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Joyriding in the Model-T Era of the Legal eTextbook¹: A Clone Called KaZaA and 2.3 Billion Dollars of eBook Trade²

Mark Van Hoorebeek³

Introduction

This article addresses the need for an accessible and thorough review of peer to peer file-sharing with specific focus on the area of legal eTextbooks. Napster, the now defunct father of the peer to peer file-sharing network still has an influence through the multitude of clones that have evolved since its litigiously enforced shutdown. The evolution of Napster's clone army has enabled users to download other digital media forms that include DVD movies, computer programs and eBooks, something users did not know was feasible during Napster's reign.⁴ eBooks represent a delivery method that the major publishing houses are keen to exploit, however piracy poses a serious threat to the profitability of this area. Section One of this article provides a review of peer to peer file-sharing. Section Two, first identifies the advantages of the eBook;⁵ secondly describes the most common forms of digital eBook piracy; thirdly provides a basic classification of the potential copyright enforcement bodies and finally looks at encryption as part of a strategy of digital rights management. A general conclusion is reached:

¹ Microsoft's vice president of technology and development, Nick Brass, named the coming decade "the Model-T era of the eBook" (Beet, 2002; Curtis, 2002).

² Anderson Consulting predicted that by 2005 the eBook industry would produce US \$2.3 billion in sales (Curtis, 2002; Reid, 2002). A more realistic figure was presented by Online Publishing News: In January 2002 according to a new report from IDC (Maclachlan, 2002) the value of the e-book market will increase from US \$9 million in 2000 to US \$414 million in 2004, *Online Publishing News*, 2002, Armstrong et al, 2002.

³ Researches Intellectual Property Law and Cyberlaw at Sheffield University Law Department.

⁴ Radcliffe MF and Sazama J, Hollywood confronts the Napster challenge, *Managing Intellectual Property*, October 2002, Issue 123.

⁵ Long SA, The case for e-books: an introduction, *New Library World*, 2003, Vol 104, Number 1, pp 29-32.

eBooks will be pirated as the law and digital rights management strategies such as encryption are at present, insufficient to turn the tide of Internet piracy.⁶ Section Three proposes that legal eTextbooks provide a microcosm of the larger issues involved in this area, subsequently legal eTextbooks and legal eLibraries are analysed. Section Four looks at the specific problems the end user of legal eTextbooks may encounter and concludes that eBook publishers are better equipped than the music industry to resist the threat of piracy. The development of eBook library packages and the problems encountered by the end user are presented as two important piracy inhibitors.

A Review of Napster and Peer to Peer File-Sharing

Napster marked an important milestone for the Internet; the idea of an online community had been developing since the Internet's conception. Napster harnessed the potential of this community, allowing the transfer of files without involving the large commercial media providers such as Sony. What surprised many commentators was the altruism shown throughout the file-sharing process, subsequently many companies watched as their products were distributed freely across the Internet.

Napster's History: From the Smallest Acorn...

'There is a lesson about human nature that Napster's legacy will firmly write into Web history: People will freely steal content when given the opportunity. Napster provided and people stole, quite a lot in fact. File swapping naturally causes anyone who has digital assets that can be stolen [to be] very nervous.'⁷

A 19-year-old college dropout named Shawn Fanning created Napster, a project that was to make him a hero to the Internet using 'generation e.' It was also a project that enraged a large and influential business consortium: the music industry. Napster was programmed to allow members of a 'community' to share computer files, at no cost, using the Internet as a digital conduit. This may not seem to be such an onerous crime; however the

⁶ Van Hoorebeek M, Scanning Textbooks: Scamming Academics Library and Information Update, March 2003, Vol 2 (3).

⁷ Peek R, Controlling the threat of eBook piracy, *Information Today*, 2001, Vol 18, Issue 6, p 42.

ramifications of this act were set to influence how many industries with digital products were to function. Napster opened its online doors in the summer of 1999, since then millions of Mp3 files have travelled across the Web. 'Generation e' suddenly no longer needed the music industry.

