

SPEA UNDERGRADUATE HONORS THESIS

A Rational Approach to Piracy

Avoiding Substantial losses in the Film Industry

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Abstract

The entertainment industry is one of the largest and most important industries in America. Everyday millions of people turn to it for a moment to escape, a moment to relax, or a moment to share, but that industry is at risk. Piracy is plaguing the entertainment world and costing the industry millions if not billions of dollars. As a response the entertainment industry has chosen litigation over adaptation in its fight against piracy. This study, through a careful analysis of many legal documents, articles, and books, shows just how ineffective and potentially dangerous that choice has been. Government involvement in the issues has only compounded the dangers of trying to litigate against these “internet pirates” on the forefront of internet piracy. Our personal freedoms may be put at risk because of the fear of the changing world of entertainment. Irrational responses to piracy, like the case of *Capital v. Thomas*, have done nothing but make things worse and alienate consumers. In that case a woman was found guilty of copy right infringement and forced to pay \$220,000 in damages for only 24 songs (Leeds). But there is hope, the information provided by many internet user responses, industry press releases, and scholarly articles on the subject have presented evidence that suggests that the music industry, after succeeding in nothing more than creating an atmosphere of fear, have chosen to try adaptation and this choice has resulted in significant progress. The success of the music industry’s strategy has made an impact on the effects of piracy and can act as a glimpse of the future for the film industry. Although the film industry has not been hit as hard as the music industry the time to start adapting to the changes in media and technology is now. To mom and pop movie rental stores this may be the end, but for film makers, producers, employees, and fans this is the beginning of a new kind of freedom and prosperity.

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Introduction

The United States copyright code states in chapter 10 code 1008 that “No action may be brought under this title alleging infringement of copyright based on the manufacture, importation, or distribution of a digital audio recording device, a digital audio recording medium, an analog recording device, or an analog recording medium, or based on the noncommercial use by a consumer of such a device or medium for making digital musical recordings or analog musical recordings,” (1008. Prohibition on Certain Infringement Actions), in regards to the noncommercial use of copyrighted materials. When this law went into effect it meant that one could not be legally penalized for recording their favorite song off of the radio on to a cassette tape or their favorite movie on VHS for their personal use, but times have changed. With today’s technology a person with even a remedial amount of internet literacy can download their favorite song or movie straight from the internet, as well as be a part of the distribution of that product, with no cost. Because it has become so easy this practice of has become a serious problem. This problem is one that has been consistently addressed since the beginning of digital piracy (opposed to physical piracy)¹ with a music sharing program called Napster in 1999, but has snowballed into quite the industry emergency for the entertainment industry (Citron and Santini). The solution to this problem started with a decision to choose litigation or adaptation. The choice in 1999 was litigation. How could the industry have known what was to come of the internet and its capabilities? But as the problem has persisted and

¹ “Digital piracy is the illegal duplication and distribution of copyrighted content via electronic means. While the usage of online (peer-to-peer) P2P networks is the most pervasive outlet of digital piracy, hosting copyrighted files such as MP3s, movies, and software on web servers, uploading copyrighted media on video sharing sites, and even simpler ways of distribution such as via email or instant messaging are also considered illegal digital piracy. Similar to digital piracy, physical piracy involves the illegal duplication and distribution of works, but in physical form. Digital media can be illegally burned onto mediums such as CDs, DVDs and sold for a fraction of the retail price. Books, newspapers, magazines, course packs, journals, research and reports can also be duplicated in physical form and distribute” (History and Overview of Piracy)

worsened, litigation has proved itself effective in scaring internet pirates, but not in deterring them. Many people looked on in awe when the courts ordered Jammie Thomas to pay \$220,000 for 24 songs in 2007, but this did little to stop most of the piracy community (Leeds). The music industry was hit the hardest with a 72.9% decrease in CD sales since 2004 (Oestreicher). This has caused them to take a new approach after a year of litigation has only scared away a minor fraction of the pirates (Oestreicher). The film industry still makes claims of lost revenues to piracy but they seem unable to back up these claims with any numbers. They claim that "our economy loses over 370,000 jobs to content theft, which is quite a lot when you consider that, back in '98, the Bureau of Labor Statistics indicated that the motion picture and video industries were employing 270,000 people" (Reid). With companies like iTunes and Pandora the music industry is adapting to the digital age of the future slowly but surely. In the meantime the film industry is starting to make changes with companies like Netflix and the influx of new digital technology, but is missing major opportunities to stop piracy before it becomes a problem. Major players in both industries such as the Motion Picture Association of America (MPAA) and the Recording Industry Association of America (RIAA) have played a part in the developments of each industry, and are the ones who need to lead the charge. The future of the film industry, and the entertainment industry as a whole, lies in the epic challenge of adapting to a digital world. We are approaching the point of adapt or fail, change and control over arrests and fines, or even a shift of power back to the artists themselves.

Litigation

Litigation is difficult in general; you must have the right facts and the right evidence to find someone guilty of a crime. This process gets significantly more difficult when the person you are trying to litigate is nothing more than a code or ghost on the internet. At first the justice system seemed to be able to control the issue, as can be seen in the landmark case *A&M Records, Inc. v. Napster, Inc.* where Judge Marilyn Patel ruled that the “Defendant is hereby preliminarily enjoined from engaging in, or facilitating others in copying, downloading, uploading, transmitting, or distributing plaintiffs’ copyrighted musical compositions and sound recordings, protected by either federal or state law, without express permission of the rights owner,” (*A&M Records, Inc v. Napster, Inc.*). Napster was found guilty of facilitating copy right infringement, not infringing upon it themselves thus still violating copy right laws. “The *Napster* decision is a firm reminder that copyright law clearly applies to sound recordings, that courts will look critically at large-scale services that copy and distribute works, and that the applicable law is multi- layered and subject to potentially complex definitions and interpretations” (Crews). But internet piracy did not end there.

