

# Downloading and copyright laws



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Illegal downloading also known as file sharing enables people throughout the world to share information such as movies, music and documents. Music artists around the world were losing out on thousands if not millions of dollars worth of profit from CD sales. The biggest offender was the newly software called Napster developed in 1999. In the past decade governments have become more and more involved into combating this form of distribution. This essay looks into how appropriate governments alongside ISPs operate against combating this type of “ crime”. Net neutrality is a major theme, that in my opinion forms a barrier. The constant updating of laws and overwriting of laws has caused an overwhelming amount of confusion, and with the development of ACTA it only causes more confusion. During my research, I have used and referred to internet on many occasions as I felt that this was the most updated form of information on this topic. Books and reports to gain an understanding surrounding technological aspects as well as sociological aspects into this ever-growing problem of copyrighted file sharing.

## **Introduction to Illegal Downloading and Copyright Laws**

The illegal downloading of copyrighted material is probably one of the most common and easiest things we can do on a computer today. It doesn't take a computer expert to do so. All this was made easier by a program called Napster, which was released before the millennium, by Shawn Fanning, a college student. He had developed a way which would revolutionize the way data was sent across computers systems.

It was just about two years ago, where the French government suggested and passed a law stating that the downloading and uploading of copyrighted material would be seen as a criminal offense and that action would be taken. Soon enough, after years of discussion the “offenders” would receive their warning letters this year. The French government claiming that over 100,000 letters were sent. However as many other journalists believe, this does seem a bit exaggerated and used a scare tactic. This investigation looks at whether it is justified for the French authorities to cut someone’s internet connection.

The law was highly controversial as it affected internet privacy, and it was soon brought to my awareness that it didn’t follow the philosophy of the World Wide Web. The idea behind the set up of the World Wide Web, was net neutrality. The ideas are simple. That governments or ISPs should not intervene with any of the content being distributed, and allow free communication between the computer systems. This being said, it doesn’t appear to be the case, and governments have become more involved.

The origins of copyright law date back to the 16th and 17th century, were different acts were made for printing and pressing. The Licensing Act of 1662 which protected printers against piracy. The breaching of this act, would lead to high fines and possible imprisonment. The first known law of copyright originated in Britain and was primarily there for the protection of literary works.

The Fair Use Copyright has derived itself from the Statute of Anne. We move on again to the Berne Convention for the Protection of Literary and Artistic

Works, which is an international agreement where governments around the world joined forces to protect intellectual property. The history and development of copyright laws is described in further detail in the History of Illegal Distribution of Copyright Material of this essay.

The topic of net neutrality is one of great importance in today's society in the case of authorities becoming involved into the case of potential illegal downloading and uploading. Regulations vary in countries, however the essence of net neutrality should never have changed. To what extent are governments allowed to access our computers or intercept data packages destined for personal computers. The contrast between telephones will be interesting to mention, as telephones require court orders for data to be intercepted from a phone. Isn't this a paradox?

ACTA (Anti-Counterfeiting Trade Agreement) is the new "hype" surrounding intellectual property. ACTA is a highly secretive treaty between developed countries who are keen on creating even stricter intellectual property laws, and add them into free trade agreements. It is important to note what type of agreement this is. It is not a law, which means it doesn't have to pass parliament. This is an easy way for countries to overcome so many issues surrounding copyright laws. Due ACTA's secrecy, information available is limited and I have attempted to get as much as I can, as I feel that this agreement will bring a lot change to the role of governments in controlling their copyright laws as well as bringing up new ethical issues.

With all of this combined, its evident that with recent developments in the world and the way it will affect how we use computer systems, I can follow up on an investigation of the question:

**“ To what extent are the responsibilities of governments and ISPs in harmony in the case of copyright laws?”**

### **Availability of Copyrighted Material**

As mentioned in my introduction, over the past few years technology has advanced so rapidly, from tape recorders to CDs to portable digital media players. These transitions have brought in different factors along with it, such as different ways of formatting music files and videos, as well as being able to access them on multiple devices. Hence making copyrighted material more vulnerable as it became so easy to transfer. The general public started to see that music, videos and software were becoming “ free”, as computer intellectuals started cracking and hacking this basic form of protection that was implemented on copyrighted material. Napster was set up in June of 1999, and was a massive hit among college students. Rumor has is that over 2 million downloads of Napster occurred in the first 6 months of its launch! Soon enough word reached the RIAA (Recording Industry Association of America) and various artists and the challenges of this new digital revolution would begin. This social and ethical battle still continues today, is it right to download copyrighted material freely? There are so many ways to find and record music, and laws that have been written aren't updated enough to keep up with the general level of advancement in technology. The issue of laws not being updated at a faster rate is touched upon in History of Illegal Distribution of Copyright Material.