'The music companies were forced to respond and did so quickly, not by getting their own product to market, but by suing Napster and similar upstart companies into the ground.'⁸

The Recording Industry Association of America (RIAA) launched legal proceedings in December 1999. It did not, however, have the expected effect; word of mouth and a high profile court case combined and turned Napster and peer to peer file-sharing into a global phenomenon. The free exchange of intellectual property belonging to others could not last long. The music industry brought in its heavy litigious artillery and placed a bull's-eye squarely on Napster.⁹

'...But something touched me deep inside, the day the Napster died, So bye, bye Miss American copyright thieves' (Or so they thought)

Copyright laws are clear and well established in most of the developed world and the legal systems seem likely to back the music industry, even if it is a contest that the music industry never seems likely to win.¹⁰ Judge Patel produced a brutal verdict in the US courts in July 2000, which all but shut Napster down. In particular, Patel deemed irrelevant previous court decisions that are relied upon by many digital-media companies.¹¹ These cases include: The motion picture industry's 16-year-old failure to stop consumer sales of

⁸ Godwin M, Napster for Novels? Not even pirates like eBooks, Reason 1.02, 2001, Vol 33, Pt 8, pp 60-62. <http://reason.com/0201/cr.mg.napster.shtml>.

⁹ King B, The Day the Napster Died, Wired, 15 May 2002, <http://www.wired.com>.

¹⁰ Van Hoorebeek M, Scanning Textbooks: Scamming Academics Library and Information Update, March 2003, Vol 2 (3).

¹¹ Green M, Napster opens Pandora's box: Examining how file-sharing services threaten the enforcement of copyright on the internet, *Ohio State Law Journal*, 2002, Vol 63, No 2.

the Sony Betamax video tape recorder,¹² the 1992 Audio Home Recording Act and a recent ruling that determined that downloading copyrighted music to a portable digital-audio device constituted 'fair use.'¹³ Napster closed its electronic doors in May 2002 however; the companies that brought about the end of Napster may regret their actions as revenge may be facilitated through a clone army.

Out of Napster's Ashes Arises a Clone Called KaZaA

While music industry lawyers ponder the copyright in musical works, the 81 Napster clones such as XoloX, KaZaA and eDonkey are facilitating the transfer of music, DVDs, computer programs and eBooks. This form of open file swapping used by KaZaA and the other Napster clones is also known as a distributed network.¹⁴ The clones allow users to swap all types of files, something they did not even know they could do just four years ago. Napster may have been shut down through legal channels but other more sophisticated programs have quickly evolved and established themselves. At present there are 81 commercial quality download programs like KaZaA, XoloX, Gnutella and iMesh, available to the public.¹⁵

In four short years Napster has risen and fallen, its idea has been improved and peer to peer file-sharing continues to gain popularity. By March 2003 KaZaA had been downloaded without cost over 180 million times. To give an indication of the scale of the problem, while this piece is being written KaZaA is showing the following statistics. On the 27 February 2003 at 6am I have access to 4 million users and their files contained on their hard drives, in total my computer has access to 6 million gigabytes worth of files (approximately 200,000 hard drives full of data). KaZaA gives a user an

¹² Lardner J, 1987a, *Annals of Law*; The Betamax Case: Part 1. *The New Yorker* (New York), 6 April.
Lardner J, 1987b, *Annals of Law*; The Betamax Case: Part 2. *The New Yorker* (New York), 13 April.

¹³ Beet RP, *Georgia State Law Review*, RIAA v Napster: The struggle to protect copyrights in the Internet age, 2002, Vol 18, No 2, pp 507-562.
Ficsor M, *The Law of Copyright and the Internet*, The WIPO treaties, their interpretation and implementation. Oxford University Press. Oxford, 2002.

¹⁴ Smart Computing, Share the wealth: Programs that let you swap files online, *Smart Computing*, Vol 13 Issue 12, 2002, pp 22-24,
<http://www.smartcomputing.com>.

¹⁵ Van Hoorebeck M, Scanning Textbooks: Scamming Academics Library and Information Update, March 2003, Vol 2 (3).

altruism rating that influences individual download priorities in relation to other users.

