<u>When Culture and Copyright Collide:</u>

A Discussion of File Sharing and the Film Industry

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AUTHOR'S DECLARATION

I declare that the work in this dissertation was carried out in accordance with the Regulations of Bournemouth University. The work is original except where indicated by special reference in the text and no part of the dissertation has been submitted for any other degree. Any views expressed in the dissertation are those of the author and in no way represent those of Bournemouth University. No part of this work has been presented to any other University for examination in the United Kingdom, overseas or on any other planetary body.

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Abstract

The recent and exponential growth of illegal file sharing is becoming an increasingly important issue for the film industry, and has sparked much debate amongst Internet commentators regarding the difficult relationship between culture and copyright in the digital age.

While the Internet's communal and global nature has undeniably increased the spread of culture, it has also jeopardised the effectiveness of the traditional protection that copyright offers to film makers to safeguard their artistic and financial security.

The film business is therefore claiming massive losses due to illegal file sharing, and warning that widespread 'piracy' is a threat to their Industry's future. In retaliation against the file sharers, the Industry has implemented a wide-ranging plethora of anti-piracy measures in the hope of neutralising the problem, none of which have been successful in impeding its growth.

This dissertation will therefore aim to assess the extent to which the Industry's claims of damages are accurate, why its anti-piracy measures have failed, and how much truth there is in the pessimistic forecasts that illegal file sharing threatens their entire Industry.

Finally and most importantly, however, this paper will look at the type of solutions that have been proposed for the future, and what actions the Industry may be forced to take; not only to ensure their own financial survival in a rapidly changing media landscape, but also to protect the valuable and sacred status of art and culture in society.

Introduction

The growth of file sharing is increasingly becoming an issue of concern for the film industry. Its potential for widespread and costless replication of movies has understandably been perceived as a severe threat to their traditional methods of distribution, and hence the financial security of their current business model. Byers (et. al, 2003: 1) asserts that: "unauthorized copying of movies is a major concern for the motion picture industry," with Bettig adding that:

> "The film industry has been ringing alarm bells about the potentially crippling financial losses that might be incurred through the unauthorised (and more importantly unremunerated) copying, distribution and sale of its products."

> (cited Yar, 2007: 677)

Their fears can be broken down into three main issues, each of which this dissertation will attempt to assess critically with the overall goal of concluding the future of the Industry.

The first problem is that file sharing is increasing. It is becoming faster, quicker, cheaper and easier (Sheridan, 2007). If the Industry is right about 'piracy' causing financial damage, the problem can only inevitably escalate. The second problem is that all of the anti-piracy measures undertaken so far have failed to stop or impede the growth of illegal file sharing. Despite attacking the problem from various disparate angles, nothing has yielded any noteworthy success. The third and final problem, therefore, is a logical product of the first two: if file sharing is increasing and reducing income, and if they can find no resolution to inhibit its growth, then how will the Industry survive economically in the future?

The first question is perhaps the easiest to answer. Whilst file sharing technology incarnates everything that is illustrious about the Internet's ability to spread culture, it also embodies the capacity for widespread and costless distribution of copyrighted content without compensating the authors. Digital technology, therefore, not only threatens to undermine the distribution methods that the Industry has controlled for decades, but also the effectiveness of copyright to safeguard the financial and artistic security of authors. Fowler notes that intellectual property has always been a unique and difficult thing to protect because it is intangible and "can be shared without being diminished" (2002: 26). In the past, movies were offered some form of protection

by the impossibility, and later difficulty, of copying them. When this became easier, the Industry increasingly relied on copyright to protect "the creation of ideas by guaranteeing the rights of their creators to be paid for their inventions" (Fowler, 2002: 26). Doctorow summarises this relationship: "the reason that copyright exists is because culture creates a market for creative works" (2008: 13). Protecting the value of these creative works is therefore imperative to any Industry that retails them as a commodity. File sharing, then, in its ability to perfectly replicate media and freely distribute it across the world, is putting a lot of strain on the efficiency of copyright laws that were established in a time before the Internet. As Lessig says, "it is the nature of digital technologies that every use produces a copy" (2005: Paragraph 14), but despite the rapid progression of technology, "copyright law treats copying as such a rarified activity, it assesses penalties that run to the hundreds of thousands of dollars for each act of infringement" (Doctorow, 2008: Paragraph 9). The Industry's traditional defensive responses have therefore begun to become a subject of controversy as "ordinary peoples' ordinary activity [enters] into the realm of copyright" (Doctorow, 2008: 7). Most importantly, though, copyright laws are rapidly proving outdated in a new digital landscape that is changing the characteristics of sharing.

The second problem that the Industry has faced, and one which it is beneficial to understand before considering the future, is that every effort they have made to stem the growth of illegal file sharing has failed in the face of widespread disregard for the sanctity of copyright law. While nobody is arguing against the ideology that "artists and copyright holders deserve to be fairly compensated" (EFF, 2009: 1), many of the Industry's attempts to prevent 'piracy' have still proved unpopular for the greater evils that are indirectly associated with them:

> "Every day the collateral damage mounts – privacy at risk, innovation stymied,
> economic growth suppressed, and random unlucky individuals singled out for
> lawsuits."

(EFF, 2009: 1)

Perhaps most damaging to the Industry's campaign, however, is the perception that their labour to stop illegal file sharing, has, at times "[led] to the suppression of valuable, non-infringing expression" (Netanel, 2003: 19). The unique, grand, and often romanticised position that culture holds in our collective consciousness is increasingly being embodied by the Internet and, in particular, its collaborative community achievements such as peer-to-peer (P2P) technology,

which directly links the media libraries of everyone on a network and allows them to quickly, cheaply and efficiently swap large quantities of media. There have therefore been, and will continue to be, strong reactions from free culture advocates when the Internet's unbridled freedom appears threatened by censoring technology or legislation.

This, to an extent, is part of a wider problem the Industry is having with the changing attitudes of consumers. Central to the file sharing debate is the attitudes of digital consumers, or 'pirates' as the Industry often negatively brands them. Huang says, "because file sharing is controversial, whether to share or not is a matter of moral judgement" (2005: 38). However, with the massive and exponential growth of the illegal file sharing populace (Mennecke, 2008), the Industry's blanket condemnation of it as morally reprehensible theft (MPAA, 2009a) would connote that society is in a state of mass moral decline. However, Snyder and Snyder argue that: "customers want to do the right thing, if they can" (2003: 3). If this is true, then there must be other significant factors involved in the polarisation of attitudes between the film industry and the 'pirates.' The conflict of opinions, and the resulting efforts by each party to protect what they perceive as rightfully theirs, has led Lessig to state "we are in the middle of something of a war here – what some call "the copyright wars" (2003: Paragraph 11).