First the music industry turned to the court room to solve the issues involved with internet piracy. “The music industry filed thousands of lawsuits against people it accused of downloading music without permission and without paying for it. Almost all the cases settled for \$3,500” (Associated Press). But within those thousands of cases there were two outliers that effected the music community the most: *Sony BMG v. Tenenbaum* and *Capital v. Thomas*. “A federal jury slapped Tenenbaum with a \$22,500-per-song verdict in 2009” for the downloading of 30 copyrighted works (Newman). Similarly “a jury hit [Jammie] Thomas with a

\$222,000 verdict when she was found guilty of sharing 24 songs using the file-sharing client Kazaa” (Ernesto). The music industry knew that it could not sue every internet pirate, and pursued these offenders in an attempt to create fear. It is similar to Jeremy Bentham’s idea of the panopticon. This was a jail system that would “allow authority figures to observe prisoners without them being able to tell whether they are being watched or not” and thus provide the “wardens the power to control the prisoners by instilling the conscious fear of feeling as though there was around the clock surveillance” (Citron and Santini). This fear was effective in some ways, for example “use of KaZaa” an internet piracy agent “alone dropped a total of forty-one percent from the end of June, 2003 (pre-announcement of suits) through September 2003 (post-filing of initial round of suits) (Groennings). However, “the industry is now more interested in shutting down sources of piracy and getting Internet service providers to warn and punish subscribers for copyright infringement”

To do this, the “entertainment business and government have started to work together to try to pass Internet privacy acts that will help to put an end to online piracy” (Citron and Santini). These acts are an attempt to use legal power and fear to control the use of digital copyrighted materials that are not explicitly addressed in current copyright statutes, as well as address the issue of catching this new breed of digital criminal. Some of them are the Stop Online Piracy Act (SOPA), the PROTECT IP Act (PIPA), the Cyber Intelligence Sharing and Protection Act (CISPA), and most recently the Anti-Counterfeiting Trade Agreement (ACTA). Each of these go about handling the issues differently.

SOPA as is described in an article in the Wall Street Journal “would give Justice Department prosecutors new powers to prevent pirate sites from getting U.S. visitors and

funding.” (Schatz). On the surface this seems like a simple solution to a complex problem.

Trevor Timm goes in to further detail in his Electronic Frontier Foundation article “How PIPA and SOPA Violate White House Principles Supporting Free Speech and Innovation” when he explains in detail the powers of SOPA. Trevor Timm explained in his Electronic Foundation article that if a “website is contacted because it is supposedly violating copyrights and does not react to the demands of the corporation then the site is shut down in five days” and that “the bill also allows the United States Attorney General to obtain a court order that could force servers, advertisers, DNS providers, search engines, and payment processors not to have contact with websites that are considered infringing upon the law” (Timm). This approach is based on the idea of changing privacy laws to adapt for more power to the companies and the government to stop online piracy. A different approach is to shift the responsibility of stopping piracy from the corporations who own the copyrights to the websites that are forwarding said materials. The PROTECT IP Act (PIPA) is the opportunity for this shift. On a basic level PIPA “would allow the ability for companies to sue sites that the companies believe are not doing a good enough job at preventing infringement” (Timm) on top of many of the powers also offered in SOPA. One common element present in both of these acts is to “allow Hollywood studios and other content owners to take private legal action against websites that are alleged to be hosting pirated material.” (Schatz) This is taken a step further with CISPA which would “appropriately authorize the federal government to share cyberthreat intelligence with the private sector, to enable private companies to protect their networks from such threats” (Franklin). All three of these bills failed to pass through congress and the president thus they are currently being revised, but

because of the uproar seen in the internet community it seems like they are not the future of this cause anymore.

There is a new approach to this piracy problem and it is called the Anti-Counterfeiting Trade Agreement (ACTA) which was signed by eight international parties on October 1, 2011 (Office of the United States Trade Representative). ACTA is an international development that “in addition to calling for strong legal frameworks ... also includes innovative provisions to deepen international cooperation and to promote strong intellectual property rights” (Office of the United States Trade Representative). Unlike SOPA, PIPA, and CISPA, ACTA has been passed and supported by many important figures in the industry. Vice President of Corporate communications for the MPAA Howard Gantman had this to say about ACTA in a September 2011 statement “The Anti-Counterfeiting Trade Agreement is an important step forward in developing strengthened international cooperation and enforcement of intellectual property rights. It is also a strong signal that the world’s largest economies recognize the critical value of intellectual property rights to their global competitiveness and are committed to moving ahead together to protect the jobs of the millions of men and women working in film and other creative industries.” (Gantman). From an outside perspective this seems like the solution to all of the piracy problems. This agreement has been signed but not yet implemented because of the proportions of its changes. The Anti-Counterfeiting Trade Agreement very well could be the end of intellectual property piracy.

Yet the problem continues to grow exponentially because of advances in technology and the internet, so much so that “it has been hard for the United States government to patrol all

the illegal file sharing” while “people in the entertainment industry still refuse to change their business model around the new world of piracy” (Citron and Santini).

