

Media piracy essay



Executive Summary Disney and the Pirates of the Industry I. Introduction As a global company with high interest in both the music and film industries, it is essential that Disney deal with media piracy effectively. With Internet access increasing globally, piracy has the potential to create huge financial losses for Disney. In order to adequately deal with this problem, it is necessary to comprehend the history and evolution of piracy, its impacts on music and film industries, and its effect on the development of innovative business strategies.

This brief will address various issues relating to media piracy in order to make insightful recommendations. II. Factors in the Evolution of Media Piracy A major issue in business today is the protection of intellectual property. While most nations recognize the right to intellectual property, laws differ from one juridical system to another. One common form of protection for intellectual property is a patent.

Another important protection of IP is a copyright. Infringement of copyrights has become a salient issue for many businesses that hold intellectual property. In particular, modern multi-media corporations face the universal challenge of piracy of copyrights on electronic and audio-visual media (See Appendix A. 1 - A.

6 for more information regarding definitions of these terms). Soft-printing music and films is a form of piracy that has become widespread due to the Internet boom of recent history (See Appendix A. 7). It is considered a copyright piracy and a theft of intellectual property. It is important to distinguish between the different forms of piracy.

Offline piracy, in which films and music are illegally distributed through copying or transferring of copyrighted information on physical media, contrasts with online piracy, which is the unauthorized transfer of media files from the internet (Tech Target IT 2005). While both of these are serious challenges to international businesses, the scope of this brief will focus on online piracy in music and film because it is currently a more relevant problem for most corporations, including Disney. The internet has been the critical factor in the rise of online piracy. High-speed internet offers the ability to share media instantaneously.

With the emergence of file-sharing networks, such as Napster in 1999, an outlet was created for file-sharing among millions of users. There has been a snowball effect in these networks, in which many new servers have emerged since the creation of Napster (Harmon 2008). These servers enable users to illegally download music and films quickly and at no cost. This eliminates the need for many to purchase this media legally in stores (See Appendix A. 8).

Furthermore, as more and more people get access to the Internet and the existing Internet connections are getting faster, this problem is rising (See Appendix 8. 9). In developing countries in particular, in which many consumers cannot afford the legal prices of this media, illegal online piracy is a solution. This is usually viewed as a socially acceptable deed, as the theft of intellectual property is generally not considered to be a "crime" (Smiers 2006).

The rise of online piracy at the beginning of the century resulted in reduced sales within the music industry. The US market has experienced a decline in

CD sales from 2001 through 2005, with the exception of 2004, peaking at 8.9% in 2003 (RIAA 2005). Internationally, CD sales also dropped since 2001, although the declines are not as significant, with the latest value of 3% reported for year 2005 (IFPI 2006) (See Appendix A. 10 for complete statistics regarding the music piracy market).

Previously, online piracy was more of an issue for the music industry; however, it is becoming more common in the film industry as well. Motion Picture Association of America estimates that the American motion picture industry lost \$2. billion as a result of Internet piracy in 2005 (MPAA 2005). Recently, faster Internet connections allowed users to download large movie files through file-sharing servers, such as BitTorrent.

An average of 500, 000 copied movie files are downloaded on the internet every day (Warner 2006). All these figures should be alarming to Disney, as a corporation involved in both the music and motion picture industries. Yet, the latest trends in the industries indicate a shift towards digital distribution of media, which may help to resolve some of the problems. Digital media will be discussed more thoroughly below.

IV. Conflicting Interests in Media Piracy The views about media piracy can generally be divided into three groups: consumers, governments and industry. From the consumer perspective, online media piracy is considered to be a means of attaining popular music and movies through the internet without having to pay for them (BBC News 2002). A survey performed by the Recording Industry Association of America found that ? of consumers do not buy new music because they are downloading or copying the music for free

(RIAA 2005). Many consumers do not consider illegal downloading to be a “crime”, whereas the music and film industries view it as a direct threat to IP.

In addition, current consumer preferences reflect a widespread demand for American culture in music and movies. Thus, online piracy is a means by which developing countries can access American culture, even if they cannot afford to purchase the media legally (Smiers 2006). From the industry point of view, media piracy is blamed for a continuous decrease in sales.