It therefore seems arguable that, while neither faction wants to make sacrifices, and while the Industry's resistance is ineffective, that "this war between rightsholders and consumers will never end and the rightsholders will never win" (Fung, 2008: Paragraph 5). If this is true, then the Industry may have no choice but to try and reconcile their business model with the changing attitudes of the 'pirates' and "rising consumer demand" (Sheridan, 2007: Paragraph 17). Whilst some argue that file sharing is not yet a threat to the film business (Chartier, 2009), "the "sky is falling" rhetoric of the … movie business" (Snyder & Snyder, 2003: 3) certainly suggests that they believe their future financial security is being threatened. While Caine says that "art for art's sake is all very well" (2008: Paragraph 11), the creation of the film industry's artistic products, more so than in any other creative industry, are expensive, collaborative endeavours and therefore require significant financial investment. The stakes, consequently, are high. If future 'piracy' increases the risk of investment, then the Industry's output could suffer, which would be detrimental to both their enterprise and the wider utility of culture.

The most pressing issue facing the film industry, therefore, is the unknown elements of how and where its revenue will come from in the future. Huang describes these as the "intrinsic problems

in the current business model of the digital-content business upon facing the new wave of digital revolution" (2005: 39). Snyder and Snyder (2003: 1), however, reduce this dilemma to the most simple, problematic question at its core: "how are we going to get paid for the work we do with our minds?"

Netanel believes the solutions to the problem could range anywhere between the least drastic "digital lockdown" (2003: 7) – essentially a continuation of the existing struggle for proprietary control which has so far been fruitless – to the inception of "digital abandon" (2003: 7), a radical alteration of attitudes and policies that would release creative works to be freely used and distributed. Clark agrees that "our society will increasingly be forced to choose which vision of the future it would prefer" (2002: 10). Of course, while the latter may sound idyllic to the consumer, it does not solve the predicament of how the Industry will earn money from decriminalised sharing. Bowman believes this conundrum should be the penultimate concern of the film industry: "if you can solve how to collect revenue, then you're going to make yourself a lot of money" (Appendix B: VI).

The final and ultimate purpose of this dissertation, therefore, is to study and assess the different constructive solutions that have been suggested. These propositions vary from providing competing alternatives to illegal file sharing technology and exploiting unexplored sources of revenue, to pioneering future innovation that would ensure the film industry continues to offer a quality and experience that piracy can not match. Indeed, Snyder and Snyder (2003: 3) do not believe that file sharing will pose a threat for the Industry as long as they find a way to effectively evolve:

> "The question before us is not whether technologies such as peer-to-peer file
> sharing will undermine the role of the creative artist or the publisher, but how
> creative artists can leverage new technologies to increase the visibility of their
> work."

This dissertation, therefore, will attempt to ultimately outline the choices and decisions that the Industry faces in the future to ensure its continued survival and prosperity. To answer the important questions that frame the debate, this paper will first draw on historical evidence to contextualise the nature and seriousness of the issue, and then investigate the reasons why previous anti-piracy endeavours have not been successful. Next it will compare and contrast the

effects of 'piracy' on the music and film businesses, using the recording industry as an illustrative measuring stick of where the debate is heading (as the speed and simplicity of downloading films is quickly catching up with digital music consumption.) Lastly, it will delve into increasingly theoretical territory, but will attempt to rationalise future ambiguity by enlisting qualitative evidence from knowledgeable parties on both sides of the debate spectrum. On one side, giving his opinions and predictions on the future of the Industry and the proposed solutions is Phillip Bowman, a Film and Television Producer in Australia of over thirty years (Appendix A). On the other side, Gary Fung, owner of, "one of the world's largest [file sharing] search engines" (Borland, 2006: Paragraph 8) *isoHunt,* gives evidence on the future of file sharing (Appendix B). His views are particularly relevant to this debate as he is currently being sued for copyright infringement by the Industry (Ernesto, 2009), and countersuing in what commentators believe to be a very significant legal action in the future of file sharing: "this landmark case might be the one to define how files can be distributed online" (Ernesto, 2008). Between them, and supported by academic evidence, their views represent a discerning insight into the future of the motion picture industry.

Chapter One – When Culture and Copyright Collide

When scrutinising the long history of copyright and 'piracy' for clues as to why file sharing is such a problematic issue to deal with today, there is a clear turning point where it is convenient and beneficial for us to intersect the story – "the Analog Period" (Doctorow, 2008: Paragraph 5). The advent and widespread dissemination of home entertainment technology, for example videocassette recorders (VCRs), had a sizeable and profound effect on every aspect of copyright. For the first time in history, it meant consumers could "do things that rose to the realm of copyright's regulated activities with stuff lying around the house" (Doctorow, 2008: Paragraph 3). It also meant, for the first time, that ordinary people could tape movies straight from television, or make copies of each other's films - all activities that the film industry had no control over, and which generated no new revenue for the producers of the content. Indeed, it could be called the beginning of modern 'piracy,' and consequently the catalyst for the media industry's fight against it – the same fight that continues today. VCRs also forced a rethink of what exactly copyright was protecting. As Geller says, "only when media technology and market conditions made piracy profitable could copyright arise" (2000: 210). Previously, intellectual property was inseparable to the physical property that contained it, but with the revolutionary inception of the VCR it became the more intangible concept of 'information' that was stored on a medium. It could be transferred, copied and remixed with relative ease. Whilst copyright before protected physical products from theft, 'piracy' was a whole new issue because it could create a copy without removing the original. This alarmed the film Industry.

In the late 1970s and early 1980s, "Hollywood's concern about its inability to curb the home video Industry led to a series of legal battles against the Industry" (Dobrow, 1990: 17). The film Industry believed that because the VCR could record movies from television or copy them tape-to-tape, potentially removing or skipping any commercials at will, that eventually the confidence to invest in the high-risk film business would shrink and perhaps even collapse. Indeed, Jack Valenti, head of the *Motion Picture Association of America* (*MPAA*) at the time, believed it was so serious that he famously said:

> "The VCR is to the American film producer and the American public as the Boston Strangler is to the woman home alone."

(Valenti, 1982: Paragraph 37)

He argued that the VCR and blank tape "threaten[ed] profoundly the life-sustaining protection… on which film people depend… called copyright" (Valenti, 1982: Paragraph 6), dramatically stating "if what you own can't be protected, you own nothing" (Valenti, 1982: Paragraph 9). While the first statement was proved ill-informed and sensationalist in hindsight by the subsequent boom in the video Industry – the $20 million the film Industry earned from pre-recorded video tapes in 1980 skyrocketed to $625 million in 1983 (Dobrow, 1990: 21) and continued to be a major Industry mainstay until the rise of DVDs in the late 1990s – his latter concerns remain relevant for the Industry today, particularly his fear of copyright protection being rendered futile by technology.