Litigation the Irrational Approach

On May 5, 2000 Napster was forced to shut down its operation and cease all actions (A&M Records, Inc v. Napster, Inc.). This is the first litigation against digital piracy and took place over thirteen years ago. After this case piracy did not shrivel up and die, no Napster changed the industry forever and proved that no litigation could stop what it had started. Both pivotal cases in the music industry litigation, Sony BMG v. Tenenbaum and Capital v. Thomas, ended up in favor of the industry but forever tarnished their reputation. In the famous Tenenbaum case U.S. District Court Judge Nancy Gertner “reduced the fine to \$67,500, calling the original amount “unconstitutionally excessive” (Newman). Similarly U.S. District Judge Michael Davis said that “an award of \$1.5 million for stealing and distributing 24 songs for personal use is appalling. Such an award is so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable” (Ernesto). Because of these allegations of “offensive” and “unreasonable” damages this cases have become “relic[s] for the RIAA, which stopped suing individual file sharers a few years ago” (Newman) and looked to a different solution to the internet piracy issue.

This new solution materialized in the attempt of the entertainment industry and the government to try and create a bill that solves copy right infringement via the internet. The positive implications of the proposed bills pale in comparison to the negative consequences of

their poor wording and attempt at squashing privacy. The worst part of it lies in the details behind the basic explanation of the possible solutions proposed.

The largest implication comes to our freedom of speech. SOPA and PIPA are examples of bills that through rewording and explanation are trying to approve censorship without due process. The official Congressional explanation of SOPA is that it “authorizes the Attorney General to seek a court order against a U.S.-directed foreign Internet site committing or facilitating online piracy to require the owner, operator, or domain name registrant, or the site or domain name itself if such persons are unable to be found, to cease and desist further activities constituting specified intellectual property offenses under the federal criminal code including criminal copyright infringement, unauthorized fixation and trafficking of sound recordings or videos of live musical performances, the recording of exhibited motion pictures, or trafficking in counterfeit labels, goods, or services” or more commonly put a system in to place that would allow the Justice department to shut down any site that they deem “dedicated to copyright infringement” (Open Congress). Problems arise because of issues like “the language in the House bill (SOPA)” which “is so broad that it would allow content owners to target U.S. websites that aren't knowingly hosting pirated content” (Schatz). Another of the proposed bills, the Cyber Intelligence Sharing and Protection Act (CISPA), which would “Establishes a National Cybersecurity Council” (Open Congress), “could go beyond information sharing...this could mean blocking websites, or disrupting privacy-enhancing technologies... These countermeasures could even serve as a back door to enact policies unrelated to cyber security” (Rashid), which is an obvious attempt to open opportunities for the corporations and the government unrelated to the problem at hand. To make matters worse CISPA also suffers from a lack of detailed language which “means there is no explicit restriction about the type of

information being shared between government and companies, so long as it could somehow be linked to cyber-threats” (Rashid), another loop hole that would benefit the corporations and the government but limit our rights to privacy. Hidden within the legal jargon this bill names “crucial, long-standing privacy laws and say that they no longer apply on the internet for the new information monitoring and sharing powers that would be created” (Shaw). Many argue that the loss of privacy is necessary to gain the power to limit or end digital piracy, but it is pivotal to realize that the use of these powers are difficult and costly to implement and are more based on fear of being caught than actually using the suggested powers (Citron and Santini).

It appears that the many bills being produced on this subject have some sort of ulterior motive which limits or restricts privacy in the name of benefiting private parties, but the Anti-Counterfeiting Trade Agreement goes way beyond that. “Officially released in 2010” after “it had already been finalized following eight rounds of closed-doors negotiation” (Rossini, Sutton and Hinze), the ACTA is a very broad and overarching agreement that can drastically affect the everyday lives of people all over the world. The “intellectual property enforcement provisions ... have the potential to open the floodgates for negative national legislation, while simultaneously creating strong incentives for online service providers to privately enforce the law in ways that can seriously undermine Internet users’ privacy and freedom of expression” (Rossini, Sutton and Hinze). This bill calls for a blatant “Violation of Privacy and Due Process”, “Greater Civil and Criminal Penalties for Copyright Infringement”, and a “Nondemocratic Enforcement Regime” (Rossini, Sutton and Hinze), all of which are completely unconstitutional. Where do we draw the line on this issue? How can we fix one problem by causing so many more, even worse issues?

Rational change: The Music Industry story

The way we must think about internet file sharing is like this, “when you take a book from Barnes & Nobel, it has one less book to sell. By contrast when you take an MP3 from a computer network, there is not one less CD that can be sold. The physics of piracy of the intangible are different from the physics of the piracy of the tangible,” (Lessig). This is the way of the future; the way we must think in order to adapt to the changing world of the internet and all its many possibilities. Services like iTunes, Pandora, and Spotify are examples of the music industry making this transition to the digital intangible world. We no longer live in a world like the 70s where teens own a bunch of records, now we have teens with thousands of songs stored on their computers or MP3 players (Oestreicher). We are now looking at a music industry based in access, because ownership is no longer necessary to enjoy the product. In the music industry of yester-year the money was in the physical copies of the music that was tangible and owned. Now the money is in selling a completely intangible form of music that allows for access to the consumer, according to RIAA statistics comparing physical sales compared to digital (downloaded) sales from 2004 to 2011 (2009 data is unavailable) (table 1). The growth of digital media seems obvious if you compare the 1.33 billion legal downloaded singles in 2008 against the 139.4 million legal downloaded singles in 2004 (Oestreicher). In the same light one can also easily notice the 50% drop in physical CD sales from 2004 to 2008 (Oestreicher).

