

Appendix A – Interview with Gary Fung

Paul Hawkins: First, I was going to ask you about the status of your court cases but I see you've recently updated about that. I assume you must be following the Pirate Bay's case quite closely, how important do you think the verdict will be to your case, and to the future of file sharing debate in general?

Gary Fung: Legally if they win then our cases maybe stronger, but Swedish laws are much different from US/Canada so how much effect isn't certain. If they lose I doubt it'll affect us much legally but it would be a blow to file sharing and internet freedom. Although I don't condone what TPB does in rejecting all notices from copyright owners either

Paul Hawkins: Yeah, I was going to ask whether you thought that might be the crucial difference between your cases, the relevance of the fact that you try to comply with copyright holders?

Gary Fung: Yes, crucial philosophical difference. I called TPB guys communists before =b. Believe it or not many copyright holders like us, except those suing of course.

Paul Hawkins: Yeah, sure. In my research, I've seen lots of cases of file sharing helping copyright holders.

Gary Fung: Anyway, I'd call TPB extremists that are perhaps necessary to balance the other extreme of MPAA and the likes.

Paul Hawkins: Do you think if you're successful in counter suing the CRIA that it will stop them and similar organisations from suing search engines like yours?

Gary Fung: We'll make them think twice.

Paul Hawkins: Do you think the media industry have shot themselves in the foot by not embracing mass distribution technologies like bit torrent and instead choosing to fight them?

Gary Fung: Yes, and they know it: <http://www.techcrunch.com/2009/03/08/big-music-will-surrender-but-not-until-at-least-2011/>

Paul Hawkins: That's interesting because essentially that's what I want to get to in my dissertation - solutions for the future where culture can remain free and accessible but where the authors are still fairly compensated. That's also what I want your opinions on as you are so involved with the debate. In a post on isoHunt, you say that you aren't against copyright, but that 'copyright does need significant reform in the internet age.' How do you think it needs to change?

Gary Fung: I can summarize it to 2 things: reduce copyright term, and remake a system of compulsory copyright registration. 100+ years terms like now is absurd, book authors have said "anything beyond 10 years is intolerable". Because they want to "free" their own books from the

publisher after 10 yrs when it's of no significant commercial value anymore and they'd benefit more from being freed and more people reading them.

Compulsory copyright registration is requiring copyright holders to submit their works for registration. That used to be required when copyright law was started but was dropped when the government couldn't handle manual registration anymore but technology has changed and now we can automate registration and beyond books, music videos software can all be submitted for registration electronically. Reason why registration is important is because no one knows the status of copyright authorization on files. Only solvable if there's a repository of registered works and database to query what is copyrighted and its owner does not wish online distribution. With that our lawsuits can go away.

Paul Hawkins: Presumably though, a repository of registered works would not do anything to stop piracy, but do you think it could be used to distribute revenue to copyright holders if it was used in conjunction with some form of legal torrent site?

Paul Hawkins: *illegal files haring I should have said instead of piracy.

Gary Fung: It'll help both with efficient takedowns and a way to ask users to donate/pay associated copyright holder directly on file downloads.

Gary Fung: Richard Stallman says piracy is attacking ships and that's bad.

Paul Hawkins: Haha.

Gary Fung: I plan to write on that. Piracy is a term invented by the lobbyists and we shouldn't follow their propaganda terms.

Paul Hawkins: Do you think that optional donations to copyright holders could be potentially viable solution in the future? Sort of like what Radiohead started with 'In Rainbows', but on a wider scale?

Gary Fung: If it works for Radiohead, why shouldn't it work elsewhere? That is what I'm working towards.

Paul Hawkins: Have you read or heard anything about the ideas of a 'Noncommercial Use Levy' or the Voluntary Collective Licensing as proposed by the EFF?

Gary Fung: Piracy tax on ISPs?

Paul Hawkins: Sort of. The first idea basically compensates artists by taxing the distribution methods, e.g. potentially the P2P technology, makers of blank CDs/DVDs, ISPs, etc. - essentially any industries that might benefit financially from file sharing... The second (here: <http://www.eff.org/wp/better-way-forward-voluntary-collective-licensing-music-file-sharing>) proposes the copyright industries set up 'collecting societies' to distribute money from consumers who would pay a kind of subscription fee to use legal file sharing tools. Both rely on some kind of

tracking technology to ascertain the popularity of downloaded files and distribute the money accordingly. (Here's a link to this first paper too if you're interested. It's long but an interesting read. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=468180) But, yeah, do you think any option like that is a viable solution in a future marketplace where there is less money involved in the transactions between consumers and culture?