File-sharing on the Internet, of course, incarnates precisely this fear. As Netanel (2003: 3) says:

> "Digital technology makes it easy for Internet users to distribute multiple perfect copies of a work throughout the world without compensating the authors or other copyright holders."

Indeed, the ease with which copyrighted files can be found, copied, downloaded and stored has led to "a roman feast of copyright infringement" (Lessig, 2005: 4), a widespread and growing subculture of sharing that bypasses the payment and compensation normally involved in transactions between consumers and culture. Doctorow says, "the majority of Americans engage in infringing file sharing" (2008: Paragraph 18). Even as far back as 2003, this number was believed to be over 50 million people, and over 200 million worldwide (Snyder and Snyder, 2003). The global nature and sheer scale of the practice has the Industry understandably worried, as Netanel (2003: 2) says:

> "They fear that P2P file swapping poses a mortal threat to the copyright system that sustains authors, artists, and a million-billion-dollar-a-year Industry."

Dan Glickman, Jack Valenti's replacement and current president of the *MPAA*, has publicly proclaimed file sharing as the "greatest threat" to the movie Industry's profits in its 110 year history (Glickman, cited Gross, 2004: Paragraph 4), and anti-piracy adverts from the *Federation Against Copyright Theft* (*FACT*) predict "piracy… will destroy our film and video industry." But is Glickman just echoing the same ill-founded paranoia that led Valenti to prophesise the VCR as the Industry's downfall? Or is the file sharing phenomenon a completely different and more damaging kind of threat? Certainly, Glickman is not alone in his pessimistic forecast:

"If economic losses are an indication of a crime's seriousness, and if current estimates are to be believed, then film 'piracy' constitutes a crime-wave nearing epidemic proportions."

(Yar, 2005: 677)

In 2004, there was believed to approximately 400,000 illegal movie downloads per day (Mercuri, 2004: 28) a scale which is much greater than anything from the analogue era. Another factor that could make file sharing a different and greater threat than video piracy is movie 'leaks' – when a film becomes available on the Internet even before its theatrical release date. Indeed, *Warner Brothers* partly accredited the enormous financial success of *The Dark Knight* (Nolan, 2008), the second highest grossing film of all time (Goodwin, 2008), to preventing a leak:

"The studio has been keen to highlight the part played by its secret six-month, multimillion-dollar anti-piracy campaign to ensure digital copies of the film didn't leak out before it opened. *Warners* counts it a triumph that the first pirated copy didn't appear on the Internet until 38 hours after the film was released."

(Goodwin, 2008)

Despite some obvious successes, though, the *L.E.K. Consultancy*, in an analysis for the *Motion Picture Association*[1] (*MPA*), calculated that the U.S. motion picture studios lost $6.1 billion to piracy in 2005, and the worldwide Industry lost $18.2 billion (L.E.K., 2005: Slide 4). However, many scholars have an issue with these statistics when they are quoted as evidence of damages to the Industry because they represent "opportunity costs" as opposed to physical theft which represents a "direct cost" (Huang, 2005: 52). This means they do not take into account many important hypothetical factors. For example, people who paid to see the film in the cinema and then downloaded an illegal copy would still register as a loss to the *MPA*. The likelihood that many consumers would download a free film that they would not pay to see in the cinema is also a significant consideration. Finally, by cataloguing every instance of file sharing as a measure of lost revenue, it does not take into account any positive effects.

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[1] The international umbrella organisation of which the *MPAA* is a part along with *MPA Canada*, *MPA EMA* (Europe, Middle-East and Africa) and *MPA Asia and Pacific*.

In particular, the by-product of "free publicity" (Byers et al, 2003: 619) should not be underestimated. Put simply, the more people who see a film, regardless of the medium or whether they paid for it, the more they will talk about it and subconsciously advertise it those around them. Indeed, according to the L.E.K.'s analysis of illegal file sharing data, the largest group of 'pirates' is 16-24 year olds (59% of Americans and 71% worldwide) (L.E.K., 2005: Slide 12). However, 12-24 year olds are also the most frequent moviegoers (MPAA, 2007) despite having the lowest income as a demographic group (U.S. Census Bureau, 2009: 443). This may, perhaps, suggest that the two distribution methods can coexist peacefully and that the average moviegoer does not see downloading 'pirated' films as a replacement for the cinema experience.

Further to the idea of file sharing coexisting with legitimate distribution, some believe it may even be beneficial to the Industry:

> "The movie industry isn't suffering because of activity on the Internet. Quite the opposite – the Industry is making more money than ever!"
>
> (Snyder & Snyder, 2003: 2)

There is certainly evidence to suggest this is true. Despite the *MPAA*-supported statistics stating losses from 'piracy,' 2008 was the "highest-grossing year in film history" (Chartier, 2009: Paragraph 1), growing on 2007 which was also a record-breaking year (Raby, 2008). An article from *The Guardian*, too, hints at this paradox. Gibson says, "not even *James Bond* has been able to avoid defeat at the hands of Internet pirates" (2006: Paragraph 1), quoting that over 250,000 copies were downloaded in the first few days after its release. However, the same article also goes on to say "record audiences turned out over the weekend for the opening of *Casino Royale"* (Gibson, 2006: Paragraph 2). Coming back to the point of file sharing acting as a source of free marketing, it is possible that the box office numbers were helped by widespread downloading. The relevance of box office statistics to damages are also doubted by Dixon, who says "theatrical releases really can be considered an extended advertisement for the DVDs, where the real money is made" (cited Mercuri, 2004: 28), a statement supported by the fact that DVD is "the fastest growing home electronics development in the history of the world" (Snyder &.Snyder, 2003: 2).

However, it may also be too early to conclude that file sharing does not damage the film Industry. As we have seen, the majority of evidence on the subject is conflicted, but one fact remains undisputed and that is that file sharing is growing (Roettgers, 2009). While Bowman believes that

'piracy' is not yet a threat because file sharers still need to be "sophisticated computer user[s]" (Appendix A: IV), he accepts that "when you can download [a film] in a minute, or even half an hour… that's going to provide a whole new set of concerns" (Appendix A: VIII). However, all of the evidence suggests that digital files are on their way to becoming the most recent phase in the technological evolution of media distribution. Indeed, while the nature of movies has provided them with slightly more natural protection than music files, Huang believes "bandwidth is the only buffer impeding the growth of unauthorized swapping of video files" (2005: 37). Therefore it is perhaps understandable that the Industry continues to fight online 'piracy' through a variety of different methods.