Free of any international restrictions KaZaA was able to integrate itself onto European computers. The lawmakers realise that the copyright in this forum is impossible to control by criminalising the end users; instead they may try to shut down the providers of these networks:

‘Music lovers and film buffs will continue to be allowed to make private copies of their favourite songs or movies after the European parliament yesterday agreed Europe-wide internet piracy legislation. MEPs [Ministers of the European Parliament] approved a copyright directive that will ensure European clones of song-swapping website Napster can be swiftly shut down through legal action.’¹⁶

This might prove to be problematic; the 81 Napster clones presently available are easily modified and have been downloaded onto millions of computers already. The social and legal precedents are already in place: the law proved to be ineffective when dealing with copied videos and cassettes in the 1970’s and 1980’s¹⁷ and it looks to be struggling to control the new peer to peer file-sharing network today. It may turn out that downloading music has set a solid social precedent in this forum and all digital media is set to be available illegally through peer to peer networks. Why should you buy when you could get it free? Nobody has enquired about those copied cassettes or videos you (or your children) have in various closets and drawers...

eBooks, eTextbooks and Piracy

At present a large amount of work is being produced concerning eBooks. The Association of Learned and Professional Society Publishers (ALPSP) commissioned a report on Authors and Electronic Publishing;¹⁸ the

¹⁶ Osborn A, In Brussels, Thursday 15 February 2001, *The Guardian*.

Ficsor M, , *The Law of Copyright and the Internet: The WIPO treaties, their interpretation and implementation*. Oxford University Press. Oxford, 2002.

¹⁷ Harris P, Supreme Court O.K.’s Home Taping: Approve ‘Time Shifting’ for Personal Use. *Variety*, Los Angeles, 18 June 1984.

¹⁸ Swan A and Brown S, *The ALPSP research study on authors’ and readers’ views of electronic research communication*, Key Perspectives Ltd, 2002.

Pelican project on pricing models for eBooks has delivered a final report;¹⁹ and the Joint Information Services Committee (JISC) has a working group concerned with eBooks. eBooks provide a new method of delivery to the end user and publishing houses are keen to exploit this new market. eBook piracy presents a problem that could impinge on the profitability and development of this area.

eBook Terminology

As with all new areas of technology eBooks and the peer to peer file-sharing network uses new terminology that is not yet fully standardised throughout the literature. The main confusion often results from the definition of an 'eBook', for the purposes of this review; I will follow the terminology used by Lynch:

'An [eBook] is just a large structured collection of bits that can be transported on CD-ROM or other storage media or delivered over a network connection [and is] designed to be viewed on some combination of hardware and software ranging from dumb terminals to Web browsers on personal computers to the new book reading appliances.'²⁰

The issue of eTextbooks further confuses the terminology, the term eTextbook is used in this paper to confer the idea that the material is similar to that found in student textbooks that confer knowledge e.g. university textbooks and instruction manuals.

Student Pirates Set Sail for Publishers Bounty

In many ways, eBooks seem perfect: They are easy to obtain; they are ecologically sound as trees do not have to be killed for paper; and they offer numerous advantages over hard-copy books such as searching, dictionaries

¹⁹ Pelican, Pricing Experiment Library Information Co-operative Network: Final Report, 2002. www.lboro.ac.uk/departments/dils/disresearch/pelican/indexpage.html.

²⁰ Lynch C, The battle to define the book in the digital world, *First Monday Journal of the Internet*, Vol 6, June 6th, 2001. http://www.firstmonday.dk/issues/issue6_6/lynch/index.html.

and linking to Internet sites.²¹ eBooks, however, are still awkward and unappealing in any format. No one seems to want to read anything much longer than a few paragraphs on a computer screen for pleasure.²²

‘In February 2001, Harper Collins with its e-imprint PerfectBound was the first major [publisher] in the UK to release e-titles. Penguin and Warner Books UK followed in the Autumn. PerfectBound initially priced books at a 20% discount to the hardcover. Their most successful e-title sold in the low hundreds. Compared to around thirty million paper backs Harper Collins sells annually, PerfectBound barely appears on the Harper Collins sales graph.’²³

A recent report from Envisional, a British digital rights management company believes that online trading of best-sellers is accelerating even as the industries’ own efforts to get a digital product out of the door are slowing to a crawl.²⁴ At present books can be pirated in two main ways, the first is to scan the book onto a computer. The second is to crack the protection of a commercial eBook thus allowing it to be freely distributed.