Shawn Corey Carter also known as Jay-Z, one of worlds most successful artists said in an interview with the well respected Forbes Magazine that the record industry had made a mistake and should have “ embraced” the technology and worked with it, rather than going against it”. In the past couple of years, the music industry is attempting to “ embrace” this new digital revolution. Since then results have proven that he was correct. In 2004 digital sales had increased by over 940%! In reply to this surge and the increase of downloading, big artists and bands have released free tracks.

The arrival of iTunes by Apple would also give more people access to music and within 7 years iTunes sold over 10 billion songs! Steve Jobs described this development as “ This has been the birth of legal downloading,” Apple CEO Steve Jobs said of iTunes when it first launched in 2003. “ We’re going to fight illegal downloading by competing with it. We’re not going to sue it. We’re not going to ignore it. We’re going to compete with it.

This is an effective statement is a prime example of where most governments should be at today, however this is not the case. iTunes is a great example of how it can work, as well as other various examples such as Spotify as well as Beatport.

In a survey I conducted among twenty individuals asking; “ If you knew how to download music and videos illegally, would you?” 60% of people said “ Yes”. It’s been evident that downloading music is a very lucrative market, and this is shown by the as data from the IFPI (International Federation of the Phonographic Industry) suggests that the combined figures of sixteen countries over a three year period leads to 40 billion illegal downloads! The

last few years have been referred to as the digital revolution, however I think we are entering a new age of digital amelioration.

## **History of Illegal Distribution of Copyright Material**

The distribution of copyrighted material has been a problem since the 17th century and the free content across the World Wide Web has only been a problem for just over a decade. The introduction of Napster in 1999 would be the start of a new era. However the sharing of data had been going on long before Napster. This data was of a different kind, and of a different purpose, yet its philosophy is similar today in the case of “ To what extent are the responsibilities of governments and ISPs in harmony in the case of copyright laws?”. The philosophy of net neutrality is based on freedom of speech, and people operating beyond the jurisdiction of any authority or any country’s authority.

Soon after Napster was set up, different methods evolved, such as other P2P software sharing such as Limewire, Kazaa. Torrents have become popular in recent years. A new era was born, and digital media was widely available. During my research I decided to find out how long and how many clicks are needed to find a song using various methods. This table is listed below:

### **Method**

As can be seen above through my research, the simplicity of downloading music, is done in less the ten clicks! This also depends upon whether or not you use keyboard shortcuts.

The origins of copyright law date back to the 16th and 17th century, where different acts were made for printing and pressing. The Licensing Act of 1662  
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stating “ An Act for preventing the frequent Abuses in printing seditious treasonable and unlicensed Bookes and Pamphlets and for regulating of Printing and Printing Presses.” Even though these acts and laws existed, printers were given exclusive rights to be able to print a certain document. Religious establishments were keen on getting the bible printed, as it was a way of spreading ideas. The breaching of this act, would lead to high fines and possible imprisonment.

The first known law of copyright originated in 1709 in Britain. This was known as the Statute of Anne, it stated “ An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or purchasers of such Copies, during the Times therein mentioned”. As we can quickly establish, the first instance of copyright law, came from a position of authority, Queen Anne of Britain. During my research it became very apparent that nearly all copyright laws were related to literature work. Over time the laws and statutes have adjusted themselves to certain situations.

The Fair Use Copyright has derived itself from the Statute of Anne. It can be compared to freedom of speech. Fair use has never been given limits by its lawmakers. It allows people to make “ a fair use is any copying of copyrighted material done for a limited and “ transformative” purpose such as to comment upon, criticize or parody a copyrighted work”. This law doesn’t allow copyright holders to over exaggerate the unlawful use of their work, as well as allowing the public to use the work fairly.

The Berne Convention for the Protection of Literary and Artistic Works, is a international agreement which was signed in 1886, and currently has 164



members. This was the first step where governments around the world joined forces to protect intellectual property. The law abolished the requirement to register foreign works and introduced an exclusive right to import or produce translations.

It has come to my attention that the issue of controlling the distribution of ideas and copyrighted material has been a social and ethical issue not for the past decade, but in actual fact for approximately three centuries, yet still today governments lack behind and still haven't found a solution. The evolution of the World Wide Web has only made this a harder task.