Chapter Two – The Industry Fight Back

As the first chapter explained, the Internet has changed and "is changing every form of traditional media" (Sheridan, 2007: Paragraph 11). The film and music industries have perceived these changes as a significant threat to the value of their products and responded by using a diverse range of techniques to reduce the spread of potential damages. This chapter will look at the various anti-piracy measures that the Industry has deployed, ranging from the most unsophisticated and technical of attempts to obstruct the technology, to the inherently problematic and punitive use of legal action. It will also explain, with particular reference to the nature of the Internet and the changing attitudes of consumers, the factors that connect these attempts in their failure.

However, it is first important to explain that not every industry greeted the *World Wide Web* as a threat, and many embraced the technology as a beneficial addition to their current distribution methods. The news and print industry is a particularly good example. When the Internet facilitated the creation of online newspapers that could be updated in real time and accessed from anywhere, the most innovative of the major news companies seized the opportunity to establish an online presence in a new diversified marketplace; without sacrificing or damaging their original distribution method. As Sheridan (2007: Paragraph 11) says:

> "Now I can get live, up-to-the-minute news for free, on thousands of different sources across the Internet - and *The New York Times* still exists."

For a short time, the recording business too remained unharmed by the Internet. While they may have lacked the foresight to see the massive potential for growth, the earliest forms of file sharing were crude and non-threatening to them. MP3s were scattered, low quality, time consuming to obtain, and "hardly a replacement for CDs" (Sheridan, 2007: Paragraph 3). More importantly, though, the trading began over small scale conduits like college networks, which were not only small enough to avoid alarming the music business, but also more private and hence difficult to police.

However, in pace with the progressive and rapid evolution of the Internet, the first popular file sharing application became available in 1999, a response to the growing demand for software that took advantage of the Internet's global nature and networking potential to distribute media files.

This program was called *Napster* and by 2000, 6.7 million people were using it to trade music (Burkart & McCourt, 2003: 339). The music industry was understandably concerned about the effect this could have on their profits. As Sheridan notes, there was no "historical precedent for an Industry's products suddenly being able replicate and distribute on their own, without cost" (2007: Paragraph 4) and so it is perhaps unsurprising that the record labels took legal action against *Napster* (Strang, 2005), successfully shutting it down in 2001 for copyright infringement as all of the files accessible through *Napster* were hosted on a centralised server. This case marked the beginning of the Industry's ongoing anti-piracy campaign, or as Netanel (2003: 7) describes it:

> "[The] story of the copyright industries increasingly brazen – some say desperate –
> attempts to shut down P2P file-swapping networks, disable P2P technology, and
> shift the costs of control onto third parties."

While the *Recording Industry Association of America (RIAA)* celebrated the closure of *Napster* as a "clear victory" (RIAA, 2001), the seeds of a free music library had been sewn and it would not be long before other peer-to-peer software grew to replace it. Not only that, but *Napster's* successors improved on the underpinning technology by removing the need for a central server, muddied the legal waters by directly linking users' computers and drew more combatants, including the *MPAA* into the copyright mêlée by accommodating other kinds of files like movies. Fowler, therefore, calls the *RIAA's* win, "a hollow victory, since successors have eliminated *Napster*'s Achilles' heel" (2002: 28). Huang agrees that "recent technology makes peer-to-peer data transfer... less susceptible to legal intervention" (2005: 51).

It seems to be an intrinsic value of file sharing technology and philosophy that any attempts to censor them are not only destined to fail, but also to make future systems more resistant to suppression. Indeed, the history of file sharing is a story of revolutionary technology striding ahead of laws and social customs, and then mutating into a different and more complex threat every time it seems close to being controllable. For example, when *Napster* was shut down for hosting copyrighted materials, its replacements decentralised the responsibility to the users. This led to lawsuits being filed against individual file sharers, which we will discuss in more detail shortly. The online community responded by setting up IP address filtering technology and community file sharing sites (where users have to be invited to participate, thus minimising the risk of being monitored.) Seemingly foiled again, the Industry tried "placing faulty files on P2P networks, to make P2P file sharing less desirable" (Netanel, 2003: 18). In response, site owners added content

rating and verification devices so users could report working and non-working files. When analyzing this pattern – the tit-for-tat between innovators and legislators – it is clear to see why many anti-piracy measures have failed. Huang (2005: 37) summarises:

> "Legal remedies to prevent infringement seem destined to be ineffective, and technological solutions appear shortsighted at best."

A perfect example of this is the deployment of *Digital Rights Management* (*DRM*) technology by the Industry, which limits the ways in which consumers can use a digital file by adding an "encryption [that] can prevent unauthorized access and copying" (Netanel, 2003: 9). However, its effectiveness as a way of stopping 'piracy' is very limited. Firstly, people could rip the same content off of DVDs "*DRM*-free… in seconds, and send it to all their friends" (Sheridan, 2007: Paragraph 10). Secondly, "skilled programmers can readily design software… to circumvent such measures" (Netanel, 2003: 9). Once a file has been successfully decrypted by one person, it can then be infinitely available to everyone else via P2P networks. Netanel concludes that: "no technological barrier can ultimately prevail over determined hackers" (2003: 9).

However, while the Industry's efforts to suppress or contain the apparatus for file sharing have almost unanimously failed, often inadvertently and indirectly leading to more sophisticated technology, their legal efforts have continued ceaselessly since the days of *Napster*:

> "The copyright industries have successfully shut down a number of P2P networks… and continue to bring lawsuits against others."
>
> (Netanel: 2003: 2)

Indeed, both the *RIAA* and *MPAA* have been involved in lawsuits against high profile websites and applications every year since 2001; the list of their defendants include many popular services such as *KaZaA*, *Morpheus*, *Grokster*, *Limewire*, *eDonkey*, *Oink* and *Demonoid*. Yet despite successfully shutting down these sites (or else forcing them to radically change their function), the Industry has been unsuccessful in stopping 'piracy,' and illegal file sharing has continued to grow rapidly. There are several reasons for this. Firstly, "file sharing has never been confined to a single exchange mechanism" (Huang, 2005: 38) so while the copyright Industries go after the high profile targets, there are always a network of alternative options ready to replace them in popularity. Secondly, lawsuits against file trading software can be long winded and complicated. For example, *Grokster*

successfully defended a case against the *MPAA* and *RIAA* in 2003, only for appeals to steer the case to the U.S. Supreme Court where they reversed the decision in 2005 (Borland, 2005).