Gary Fung: Good in theory but we know how well it (didn't) work in Canada with the CD blanks levy. Government's role should be to provide sensible laws and a copyright registration scheme so any levy scheme is even possible. Then the free market should compensate copyright holders fairly or get sued (and with more grounds if the mechanisms to compensate is in place).

Paul Hawkins: Do you think that a free industry-run legal torrent site (or equivalent) would be economically viable if financed by advertising?

Gary Fung: If anyone would use it. They just need to be the one licensing.

Paul Hawkins: OK. Well, perhaps my two most important questions that I want your opinion on is firstly: what do you think will be the future of file sharing and the media industry if they continue using the same anti-piracy tactics they use today? Do you believe there's any truth to the pessimistic predictions of the film industry when they say it will seriously damage or destroy them?

And secondly, what do you think would be the future of the industry if they changed their attitudes and policies? If they stopped suing 'pirates', stopped going after distribution technologies and made their own efforts at free distribution?

Gary Fung: What damage..? <http://techdirt.com/articles/20090301/1406403935.shtml> and they already have: <http://hulu.com/>. The film industry is more clued than music, they sue because they want more control over distribution

Paul Hawkins: I have a chapter on the extent of piracy where I mention the same things: the record profits at the box office, etc, despite increased file sharing, but I think the film industry hasn't been hit as hard as the music industry sheerly because of file sizes and bandwidth limits, but obviously these are getting more user friendly. Do you think file sharing will ever reach the extent where it damages the industry, or do you think cinemas and gigs will always keep artists afloat?

Gary Fung: No: <http://torrentfreak.com/mininova-one-million-torrents-strong-090209/>. More videos in both quantity and definitely in bandwidth. Music is going downhill because they overcharged and most commercialized music is crap.

Paul Hawkins: OK, well I think I've got a good idea of your views now and a few good bits to quote. Do you mind if I tidy up your punctuation and stuff before I quote you? Other than that, I think I'm done so thank you very much for your time. It's really appreciated.

Gary Fung: Ya, tidy away. And the movies biz show record profits because they make good movies, I go to theatre all the time and haven't bought CDs in years.

Paul Hawkins: Yeah, I'm the same.

Gary Fung: <http://isohunt.com/release/?cat=1>, <http://isohunt.com/release/?cat=2> - 18401 video vs 15493 audio releases on isohunt.

Paul Hawkins: Anyway, that's all my questions really so thanks again. Just out of interest, what made you start isoHunt?

Gary Fung: Learn new programming languages and do something that hasn't been done (search engine for P2P networks).

Paul Hawkins: That's cool, you must be pretty proud of it

Gary Fung: I am.

Appendix B – Interview with Phillip Bowman

Paul Hawkins: How does the Australian compare to the British industry in terms of size. I was looking on the *Screen Australia* website the other day, which I was directed to by searching your name...

Phillip Bowman: Haha, yeah.

Paul Hawkins: How do you think it compares to the British film industry?

Phillip Bowman: Arguably it's a bigger Industry given we're a smaller country. But it's probably not bigger in total. Basically, it really comes down to the number of films you release every year. I noticed yesterday they're saying we're releasing 35 films this year. Which is a lot of Australian movies.

Paul Hawkins: That must be rivaling the British production...

Phillip Bowman: I think the British have carved out quite an interesting niche for themselves in cinema and that is the do bonnet dramas, adaptations of *Jane Eyre*, etc – period dramas – they've got the *Bond* franchise, which kicks in a couple of hundred million every year which is good. You've always got the gangster films, like *The Bank Job*...

Paul Hawkins: And the Guy Ritchie stuff.

Phillip Bowman: Yeah. But *The Bank Job* did terribly well. It made a lot of money. And it was actually financed by an Australian company, or at least partly. But in answer to your question I suspect our industry is – if you were to measure in terms of population – I expect our industry is slightly bigger. But your television industry is way bigger than ours. Just by sheer population, you know.