## **Net Neutrality**

The definition of Net Neutrality is unclear, as there are many different interpretations, fundamentally it means the access to the internet without restrictions. Tim Berners-Lee once said that Net Neutrality “ is a principle proposed for user access networks participating in the internet that advocates no restrictions by Internet Service Providers and governments on content, sites, platforms, the kinds of equipment that may be attached, and the modes of communication allowed”

Net neutrality is the reason the internet has become such an important and powerful way of bringing messages across, and has had such an influence on world affairs. A great example is the affect of Wikileaks, and how governments attempt to remove them. The educational value it just as important, as it enables old and young generations to share ideas and learn from each other. In the case of music, it can be argued that their definition for music is very different, and indeed the definition of music is still today a

matter of discussion. Record labels obviously feel that it is a source of income. Some people feel that it is a way of expressing emotion. The sharing of music allows inspiration for others to follow, and I think it can be widely agreed on. If people did not have access to as much music as they do, the music industry wouldn't be as alive as it is today. It would appear that copyright laws established by government are actually inhibiting new artists, instead of blossoming their growth.

ISP's and Governments appear to be receiving pressure from the creative arts industry internationally. This is slightly ironic as it is primarily the music industry that have such issues with the current state of their market. The International Chambers of Commerce states " the significant volume of digital and fake products being distributed via the Internet, and the loss of economic development, harm to health & safety, reduced technology transfer, and innovation, the total magnitude of counterfeiting and piracy worldwide is well over US\$ 600 billion."

France has been the center of government and ISP regulation, as its said to be the number 1 country in illegally accessing movies and music. In 2005 the DADVSI was voted through by both houses of the French Parliament. DAVSI was a proposed law based on reforming the French copyright laws, which forbid the sharing of copyrighted material through P2P networks. This was probably one of the most understood laws implemented. The law has had its fair amount of modifications since its implementation, as well as new laws overwriting the DAVSI law as new technological and social issues kept arising. The example of this is the new controversial HADOPI law, which was implemented after a previous failed attempt in early 2009. After its first year

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of running, and still uncertainty on what these laws exactly are. The French President Sarkozy, has announced that the HADOPI agency has warned over 100, 000. Although experts say that the real figure is approximately 30, 000. The ways these warnings are received, touch upon the essence of net neutrality. International Press as well as computer experts have suggested French ISPs have been reluctant to identify and email customers, yet have been forced to do so under government pressure.

Our discussion, is to determine the right idea for third parties such as ISP's to get involved for an issue that isn't theirs but that of the record labels. This makes legislation a lot harder, and it requires constant updating.

The Chinese government is an example of how a government controls the internet, shutting down sites that could show information which could potential bring vast amounts of criticism from other countries. However the US has criticized this thoroughly, recently there have been government proposals for wire tapping the internet, to allow national security agencies to track and look at your personal computers data through the internet. In the western world, where people are often critical of Eastern policies, we are now moving to similar policies that we criticize to this day.

ISPs shouldn't be allowed to packet sniff to investigate our activity. This brings in the whole issue of privacy. There are another few examples which can be shown as why net neutrality should be enforced further. In 2007 Federal Communications Commission advised the US government to vote for the implementation of a law for net neutrality as it is only a morale and not an actual law.

-Telephone companies connect phone lines together to allow people to communicate easily, but don't tap them to listen to what is being said. Wire tapping requires judicial warrants, and is seen as a huge privacy matter to tap into someone's phone.

Where do we cross the line? I believe that is a question that nobody can agree upon, from a political as well as a "illegal downloader" perspective we would receive biased opinions. The willingness for concessions appears to be 0% from both parties.

### **ACTA (Anti-Counterfeiting Trade Agreement)**

ACTA is a " plurilateral agreement" between 10 countries and the European Union , which is attempting to set out authoritative measures on intellectual property rights. This idea was developed by America and Japan back in 2006 and the first conference was held in 2008, where soon countries New Zealand to Mexico would join. These talks have been held at a very low level, which has raised suspicions from computer experts, and leaked documents have only increased the fears of the effects that this treaty could have to the public. This agreement gives government authorities rights such as:

-The right to search through personal computers, when under the suspicion that illegal copyrighted material might be contained inside. (Border Search Possibilities)

-Track internet user behavior

-The close cooperation between ISPs and copyright holders in removing infringing material.

### -Network filtering by ISPs (DPI))

These are an example of the problems that face this agreement, even though ACTA allows countries to set up their own punishment. Some of the suggestions put forward to combat the illegal distribution of copyrighted materials are not in line with privacy laws set out by certain governments, or certain international treaties. Which of course, leads to further complications.