Another difficult issue with these lawsuits is the borderless nature of the Internet, the problem that copyrighted material may be hosted in jurisdictions with different copyright laws and the fact that "it is rare in cyberspace for users to be aware of the physical locations of materials" (Penfold, 2002: 87). The U.S. copyright industries' ongoing case[2] against web site *The Pirate Bay* is illustrative of this predicament as the site is hosted in Sweden where copyright laws are different and where it is "legal to offer a service that can be used in both a legal and illegal way" (Samuelson, cited BBC, 2009: Paragraph 8). Since 2003, *The Pirate Bay* has snubbed all copyright infringement takedown requests from the *MPAA* and individual movie studios and basked in the supposed sanctuary that Swedish law provides it from international impeachment. This has made them not only a high profile target of the media industry but also a flagship for the anti-copyright (or pro-piracy) movement. In 2006, the Swedish police raided *The Pirate Bay*, confiscating servers and holding its three owners for questioning. However, despite their efforts, the site was back online only three days later – testament to the problem of policymakers "thinking locally and acting globally" (Barlow, 2000: Paragraph 13). Immediately after the takedown, the site's number of registered users shot up from 1 million to 2.7 million (Hussain, 2008), most likely due to the publicity generated by the raid. Today, despite the ongoing lawsuit, the figure is 3.5 million registered users and well over 10 million unregistered users, numbers that have "exceeded all other file sharing populations" (Mennecke, 2008: Paragraph 2). Once again, it shows how an attempted anti-piracy measure can backfire and become counterproductive.

The failure of the Industry's attempts to stem file sharing by attacking the 'hosts,' however, led to one of the most significant changes in their anti-piracy policy. In 2003, the *RIAA* begun to take legal action against individuals, starting with 261 file sharers (Borland, 2003), and the *MPAA* closely followed suit in 2004 (Gross, 2004). This was an important change in policy because previous lawsuits were justified on the grounds of the defendants profiting from 'piracy' or "more egregious forms of copying, such as selling pirate DVDs" (Doctorow, 2008: Paragraph 19), but these were people who were downloading for their own non-commercial private consumption. Netanel therefore says of the practice:

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[2] The trial hearings ended on 3rd of March 2009. The verdict will be read on the 11th of April 2009.

> "[It] might successfully drive many users off P2P file sharing networks [but] has
> significant public relations and marketing risks."

> (Netanel, 2003: 8)

Indeed, Netanel says that the *RIAA's* first batch of lawsuits had a "significant public backlash" (2003: 8). The media were quick to highlight that one defendant was a 12-year-old girl whose mother had to settle two thousand dollars out of court (Mook, 2003). Other cases which caused controversy include a 66-year-old grandmother who was "slammed with a $300 million lawsuit… for allegedly downloading 2,000 rock and hip-hip tunes" (Mercuri, 2004: 27). She later turned out not to have the *KaZaA* application she was accused of using; and a deceased great-grandmother who didn't even own a computer (Bangeman, 2005). These cases highlight the difficulties of accurately tracking down culprits of file sharing, and illuminate one of the reasons for the "image problem the Industry has faced in its handling of the piracy issue" (Sheridan, 2007: Paragraph 4).

The final factor to consider, then, when assessing the reasons why anti-piracy measures have failed is the changing attitudes of consumers; both in the way they perceive the Industry and in their moral response to the practice of file sharing. This factor is probably the most significant because file sharing is unquestionably the consumers' choice – a moral choice, the *MPAA* would argue – and "most of these people are well informed and understand the implicit copyright infringement issue" (Huang, 2005: 38). If ignorance is not the reason people share files, then a more apathetic motive must exist.

Many commentators certainly believe that the tactics and attitudes of the copyright Industries, especially the music industry, have pushed or persuaded many consumers into dissent, and subsequently lessened their guilt about file sharing:

> "Those who love to consume music by sharing are likely to justify their behavior
> with reference to the perceived egregiousness of record companies."

> (Huang, 2005: 40)

The source of this resentment and utter lack of sympathy, it is argued, comes as a response to the way the Industry treats 'pirates' – including the use of that word to brand them. Sheridan explains how "fans became enemies to the artists and companies they had supported for years" (2007: Paragraph 4). As we have seen, they sued people and services, sometimes with mistaken

identities, instated troublesome *DRM* that alienated consumers including "the academic community, which has long enjoyed "fair use" exemptions" (Mercuri, 2004: 29), and over-saturated their audiences with marketing campaigns that claim "movie pirates are thieves, plain and simple" (MPAA, 2009a). Whether it is an advert that can not be skipped on a legitimately bought DVD or the strict warnings before a screening in the cinema, the message the Industry broadcasts is that "Piracy is Theft" (MPAA, 2009b). The application of this comparison however is often hotly debated by the Industry's critics who believe that "piracy is a loaded word... [which] is a disservice to honest discussion" (Snyder & Snyder, 2003: 3). They argue that the definitions of 'piracy' and 'theft' are mutually exclusive: theft removes the original, whereas 'piracy' makes a copy. When the *MPAA*'s adverts compare downloading films to carjacking, mugging someone of their handbag and shoplifting DVDs (MPAA, 2004), it is not difficult to see why ordinary file sharers become disillusioned with the offered 'reality,' and decline cooperation with the Industry.

In general, as well, it could be argued that many people's moral stances on file sharing have softened. As Netanel (2003: 18) says:

> "Public opinion surveys indicate that most people think there is little, if anything, morally wrong with P2P file sharing."

Huang agrees that "people do not see piracy as a serious ethical problem" (2005: 38), and Doctorow (2008: Paragraph 19) adds:

> "Copyists either know that they infringe but don't care, or they believe that the law can't possibly criminalize what they're doing."

This perhaps shows more than any other factor why the Industry is fighting a losing battle when trying to stop 'piracy.' If technological and legal measures continue to fail, and the majority of a growing and increasingly computer literate community of Internet users perceive little or no ethical wrongdoing, then it is inevitable that file sharing will continue to grow. The *Electronic Frontier Foundation* (*EFF)* explains why the need for a serious rethink is moving inexorably closer:

> "Sales are in serious decline, and digital downloads are not offsetting the losses... Despite the industry's lawyers having target[ted] more than 30,000 college students, parents and... fans for lawsuits, file sharing is more popular than ever."

(2009: 4)

Clearly then, there are going to have to be significant changes in the future if the Industry wants to maintain some level of control without further damaging their relationship with consumers. As the Industry's entire arsenal of preventative, suppressive and retaliatory approaches have so far proven unsuccessful; perhaps it is time to look at completely new and initially foreign types of solution.

Chapter Three – File Sharing and the Future

> "Since we don't have a solution to what is profoundly a new kind of challenge,
> and are apparently unable to delay the galloping digitalization of everything not
> obstinately physical, we are sailing into the future on a sinking ship."