Paul Hawkins: How would you say that the Australian film industry - with the credit crunch, and hard economic times we're in right now – would you say that the Australian film industry is doing well financially? Is it growing still?

Phillip Bowman: It's certainly a wait and see – I don't think anyone knows where the world is going right now – I think things are particularly grim in England from what I'm hearing. We're not – frankly, things aren't that bad here. I think a few bankers have lost their jobs, but people aren't too sad about that, and I think resources have been hit a bit because China stopped buying. Things are really grim in the UK. And how that affects us – well, it could be quite interesting. In fact, a lot of sales agents are based in Britain and ones here are going out of business, so that is going to impact on us definitely. But hitherto, the new regulations that have come in – using *Screen Australia* with the new financing arrangements, people feel reasonably optimistic about it, and they're encouraging us to make higher budget films.

Paul Hawkins: Really? That's interesting.

Phillip Bowman: Yeah. Indeed, the biggest problem we've had here, and still have to some extent, is the cult of the first timer. First timers invariably produce introspective, angst-ridden films about their childhood, or adolescent films at best. What you need is that feeding into a mature industry. I'm currently putting three films together. One has a director. Another one... we may have to use a Canadian director because that's the deal. But the third one, but the third one which arguably owes something to *Mrs. Doubtfire*.

Paul Hawkins: I think I've heard about it.

Phillip Bowman: Yeah. It's an absolute cracker of a script. Frankly, there's no one here that can direct it. There's one director called Fred Schepesi who did a film – a very excellent film called *Roxanne*, but that was like 20 years ago. He's done films since, by the way. But really there is nobody here who is bankable. In fact, I'm thinking of approaching Frank Oz, you know the guy who directed *Death at a Funeral*.

Paul Hawkins: Yeah, I've seen it.

And curiously, he did *Dirty Rotten Scoundrels* which is a very good picture but a long time ago. *Death at a Funeral* did very good business. They made it for eight million and it grossed forty. So that's five times its budget so it made a handsome profit. It made a lot of money.

Paul Hawkins: That's interesting because, as I was saying, my dissertation is about the relationship between file sharing and piracy and the film industry, and whether it is suffering or in as much danger as the MPAA make out, and mainly, if it does become such a serious problem – where it is talking a lot of money out of the industry through people copying films over the Internet – how the industry will survive. That's why I wanted to talk to you as someone who is in the film industry, especially a smaller film industry than the American one, about whether you believed file sharing is affecting the industry. But firstly, I'd quite like to know how you feel in general towards file sharing? What are your views on it?

Phillip Bowman: Well, ultimately, it can't be good, can it? It's a very interesting thing you've raised. One of my directors, who's doing a feature for me... I was having a drink with him a couple of weeks ago and he told me about bit torrent. Basically, you're connected to the world, aren't you?

Paul Hawkins: Yeah.

Phillip Bowman: So what happens is... someone's watching a film that you want to watch. So you know they've got it, so you log on... He's got a computer that is continually on and he downloads the film – because the cost of downloading is still quite a lot, because of the size of the file – so what he does is downloads it off peak. It happens automatically. Now he's a very sophisticated computer user and he has an absolute interest because he's a director – he's actually directing his first feature currently, well just about to – so therefore he wants to see as many films as he can. Frankly, I believe, while it's that difficult, it's not remotely a threat. And it's that costly. For

example, we're using Skype now which costs us exactly nothing to make a trans-world phone call. Ten years ago – five years ago – we'd be paying real money for this phone call. And so that really impacts on the revenues of telephone companies. Having said that, telcos have developed other revenue streams. I don't know how the *Motion Picture Association of America* will deal with that – I don't know what other revenue streams you can have - you can have DVD, pay as you go, all that sort of stuff, but ultimately if its ends up being as easy as downloading a piece of software like *Skype* – you click and then it downloads a movie instantly – then it's going to be a problem, I suppose. That's if you want to watch films at home, but if you want to see them with the full cinema experience then you'll always go to the cinema.

Paul Hawkins: I would argue that the technology is already almost there. Especially with young people – I've got a chapter on the extent of file sharing as it is today - and the age range of 16-24 year olds are very familiar with the technology, and I'm familiar with bit torrent in particular – and a large portion of my dissertation is about that – I would say it is so easy. I could probably type in any film that's been released in the last 30-40 years and have it on my computer within; I don't know, four to five hours – something like that.

