Copyright and P2P

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Copyright

• Covers original works of authorship, fixed in a tangible medium of expression
  – Literary works (including computer programs)
  – Musical works, including lyrics
  – Dramatic works, including musical accompaniment
  – Pantomime and choreographic works
  – Pictorial, graphic, and sculptural works
  – Motion pictures and other audiovisual works
  – Sound recordings
  – Architectural works

Copyright

Does not cover

• Titles, names, short phrases, slogans
• Ideas, procedures, methods, systems, processes
• Concepts, principles, discoveries, or devices

• Lasts a very long time
  – Life of author, plus 70 years

Exclusive Rights of © Owner

• Without permission of © owner, illegal to:
  – Reproduce the work in copies or phonorecords
  – Prepare derivative works
  – Distribute copies or phonorecords to the public
  – Perform the work publicly
  – For audio recordings, to perform publicly by digital audio transmission

• Public is free to make other uses

Fair Use

• Exception for socially beneficial uses, which would otherwise infringe
• Four-factor test to determine whether a use is fair:
  – Nature of the work
  – Nature of the use (commercial, educational, comment, parody, etc.)
  – Amount of work used, in relation to whole
  – Effect of use on market for original work

• Two categories of fair uses recognized:
  – Transformative use: parody, commentary, education, ...
  – Home use: time-shifting, space-shifting, ...

Theory Beyond (U.S.) Copyright

• Utilitarian theory – incentive to create
  – Author controls some uses
  – Can charge others for use
  – Incentive to create

• Balance
  – Creator revenue vs. public access
  – Previous creators vs. new creators
Peer-to-Peer Technology

- Ordinary users share files
- Search facility
- Likely used to distribute copyrighted files
  - Illegal to use this way (unauthorized copying)

Copyright Owner Responses

- Anti-ripping technology
  - Topic of next mini-lecture
- Technological disruption of P2P networks
- Sue direct infringers (end users)
- Sue P2P vendors

Sue Direct Infringers

- Thousands of suits filed by RIAA
- MPAA has started too
- Possible damages $30k - $150k per infringing work
  - But settle for $3k or so
- Has it worked?
  - Success in educating users
  - Not much deterrent effect seen; too many people to sue
  - Users move to new P2P networks

Sue P2P Vendors

- More viable target than end users.
- But: not direct infringers
  - Vendors don’t copy files – their users do.
- Sue vendors for secondary infringement
  - “Aiding and abetting”

Lifecycle of a Work on P2P

- From owner to user to P2P

Technological Disruption of P2P

- Distribute spoofed files
  - Easy, but users/designers have countermeasures
- Targeted denial-of-service attacks
  - Might work, but legally iffy
- Disrupt self-organization algorithms
  - Legally iffy
- Infiltrate with misbehaving nodes
  - Legally iffy
Secondary Infringement

- Contributory infringement
  - Infringement by another
  - Knowledge of specific acts of infringement
  - Material contribution to infringement

- Vicarious infringement
  - Infringement by another
  - Right and ability to control infringing behavior
  - Financial benefit from infringement

Secondary Infringement: History

- 1984: Sony v. Universal ("Betamax") (Sup. Ct.)
  - VCR legal; has "substantial noninfringing use"

- 1999: Napster (9th Circuit)
  - Illegal; central making server too involved

- 2003: Airtel (7th Circuit)
  - Illegal; design to avoid knowledge of infringement; no legitimate justification offered; no control over use of system
  - May go to Supreme Court

- 2004: Grokster (9th Circuit)
  - Legal; no specific, actionable knowledge; no control over use of system

Is Current Use of P2P Harmful?

- Argument for harm:
  - ~25% drop in music sales
  - Lots of P2P infringing content
  - Surveys show downloads substitute for sales

- Argument against harm:
  - Some users sample works on P2P, buy later
  - People only download things they wouldn't buy, so no harm done
  - Other explanations for drop in music sales (som e support from economic studies)
  - Harm to © owners, but bigger benefit to others

Questions/Discussion