Corporations within these industries have collaborated to create many industry financed anti-piracy organizations.

Examples of anti-piracy organizations include the Coalition for Intellectual Property Alliance and the International Anti-Counterfeiting Coalition (Yar 2005), as well as the Recording Industry Association of America and the International Federation of Phonographic Industry (Liebowitz 2006). Another strategy enacted by the entertainment industries is the use of digital rights management systems (DRMS). DRMS are tools for the media industry to fight piracy by controlling access to and usage of digital data, essentially going beyond the restrictions of copyright law by putting additional limits on distribution of intellectual property (Fetscherin 2003). For example, the iTunes online music store encodes its music files so that they may not be illegally copied (Dela 2005).

DRMS is a controversial topic, as many consumers claim that DRMS restrictions take away the benefits of the digital world (Fetscherin 2003). This represents the conflict in ideology between consumers and industries. Having said that, Disney has to preserve its competitiveness in the industry

by closely following all the technological developments associated with copyright protection. As the industry shifts more and more towards online retail, the theme of copyright protection of digital files will continue to recur. The government's position in the media piracy issue is more complicated.

Governments must try to appease the industries but also face the conflict of consumer interests (Harmon 2003). This involves establishing complex legislation systems, as well as enforcing them. V. Legislation Across the World Various legislation and policies have been enacted throughout the world in response to the media piracy dilemma.

It is important to be aware of the tools that this legislation provides your company in combating piracy, as well as the limitations of these laws. Intellectual property law has changed dramatically in recent decades. Before the 1990s, there was little concrete international law regarding intellectual property protection. The 1984 amendment of the United States Trade Act was an important piece of legislation that connected the international protection of US copyrights with US bilateral trade relations.

This amendment established the “ Special 301” process by which the US administration could penalize countries that were believed to be violating intellectual property rights (Yar 2005) (See Appendix B. 1). In 1994, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) was passed by the World Trade Organization. This agreement required all WTO member countries to enforce a set of intellectual property standards that gives maximal protection to rights holders. The TRIPS agreement “

introduced IP property law and the idea that copyright violations were 'criminal acts' into the international trading system" (Yar 2005).

This agreement was important for the industries of heavy IP exporting nations such as the US, the European Union, and Japan. For a complete timeline of international IP legislation, see Appendix B. 2. Furthermore, many nations have passed legislation to criminalize piracy. For example, the US passed the Digital Millennium Copyright Act in 1998 to increase penalties for copyright infringement on the internet. (Caslon Analytics 2005).

Later on, the No Electronic Theft Act of 1998 was passed in the US which made provisions for imprisonment for those convicted of pirating. The significance of this act is that it was extended to piracy both for commercial gain and also not-for-profit digital trading, such as file-sharing. Thus, this act directly restricts online piracy (See Appendix B. 3) (Yar 2005). Both national and international governmental legislation for IP protection conveys an important aspect of the piracy problem itself: different countries have different perspectives and levels of success in fighting piracy.

In developing countries, the general consensus is that the laws against intellectual property use benefit the developed countries and hurt the developing ones. In addition, within many developing countries individual intellectual rights are not a common notion, and thus it is difficult to implement laws that the general public does not believe in (Smiers 2006). From this legislative analysis, we see that piracy creates a conflict not only between consumers and industries, but also between governments of different countries. A prime example of this is the conflict between the

United States and China. The US, as the world's largest net exporter of IP, is an advocate against piracy.

However, China has notoriously high levels of piracy due to its poor enforcement of international conventions, including TRIPS (Smiers 2006). This is reflected in that Chinese film piracy levels are over 90% of total film consumption. (See Appendix B. 4). This has fuelled much tension between the US and China in recent years.

The contrast between the US and Chinese attitudes towards media piracy highlight an important concept in the fight against piracy: a need for consistency in enforcement. Piracy is an international threat in that the internet has globalized its scope. Therefore, while it is critical for you as a competitor to use profitable strategies, international cooperation will be vital in supporting these strategies.

