

**"DIGITAL MILLENNIUM
COPYRIGHT ACT
AND FILE SHARING"**

Pennsylvania Bar Institute
October 6, 2011

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INTRODUCTION

Digital Millennium Copyright Act "DMCA"

- Purpose – to attempt to bring US copyright law into the "digital age"
 - The internet was presenting a lot of unanswered questions!
- Signed into law by President Clinton on October 28, 1998 (112 Stat. 2860; Public Law 105–304)
- Components of the law are multi-faceted, addressing issues such as:
 - Anti-piracy measures (and circumvention thereof)
 - *Copyright infringement liability for material on the internet

Copyright Infringement

17 U.S.C. § 106

Copyright Owners have a Bundle of Exclusive Rights of:

- Reproduction
 - Distribution
 - Public Performance
 - Public Display
 - Creation of Derivative Works
 - Public performance by digital audio transmission
- > Unauthorized exercise of any of these rights by a third party without permission to do so may constitute copyright infringement

File Sharing

What is File Sharing?

- Providing access to stored computer files on a computer to one or more other computers
- Common model to provide access is through peer-to-peer (P2P) file sharing programs
- Examples of P2P Programs:
 - Gnutella
 - Pirate Bay

Typical File Sharing Scenario

- Miguel (a college student) and Dorothy have the Gnutella file sharing program installed on their computers
- Miguel is looking for the song “Oops!...I Did It Again” by Britney Spears and uses Gnutella to search for a free copy (he is on a budget)
- Using Gnutella, he finds the song on Dorothy’s computer and “downloads” a copy

Is (P2P) File Sharing Illegal?

- Usually no, if the files being shared:
 - are not subject to copyright
 - Ex. In public domain
 - Ex. Not eligible for copyright protection
 - or, are copyrighted files that are owned by the sharer
- Usually yes, if the files shared are copyrighted and shared without permission of copyright owner
- In our example:
 - Miguel made an unauthorized COPY of the song
 - Dorothy “made available” the song file to allow copying to take place, which some have equated to “DISTRIBUTING” the work
 - Recall that both the right to make COPIES and to DISTRIBUTE the work are two exclusive rights of copyright holder.

Who Cares?

- Copyright owners allege steep sales declines for many copyrighted works since the 90s and the advent of file sharing, particularly in the entertainment industry.
- Owners such as movie and TV studios, record companies and others use file sharing programs to locate alleged infringers of their works
- The copyright owners notify the relevant service provider of alleged infringing activity via mechanisms described in the DMCA

DMCA Take-Down Notice Process

- A copyright owner submits a written, signed notification under penalty of perjury to the ISP's "designated agent" that the information in the notice is accurate, including:
 - the specific copyrighted work that is claimed to be infringed (date and time are usually included too)
 - contact information for complaining party
 - a statement your complaint is being made in "good faith" (use is not authorized)
 - A statement that you have the right to proceed (because you are the copyright owner or the owner's agent).
- "Put Back" Provisions

What Are the Consequences?

- For the alleged file sharer:
 - It depends
 - Typical University Scenario:
 - Copy of DMCA Notice is shared with the alleged infringer, if the infringer can be identified (through network logs)
 - Network privileges may be temporarily revoked or suspended by the University
 - Student Judicial Affairs may become involved
 - "Reactivation" fines may need to be paid
 - Other scenarios

What Are the Consequences?

- For Service Provider ("DMCA 512"):
 - relatively immune from liability in the US, provided DMCA provisions are followed closely
 - Service Provider must address "repeat infringers."
 - Must accommodate and not interfere with "standard technical measures"
 - not liable for money damages, but may still be ordered by a court to disable access to infringing material, etc.
 - Section 512(c) Safe Harbor – deals with "online storage"
 - Example – Youtube
 - Additional requirements
 - No financial benefit
 - No awareness
 - Act expeditiously to remove content

What are the Consequences?

- File Sharing Program Owners
 - Many have been sued
 - **MGM Studios, Inc. v. Grokster, Ltd.** 545 U.S. 913 (2005)
 - **Arista Records LLC v. Lime Group LLC**, 715 F. Supp. 2d 481 (2010)

What if the Copyright Owner Wants to Further Pursue the Matter?

- The Basics:
 - "John Doe" lawsuit is brought (where ISP is headquartered)
 - Because the copyright owner only knows the individual's IP address initially
- Copyright owner subpoenas the ISP for the identity of the alleged infringer
- ISP contacts the alleged infringer and relays a copy of the subpoena (opportunity to quash)

What if the Copyright Owner Wants to Further Pursue the Matter?

- If the subpoena is not quashed, the identity of the alleged infringer is usually turned over, if the individual can be identified.
- Often, settlement negotiations commence.
- Litigation
- Example: Recording Industry of America (RIAA) sued thousands of college students using a similar process – most settled.

Recent US Cases

- Boston University student was ordered to pay \$675,000 for 30 songs he was found liable of infringing, to the Recording Industry Association of America.
 - Later reduced to \$67,500
- Minnesota woman was ordered to pay \$1.92 million for infringing 24 songs.
 - Later reduced to \$54,000

CONCLUDING REMARKS