Cracking the Code of Commercial eBooks

‘If eBooks take off, the number of titles available online could multiply dramatically. All it would entail would be for some hacker to crack the code on a new eBook, put the text on a peer-to-peer service and launch it widely into cyberspace. A valid objection UK trade publishers have against eBooks is lack of security. There is huge scepticism that this can be resolved satisfactorily.’²⁵

²¹ Long SA, The case for e-books: an introduction, *New Library World*, 2003, Vol 104, Number 1, pp 29-32.

²² Epstein J, *Book Business*, WW Norton, New York, 2001
Ardito S, 2000, Electronic books: To "e" or not to "e"; that is the question, *Searcher*, 8, 4, www.infoday.com/searcher/apr00/ardito.htm.

²³ Guthrie RG, The eBook: Ahead of it time or a burst bubble?, *LOGOS, The Journal of the World Book Community*, 2002, Vol 13 Issue 1, pp 9-17.

²⁴ Godwin M, Napster for Novels? Not even pirates like eBooks, *Reason 1.02*, 2001, Vol 33, Pt 8, pp 60-62. <http://reason.com/0201/cr.mg.napster.shtml>.

²⁵ Curtis R, *Publishers Weekly*, 7 Jan 2002, Bullish on eBooks, pp 10-11.

On 28 August 2001 a federal grand jury in the US indicted the Russian company Elcomsoft and programmer Dmitry Sklyarov on charges of trafficking and conspiracy to traffic in a copyright circumvention device. The charges were brought for violations of the provisions of the Digital Millennium Copyright Act (DMCA). This Act prohibits companies from creating and selling technologies that circumvent protections placed on copyrighted works. ElcomSoft employees allegedly violated US law when, in June 2001, they began selling a program that disabled the encryption of Adobe eBook documents.²⁶

Vladimir Katalov, managing director of Elcomsoft, released methods of breaking the security features on Adobe's eBook library system.²⁷ The eBook Library is designed to be a secure repository for eBooks and allows users to 'borrow' titles for a specified number of days. Katalov identified a method of borrowing all the books in the library for an unlimited time period. The acquittal, announced in a federal district court in California, brought to a close the first criminal trial of a company accused of violating the DMCA. By favouring ElcomSoft, the jury showed a reluctance to prosecute a company or programmer for creating a program that others might use to commit acts of infringement.²⁸ This casts doubt over the essential element of security of eBooks.

Scanning eBooks

While publishers have been pondering the prospect of thousands of users trading 'hacked' commercial eBooks over the Internet, the book pirates have set sail in a different direction. They have side stepped commercial eBooks, choosing to scan the text of traditional paper editions and make the results available on the internet, often through Napster like file-sharing devices.²⁹ In the short term, increasing piracy of scanner produced eBooks seems a certainty. Doorstop tomes can be scanned onto files ranging from 2

²⁶ Taylor, C, Throwing the eBook at him, *Time*, 20 August 2001.

²⁷ Rosie MJ, Throw the eBook at Sklyarov, *Wired.com*, 24 July 2001.
<http://www.wired.com>

²⁸ Glasner J, Verdict seen as blow to DMCA, *Wired*, December 2002.
<http://www.wired.com>

²⁹ Rawlins GJE, The new electronic book technology, Department of Computer Science, Indiana University, 27 July 1998.

to 3 megabytes in size. The complete works of Isaac Asimov comprising 25 books fits into 8 megabytes, which is the approximate size of one Mp3 music file.

Piracy Control Methods

‘In spite of the disillusionment some publishers now feel about whether there will be a significant market for eBooks in the near future, the American Association of Publishers is adamant about the need to advance eBook anti-piracy technology.’³⁰

Two methods of control are available: Firstly, there's the legal code, or set of laws, that could end up legalising file-sharing and private non profit copying or make both a criminal activity. Secondly, piracy can be combated by computer programs, which encrypt files so they can never be shared. Both still seem to have inherent flaws, which are difficult to remedy. There is to date, no current precedent for absolute security in any digital media.