> (Snyder & Snyder, 2003: 1)

As this paper has now presented the reasons why file sharing has grown over the past decade and why the Industry's increasingly heavy handed efforts to stop it have failed, it is important to look now at the future, and to discuss some of the changes that are needed to keep the Industry's 'ship' afloat. This chapter will look through a contemporary lens at many traditional attitudes to gauge whether they have become outdated, and reevaluate the effects of the Industry's past policies to establish whether any of their anti-piracy measures have been counter productive. Most importantly, though, it will look at the potential choices that the film business faces, and the solutions that have been proposed to remedy any impending financial predicament.

Before looking into the Industry's revenue generating options for the future, however, it is first important to reassess the nature of copyright and its relevance in a contemporary media landscape. The changing habits of consumers that have accompanied technological development have altered the range of copyright from something that protects the artistic and financial rights of authors to something that can, and has been, used as weapon to punish file sharers. Increasingly, the Internet is drawing more and more users into copyright's crossfire for behavior that was previously acceptable. Many academics therefore believe it needs to be drastically updated in order to integrate and harmonise with the new reality of file sharing. Sheridan (2007: Paragraph 16) describes the:

> "Rigged, outdated, and unfair structure of current intellectual property law [as] in
> need of massive reform in the wake of the digital era."

Snyder and Snyder agree that "the entire concept of intellectual property needs to be reexamined" (2003: 1). Doctorow explains how "every transaction on the Internet involve copies" (2008: Paragraph 8), a practice that outdated copyright laws technically criminalise, and yet which is involved in the most ordinary uses of a work on the Internet. Similarly, Lessig talks of the outdated laws stifling "amateur creativity" (2008: Paragraph 8) – writing fan fiction, remixing

songs, creating fan videos, etc.- and suggests we should "craft copyright law to encourage a wide range of both professional and amateur creativity" (2008: Paragraph 23). One thing that Gary Fung, *isoHunt's* owner, thinks will help this is reducing the length of copyright terms:

> "A 100 plus years term like now is absurd; book authors have said "anything beyond ten years is intolerable." Because they want to 'free' their own books from the publisher after 10 years when it's of no significant commercial value anymore, and they'd benefit more from being freed and more people reading them."

> (Appendix A: I)

This has become even more crucial recently for the movie industry as the Internet makes content available so quickly and completely that market saturation occurs faster. This could be potentially dangerous for the film industry because their current business model relies on a hierarchy of releases to maximise profit, i.e. the time prior to theatrical release where the cinematic experience is advertised, after the theatrical release where the DVD is advertised, and finally the DVD release (where it may be advertised for rental, also.) Therefore, Byers (et al., 2003: 4) argues that:

> "Freshness is important, because demand tends to be highest for new movies and marketing efforts are greatest for recent releases."

However, peer-to-peer technology can potentially bypass all of these stages instantly, especially if a movie 'leaks,' so it is plausible that file sharing represents a danger to the Industry's current business model. The website *isoHunt* is a prime example of a service that makes movies wholly available, and its creator Gary Fung is currently being sued for copyright infringement alongside *The Pirate Bay*.

Fung's second and final concept, then, is one that may sound initially surprising from someone who is being sued by the *MPAA* and *RIAA* for copyright infringement. His idea is for compulsory copyright registration, an initiative that would require copyright holders to submit their works for registration:

> "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."

(Appendix A: II)

He elaborates after that this database could be used on file sharing sites to offer a voluntary donation option, an extension of *Radiohead* and *Nine Inch Nails*' experimental "pay-what-you-want" (Sheridan, 2007: Paragraph 23) offerings in 2008. Fung concludes: "If it works for *Radiohead*, why shouldn't it work elsewhere?"

What these amendments encapsulate, however, is a drastic need for change, both in law and attitudes. Important modifications need to be made to ensure that copyright protection in the future is sensible and not completely impractical as it is in danger of becoming with the actuality of file sharing:

"[The] 3 billion downloads the previous month shows that the law is going to have to be changed, unless you take the position that downloaded music is stealing and thereby criminalize society."

(Snyder & Snyder, 2003: 1)

Fung (2008: Paragraph 7) concurs:

"When the majority of society has no ethical conviction of wrongdoing when they violate copyright law, its not society that's wrong, it's the law."

There are three reasons why these changes are needed. Firstly, "lawsuits against music fans have not put a penny into the pockets of artists" (EFF, 2008: 1) so they do nothing to protect culture. The second is because they highlight how ineffective lawsuits against individuals are doomed to be. As Sheridan says, "people who download music illegally now number in the hundreds of millions, and they can't sue everyone" (2007: Paragraph 14). Fortunately, the *RIAA* seems to have realised this and has announced that it plans to end lawsuits against people who illegally download music. They "will pursue lawsuits that have already been filed, but have said they do not intend to file new suits" (NME, 2008: Paragraph 4). Perhaps, if the trend is similar to when they started suing people, the *MPAA* will shortly follow suit. The third reason is that outdated copyright laws seem draconian in relation to the increasing social acceptance of file sharing. Lessig describes

the problem of having laws which criminalise 'ordinary' people, especially young people to whom file sharing is "the new cultural norm" (Sheridan, 2007: Paragraph 9):

> "They see themselves as "criminals" [and] begin to get used to the idea. That recognition is corrosive. It is corrupting of the very idea of the rule of the law."

> (Lessig, 2008: Paragraph 20/21)

Thankfully, the *RIAA* is not the only organisation that shows hopeful signs of responding positively to the changing habits of consumers. *Apple*, one of the largest retailers of legal digital music files (and now film and television content), is removing the *DRM* on the majority of its *iTunes* library from the 1st of April 2009 (Diaz, 2009). Again, *DRM* is an anti-piracy measure that has been rendered futile by technology, and which causes resentment towards the Recording Industry as it limits how the consumer can use the file. Sheridan says that it "frustrates people and drives them to piracy" (2007: Paragraph 11). Huang (2005: 48) previously wrote of the music business that:

> "Record labels don't seem to realize that consumers are the ultimate profit generator of the business [and] that cultivating and maintaining a good relationship with the consumer is important."

Hopefully, *Apple* removing its *DRM* restrictions and the *RIAA* discontinuing its lawsuits against file sharers are signs that the wider Industry's attitudes are changing, and Huang's statement is no longer correct.