Physical		2004	2005	2006	2007	2008	2010	2011
CD	Units Shipped (millions)	767.00	705.40	617.70	511.10	384.70	253.00	240.80
	Value (millions of US\$)	11446.50	10520.20	9372.60	7452.30	5471.30	3389.40	3100.70
	Average/unit (US\$)	14.92	14.91	15.12	14.58	14.22	13.40	12.88
CD Single	Units Shipped (millions)	3.10	2.80	1.70	2.60	0.70	1.00	1.30

	Value (millions of US\$)	14.98	10.90	7.70	12.20	3.50	2.90	3.50
	Average/unit (US\$)	4.83	3.89	4.53	4.69	5.00	2.90	2.69
Digital		2004	2005	2006	2007	2008	2010	2011
Album	Units Shipped (millions)	4.60	13.60	27.60	42.50	56.90	85.80	104.80
	Value (millions of US\$)	45.50	135.70	275.90	424.90	568.90	872.40	1091.40
	Average/unit (US\$)	9.89	9.98	10.00	10.00	10.00	10.17	10.41
Single	Units Shipped (millions)	139.40	366.90	586.40	809.90	1033.00	1177.40	1306.20
	Value (millions of US\$)	138.00	363.30	580.60	801.60	1022.70	1317.40	1492.70
	Average/unit (US\$)	1.01	0.99	0.99	0.99	0.99	1.12	1.14

Table 1 RIAA Sales Statistics 2004-2011 (2009 unavailable) (Oestreicher)

iTunes

In today's world it is necessary to think in terms of the technology that rules our times. One of the most influential pieces of said technology is the iPod created by Apple Computer, Inc. This Mp3 player seemed the same as the slew of others released in its time, until Steve Jobs introduced the world to iTunes. iTunes "offers individual songs for 99 cents and most full-length albums for \$9.99" and had "accounted for the legal downloading of over 25 million songs in 2003 and was named Time invention of the year" (Wade). In its first sixteen days of operation iTunes had over two million downloads and quickly became the industry leader for legal downloads (Digital Media Project). By offering customers a cheap and easy way to access music, iTunes filled the void that drew in many digital pirates. With over 700,000 tracks from all of the five major labels, buying music was easier than stealing it from the internet (Digital Media Project). iTunes offered "à la carte purchases with fast searching, one-click purchasing, and integrated software tools [that] keep the consumer's focus on short-term costs and his or her immediate desire for a song" (Digital Media Project) thus emulating the desires and needs of those who may have previously turned to illegal sharing. The importance of what iTunes is doing for the industry cannot be downplayed. Not only have they proved successful in curbing the number of illegal downloads, they have motivated others to get going as well. In the name

of competition Microsoft is working on their own music system similar to this, along with Napster 2.0 which “offers its users unlimited full listening rights of its entire library for a \$10.00 monthly fee” as well as a feature that allows “users of the subscription service [to] pay a discounted rate of as little as (\$0.80) for the rights to burn, download, and use on portable devices” (Digital Media Project). With competitors trying to replicate the success of iTunes, Apple has consistently updated iTunes with a more user friendly format and a growing number of features and things to buy. Even 9 years after the birth of iTunes they still claimed 64% of the entire digital music market in 2009 (Dahud). More impressive than that is the fact that they have also accounted for 29% of all music sold at retail both digital and physical, and in case you were unsure about the rise of digital media Amazon.com was responsible for 19% of all music sold at retail putting Wal-Mart in third with only 11% (Dahud). Of course those numbers do not take in to account the millions of illegal downloads; however, according to an NPD article printed that same year the number of songs downloaded through p2p declined 6% in the previous year (The NPD Group). iTunes and its similar competitors are providing an affordable and easy way to access music on the internet legally and safe, just one example of how the music industry is adapting to the changing industry.

Pandora

As mentioned before the amount of importance placed on ownership by the consumer has been replaced with importance placed on access. When buying music in iTunes you are essentially buying the song, but the ease of



Graph 1 Total Radio Online Revenue in Millions of US\$ (Focus)

access draws you in; however, there is an alternative. On-line radio sites like Pandora offer the opportunity for a person to essentially rent the song to listen to but have no ownership rights. According to a September 2012 NPD article "Online radio and on-demand services remain the fastest growing form of music consumption in the U.S" (The NPD Group). This may come as a shock to the everyday listener, but with over 740,000 analyzed songs and over 2.5 million new users a month it is no surprise (Grossman). Pandora and its many online counter parts are coming up as the newest option to battle online music piracy. It attempts to curb piracy by convincing consumers to be a part of what they call a recommendation engine. This piece of software essentially "gives you advice about what you might enjoy listening to or watching or reading next, based on what you just listened to or watched or read" (Grossman). This curbs internet piracy by drawing in potential pirates and turning them to music that is legal, safe, and similar to things they like; as well as help to create revenue for the industry itself. A system where the industry makes money, but the consumers can still enjoy a free product with incredible access stops the everyday music listener from turning to piracy. According to a quote by industry analyst Forrester in a 2010 TIME article "one-third of customers who notice recommendations on an e-commerce site wind up buying something based on them" (Grossman). Not only can we count on online radio services, like Pandora, to draw in potential pirates but they are also aiding in the revenue streams of their money making competitors. In specific terms for music "64 percent of iTunes buyers listened to online radio, as well" (Grossman), thus pairing companies like iTunes and Pandora, at least for now. This indicates that online radio will one day utilize their ad-based and subscription based revenue systems to power the music industry. By examining the progression of total radio online revenue since the

birth of Pandora in 2000, you can see a huge jump from \$28 million in 2003 to a whopping \$827 million in 2013 (Graph 1) (Focus). Taking in millions of dollars in advertising money, as well as some from premium subscriptions, Pandora makes a solid revenue stream while not sacrificing what people care about the most, access. A pivotal aspect of Pandora is that the consumer is not bombarded with ads like one might expect from a company that derives most of its profits from advertising. On average Pandora only runs about 80 seconds of advertising in a given hour compared to the ten to fourteen minutes of ads per hour on regular radio (Focus). Online streaming may one day be the central focus of the music industry, but for now it represents one of the many attempts by the music industry to adapt to the changing age of digital media.

