

From: [REDACTED]
To: [FN-OMB-IntellectualProperty](#)
Subject: Feedback for Intellectual Property
Date: Wednesday, March 24, 2010 12:00:42 AM

On the request of feedback on the topic of Intellectual property infringement, I am writing to share my thoughts and recommendations on the subject in hopes that they be considered in the overall U.S. plan for action.

My name is Brian Ralston. I am a film and television music composer based in Los Angeles, California. In addition to composing music for films and media projects, I also compose music for concert groups, arrange and orchestrate songs and other musical compositions. I both own the copyrights on much of my compositions, as well as create music for films under "work for hire" agreements. The issue of intellectual property infringement affects all of us who make a living creating creative "intellectual" property. The biggest issue today I see with regards to intellectual property infringement is due to the technological advances the internet brings to society. A decade or more ago...songs were of course being copied and shared with friends, movies were being copied to VHS tapes and sold on the black market, etc... Pirated intellectual property is not new.

What is new is the distribution capability the internet gives to a single individual. Now...one person with one digital copy of a CD, an MP3 of a song...or a digital movie file...can upload to various file sharing websites or peer-to-peer networks and with one click of their mouse...they easily distribute that content to millions on a massive worldwide scale...thereby circumventing the commerce system in place for purchasing our works and greatly affecting US commerce. Most all of the film/projects I have been involved with as composer have been widely distributed on these peer-to-peer websites, sometimes before they were even released legitimately for sale in the U.S. The consequences for this happening are great. Especially to "smaller" independent films who need all of the leverage they can get to get a distributor to buy the film for distribution. And if the film gets out there by some rogue individual before a deal is in place...this can effectively eliminate the deal all together. The people think, "why pay for something when I can get it for free on the internet." This kind of IP infringement can destroy a delicate distribution deal in place.

Another issue that I feel is closely related is in regards to the royalty structure in regards to music. As a composer...we are entitled by law to performance royalties of our works when they are performed on the broadcast networks. Many deals in the entertainment industry today use this fact in our contracts and compensate use for our hard efforts with very little up front fees...in exchange for those back end royalties which only come from these future performances and broadcasts. Most composers I know in the industry make a living off of their broadcast performance royalties and not the up front fees acquired actually creating the content in the first place. As more and more content is being pirated and traded on the internet...less and less people are watching content via traditional broadcasts. This creates a negative cascade effect on the industry in place. With less people watching...less advertising revenue is brought in. In order to combat this, the studios and other content creators attempt to move their intellectual property onto various "legal" internet sites to compete. Websites like Hulu.com, ePix.com, TV.com and yes, even YouTube.com are used to stream and showcase material now in an effort to at least re-generate some advertising income from the internet audience who is already

getting their content from the internet and not watching TV broadcasts. But the studios have figured out that "broadcasts" are defined as being the "airwaves" only...the broadcasters do not have to pay broadcast royalties to us, the content creators when it is streamed or downloaded over the internet. So, while some new advertising revenue is collected on these new online ventures...money is saved by the studios overall because they are bypassing the broadcasters, taking on that role themselves, thus circumventing the long established practice of the broadcasters paying performance royalties to content creators. So, the creators of the intellectual property are once again getting screwed out of the fair and long established compensation for their intellectual property work (which is being used to drive those advertising sales online).

What can be done? Recommendations:

1. The government needs to amend current laws quicker to catch up to the technology in place. First and foremost...the internet when used for streaming or delivering intellectual property content needs to be classified as a broadcast just like it is on the airwaves. The same rules for broadcasting need to apply to the internet. The internet is simply another delivery mechanism...no different than a broadcast from a radio tower. It is a "broadcast", wired or wireless (similar to radio, cable or satellite TV)...that is a delivery of intellectual property (TV shows, movies, music, etc...). And hence being a broadcast...it should be subject to government regulation and eventually performance royalties for content creators who make a living off of those royalties.
2. Being a "broadcast" of digital data that carries intellectual property, now under regulation...the government could then regulate content providers ("uploaders"). Perhaps require a permit to stream data. Or a license to serve content just like any other broadcaster. I do not think the cost of doing so should be prohibitive to people or businesses. Perhaps it could be based on the number of streams served or distributed. So smaller content providers and individuals providing their own content can do so over the internet easily (a few cents per stream)...but the big studios and content creators like YouTube, Hulu, etc...who have millions upon millions of streams of data would obviously pay more. It would also be a much needed new source of revenue for the government.
3. Individuals who are found to violate intellectual property they do not have a license to distribute on the internet via a mass distribution system like bittorrent or a peer-to-peer or file sharing network should face stiff penalties so as to deter this behavior. Requiring a license or a registry to stream content would help identify individuals who are online and sharing information.

Technology will always advance and there is little we as a society can do to physically stop individuals who have the ability to use the internet to distribute and violate intellectual property. But what we can do is change our reaction to them and make stiff penalties. Enforce them. Redefine the internet as another broadcast medium just like the airwaves and regulate it through the FCC as another communication protocol vital to our nation's infrastructure. Then the power to enforce intellectual property infringement via the internet (which is the greatest threat to IP) would easily rest on the side of the government.

--

Regards,

Brian Ralston
Los Angeles, CA
Film / TV Composer