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Piracy and Distribution of Digital Media

By 2011, the act of copyright infringing by illegal streaming had been reviewed three times over the span of 14 years. The first provided the NET act in 1997, which established that the distributing copyright protected information over the internet is, in fact, unlawful. Due to the NET act, section 506(a)(1)(B) notes that it is a criminal act to distribute these materials digitally: “by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000”¹, and broadens the definition of “financial gain”².

9 years later in 2005, the ART act was released. This act was created predominantly to address the issue of commercial materials (bootleg copies) that are distributed digitally before they have been released to the public. The new amendment states “a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution”³.

Lastly, in 2011, the copyright office reviewed this topic one last time. They made no changes, but simply noted the notorious difficulty in pursuing legal action or prosecution against those infringing by illegal streaming.

Throughout these amendments and notes, it is curious that the combined power of these revisions only protect materials with a value higher than \$1,000, and emphasizes those that were to be commercially distributed. Although rightsholders of illegally streamed videos may be the most financially affected by the lack of strong copyright enforcement, there are far more instances of low-risk that are illegally taken, distributed, or reproduced every day. These materials aren’t so far from the definition of streaming, as this information is continuously received and viewed on third party websites.

Although it is clear that the right to duplicate and reproduce works clearly belongs to the author, it is now possible to reproduce or duplicate a work without downloading it and therefore without producing a local copy. For many web services, it is possible to use an image by providing the URL instead of uploading it from your computer directly. This quickly can become an issue. Regarding sharing of sound recordings, Menell appears to be liberal by noting that “...to prove violation of copyright’s distribution right, a copyright owner need merely show

¹ “U.S. Copyright Office - Copyright Law: Chapter 5.” Accessed November 25, 2016. <http://www.copyright.gov/title17/92chap5.html>.

² “U.S. Copyright Office - Copyright Law: Chapter 1.” Accessed November 25, 2016. <http://www.copyright.gov/title17/92chap1.html>.

³ “U.S. Copyright Office: Promoting Investment and Protecting Commerce Online: The ART Act, the NET Act and Illegal Streaming.” Accessed November 25, 2016. <http://www.copyright.gov/docs/regstat060111.html>.

that a copyrighted work has been placed in a share folder that is accessible to the public”⁴, while others claim that you would need to prove that the file has been downloaded to show that one’s distribution right has been infringed. Neither of these options is very practical for non-AV files.

Under the current law, all digital content authors are essentially stuck when it comes to the established content being used without their permission. Commonly stolen materials include images, tweets, gifs, and text-based facebook posts. There are little to no repercussions for these materials, as a single visual of a cute cat may not have a financial value of over \$1,000, and it may not have been shared in a way that is conclusively defined as “distribution” or “streaming”. This issue is further complicated by .gifs, which are neither truly streamed or distributed, but more closely straddle the two terms than any other option.

Another curious example of a lack of clarity is the phenomenon of stolen images being uploaded to websites as free stock images under a Creative Commons license⁵. In this case, there is no “financial gain” displayed, even by the broadened definition. Those infringing had nothing to gain from stealing these images.

Essentially, there are millions of works that lack any degree of regulated and conclusive protection or defense against infringed rights. Although it *is* possible to request a take-down through the distribution platform, there is no guarantee that the website will choose your side, specifically if there is financial gain for them not to, Skip Elsheimer of AV Geeks noted at AMIA 2016.

My proposed reform would be to establish an amendment that would clarify sharing methods and protect mediums that may be AV in nature, but are more likely to be infringed upon than traditional, studio-made AV materials. This includes images that are taken and not “copied” or saved locally, and materials that are copied and shared specifically through social media. With these specifications, it will be more difficult for these commercial entities to refute copyright claims based solely on financial gain.

In this reform, my allies would be authors and rightsholders, as content would gain better defenses against infringement than there has previously been in the internet age. They would want their content to be protected, especially as some content may be commercially viable, just not exceeding \$1,000 in value.

My foes would likely be the websites and platforms. Under this proposed amendment to clarify and protect these materials, they would have an increased number of copyright claims to process, and this clarification may end up damaging the relationship between large companies and the platforms, as it may impede advertising revenue.

⁴ Menell, Peter S. “IN SEARCH OF COPYRIGHT’S LOST ARK: INTERPRETING THE RIGHT TO DISTRIBUTE IN THE INTERNET AGE,” n.d.

https://www.law.berkeley.edu/files/Menell_-_59_J_Copyright_Society_1_2011.pdf.

⁵ Vaughan, Pamela. “Copyright Law on the Internet Is a Total Train Wreck Right Now.” Accessed November 25, 2016. <https://blog.hubspot.com/marketing/internet-copyright-law-failure>.

In this case, my foes would argue that these materials are already technically protected, and that any further clarification is unnecessary and redundant. In addition, they would likely mention that the number of materials to gain better protection would be unmanageable.