Although iTunes and Pandora are just a few of the monstrous amount of companies trying to pander to the ever changing needs of the music industry they tell us a lot about where the industry is headed and how they are reacting to piracy and the switch to digital media. Russ Crupnick, an entertainment industry analyst for the NPD Group, is quoted in a NPD article titled “Digital Music Increases Share of Overall Music Sales Volume in the U.S.” that “The growth of legal digital music downloads, and Apple's success in holding that market, has increased iTunes's overall strength in the retail music category” (The NPD Group), proving that iTunes and companies like it have a lot to gain from helping the music industry rid the internet of illegal downloads and piracy.

The Time for Rational Adaptation is Now: The Film Industry Story

The point of this essay is to offer models for how the film industry might respond to this very different market. The film industry is my primary focus in this essay, and now armed with

the knowledge of the music industry litigation and successful adaptation the present state and future of the film industry can now be discussed. Jared Wade said in his Risk magazine article that “The first battle in the war between the pirates and the industry is winding down, with the industry winning the courts and the pirates still controlling the Internet. For the major labels, winning the next battle will mean that the status quo needs to change and new business models must be created” (Wade). People are inherently scared of change, and the heads of the major studios in Hollywood are no different, but the future is now and something must be done.

Many claim that the movie business is hurting because of the billions of illegal downloads per year that plague the industry. A suggested \$25 billion annually is lost to pirates downloading and stealing feature films (Backgroundchecks.com: The True Cost of Piracy). Quite the large number until you note that on a global scale the film industry reached \$32.6 billion in box office revenue alone in 2011 which was a 3% increase for 2010 (MPAA). However, there is no denying that in the U.S. and Canada box office revenues decreased 4% from 2010 to 2011, but still topped \$10.2 billion (MPAA). This is a small decrease, but it is one that cannot be ignored. The film industry is at the beginnings of what online piracy and digital media can do to it, both good and bad. Since the birth of BitTorrent in 2003 the “extreme ease of use has contributed greatly to BitTorrent’s adoption” (Cohen) and by the end of 2004

Table 2 Top 10 Most Pirated Movies of 2011 (Ernesto)

Rank	Movie	Downloads	Worldwide Grosses
1	Fast Five	9,260,000	\$626,137,675
2	The Hangover II	8,840,000	\$581,464,305
3	Thor	8,330,000	\$449,326,618
4	Source Code	7,910,000	\$123,278,618
5	I Am Number Four	7,670,000	\$144,500,437
6	Sucker Punch	7,200,000	\$89,792,502
7	127 Hours	6,910,000	\$60,738,797
8	Rango	6,480,000	\$245,155,348
9	The King’s Speech	6,250,000	\$414,211,549,
10	Harry Potter and the Deathly Hallows Part 2	6,030,000	\$1,328,111,219

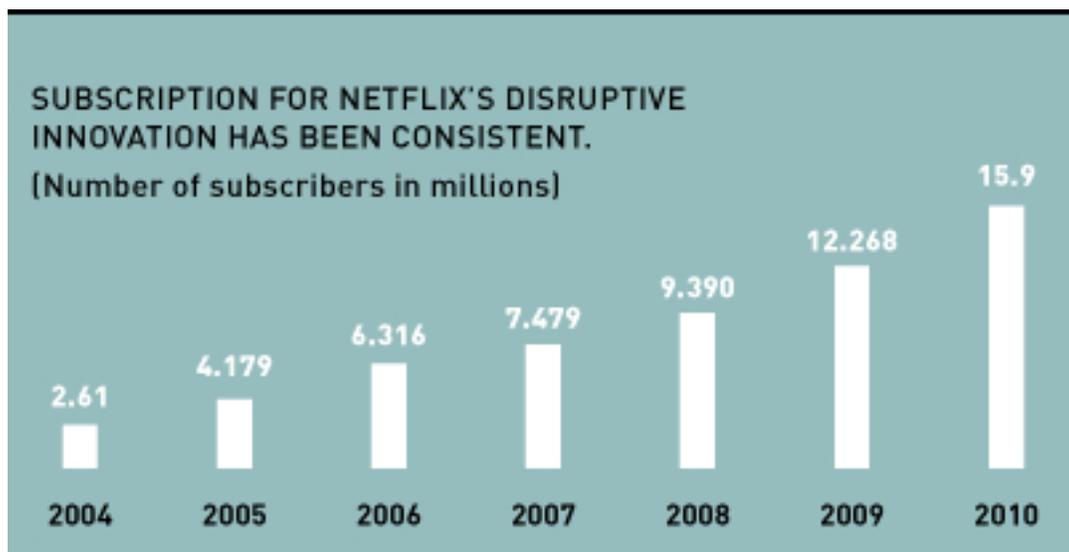
BitTorrent “accounted for as much as 30% of all Internet traffic” (Danaher and Waldfogel). The incredible growth and use of BitTorrents in such a small time shocked the industry. Yet even with that kind of web traffic, and the downloads now numbering in the billions the industry seems to be just fine. For example the most downloaded movie of 2010 was Avatar with an enormous 17,580,000 downloads (Go-Globe: Online Piracy In Numbers), but it still set an industry record for highest grossing movie of all time bringing in \$2,782,300,000 (Box Office Mojo). Almost \$3 billion from the most downloaded film of the year, and this is not an outlier. If you look at the top ten most downloaded movies of 2011 it is plain to see that even movies that surmounted almost 10 million downloads still made tens, if not hundreds, of millions of dollars (Ernesto) (Table 2). Right now in the heat of the problem we can still see the film industry still putting up billion dollar years at the box office and millions of dollars on even the most pirated films. Still many members of the industry are quick to complain about the money they are losing. Even the all-powerful MPAA has claimed that every year our economy loses somewhere around \$58 billion to piracy, to which Author Rob Reid responded “This isn't just the hypothetical retail value of some pirated movies that we're talking about, but this is actual economic losses. This is the equivalent to the entire American corn crop failing along with all of our fruit crops, as well as wheat, tobacco, rice, sorghum” (Reid).