III. Socioeconomic Considerations

It was already argued that consumers prefer media piracy, so it is not a surprise that economic theory supports the claim that media piracy is actually beneficial for the society.

A study, conducted on a sample of university students, showed that less-valued music is more likely to be downloaded than music that is valued highly (Rafael and Waldfogel 2006). Thus, the sales displacement by music downloads is incomplete, meaning that each downloaded album does not result in a loss of revenue of one sold album. Welfare analysis showed that consumer welfare increased as a result of media piracy, partly from the decrease in expenditure, but mostly from the decrease in the deadweight

loss. This deadweight loss is associated with the less-valued music that would not have been enjoyed, were the downloads not available (CITE?).

While it is clear that the society will continue to convert this deadweight loss to consumer profit by engaging in free (and illegal) music downloads, the industry should be able to capture some of this deadweight loss as well. A better price-discrimination model is needed to transfer the maximum amount of this deadweight loss to the industry. The current legal music download scheme provides a basic means for price discrimination.

Consumers are able to purchase individual songs, so the industry receives additional revenue from listeners who are not willing to spend the money to buy a complete album.

An improvement to this model would be introduction of a tiered system of download pricing, where the most popular downloads would be the most expensive. Similarly, the less popular music, which is very likely to be downloaded illegally, would be sold at a discounted price. Record industries, including Disney, have been known to disagree with the internet retailers' pricing policies, and should continue to lobby the retailers to introduce variable pricing on the downloads (Dela 2005). It should be noted, however, that certain analysts believe that the industry is still immature and any change in pricing of online downloads could backfire ([http://www.msnbc.](http://www.msnbc.msn.com/id/7048053/)

[msn.com/id/7048053/](http://www.msnbc.msn.com/id/7048053/)) THIS IS NOT IN THE BIBLIOGRAPHY. IV. The Impact of Media Piracy on Business As piracy has grown, so has the development of new technology. Media pirates have capitalized on the capacities of the Internet and created a myriad of online programs that allow users to share

their files. Based simply on the popularity of piracy programs, it is clear that they have managed to satisfy consumer demand for content availability, quality, and price.

Since piracy provides service to the same market as Disney, it is obvious that the company is, in some way, not fulfilling its consumers' demands. Thus, Disney should adapt by becoming more involved with distributing goods and services via the internet. It is better to cannibalize one's own business than to let pirates do so. Besides the use of technology as a competitive advantage, piracy has also been a " source of invaluable market insight to the business world. " (Choi and Perez, 2005) Businesses need to research and understand the reasons for the enormous success of piracy communities.

In doing so, businesses may be able to identify any areas in which they are not adequately satisfying their consumer. As well, they can use the information to identify consumer trends in order to determine what type of music or film will be popular in the future. Secondly, piracy has impacted business in that it has forced companies to find new and innovative ways to compete. Peer-to-peer (P2P) sites attract users by offering a large selection of free quality recordings that can be downloaded at the user's convenience (Choi and Perez, 2005). This was a revolutionary new distribution channel. While the entertainment industry was certainly not pleased by the free offerings, P2P sites were obviously the prototypes for online stores such as iTunes.

It can also be argued that most consumers are attracted to P2P sites not because of price, but because of convenience and because they can tailor their downloads to their tastes, as opposed to buying an entire album. This can be proven by the fact that digital music sales more than tripled from 2004 to 2005 (Economist 2005). Moreover, the increase in digital music sales offset the drop in physical format sales in certain markets, such as Japan (IFPI World Sale Report 2005). Initially, the industry began suing individual down-loaders and file-sharing services in the hopes that litigation and legal action would discourage people from downloading.

The entertainment industry also won a major victory when the US Supreme Court ruled in June 2005 that file-sharing sites could be held liable for copyright infringement if they encouraged users to swap illegally. Following this ruling, the industry began to issue legal letters against P2P sites, eventually forcing these piracy communities to shut down. The popular site eDonkey, which accounted for about half of online downloads, announced that it would begin offering downloads for a fee, while a number of other popular P2P sites simply shut down (Economist 2005). Thus, piracy has forced the film and recording industries to become more innovative and to develop new business models to compete. In order to maintain a competitive advantage, Disney must keep up with ever-changing technology, and constantly seek to make their business better.