## **The Effects of Illegal downloading Internationally**

Illegal downloading has been on the agenda of international politics for the last couple of years, and it has become a growing problem for governments, and a global interest for youngsters in that same period. The spread of material through the Internet has grown drastically since the introduction of the World Wide Web. According to the University of Minnesota around 675 petabytes per a day of data crosses between computer systems a day, and an approximated 21 exabytes a month. Its estimated that the internet's total data is about 500 billion gigabytes of data back in 2009 . Thanks to all the advancement in technology, and new security concerns, the saving of data has been essential. Multimedia has become a big part of daily life, and it is estimated that on average U. S. children spend almost 8 hours a day using media, such as TV and computer.

According to the International Federation of the Phonographic Industry(IFPI) it is estimated that over 95% of all music downloads are illegal (2009).

However over the last decade, the music industry has had to adapt to the new demands of the consumer. The digital era has also affected the music

industry, and companies such Apple Inc. are selling music at an unbelievable rate from their online music store.

The big four Universal Music Group (UMG), Electric & Musical Industries (EMI), Warner Music Group (WMG) and Sony Music Entertainment, have developed 360 deals where they fund marketing and promotion for an artist. In return the artist will share his profits from concerts and sales with his record label. Big artists such as Robbie Williams and Jay-Z are attached to such contracts.

The digital market, and revenues have increased dramatically in this area. (IFPI report). It shows that the music industry is capable of adapting to new circumstances. Yet feels that is it missing revenues. Although this assertion is correct, the nature of the problem has grown to an extent where it is impossible to reverse, and only minimize damage. I believe a distinction must be made between the music industry and artists, some artists choose to post their work for free as that is their way of marketing it. It changes the discussion point which links in with my research question. To what extent has the distribution of copyright affected the music industry. A wide conception is made when thinking of the music industry as a group of multinationals, however I believe that this is a misconception that shows another complexity on the issue of copyright law. The music industry also consists of the small artists that haven't achieved fame. Kate Nash provided her music for free on myspace, and eventually her popularity increased and gaining herself a deal.

Overall the effects of illegal downloading has caused some change, instead of actually combating the issue.

## **Conclusion**

I have attempted to show the consequences of illegal downloading, and future problems caused by it. Copyright law, has evolved thoroughly throughout the past century. Yet the development of technology and the introduction of digital media have only increased this evolution to a rate where it is impossible to overcome the impact. This is reflected in the limited range of sources, as the Internet has proved most updated. When Napster started the idea wasn't embraced but attacked upon, which I believe was a very fundamental error as they could have used this type of technology to their advantage. The music industry has seen a new way of spreading their product and this has shown as from 2004 to 2009 there was a 940% increase in digital sales! Ironically in the same source its stated that in P2P sharing (largest piracy method) 76% actually spend money on music, yet still claim that the " net effect" is still negative.

The development of Copyleft and Creative commons is in my opinion the future. The music industry is like any industry, they have their cycles. It is unfortunate that file sharing was easily dismissed between computer systems.

As for ISPs becoming involved, it really relies on governments and in a recent report by the International Federation of the Phonographic Industry (IFPI), they stated " The music industry and other creative sectors around the world are seeking to engage ISPs in curbing digital piracy on their networks. In

most countries, this requires help from governments in establishing a consistent and effective response from the entire ISP community..... IFPI first called for ISPs to cooperate in a graduated response system in 2005. Five years later, voluntary means have largely failed to progress.” This failed progress is evident from the reluctant ISPs to forward information, as they feel that they are betraying the privacy of their clients.

A majority of governments around the world have set themselves a major task, reforming the way digital media is distributed. The development of ACTA has only made the combination of copyright law, intellectual property law and international treaties a immensely and unimaginably complex process. The laws and treaties to overwrite and conflict each other, and complicate the process of reform further. Reviewing the laws and treaties in different countries, just makes me think what on earth are governments attempting to do. Governments are attempting to work in harmony with copyright laws, yet ISPs are becoming increasingly resilient to co-operating with governments but have no choice as laws have been designed which require information about customers to be shared.

Another question that arises is to what extent will these measures go, in the Net Neutrality part of this essay. If the government succeeds in forcing ISPs or enabling co-operation between the two. How far will this go with other means of communication? Privacy will be a major social issue. The defending of net neutrality will be difficult as it is a principle and nothing more. Yet it still maintains a status of etiquette among society which is now slowly being broken.



The ability of hackers is a force to be reckoned with, they always appear to be one step ahead. Governments and ISPs will always be behind no matter what situation they find themselves in. This is a big social and ethical issue plaguing the World Wide Web. Steve Jobs set an example that many governments must follow, and its too late too combat, so the only way is too compete. The question here is, what will it take to compete?

Many lawyers, computer science experts, music businesses and governments have spent years attempting to solve this issue, but to what extent it will ever be gone for good, will be hard. As a concluding statement,

I