So if the film industry is not losing substantial money than why should you care about what it is doing right now in the face of internet piracy and the growing world of digital media? Put simply because this is the moment to prepare for the future. “Today, the rise of video streaming through sites such as Netflix shows that the changing technology did shift consumer demand for digital entertainment” (Chaudhry and Zimmerman). As consumer demand changes

it is pivotal that the film industry does not become static. These small loses suggest now is the time to get on the front of the upcoming wave. In a Frontline interview concerning the growth of the internet in Hollywood, editor-in-chief of Variety newspaper Peter Bart said “technology remains the most exciting thing going on in several ways” (Frontline). Variety is one of the most well-known and trusted trade newspapers in Hollywood, and is known for recognizing trends. In that same interview chairman and CEO of Sony Corp. Howard Stringer predicts that in the future “there will be huge audiences for movies that people want to see when they want to see them” (Frontline). Many facets of the film industry are currently on the brink of changing. Companies like Netflix are helping to adapt the film industry into the digital media age. As well we can see a possible use of digital technology to help the film industry reach out to more people than ever.

Netflix

In 2007 Netflix live streaming was born, and became a pioneer in the internet streaming world changing the film industry forever (Netflix). In response to the growth of internet piracy and digital media Netflix created a legal and cheap way to watch movies and TV shows where and when you want. It is important to note that without the support the film industry Netflix could never of gotten off of the ground. Their “ability to provide [their] subscribers with



Graph 2 Number of subscribers in millions (Focus)

content they can watch instantly ... depends on studios and other content distributors licensing [them] content specifically for Internet delivery” (Netflix). Already we can see an obvious relationship between Netflix and the film industry. The financial system of Netflix is dependent of people subscribing to their services on a pay per month basis. Currently for \$7.99 a month a subscriber can enjoy an unlimited amount of streaming services (Netflix). Since their conception in 2002 the number of Netflix subscribers has been growing by the millions (Focus). After they introduced their live streaming services in 2007 the number of subscribers shot up from 7,479,000 to 9,390,000 (Focus). As digital media has grown in popularity so have the number of Netflix subscribers (Focus)(Graph 2). The growing numbers of subscribers are people choosing legal streaming over internet piracy. Not only have people been actively joining Netflix they have been abandoning their old practices for viewing media. In 2002 Netflix was responsible for 288 million of the market cap of in store entertainment (non movie-theater), while Blockbuster was responsible for 1.62 billion of the market cap. Eight years later in 2012 Netflix was responsible for a whopping 9.18 billion of the market cap, with Blockbuster as a sad almost bankrupt 35.1 million of the market cap (Focus). An important thing to notice in these statistics is the fact that Netflix is responsible for far more of the market than Blockbuster ever was, which suggests perhaps Netflix is in enough control to draw in what would be potential pirates. With this market control it appears that Netflix is offering legal access to film that is almost as cheap and as easy as illegal downloading, and many people are responding.

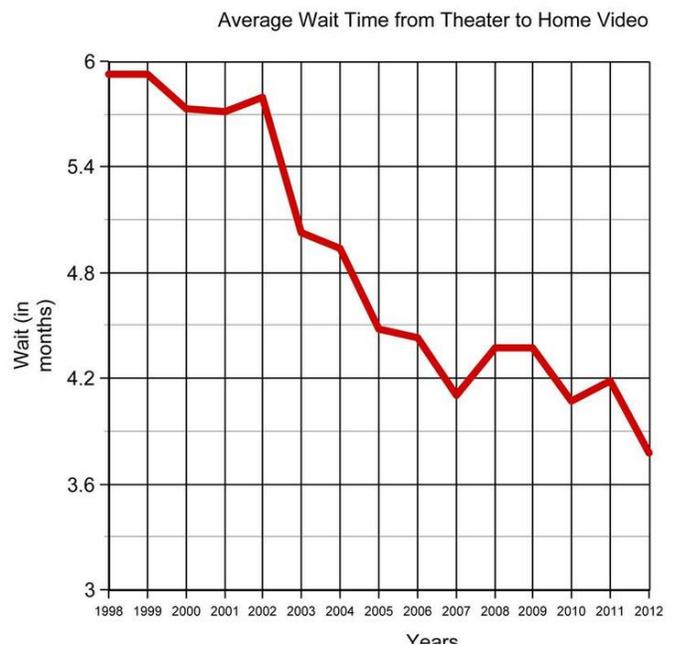
Each and every year Netflix continues to impress and this is because they understand the market shift to access. In a 2010 Annual Report, Netflix mentioned that they strive to “improve technologies, content offerings, user interface, and business models that allow

consumers to access entertainment” (Netflix). From the looks of it Netflix has no question of their future success. Unfortunately they may have an Achilles heel. In the same Annual Report Netflix explained that they “are completely dependent on the studio or other content distributor to license [their] content in order to access and stream content” (Netflix). Should the studio decide to go other avenues than Netflix would be completely out of luck. As well Netflix has to deal with the issues of competing parties getting in the way of their licensing agreements. For example if HBO were to license something from Warner Brothers than that agreement would stop Netflix from also getting a license for that same content and limit the content that they can provide for their subscribers (Netflix).