Phillip Bowman: But it's still costly though.

Paul Hawkins: Not so much. I mean, I don't know about you... Broadband – bandwidth limits, etc. are getting so much higher, it doesn't cost any extra. We pay a flat monthly fee for broadband, and can download almost as much as we want with that.

Phillip Bowman: Yes, but four or five hours – to tie your computer up for four or five hours – while you download a film – unless you've got a second computer...

Paul Hawkins: Yeah, there is that.

Phillip Bowman: I think it will only become of great interest when you can download it in like a minute. Or even half an hour, whatever. I don't think people – when it takes four or five hours to download – I just think it's too hard.

Paul Hawkins: You would argue now that it's not convenient enough to be a threat?

Phillip Bowman: Yes. It's always based on convenience. The human being is essentially a lazy creature. We like come in, flick the TV on, put our feet up, glass of wine and sit back and enjoy. And pay-per-view on cable on stuff is OK – the range of films is quite limited, frankly, and they're getting worse with the recession. I think they're cutting costs there. I think the whole idea of four or five hours of downloading...

[*Skype* cuts out for several minutes.]

Phillip Bowman: See, even this technology is slightly flawed... But, I just think its quite a big thing to set up – and I know you can download the software easily, and that's no big deal – but just the

programming – you set it up before you go to bed and it's there in the morning... but I mean, what do you download it on to, a hard drive?

Paul Hawkins: Yeah, you could download them on to your hard drive, or burn them onto a CD, and then – for example, here we have a *DivX* player, which is like a DVD player, except you can burn an ordinary video file, whatever it is, onto a blank CD which costs you 10p, then watch it like a DVD. I agree with you to an extent that's not at the stage yet where it's a threatening alternative to DVDs or the cinema – especially the cinema, because that's obviously an experience – but I would argue that it's quickly catching up.

Phillip Bowman: Oh definitely. I mean we've got a big screen plasma TV, and that's hooked up through some speakers, and that's pretty good. I went to see *Slumdog Millionaire* at the cinema recently and that was worth doing, but I'm pretty happy to watch them on the big screen at home, yeah.

Paul Hawkins: I think that one day, with how quickly the technology is evolving, we will be able to watch films almost instantly online.

Phillip Bowman: That's right, and once that happens it's going to be 'click on, download, play.' And that's going to provide a whole new set of concerns. Frankly, I haven't thought through it enough to give you a very clear answer other than, but it's very much about ease of use.

Paul Hawkins: Yeah. Basically, a lot of what I'm trying to get at with this, the *MPAA* have this 'sky is falling' rhetoric' of saying piracy will destroy the film industry, and really corrosive towards profits and stuff, but it's essentially the same attitude they took in the 80s towards the VCR. Jack Valenti, who was the President of the *MPAA* at the time said something along the lines of 'the VCR is to the American film industry as the Boston strangler is to the woman home alone.' And then within five and ten years...

Phillip Bowman: Yeah...

Paul Hawkins:...the VCR kicked off and became a major source of revenue for the film industry. And I'm almost wondering if they're going to be the same kind of thing where the Industry has demonised file sharing as 'pirates' and kids stealing, but whether one day it will become the greatest distribution method that everyone uses?

Phillip Bowman: That may be the case, but how are you going to pay for it? If you can solve how to collect revenue, then you're going to make yourself a lot of money. That's the problem. I don't think the *MPAA* would have a problem with the idea of people accessing movies in any way, as long as people were paying dollars for it ultimately. My partner here – who you spoke to briefly, and she used to run the *Australian Film Commission* by the way. She was the CEO, and she's met Jack Valenti and all those people, and lived in LA, and has done all that... But, it's all about control, isn't it? Frankly, I think one of the biggest threats now to American – and again, I apologise for not having entirely thought this through – I've just had an e-mail from a new distributor in Australia,

who really loves one of my latest scripts, and who is offering to distribute it, so it was very nice to receive that e-mail. But they're a new, lean, mean distributor who are really looking towards digital distribution.

Paul Hawkins: Sure.

