

Internet Crimes and Increasing Regulation

By Amy E. Wong



I was a Napster baby when the innovative music-sharing system first came out in the late 90s. Those were the sweet times when I could sample tracks from different artists. Unfortunately, those sweet days were numbered as the music industry accused media-sharing systems such as Napster, Kazaa, and BearShare of massive copyright violations. One by one, court orders brought the precious services of each to an abrupt end.

In its attempt to stop the proliferation of digital piracy of music and movies, the entertainment industry has created what many are calling a “copyright panic,” or an unreasonable expansion of copyright protection, which has led to an irrational expansion of rights.

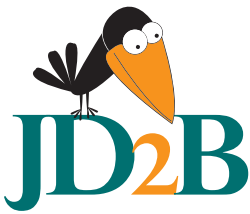
Mark Bartholomew, visiting associate professor of law at the University at Buffalo Law School, and John Tehranian, associate professor of law at the University of Utah S.J. Quinney College of Law, explored this issue in their [article](#) published in the *Berkeley Technology Law Journal*.

They note that, back in the day, a company was only punished for secondary copyright infringement when it directly profited from the illegal use of technology. Under earlier laws, Napster and other P2P sharing services did no wrong because they did not profit. They did not commit the same crimes that were and are being committed in China, where 90% of all CDs, movie DVDs, and software programs are pirated.

Bartholomew contends that the court only expanded copyright law because Napster had a “hypothetical future revenue stream”—an action that was as ridiculous as arresting an armed man for murder. He continues, “A lot of people in the legal community are concerned that copyright protections have gone too far.”

As copyright law continues to grow, trademark law remains the same because “[t]hese cases usually involve big corporations, ad people, and sales people who are not as appealing of a plaintiff as a Carlos Santana or Don Henley. That’s why the court has been able to resist expanding trademark law.”

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However, Bartholomew's and Tehranian's article purports that trademark law will undergo the same panicked expansion that copyright law has undergone as technology continues to develop.

Large and small companies will be suing each other left and right for using certain logos or taglines. Perhaps Coca-Cola will one day sue another company for using its trademark "Coke" bottle. Gap may sue somebody for using its 60's-inspired psychedelic font style. (These are, of course, just examples and do not reflect any actions actually taken by the companies.)

Will there ever be a day when this panic stops spiraling out of control? There must be some way to keep these laws from taking on absurd proportions.

Tim Wu, law professor at Columbia University and co-author of *Who Controls the Internet?*, asserts that there is a way to curtail expanding copyright laws. In his [article](#) on [Slate.com](#), Wu notes that Section 512(c) of the 1997 Online Copyright Liability Limitation Act protects websites that "host" user-generated content-websites such as Wikipedia, MySpace, and YouTube.

Unlike Napster, these host websites do not help users find and download infringing content. Napster, Wu contends, helped users find infringing content, so it played the part of a pimp. Websites like YouTube are just platforms for displaying content, so they resemble hotels where illegal activity takes place more than they do active enablers.

If a host website has infringing content, the owner can simply request that the website remove the material. Assuming that the website was ignorant of the presence of infringing material and honors the request to remove the material, it is free of any and all legal liability.

I believe this copyright panic can and will slow down when all web-based companies protect themselves by becoming hosts rather than active enablers. They need to remove the "search" button and allow users to post content.

What will happen to trademark law? Well, if Bartholomew's and Tehranian's dire predictions are right and regulations do spiral out of control, we'll deal with the problem in the future when the need arises. I do think, however, that if and when accusations of trademark infringement run rampant, the government will handle trademark law similarly to how it handles copyright law: by giving fair warning to those companies who have unwittingly offended.