

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)
 - Music works, including lyrics
 - Dramatic works, including musical accompaniment
 - Pantomimes 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, commentary, 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, ...

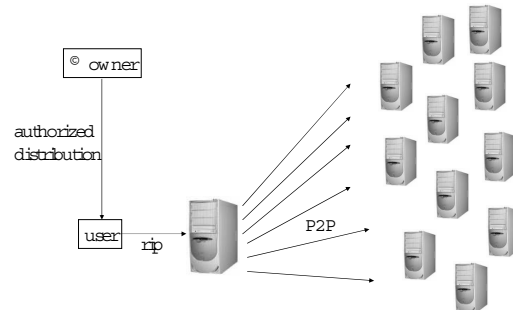
Theory Beyond (U.S.) Copyright

- 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
- Widely used to distribute copyrighted files
 - Illegal to use this way (unauthorized copying)

Lifecycle of a Work on P2P



Copyright Owner Responses

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

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

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?
 - Succeeded 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"

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 matching server too involved
- 2003: Aimster (7th Circuit)
 - Illegal: design to avoid knowledge of infringement; no legitimate justification offered for design; balancing test
- 2004: Grokster (9th Circuit)
 - Legal: no specific, actionable knowledge; no control over use of system
 - May go to Supreme Court

Is Current Use of P2P Harmful?

- Argument for harm:
 - ~25% drop in music sales
 - lots of P2P infringement
 - surveys show downloads substitute for sales
- Argument against harm:
 - some users sample works on P2P, buy later
 - people mostly download things they wouldn't buy, so no harm done
 - other explanations for drop in music sales (some support from economic studies)
 - harm to © owners, but bigger benefit to others

Questions / Discussion