



Law, Policy -- and IT?

Tracy Mitrano explores the intersection where higher education, the Internet and the world meet (and sometimes collide).

Hamlet's Dilemma

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By **Tracy Mitrano**

Whether 'tis nobler to abide by a law out of sync with technology or to take arms against a sea of troubles, that is the question for the common user of the Internet who desires content at the lowest price point, instantaneously and within some framework of economic fairness and personal ethics.

In the last blog, I promised to add some more electrons to the discussion about what is commonly referred to as "illegal file-sharing" or "downloading" but what more appropriately might be called "copyright infringement" because legally, that is what it is in the most plain and non-perjorative term.

As the DMCA Agent for Cornell University, and having overseen now thousands of DMCA notices, allow me a few stray thoughts before I get to the point. First, whether it is "legal" or "illegal" is a question that belongs in theory to an analysis of the legislation and in practice to what pressures the content industry places on the Department of Justice to act in various circumstances, from the most minor to the major, as was evidenced by the events surrounding Megaupload last week. From a legal perspective, what we know for sure is that the activity is potentially "actionable" as both a civil and criminal manner.

Second, not a single DMCA notice in my experience has ever been about a "download." Every single one is about an "upload," that is when the content is going out from the device onto the Internet to another device. This is an important point, because it trips the "distribute" wire of ownership rights incontrovertibly. It is also very smart of the content industry because it takes "fair use" out of the picture completely. When actionable, this manner of infringement leaves the defendant with virtually no defense and only with the question "how much in damages do I pay?"

Third, file-sharing is not civil disobedience unless the defendant stands up prepared to suffer the consequences. When students have raised this defense to me as argument for avoiding disciplinary measures I, as a child of the 1960's, bristle. Henry David Thoreau and Susan B. Anthony you are not unless you happily pay megabucks and/or want to cool your heels in jail.

Let's get to the issue: what is a user to do? I urge taking arms against a sea of troubles, and by that getting involved in the issue, discussing them with the same verve one might have given to civil rights or environmental or more currently economic matters in our civil society. Rampant, gleeful copyright infringement demeans one's ethical posture. Very quickly may I say I do understand it, especially for people who crave culture as a part of their identity and development in global society but may not have the resources at their disposal, as students or persons living in debt or persistent poverty. Nor do I say it as a buttress to the content industry; this comment is born out of my parental/teacher perspective that cares deeply about the personal, ethical development of young people. Regarding the content industry: that trade group, lobby force, has never acted in ways other than for their own good, not for the good of American society, whether measured in their failure to provide alternatives commensurate with new technologies that would provide workable options for most people to use without legal peril or (and here I am at my preachiest) in the values of the content that they peddle just to make money.

Oft-times I have used Teddy Roosevelt's trope of "malefactors on the left and malefactors on the right" to describe the circumstances surrounding the copyright issues of today. The extremes have so dominated the debate that even when moderate voices attempt to speak, their words, intentions and message get sent into the centrifuge of this debate and spun out in one or another direction. I believe this to be the case of Lawrence Lessig, for example, who, from the legal perspective, has led the charge for copyright reform for over ten years now. A number of years ago when I mentioned bringing him to Cornell to speak, many people bristled saying he was "too radical." Are you kidding?!? Try Kim Dotcom if you want radical in the sense of extreme flagrant copyright infringer by his own YouTube testaments. For many years I also suffered the slings and arrows of students who pillared me simply for being the name on the end of the information about copyright and file sharing at Cornell, assuming, wrongly, that I was the hand of the content industry reaching down into their network activity. One year, a student even posted the declaration that Cornell should "Fire Mitrano!" Don't worry, as I have gotten older I have developed pretty tough skin, and thankfully the administration understood the issues and mentality of the students and did not take their advice. My point is: to date, has it been difficult to speak about this issue without being thrown into the whirlwind.

Recent events suggest that the political landscape may be about to change, and for the better. The Obama Administration's statement a couple of weeks ago stating that they would not support SOPA was the seminal moment. And to demonstrate that the Administration is not, however, in the other camp, the DOJ acted against Megaupload. That noise you hear from the boonies in Central New York is me cheering wildly. Not that I had an axe to grind against Mr. Dotcom; frankly, I had never heard of him before. Not that I fail to recognize the foundational concern of the content industry when it comes to services, especially those outside of the United States, that egregiously violate their copyrights and/or trick users into buying their services posing as legal when they are patently not. I do. No, the cheering you hear is for the opportunity, at least, to have a reasonable, middle ground, politically moderate discussion about copyright reform in this

country. That is how this country can exercise affective global leadership. That is place where higher education -- consumer and producer of content -- can play an important role in educating people, encouraging debate, moderating discussion. So

"If music [or movies, or software, or video games] be the food of love, play on!"