Potential Legal Remedies Against Copyright Infringement

It is important to remember that books, regardless of whether they are in printed or electronic form are protectable under copyright laws in the United Kingdom. The written word, is one of the original creations that copyright law was designed to protect.³¹

The intangible property protected by copyright law is distinctive in that it arises automatically and usually for the benefit of the author. Various rights are conferred on the owner of copyright, including the right to copy the work. The rights given to a copyright owner last for a considerable time: in many cases seventy years after the death of the author of the work. The basic framework of UK copyright law is largely to be found in the Copyright, Designs and Patents Act 1988 as amended, most significantly to implement European Community Directives.³² Protection against unauthorised use in a

³⁰ Godwin M, Napsters for Novels? Not even pirates like eBooks, *Reason 1.02*, 2001, Vol 33, Pt 8, p 60-62. <http://reason.com/0201/cr.mg.napster.shtml>.

³¹ Bentley L and Sherman B, *Intellectual Property Law*. 1st Edition, Oxford University Press, Oxford, 2001.

³² Lim FL, *Cyberspace Law: Commentaries and Materials*. Oxford University Press, Oxford, 2001.

particular country depends on the national laws of that country. Countries do offer protection to foreign works under certain circumstances and international copyright treaties have simplified these conditions. The two key 1996 WIPO treaties dealing with the area of Internet copyright law are the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).³³

The European Copyright Directive 2001/29/EC

Article 6 of the European Copyright Directive 2001/29 provides a legal response at a European level, to the growth of copyright infringement in the digital era. This Directive could provide the legal mechanism to shut down the peer to peer file-sharing network, it demands that:

‘Member States...provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective for the purposes of this Directive, the expression "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts which are not authorised by the right holder.’

The results of a consultation paper on the Directive are presently being processed by the Patent Office: once processed, implementation can take place. A recent Patent Office press release reveals the predicted implementation schedule.

‘We now see no prospect of meeting the Directive’s transposition date of 22 December 2002; we do remain committed to the earliest possible implementation of this important Directive. We will endeavour to implement the Directive by 31 March 2003 at the very latest.’³⁴

³³ Ficsor M, *The Law of Copyright and the Internet: The WIPO treaties, their interpretation and implementation*, Oxford University Press, Oxford, 2002.

³⁴ Arnesen T, speaking on behalf of the UK Patent Office: A Progress Report on UK Implementation of the Copyright Directive (2001/29/EC), 2003.
<http://www.patent.gov.uk/copy/notices/report.htm>Teresa Arnesen

After implementation it remains to be seen if this Directive will be able to combat first, the social disrespect of copyright and secondly the peer to peer facilitators and finally the KaZaA distributed business model. These concepts are further discussed in the following Sections.

The Social Disrespect of Copyright and the Copyright Enforcement/Collection Bodies

Copying for individual use and free peer to peer distribution alongside a combination of digitisation, the Internet and a globalised market makes it a difficult area for the law to penetrate. Disregard for the law at an individual level is seen by many commentators as the norm:

‘Across the whole intellectual property arena, licences are being ignored, rights are being infringed, royalties are being lost. The scale of copyright piracy and counterfeiting is huge. Estimates for the computer software industry are that one in three applications are pirated with some \$11 billion in revenues lost in 2001[and] two out of every five CDs and cassettes sold world-wide are illegally produced and sold.’³⁵

There is no single supervisory body mandated by statute to reduce copyright theft however a number of groups may typically be involved in the investigation of alleged copyright offences. These have been identified by Fry in a recent intellectual property article:

- i) Trade Associations: FACT (the Federation Against Copyright Theft), BSA (Business Software Alliance), FAST (Federation Against Software Theft) and ACID (Action Against Copying in Design).
- ii) Collecting Societies: The principal role of collecting societies is to exploit their members’ copyrights.
- iii) Police and Trading Standards: These bodies investigate counterfeiting operations and copyright offences.
- iv) Private Individuals and Companies: Private individuals and companies

³⁵ Fry R, Copyright Infringement and Collective Enforcement. *European Intellectual Property Review*, 2002, Vol 24, No 22, pp 516-524.

do take steps to enforce copyrights directly: usually in the civil courts. The criminal courts can also be used to enforce the criminal offences under the Copyright, Designs and Patents Act 1988. Sections 107, 110 and 198 create criminal offences in relation to the making, distribution, importation, sale and hire of infringing copies.³⁶

At present there is not an effective and enforceable legal remedy against the individual copying for private use.³⁷