To compete with P2P sites where users could exchange music, the industry responded with online stores such as iTunes, which now accounts for over 80% of \$1. 1 billion digital music sales in the US (Economist 2005). While the music industry has slowly begun to adapt to this new format, the film

industry should learn from history. There are an increasing number of video download sites, such as YouTube and BitTorrent. This demonstrates consumer demand for Video on Demand services. Obviously, Disney is already keeping with the trend by signing a deal with Apple iTunes to offer television segments, and has since sold 12.

8 million units through this deal (Nettribution, 2006). This trend will only continue to grow, especially with the growing popularity of online video specific search engines (Choi and Perez, 2005). After all, it was the growing popularity of this technology that prompted Google to purchase video sharing site YouTube for \$1.5 billion (Source?). Furthermore, the major television networks have caught onto the trend. Realizing that episodes of their popular television series were being uploaded to video piracy sites, ABC decided to cannibalize its own content online.

When the fall sweeps began, ABC started airing its popular series *Lost* and *Desperate Housewives* on its website immediately after the shows finished broadcasting on television. Fox quickly picked up the trend by broadcasting *The O. C.* on its website as well. In doing so, consumers who might have illegally downloaded the shows on a P2P site can now simply go to the network website and be guaranteed a high quality download of the show. Meanwhile, the networks avoid losing control of their content, and may be able to derive profits by selling online ads.

While new business models are developed, piracy has also permitted the entertainment industry to find new ways of marketing to consumers, such as viral marketing (Wall Street Journal, 2006). Musical artists such as Dashboard

Confessional and Jay-Z have used this technique to promote their new releases. In this strategy, the record company uploads content onto the P2P site with a brief preview before locking the rest of the content. The user is then required to forward the song to as many people as possible in order for the rest of the file to be downloaded.

Obviously, piracy has had a roundabout positive effect on the entertainment industry by forcing them to improve services, and to continually adapt business practices to changing technology. While Disney has been relatively quick to embrace these trends, Disney must recognize that consumer demand is more important than ever. With the number of illegal P2P sites available, Disney should focus on using the latest technologies to offer consumers content of the highest quality which can be easily downloaded at a reasonable price. They must compete for consumers by doing their best to satisfy all consumer demands.

V. Recommendations and Concluding Remarks As this brief presented, media piracy is a multifaceted problem with no clear-cut solution. Yet, it is evident that certain recommendations could be made to minimize the consequence of piracy proliferation. Since many of the key players in the media industry are multinational corporations, international legislation should be implemented using a multilateral strategy.

It is vital to lobby the company interests since this legislation is still being developed in many parts of the world. Industry leaders, including Disney, should strive to maximize international cooperation and consistent enforcement of legislation, such as TRIPS agreement. More importantly,

however, Disney should also focus on its business models. In recent years, media piracy has revolutionized the way the media industry conducts its business operations. Piracy has forced companies such as Disney to seek innovative business models to make their distribution systems more efficient.

While Disney has already entered the online retail field, it should continue to improve the distribution of its products to tailor to consumers' interest in on-demand access to media. For instance, the company should offer more products online, as well as explore the possibility of offering its content through wireless telephone services. Besides that, Disney should be on top of the technological advancements in order to stay competitive in the industry and possibly gain first mover advantages. This may involve implementing new developments in the DRMS field.

In order to achieve this goal Disney should consider increasing its research and development spending in IT. Finally, the media industry, including Disney, should realize the phenomenon of media piracy has been embedded in our society and will not disappear in the foreseeable future. Moreover, Disney should understand that piracy may further proliferate with new technological advancements unless the industry uses them to their advantage before the online pirates do. Instead of trying to eliminate piracy, Disney must implement strategies to counter its effects. Online media piracy flourished because its only goal was to please the customer, not gain profits. Similarly, Disney's top priority should be satisfying consumer demands and recapturing the market, which would result in their ultimate financial success.