As a plan for the future I feel like it would thoroughly secure Netflix’s place in the entertainment world if they were to either partner or sell out to the film industry. By becoming part of the entity that they now answer to would allow them to be confident and sure of all

future licensing agreements. This partnership would not only ensure that Netflix has what it needs in terms of licensing, but it would create a mass streaming source that can ensure a proper use of intellectual property. It is important to note that it is not just Netflix that stands to gain from the future. Since 1998 the average wait time form theater to Home video of movies that topped \$100 million at the box

office has been decreasing (Graph 3) (Dai). However, if the industry were to partner with Netflix



Graph 3 Average Wait Time from Theater to Home Video (Dai)

then they could cut their losses on this shortened period of profit. On top of that these partnerships could lead to the possibility of a more costly “premium” option for Netflix. For example if Netflix were to partner with Disney they could gain access to their complete collection of animated features and provide both companies with added revenues (Agnello). For adults, Netflix could partner with HBO and gain access to an unparalleled library of premium television and movies while helping HBO deal with their declining physical DVD sales (Agnello). With access to the Disney collection and to the HBO library, Netflix could offer a premium option and make more per subscriber. Along with this added revenue this premium option would draw in even more subscribers that choose this legal alternative to piracy while still embracing the digital media. Already “partnerships with leading Hollywood studios and entertainment companies such as Metro-Goldwyn-Mayer, Twentieth Century Fox, Hasbro studios, The Weinstein Company, Epix, and Walt Disney has enabled it to offer varied content” which in turn has caused the “total unique subscribers” to increase “25.7% year over year to 31.8 million” (Zacks).

It is this varied content that makes Netflix so valuable to the industry studios. By partnering with Netflix they become part of a larger whole that take away piracy’s largest advantage, convenience. “Piracy is currently the fullest realization of the internet's potential as a culture-machine: virtually any movie, any TV series, any song, any obscure documentary or bootlegged live performance, all accessible to anyone” (Beadon). Currently if consumers “want comprehensive access” they have to “buy multiple different subscriptions from multiple different companies” (Beadon) and that is a huge weakness. Partnerships like that of industry studios and companies like Netflix “allow more sharing of content, new infrastructures that

make delivery and payment more seamless, and the undeniably challenging elimination of geographical restrictions and other obsolete licensing concerns” (Beadon) and that is where piracy will meet its match. When a consumer can pay one price and access everything both Netflix and the industry can prosper.

Digital Technology

In the age of physical media all parts of the film industry were limited by cost and skill level, but now with the introduction of digital media and technology there are more possibilities than ever. Through the growth of digital film equipment and YouTube more people than ever have been able to create and showcase films creating a new and original talent pool. With the advancement of digital media files and satellite technology more people around the world can enjoy a high quality legal print of a movie at a low cost to the industry. With the advancement of digital technology the film industry is able to reduce costs for themselves and their customers while providing a better quality product. With lower costs and better quality the film industry can make acquiring and enjoying its content cheaper and more available to the public, thus reducing the need for internet piracy.

Through the advancement of digital filming equipment, digital editing software, and the internet more people than ever are getting involved in making movies. Former film executive Lucy Fisher feels very positive about the effects of digital technology on young talent saying that “it feels like the digital revolution or whatever you want to call it could be a really wonderful avenue for filmmakers to take the means of production back into their own hands and not have to ask for permission” (Frontline). Because digital video equipment is relatively

cheap and the fact that many computers now come stocked with some sort of editing software talent has been sprouting up everywhere in the form of increased content. It is well known that “more advanced, cheaper cameras and equipment as well as the accessibility of YouTube have allowed some very creative people to make great short films on a budget” (H.). A YouTube production company called Wong Fu Productions raised the ranks of YouTube and now has produced professional grade shorts while working with AT&T and other big name companies (H.). While Wong Fu is just one of the many users on the popular video site they are a perfect example of what kind of talent can be found because of digital technology and digital media. Another professional grade YouTube team is Freddie Wong and Brandon Laatsch who within their YouTube account created a feature film that was broken up into episodes that premiered weekly (H.). Their film was so impressive that it is actually available on Netflix (Netflix). These young filmmakers would never have had the chance to be so successful had it not been for the growth of digital technology. The best part of this talent is that they are distributing their works in a free and legal way that gets their work out to the people and to the professionals, a mindset that shows they are already adapting to the changes in technology. As a free talent pool the industry can utilize this structure to improve its quality of work and plan for the generations to come with new and original content. Along with this talent and content comes new and innovative ways of filming that can reduce the costs of production and hopefully reduce the costs of consumption. It is those falling costs that stand to make a difference in the industry by making content cheaper and easier to access as a consumer. Right now “DVD sales and TV licensing fees are much more profitable ventures since the marketing and distribution cost are significantly lower and they make for the major portion of studios’ profit” (Castor), but

they are not yet at a price point that is valuable to the consumer. In a Streaming media article Netflix CEO said that they “are going to spend a lot of money this year to license content where the costs are ‘reasonable’” (Rayburn). As costs go down for the studios they can charge the streaming company less to increase content, as content increases subscription increases and piracy decreases, as can be seen by the increase in subscribers after Netflix’s most recent licensing acquisition (Zacks).