The Facilitators of Copyright Infringement

Non profit copying by end users is obviously viewed as a breach of copyright by the right holders. Due to the obvious enforcement problems other approaches have been used against the facilitators of Internet piracy (Napster and KaZaA). Companies on the edge of copyright legality have felt safe since 1984, when the Supreme Court in the US ruled that people could record television and movies in their homes. Other storage devices are afforded similar protection from legal proceedings. Napster (as discussed previously) changed that feeling at least in the American courts. The problem of this approach is that numerous hardware and software devices also enable the facilitation of copyright infringement. DVD and CD copiers are standard fittings present inside modern computers, a computer that is also supplied with the software that enables DVDs and CDs to be copied. Telephone companies provide a supply route to copyright piracy. Could these devices and services be viewed as facilitators, with subsequent legal liability?

The KaZaA Distributed Business Model

‘2 October, 2001. That was the day every major American music label and movie studio filed suit against [KaZaA]days later, the company

³⁶ Fry R, Copyright Infringement and Collective Enforcement, *European Intellectual Property Review*, 2002, Vol 24, No 22, pp 516-524.

³⁷ Green M, Napster opens Pandora's box: Examining how file-sharing services threaten the enforcement of copyright on the internet, *Ohio State Law Journal*, Vol 63, No 2.
Gosse ER, *RIAA v Diamond Multimedia systems*: The RIAA could not stop the Mp3 files and the Audio Home Recording Act, *University of San Francisco Law Review*, 2000, Vol 34, No 3, pp 575.

was reborn with a structure as decentralized as Kazaa's peer-to-peer service itself. Why all the subterfuge? It's an international business model for the post-Napster era. A close look at KaZaA reveals a corporate nesting doll that frustrated Hollywood attorneys for more than a year. The servers are in Denmark. The software is in Estonia. The domain is registered Down Under, the corporation on a tiny island in the South Pacific. The users - 60 million of them - are everywhere around the world.³⁸

It remains to be seen whether KaZaA can be shut down by legal means, the distributed business network may turn into a model that allows Internet piracy to continue for the foreseeable future.

Encryption as Part of Digital Rights Management

Encryption is just one of the protection methods forming the area of digital rights management. During the dot.com boom new start up companies offered digital rights management, that focused on security and encryption as a means of preventing unauthorised copying.³⁹ Digital rights management looked for a time to herald a new way of protecting content, however many of the digital rights management companies are disappearing from sight.

‘In the last eight months, a flock of content protection companies, including Buffalo, NY-based Reciprocal, San Jose, CA-based Vyou.com, Maynard, MA-based Digital Goods and Mountain View, CA-based Preview Systems, have been shut down or sold. InterTrust Technologies of Santa Clara, CA, the company that founded the digital rights management industry, has slashed its head count by 40%.⁴⁰

³⁸ Woody T, *The Race to Kill KaZaA*, 2003.

<http://www.wired.com/wired/archive/11.02/smoking.html>.

³⁹ Iannella R, *Digital rights management (DRM) architectures*, *D-Lib Magazine*, 2001, Vol 17, No 6, <http://www.dlib.org/dlib/june01/iannella/06iannella.html>

⁴⁰ Roush W, *The death of digital rights management? A pivotal young industry is struggling to survive*, 2002. <http://www.technologyreview.com/articles/innovation10302.asp>.

Encryption is a complex and difficult task; as soon as one programmer creates a new software encryption device, the programmers wits are matched against the countless users of the internet who can, by conversing in chat rooms, work together to crack the code. A few days after new eBooks are released hackers break the code and post a copy on the Internet. Weber termed this a 'digital arms race.'⁴¹

Legal Academic eBooks: Are Publishers Like Cavendish Likely to be the First to be Affected?

Legal textbooks are very rarely bought or read for pleasure and the easiest and cheapest way of accessing an eBook is by using a normal computer screen. The legal eTextbook may have the earliest market penetration of the eBook market, as there is no need to use expensive, specific and portable electronic eBook readers. Law school students and lawyers study from books that contain legal opinions on a particular subject selected and edited by the authors. They are large, expensive and in certain areas of law the books will have a very short shelf life. These types of book make ideal eBooks, they also make ideal targets for pirates.