Phillip Bowman: And that's going to be quite interesting, because no longer will people be flying around great big cans of 35mm film. They'll be sending them over the 'Net. In that sense, the whole infrastructure that American distributors have, which is cost prohibitive in many ways, will of course be disassembled. Now, that doesn't mean they still won't control distribution, because they will. Having said that, it will allow new entrants into the market. Where people may have a different sort of cinema chain. In the country, for example. They may have a series of country cinemas rather than the large multiplexes in the city. So that is an area that I think is quite interesting, and people are really looking at that. But as for the bit torrent delivery – and I can't back this up with any case studies, or anything other than what I know as a user – two things essentially drive that: the ease of use and the word of mouth. For example, it was interesting that you didn't have Skype. Once you've got it, now that will go into your brain and all of a sudden you'll hear more people talking about *Skype* – because a lot of people have it. That's what happened to me. I got it because one of my script editors living in Melbourne has it, so rather than speak on the phone all the time, we do *Skype* and it costs us nothing rather than something. And then you enter this world of '*Skype* people' and know a lot of my business is done on *Skype*. So once something enters the mainstream, and enough people have it and know how to use it, then that becomes arguably a threat to the traditional business models, yeah.

Paul Hawkins: There's a lot of academic work discussing the morals and ethics of file sharing, so that's not something I want to go in to too much. But I personally don't like some of the campaigns by the *MPAA* and others that compare piracy to theft, because I think they're different. With theft, you are taking away the original, but with piracy you're copying it, so the cost to the Industry is an opportunity cost rather than a direct cost, so I think comparing them is damaging to their own argument.

Phillip Bowman: But you're still not paying anything to use it, and I think that's the problem because ultimately if people aren't receiving a fair rate for their goods then they won't be able to make those goods any more, and you don't want that. That's the worst possible outcome: no one's making films any more because no body will pay to go and see them. So you've got to come up with a toll gate somewhere for people to pay. So what I would say is it's great, as long as they find a way to collect. It's better to have a billion people paying a dollar a few million people paying ten dollars. I guess that's the way to look at it.

Paul Hawkins: Yeah. My final chapter is about possible solutions for the future. Almost assuming the worst – that file sharing will increase and improve so much that eventually there will be a situation where there is not as much money coming into the Industry as there should be. I

wouldn't mind running by you a few of the proposed solutions, and find out your opinions on them?

Phillip Bowman: OK.

Paul Hawkins: There's one idea that's of interest, which is the idea of a 'culture tax' which essentially would work a bit like the UK's TV Licensing scheme – that most people pay this tax to a central organisation then it is distributed out to the creators. What do you think of something like that as a potential solution in the future?

Phillip Bowman: I think the whole idea of a culture tax just won't get up. They're already trying to move away from... they're now saying because of satellite penetration, people don't want to, or don't need to, watch the *BBC* so why should they be paying for something they don't want to watch? And that would be even greater with movies because a lot of people don't go to the movies. Canvas it by all means, but I don't think it's a legitimate option.

Paul Hawkins: Another proposed solution, although it wouldn't generate as much revenue I don't think, is called the *Noncommercial Use Levy*. Basically, the idea is putting a levy on any kind of technology or service that benefits financially from file sharing, whether that is bit torrent sites, or the blank CDs, and that money is distributed out.

Phillip Bowman: Although with a hard drive, you might not need blank discs.

Paul Hawkins: I think, out of all the proposed solutions, that is the hardest one to see where the money would really come from.

Phillip Bowman: Yeah, I agree.

Paul Hawkins: The final big solution, really, is for the Industry to stop fighting file sharing software and make their own, and then try to recoup revenue by advertising. How viable do you think that would be as an option?

Phillip Bowman: There's something there I think. You've only got to look at *Google*, and *Facebook*, and all that. In other words, instead of being some obscure piece of technology, it's something you can buy or subscribe to, like *Facebook*, and so it legitimises file sharing. And also, if they nail the technology – so it's 'click on, get a movie.' And maybe you pay a small price, or simply, advertising. That to me seems to be the way. I think that's the best answer so far. Definitely no to the tax. And I think placing a levy on, you know, a USB stick... I mean, how do you do that? They'll be some people buying them not to put movies on, so that's not fair.

Paul Hawkins: How do you feel about the Industry practice of suing individuals for file sharing?

Phillip Bowman: I was aware of a case – *Napster*, wasn't it?