While these changes are important in modernising the Industry's reputation, they do not provide a solution for the challenge of file sharing taking the money out of transactions between consumers and culture. That means, concordantly, that they do not help with "compensating copyright owners for displaced revenues" (Netanel, 2003: 6), which is the film industry's most urgent problem. Snyder and Snyder (2003: 3), however, believe that there is a straightforward solution:

> "The simplest way to get customers to stop trading illicit digital copies of music and movies is to give those customers a legitimate alternative, at a fair price."

The key concept that the movie industry must grasp for their alternative to be successful is that no matter what they come up with as a rival distribution method to file sharing, it must be competitive. In 2008, for example, several movie studios unveiled their collaborative video-

streaming website *Hulu*, which delivers video content for free (Sweney, 2008) and is financed by advertising. In the same year, the music-streaming application *Spotify* was launched, which aims to compensate musicians in a similar way (Salmon, 2009). However, while these services are certainly important and admirable steps in the right direction – and will likely do much to appease amateur users and casual consumers – they are still inferior to alternatives in terms of quality, choice and convenience. In short, legal services will not represent a long term solution until they rival the completeness of P2P file sharing networks. However, if and when the Industry does create a preeminent distribution method, it would not only strangle the need for many of its illegal rivals, but also be in an unrivalled position to make money from digital content.

Certainly, the potential exists to make money through digital files and Huang argues that DVDs and CDs should be seen as "just a phase in the ever-evolving history of music consumption" (2005: 49). Despite it being more difficult to extract an economic return from file sharing, the profit margins for digital media are potentially far greater than with hard copy distribution. There is no physical product to make, ship and store, and by utilising P2P technology, the distribution costs (i.e. the price of bandwidth) rest with Internet Service Providers and the consumers. Weiss states that "retailers of digital media like *Apple iTunes* are enjoying fat profit margins distributing content through ISPs' pipes" (2008: 40), and utilising peer-to-peer networks would be an extension of this.

Terry McBride, the CEO of *Nettwerk Music Group*, says "if you could monetize the peer-to-peer networks, everyone would make money" (cited Howe, 2006: Paragraph 27). McBride certainly recognises that the media industry is going to have to move away from old business models to survive in the future. He believes: "the future of the business isn't selling records... it's in selling music, in every form imaginable" (2006: Paragraph 10), a philosophy which is easily transferable to the film industry and their zealous reliance on DVDs as a source of revenue.

It is this quest for new and unexplored sources of revenue, then, that has led to several more extreme resolutions being suggested and utilised. The ideal aim of these 'solutions' is to strike a balance between making the film industry sustainable regardless of how much money the Internet subtracts from traditional distribution methods and preserving the freedom of having massive amounts of content freely available to consumers. These ideas take the form of taxes, levies and subscription style charges.

In 2003, Netanel (2003: 5) proposed a *Noncommercial Use Levy* (*NUL*), which would compensate artists through:

> "Levies on equipment and media used to make personal copies [and] compulsory licences for distributors of copyright-protected material."

He believes the *NUL* would provide "ample remuneration for authors" (2003: 6) and that "copyright industries, authors, providers of P2P-related services and products [would] all have reason to support it" (2003: 6). Since the time of his proposal, his idea has been utilised in Europe in an attempt by the copyrighted industries to "establish a guaranteed revenue stream in the face of dwindling sales which are blamed on piracy" (O'Hear, 2008: Paragraph 4):

> "Currently 22 out of 27 European countries already enforce the so-called 'iPod tax', at greatly varying levels, on products ranging from digital music players, printers, mobile phones and even blank CDs...The charges are designed to compensate for the losses copyright owners may face from "private copying" of works."

> (O'Hear, 2008: Paragraph 2)

A similarly compromising approach to the problem is a proposed 'Culture Tax.' Jenner thinks there should be "a mandatory monthly tax in the European Union on broadband Internet and mobile phones of around €4 per month" (cited Anon., 2007: Paragraph 5). The idea, which is based on the UK's television licensing scheme, could finance high quality legal services, and would free people to use digital content in whatever way they wanted, without the need for limiting *DRM*. While the idea is not without its potentially problematic components - how it "might be divied-out amongst artists... would prove an interesting exercise in logistics" (Anon., 2007: Paragraph 6) – it is nevertheless a viable option that preserves all of the benefits of file sharing technology.

The final 'idea' to be discussed is one that acts as part solution to the financial uncertainty of the Industry's future, and part bridge to the good will gap between the Industry and the consumers. In essence, it is both a change of attitudes and reallocation of resources that would see the Industry stop punishing consumers for 'leaving,' and instead try to win audiences back by improving the quality and value of their service. Following on from several years of box office records, it is clear to see that 'piracy' has not affected the popularity of the cinematic experience. It should, therefore, not be neglected as a source of revenue in the future. It should be noted that the status

and esteem of high quality *IMAX* cinemas is increasing (Burke, 2009) and there is digital projection technology on the horizon which will yield "great benefits in terms of image clarity and quality, lower cost, greater security, and more flexibility in the cinema" (Swartz, 2004: 1). There are also attractive incentives like "the hugely successful *Orange Wednesdays* campaign in the UK" (Bibby, 2005: Paragraph 1) and a proposal to build a $200 million chain of luxury theatres, complete with valet parking, reclining armchairs and bar (Gruener, 2008). These modern initiatives, coupled with the continuing improvements in Home Entertainment (high definition televisions, surround sound systems and emerging *Blu-Ray* technology, for example), make it clear that the movie business is not short of pioneering ideas that will offer things in the future that 'piracy' can not.

Coming back to the question of whether the film industry will survive 'piracy,' though, the available options for generating revenue make the Industry's predictions about the future seem unnecessarily bleak and pessimistic. Indeed, Bowman believes that it doesn't matter what method the Industry offers up, or how radical it is, as long as they "come up with a toll gate somewhere... [so there is] enough revenue flowing back to the people who make films" (Appendix B: VIII). The only way that the film industry risks its own predictions coming true then, it would seem, is by not adapting to the changing habits of consumers, and by failing to offer an alternative that is worthy of replacing its illegitimate predecessors.

Conclusion

It is clear from the proposed solutions that some radical changes of attitudes are needed in the way that the Industry thinks about consumers, products and distribution. The Industry must acknowledge that audience needs and expectations are changing, and it is them who may have to adapt to fulfil the increasing demand for choice and quality. As anti-piracy propaganda has proved more-or-less completely ineffective, it shows that a lot of consumers are satisfied or content with the moral choice that file sharing represents. Indeed, if the Industry continues to label the practice as 'wrong' in the future, then they must be aware that they are not only criminalising a larger and larger percentage of their audience, but doing so in the face of a growing movement of reformists who want to update copyright law to reconcile "the reality of downloaded music with the idea of intellectual property" (Snyder & Snyder, 2003: 1). The Industry should also begin to re-evaluate the nature of the product they are selling. As the Internet gradually reduces the effectiveness of copyright law as a means of protection, it will concordantly become imperative for the Industry to control the distribution as a means of generating profit. As for distribution, the groundwork of a future resolution has already been laid.