Intellectual Property Law by Bentley and Sherman is a recently published, popular and highly regarded textbook aimed at practitioners and university students. It is approximately one thousand pages long and costs £33 (3 pence a page) direct from Oxford University Press. Second-hand it costs £20, (2 pence a page) approximately the same cost of photocopying the whole book. Printing the book on a printer attached to a home computer would cost approximately 10 pounds (1 penny a page). Using scanners or cracking an eBooks code allows an eBook identical to the original to be distributed quickly and freely across the Internet. Distributed electronically the process becomes a zero margin game as there is no cost involved once the original has been made available. Mixing price and cost can be a little misleading but the point is valid.⁴²

⁴¹ Weber TE, In the age of Napster, protecting copyright is a digital arms race, *Wall Street Journal*, 24 July 2000 p B1.

⁴² Van Hoorebeek M, Scanning Textbooks: Scamming Academics Library and Information Update, March 2003, Vol 2 (3)

UK publishers like Cavendish command large revenues from the sale of academic textbooks and have a lot to lose if scanner piracy increases. Cavendish uses the Sklyarov cracked Adobe technology for access to its library of eBooks, obviously new protection methods have been employed by Cavendish and Adobe. Unsealer is the method used at present, which is free copyright protection software, developed and distributed by SealedMedia. It can be downloaded directly from www.sealedmedia.com.⁴³ This method is already under scrutiny by the Internet community.

The Role of University Law Libraries

Publishing houses are looking at non-legal and non-encryption methods of discouraging eTextbook piracy. Cavendish has been working on a university library bundle. The bundle can comprise best-selling titles in a particular area or law libraries and law departments can choose their own titles. Students will then be issued 'borrowing licenses' in accordance with the library's existing borrowing regulations. As a marketing strategy this would effectively lock in a university; especially if lecturers write courses based around the licensed eBooks. This could be beneficial to the student populace especially with university top up fees looming (*Times Higher Education Supplement* 2003). It remains to be seen if a suitable and viable marketing model can be agreed upon that satisfies the students, the lecturers, the university and the publishers.

Conclusion

Selling packages to libraries will reduce piracy, however another factor may reduce the usage of pirated legal eTextbooks: the problems encountered by the end user. These problems range in severity from the confidence of the user that the information that they are using is correct and up to date, to the more serious aspects of viral download and fake eBooks causing eyestrain.

As with any type of pirated material it is almost impossible to determine the authenticity, in certain areas this may not be an important consideration. If an Mp3 file is incomplete or corrupted the music will skip. With an academic textbook this could compromise the worth of the copy as confidence in the material is paramount. Reading out of date, incomplete or

⁴³ Cavendish eBook brochure, 2002, available from Cavendish.

incorrect material is a waste of valuable time and may be damaging to student results. Many users will realise this and choose the safer option of authentic material. An additional worry is that certain areas of the law develop at a rapid rate and keeping up to date with the law is essential. Thus, the authenticity question must be in the forefront of an eBook purchaser's mind.

Publishing houses and authors could follow the lead of those supporting the music industry in the battle against the pirates. Music industry supporters have employed various techniques to reduce piracy. Viruses can be attached to a file that wipes the shared folder directory of the user; this effectively removes a portion of available files. Poor quality or incomplete downloads can be posted to lessen the possibility of a user downloading an original copy, this tactic when used in the context of eBooks, could result in poor quality eBooks being deliberately posted. This could result in eyestrain or incorrect information being assimilated by the reader.

'Book publishers are convinced they won't be spared, and unlike the music industry, which spent much of the 1990s in a defensive crouch, they are busily preparing for the inevitable. From Random House to McGraw-Hill to Simon & Schuster, publishing houses are racing to digitise their valuable backlists.'⁴⁴

⁴⁴ Lynch C, The battle to define the book in the digital world, *First Monday Journal of the Internet*, Vol 6, 6 June 2001.

http://www.firstmonday.dk/issues/issue6_6/lynch/index.html.

The publishing houses are taking steps to mitigate the threat of eTextbook piracy. Publishing houses are not just digitising their backlists but are taking practical steps to lessen piracy by taking the eBook experience to the market. Alongside this, publishing houses are certain to exploit the end users fear of the legal eTextbook not being authentic or being out of date. The future of legal eTextbooks or even eBooks in general is not certain but eBook publishers are, at present, better equipped than the music industry to resist the threat of piracy.

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