

WHO IS A COPYRIGHT PIRATE?



BY: ERNEST V. LINEK

Maybe you, if you pay for a high speed Internet connection.

Modern technology is great.

Television, telephone and internet services are bundled together in one convenient package so that the whole family can enjoy each form of entertainment - all for one monthly fee. The bill is paid by the single subscriber to this convenient service, and nobody worries about the details regarding use - until something goes wrong. What could go wrong?

Someone using your computer system could violate the Copyright Laws of the United States, possibly making you - the Internet account holder - responsible for such illegal activities.

Here is a common fact pattern in such matters:

A subpoena arrives in the mail regarding a copyright lawsuit filed against a number of "Doe" (i.e., unnamed) defendants in a local federal court. Accompanying the subpoena is a lawyer letter requesting from \$3000 to \$4000 to settle the matter without further action.

Why did you get this letter? Simple, your IP address was identified as a participant in a BitTorrent download of a copyright protected movie. Can you fight this? Yes, but it would likely cost more than the settlement offer. Would you want to fight this?

WHAT IS BITTORRENT ?

BitTorrent is a peer-to-peer (P2P) file sharing system that allows its users to share large data files (e.g., music and video files) quickly and easily. See www.BitTorrent.org.

In systems like BitTorrent, participants act both as transmitters and recipients of blocks of a particular file, but they see themselves as users and receivers, and not as distributors in any conventional sense.

BitTorrent prevents the system crashes that could otherwise occur when multiple parties want to obtain a large file from one server. With BitTorrent, those who get your file tap into their upload capacity to give the file to others at the same time. Thus, each recipient also serves as a provider of information. Cooperative distribution can grow almost without limit, because each new participant brings not only demand, but also supply. Because each new participant brings new resources to the distribution, you get limitless scalability for a nearly fixed cost.

FEDERAL COPYRIGHT LAW

Federal copyright law protects the value of creative works. When someone makes an unauthorized copy of someone else's creative work, that someone is taking something of value from the owner without his or her permission.

Most likely, you've seen the FBI warning about unauthorized copying at the beginning of DVD movies. This warning is about the "criminal" aspect of copyright infringement. Criminal charges may leave you with a felony record, accompanied by up to five years of jail time and fines up to \$250,000. Most BitTorrent users are safe from criminal actions, as the FBI generally only pursues "large scale" infringers.

However, the Federal copyright law also provides for "civil" penalties for the unauthorized reproduction, distribution, rental or digital transmission of copyrighted sound

[COPYRIGHT, FROM PAGE 17]

recordings. (Title 17, United States Code, Sections 501 and 506). Statutory damages of up to \$150,000 per copy can be levied by a Federal Court against an infringer.

WHY MY INTERNET ADDRESS?

As described above, BitTorrent uses multiple computers on the Internet to share the upload and download of large files, especially movie files. Each participating IP address can be traced using investigative software. Film companies pay snoops to troll BitTorrent sites, dip into active torrents and capture the IP addresses of the peers who are downloading and uploading pieces of the files. Once an IP address has been identified, that address can serve as the designated defendant (“Doe”) in a federal copyright action.

The movie companies identify the Internet Service Provider (ISP) for each IP address from a public database, then generate a spreadsheet, with the IP, the name of the ISP, the date and time of the download, and sometimes the size of the file and the BitTorrent client used. The spreadsheet is converted to a PDF and attached to a discovery demand filed with the court, asking a judge to grant subpoenas to all the ISPs. Once the film company has the name and address of the customers, they send out settlement letters.

Movie studios are looking for new tactics against illegal file-sharing and other copyright infringement, from hiring young, tech-savvy turncoats to taking legal action against digital pirates and the search engines they use.

23,000 DEFENDANTS AND COUNTING

In May 2011, at least 23,000 BitTorrent file sharers were notified they were being sued for downloading the 2010 Stallone movie “The Expendables” in what was, up to that date, the

single largest illegal-BitTorrent-downloading case in U.S. history.

A DC Federal judge granted a motion to allow the plaintiff’s lawyers to subpoena ISPs to find out the identity of everybody who had illegally downloaded the movie meaning the number of defendants is likely to dramatically increase as new participants are discovered.

It is hereby ORDERED that Plaintiff’s Motion for Leave to Take Discovery Prior to the Rule 26(f) Conference is GRANTED. ORDERED that Plaintiff is allowed to serve immediate discovery on the internet service providers (ISPs) listed in Exhibit C to Plaintiff’s Motion to obtain the identity of each Doe Defendant, including those Doe Defendants for which Plaintiff has already identified an Internet Protocol (IP) address and those Doe Defendants for which Plaintiff identifies IP addresses during the course of this litigation, by serving a Rule 45 subpoena that seeks information sufficient to identify each Defendant, including name, current (and permanent) addresses, telephone numbers, email addresses, and Media Access Control addresses, and the ISPs shall respond to such subpoenas

That record was later broken, when almost 25,000 BitTorrent IP Addresses were designated in the Hurt Locker copyright lawsuit.

Voltage Pictures, the studio behind 2009’s The Hurt Locker, is suing almost 25,000 BitTorrent users who allegedly illegally downloaded the flick. That came just weeks after 23,000 were sued for downloading The Expendables, produced by Nu Image.

NEW COPYRIGHT COOPERATION

In July 2011, a group of ISPs, including Comcast, AT&T, Verizon, and Time Warner Cable, announced that they will take a [MORE▶](#)

more active role in policing online copyright piracy by their subscribers. These ISPs will now send "Copyright Alerts" to Internet subscribers when their connection is allegedly being used for content theft.

This policy, while not new, is being taken more seriously by the ISPs due to the rash of "Doe" lawsuits that have been filed recently in Federal Courts across the country - often naming thousands of defendants - but only by their IP Address. The movie lawyers then go to the court and seek discovery from the ISPs for the identification of the IP Address owners - so the individual subscribers can be notified of the litigation and offered a settlement letter as described above.

This is a big win for the music and movie industries. For several years the Recording Industry Association of America (RIAA) and the Motion Picture Association of America (MPAA) have been attempting to forge an alliance with ISPs to knock out illegal file-sharing. ■