As this dissertation has presented, there are a plethora of reasons why file sharing has increased, from improvements in technology and faster broadband to consumer reactions to the perceived egregiousness of the Industry, but the main one – and the reason most difficult to fight – is that peer-to-peer networks represent "the most complete and most efficient distribution model the world has ever known" (Sheridan, 2007: Paragraph 18). As Sheridan says, "it's not about profit, and it's not about maliciousness" (2007: Paragraph 19). He argues that the increase in file sharing has nothing to do with moral decline, or the widespread acceptance of 'stealing' as the copyrighted Industries brand it. It is simply a response to the most effective way to share and consume culture. Importantly, then, the Industry must take into account that any anti-piracy measures that may prohibit this freedom could be perceived as greedy, out-of-touch and, most damaging to their apparent intentions, as an attempt at censorship. Indeed, even the *MPAA's* website recognises (although does not apologise for) the fact that:

> "Culturally, piracy has been tolerated due to the perception that it provides
> cultural access to normally excluded portions of society."

(2009a: 2)

When considering that the majority of file sharers are those with the least disposable income – namely young people and students – and that hard copy 'piracy' is most widespread in poorer countries (L.E.K., 2005: Slide 7), it highlights how showing some sensitivity could be beneficial to the Industry's reputation when dealing with the issue of file sharing. It is also a reminder that a lot of the 'damages' that the Industry claims may not actually be lost revenue at all, and that the issue of file sharing may not yet be as serious as it is declared.

However, while some of the evidence may suggest that the Industry has not yet been negatively affected by file sharing, the certainty of its future growth, and indeed the difficulty of predicting future trends, renders any potentially complacent approach towards the issue risky. Certainly, if the Industry is to realign their perceptions of file sharing with those of the general population, it would be wise to have in place the policies, technology and infrastructure to compete in a rapidly changing and expanding media landscape. As we have seen, 'piracy' is not caused by a disregard for the sanctity of culture, but is a very human reaction to the conception of a distribution method that can bountifully feed our insatiable hunger for art, music and stories.

Certainly, the amount of media the average person consumes has increased. Small physical collections of records, tapes, CDs and DVDs are giving way to vast libraries of digital content. Sheridan describes the practice of rampant downloading, file sharing, collecting and discovery of free media as "the cultural norm to the *iPod* generation" (2007: Paragraph 10). Snyder and Snyder note that in this context, "obscurity is a far greater threat to authors and creative artists than piracy" (2003: 3). As well as the increase in media consumption, the combination of the Internet, file sharing and free 'remixing' software has led to an abundance of "amateur creativity" (Lessig, 2008: Paragraph 8), which again is expansive to the horizons of culture but which is technically illegal under the current scope of copyright. Lessig says: "it is time to recognize that we can't kill this creativity, we can only criminalize it" (2008: Paragraph 22). With the demand for media at its highest ever level, however, it seems counterintuitive to reduce supply.

Indeed, it seems unpalatable and improbable that in such a gluttonous cultural environment there is no money to be made by the creators and distributors of the artefacts that entice consumers to the digital media feast. Advertisers and innovators need only find a way to capitalise on this demand, and there will pre-exist the foundations of a powerful marketing platform; and if anyone is to accommodate this potential, it should be a modern, informed and adaptable media industry that is willing to progress beyond its old business models. Snyder and Snyder believe that "in an

era of rapidly evolving technology, businesses that adapt will survive, those who don't, wont"
(2003: 2). However, they note that this does not necessarily mean the death of culture, only the
pruning of the out-of-date machinery used to distribute it. Importantly, Sheridan concludes: "the
marketplace will shift and artists will survive" (2007: 14). Lessig's suggestion is therefore that
"we... reject the notion that Internet culture must oppose profit" (2008: Paragraph 8).

Before the Internet, the financial relationship between consumers and culture used to be simple,
linear transactions of physical products. However, now that the 'products' are becoming
increasingly intangible and replicable, it may soon be that the product is not what generates the
money, but the distribution method. At present, although it may be beginning to shift, a lot of the
distribution methods are in the hands of the file sharing movement (or 'pirates' as the Industry
describes them.) It should therefore be the penultimate goal of the Industry to control these
distribution methods and the inevitable financial return they could provide. As Chapter Two
demonstrated, it is futile to attack the existing, illegitimate services. The Industry will not achieve
market dominance by stifling the competition, as the Internet is "inherently resistant to
censorship, both in operating philosophy and technical set up" (Hwa Ang & Nadarajan, 1996: 75),
but by challenging them fairly. To alliterate one of the final points from Chapter Three, the
Industry should not be 'punishing' defecting customers but trying to win them back.

And as we have also seen, this means they can make no half-hearted attempts. If the legitimate
alternatives that the Industry offers fail in any respect to match their rivals' completeness,
convenience or flexibility, they will wholly undermine their own value. As Sheridan says, a
"precedent... [has] already been set" (2007: Paragraph 10) and unless it is matched, a reason for
'piracy' will still exist. However, by the same token, if the Industry does create a distribution
method that is as great or greater than the existing file sharing services, then it will render any and
all unlawful alternatives equally worthless.

However, for this to happen, the Industry has to fully embrace the significant changes that may be
needed in the future. Hencewise, the movie industry should welcome new technology for all of its
great potential and trust that the unquenchable human thirst for art and stories will, almost
involuntarily, ensure that their products survive and prosper. Indeed, "history has shown that
advances in technology increase consumer spending" (Snyder & Snyder, 2003: 2). In the same way
that the VCR was prophesised to be the Industry's nemesis then increasingly became a large
benefactor to its profits, they should be aware that the file sharing apparatus they are currently

trying to stifle may one day be their own distribution method. Consequently, embracing this technology may be the key to future business models. More importantly, however, it would also be to the obvious and universal benefit of culture. If the Industry's future priorities are in the best interests of the consumer then everyone's ambitions will be united in the pursuit of a digital, cultural utopia. In addition, the sheer volume of users that would be attracted to such a complete and enticing library would ensure that ample revenue could be generated to sustain the service. As Bowman says, "It's better to have a billion people paying a dollar than a few million people paying ten dollars" (Appendix B: IX). Furthermore, such noble ambitions could hope to heal the wounds of the past by winning back disgruntled fans and disillusioned consumers, perhaps even restoring the Industry's misplaced reputation as creators of priceless treasures that delight, move, inform and entertain us.

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Appendices

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