Paul Hawkins: *Napster* was the first big case where the Industry sued a file sharing service for copyright infringement. Since then, they've had lawsuits every year against other large names and

websites. At the moment, they're involved in two big ones. One against *The Pirate Bay* – have you heard of them?

Phillip Bowman: No, I haven't.

Paul Hawkins: It's quite interesting because they're one of the largest bit torrent sites around – and they've got millions of users – and it's based in Sweden. For the last three or four years the Industry, the *MPAA* in particular, have been trying to shut it down but because Swedish copyright law is different to the USA's, they haven't succeeded. And the other one, which is called *isoHunt* – and I actually interviewed the owner of that recently and he's being sued as well for a similar kind of charge. But since then, since they've sued all these different hosts and websites but every time they have succeeded a new or better alternative has risen out of the ashes to take its place. So the next step they took was, instead of suing the services, they started to sue the ordinary people who were file sharing. I was wondering how you feel about that practice of suing file sharers?

Phillip Bowman: I just go back to my point earlier. If you want to have films made, films cost real money to make. So the logical conclusion about the mass audience watching movies for free... well, the upshot of that is that no one will be making movies because they can't afford to. Does that sound like me being too obvious?

Paul Hawkins: No, that's definitely the attitude that the American Industry seems to take towards it. The problem that a lot of people have with it is that they don't believe file sharing is as bad a crime as its punishment would suggest. You've got people being sued for thousands and thousands of dollars, and facing potential jail time if they refuse to pay, and huge court cases against people. A lot of people argue that their criminal intent is only that they want to watch films or listen to music or whatever, and the problem is just that they're are doing it with the most efficient distribution method available to them.

Phillip Bowman: Sure, I can see every side of the debate. But arguably, if you want to watch movies, there have got to be movies to watch. If you want to participate in the value chain, and keep people working and making movies, then surely you understand that if you're paying through advertising on the bit torrent site, that's fine, but people like me still have kids to feed, and sons that need brand new surf boards! I mean, I've got to eat. All these bit torrenters round the world may think it's all very neat and subversive and that's great – I have no problem with that, I'm all for a bit of subversion – but at the end of the day, there's got to be enough revenue flowing back to the people who make films. Or I guess you could go the other way and go 'bugger that, we'll just get governments to fund film industries all around the world' and that becomes just another line item in their budgets. It's always got to go back to that. But does the punishment fit the crime? Clearly, I'd hate to see any one go to jail for something as minor as that. I just think the solution for the *MPAA* is put a whole lot of geeks on the case, come up with the absolute best-ever solution for a way to download a movie in thirty seconds. Whoever comes up with it first, and the technology is absolutely dynamite, like *Google* is – *Google* is the household name for search even though there are other engines, and that name has passed into popular vernacular – if the *MPAA*,

or whoever, comes up with the world's best technology that really can't be beaten, and they've copyrighted that technology, and it gets such a head of steam up then it will be like *Google*. That's the best solution. I think you should close your thesis with 'technology will provide the answer.'

Paul Hawkins: That is very close to what I plan to say in my conclusion.

Phillip Bowman: There you go. I've never even thought about it before now but that's what my head is telling me.

Paul Hawkins: That's what I'm arguing. They've been fighting this technology for the last ten years and it hasn't stopped it. More people are file sharing now than ten years ago when they started suing people. So, I'm trying to argue that everything they've tried to do to stop it so far has failed, and the only legitimate option now it is to compete with it, and, as you say, make a service that's as good or better.

Phillip Bowman: Yeah, embrace it, and make it work for them. That's what I'd be doing. That's my conclusion.

Paul Hawkins: Haha, that's great. Thanks a lot.

Phillip Bowman: As long as you know that when it comes to this, I really am Joe Public. I'm not Joe Public in the sense that I make films...

Paul Hawkins: But I think that makes you the perfect person to ask, because you are someone who, as a producer... it's about people downloading the work that you've done for free. And, as I say, I interviewed the owner of a site that can be used for copyright infringement. So between you, you represent both ends of the spectrum as you are someone, although as you say not now, could potentially stand to lose out through free file sharing in the future.

Phillip Bowman: That's right. But technology ultimately sorts out most things, and that's the conclusion I would draw. It will be win-win.