For many potential pirates it is a question of cost, but for others it is a question of access. With Netflix at home consumers in the U.S. have more access than ever before to some of their favorite content easily and legally; however, many places around the world are not so lucky. Many hypothesize that the growing numbers of illegal downloads around the world are a byproduct of Hollywood’s inability to cheaply and efficiently bring that media to them. In his interview with Frontline Howard Stringer noted that “at the moment part of the problem of sending movies around the world is that the prints are expensive” (Frontline). He goes on to explain that by creating digital media via digital technology we could “distribute a digital picture via satellite directly to a digital projector” and that “the movie will be pristine no matter where it's shown and no matter the conditions” (Frontline). This is something never before possible. In many cases in rural china the only choice was to either find and illegal download a film or buy a bootleg copy, but not anymore. By utilizing digital technology we can hope for a time where consumers choose piracy by necessity because the industry is unable to provide them with ample access. On top of this expansion of access the expansion of digital technology represents an opportunity to cut distribution costs. Mandalay Pictures chairman Peter Guber claims that digital technology can potentially lower costs by closing the gap between production and

distribution by eliminating “a lot of intermediaries who made money in the process, people carrying film cans around, all kinds of other distribution mechanisms” (Frontline). By utilizing this technology digital media stands to represent a future where we not only can cut the costs of distribution, but also cut “the distance between the "Eureka" of the artists and the "Wow" of the audience” (Frontline).

With the film industry at the edge of what will most defiantly be a significant make over it seems that there is potential for success of epic proportions. Just as the film industry did after the invention of synchronized sound of the 20s, the introduction of television in the 50s, or the VCR in the 60's it will adapt. Internet piracy is viewed by many as a negative aspect of digital media, but I view it as the catalyst for the necessary change with in the film industry. Netflix is just one of the many companies doing their part to extend access to consumers in an easy and legal way, edging piracy out one subscriber at a time. That reduction of piracy paired with the reduced costs and improved quality that comes along with the use of digital technology and media could mean that piracy will never affect the film industry to an extreme degree. CEO and chairman of the MPAA Chris Dodd once said in a press release that “here in the United States, more than 2.2 million hard-working, middle-class people depend on the on entertainment industry for their jobs” (Gantman), with the growth of access to the consumer and utilization of the upcoming technology those people will be just fine.

Conclusion

In 1999 it would have been impossible for the industry leaders and government officials to understand where the problem with internet piracy would lead them. But now the year is

2013 and we can see that the time for a rational approach to piracy is now. Litigation has succeeded in nothing more than scaring the public, but failed at stopping piracy, because it is not an issue of online pirates being brave enough to steal intellectual property, but an issue with the fact that entertainment industry is behind the technology. The music industry proved that by adapting to our ever advancing technology piracy can be curbed, and as companies like iTunes and Pandora grow their impact on piracy will grow with them. It took billions of dollars in lost revenue for them to realize that. Today the film industry claims to be losing billions of dollars to piracy each year but is still taking in record amounts of revenues and profits (Reid). I want this study to be a message to the heads of the studios that run the film industry. Internet piracy has the potential to cause serious damage to the world of film, but it has not yet started. There is time to act, time to change. Netflix is going to need help from the industry if it is going to make a significant dent in warding off piracy, but the potential is there. Every year our digital technology gets more and more advanced yet the film industry does not act on the possibilities of the future. The world needs film, and film needs the world. Through the implementation of new technologies we can cut costs, improve quality, and increase access. In coming years piracy could grow to be a festering tumor in the film industry costing it billions of dollars, or it can be rendered insignificant by the adaptation of the film industry to harness the potential of access, quality, and lowered costs. The choice is left up to the people we trust to make our movies. But never forget the words of a great American who embraced adaptation, Abraham Lincoln, "of the people, by the people, for the people". It is our duty as members of the film community to ensure that the industry does what is best for film in general. Now is the time for

rational action, now it is the time to look forward and to adapt to the ever changing world. It's high time we make a rational approach to piracy.

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Digital Piracy, Self-Control Theory, and Rational Choice: An Examination of the Role of Value. George E. Higgins¹ University of Louisville, USA. Further, no study in digital piracy or criminological literature had considered the role of value in such an examination. Therefore, the purpose of the present study was to contribute to the literature by examining the links between low self-control, rational choice, value, and digital piracy. This study built on the mediating model presented by Piquero and Tibbetts (1996). The factorial design approach combined the strengths of experiments and probability sampling. This allowed a researcher to develop unique qualities about a given situation without forcing the researchers to tax their respondents (Rossi & Nock, 1982). Having decided what is important, you then need to progress these tasks quickly and efficiently, and adopting a rational approach to decision making will be a key factor in your ability to do this. The following decision making technique can prove useful. 1) Define and clarify the issue. 2) Does it need to be dealt with? 3) Gather all the facts and understand their causes. 4) Think about or brainstorm possible options and solutions. 5) Consider and compare the pros and cons of each option. The rationale for writing this book is a desire to highlight the utility of combining the efforts of criminologists, security practitioners, and policy makers in confronting crime problems such as maritime piracy. The study examines maritime piracy incident trends over the past few years and presents an explanation for the significant reduction of incidents in East Africa and offers a new approach in constructing a crime-reducing framework applicable to piracy, as well as other crime problems. The intent is to add relevance to the pursuit of social science research crime data collection and an