

## Copyright's New Sting

What do the Business Software Alliance, the U.S. Customs Service, the Recording Industry Association of America (RIAA), and the Net Police Department (NetPD) have in common? It doesn't take much more than browsing through a few newspapers and journals to find the answer. Articles such as "Hollywood's Lament: Movie Piracy Hits Mainstream," "U.S. Expands Investigation into Piracy of Software," and "New Company Besieges Colleges with Notices about Copyright Violations" tell the story: cyberspace copyright infringement, long undetectable and often ignored, suddenly has a spotlight shining on it.<sup>1</sup> And colleges and universities often find themselves in the glare of that spotlight as well.

Of course, most higher education institutions already have policies and procedures to deal with claims of online copyright infringement under the Digital Millennium Copyright Act (DMCA). The appropriate filings have been made with the U.S. Copyright Office; someone has been designated to receive infringement claims; and a procedure, whether it is immediate takedown or full due process, has been defined. So what's the big deal?

### A New Challenge

There is a powerful trend toward the protection of intellectual property rights in cyberspace. This trend is matched by a new aggressiveness in pursuing online copyright infringement—an aggressiveness that poses more than one challenge for higher education institutions.

First, companies are now using sophisticated technology to ferret out in-

fringing activity. Whereas in the past an institution may have received occasional claims from the RIAA about a server offering hundreds of MP3 song files without permission, the new technologies will detect single cases of infringement and automatically send notices to the offender's Internet Service Provider (colleges and universities, in this context). In practice, this means that the number of claims has risen significantly and, further, that the claims are no longer centered in the residence halls: a staff member in a department has an equal chance of being caught in the act. (This automated detection appears to have become a cottage industry, with several companies offering services in this area.) Assumptions about process may need revisiting, since the sheer volume of claims can overwhelm existing procedures at large, decentralized campuses.

Second, software piracy operations—such as Operation Buccaneer by the U.S. Customs Service in December 2001, in which twenty-seven simultaneous search warrants were executed in five countries—are evidence that law enforcement takes infringement seriously.<sup>2</sup> Though the operation was directed at specific individuals who were part of a software piracy "gang" and not at the higher education institutions, colleges and universities must nevertheless foster a culture that respects copyright laws. The members of the gang targeted by Operation Buccaneer did not engage in massive software piracy for profit. They pirated software because of the technical challenge and because of the thrill of pulling something off under the noses of the "evil" content owners. This is the gang reputed

to have made its name by releasing Microsoft Windows 95 to the world—two weeks before Microsoft did.

Third, respect for copyright need not be based on anything as dramatic as an international law-enforcement operation. Does it raise eyebrows when an individual purchases a piece of software for home use but installs it on both a desktop and a laptop computer? One might rationalize that this action is fair use (how many people know what that means?) or that the license allows the purchaser to make a backup copy (some licenses do). More commonly, the underlying belief is that no one is hurt by this action—or at least no one who matters. Given the major philosophical battles being fought today over what copyright should be, one might legitimately argue both that the law is just right and that it is too far to one side.<sup>3</sup> Regardless, in the institutional context, this type of casual infringement increasingly represents a financial exposure. The Business Software Alliance, through investigation and anonymous reporting, routinely audits organizations for proper software licensing and has achieved large settlements by raising claims of noncompliance.<sup>4</sup> Apparently, the anonymous reporting often comes from disgruntled employees ratting on their employers.

Finally, higher education is all about the open exchange of information and ideas, which in some sense aligns well with the online music revolution spawned by Napster and its successor software programs that tie together individual collections of music, videos, and software into a single, gigantic database of freely downloadable digital media. The expectations and cultural values of chil-

dren who have grown up with this virtual database at their fingertips are at odds with the copyright policies and laws that colleges and universities implement institutionally.<sup>5</sup>

### What Can Be Done?

Curbing illegal practices is important.<sup>6</sup> And yet, there is no magic incantation that will change behavior, values, or understanding, particularly if part of the issue is a feeling that the law itself is wrong or irrelevant. So we must look to a multi-pronged strategy that tackles the issue from the different angles of education, policy, and technology simultaneously.

First is education. For students, colleges and universities should start from the premise that the young people coming to their institutions feel that, at least for each of them as individual users, the laws of copyright have no meaning. Thus, education is better focused on the consequences of noncompliance with institutional policy concerning the sharing of unlicensed proprietary material. The idea is to convince users that their continued sharing of unlicensed files can affect them personally.<sup>7</sup>

For faculty and staff, more serious consequences arise from using unlicensed software than from sharing music or videos. Both the downloading and the use of unlicensed software is in some areas well embedded in the culture, predating by decades the current popularity of sharing music and films. Since education is most effective when it starts at the highest levels, administrators need to be made aware that the sharing and use of unlicensed software, a long-simmering problem, has in recent years become readily detectable, with potentially serious monetary consequences to colleges and universities. This information can be disseminated electronically, but the seriousness of the problem may suggest that workshops, flyers, and other methods of publicizing the problem should also be employed. Here again, the consequences to the individual should be emphasized.

Second is policy. Clear policies about the acceptable use of electronic resources (including properly licensed software) and the effective promulgation of these policies to the campus community are fundamental. In terms of online sharing,

the potential for numerous automated infringement claims makes a streamlined, simplified procedure for responding to such claims imperative. More important, an infringement claim is also a “teachable moment.” Part of the notification to the alleged infringers should include materials to help them understand copyright issues and consequences. For example, the RIAA’s Soundbyting Campaign has educational materials that may be helpful, including a “Top 10 Myths” page.<sup>8</sup> Actual precedent can also be persuasive, as in the *Wired News* article “MP3 Pirate Gets Probation,” which describes the experience of a student charged under the No Electronic Theft Act.<sup>9</sup> Real-world cases are particularly important because many people do not realize that their file-sharing programs are offering materials from their computer to the world. In our experience, individuals whose sharing of unlicensed materials comes to the attention of the college or university through one of the monitoring services stop their file-sharing after the first warning (or at least conduct themselves henceforth in a way that does not bring them to the attention of these services).

Finally, third is technology. Many colleges and universities are already using technology curbs, often more to protect scarce network bandwidth than to deter copyright infringement. Such curbs include traffic shaping and prioritization (so that, for example, music-sharing traffic gets a tiny part of the pipe and only at the lowest priority). Additionally, some institutions will permit students to be the consumers of, but not the purveyors of, this type of digital media, by preventing server applications from running on residence hall networks.

### An Urgent Matter

A recent *Los Angeles Magazine* article described the music collection of Zack, a southern California teenager: “There are no albums in Zack’s archive, just 1,001 songs.” Thus, unlike his parents, Zack will not have summer vacation memories of songs from “one album played to death.” The article strikingly captures the essence of the current shift in cultural expectations about music, a shift initiated by Napster and its successors. The reporter wrote: “I tried one more time.

‘Surely,’ I asked, ‘there must be some reason to still buy CDs?’ Zack gave me a pained expression and rubbed his head some more. I sympathized with him; at the moment, looking at the 1,001 songs he downloaded for free, buying CDs made no sense to me either.”<sup>10</sup>

Clearly, the trend toward increased protection of intellectual property rights in cyberspace is on a collision course with a generation that has grown up with Napster-like resources (and Internet2 pipes) at their fingertips. But with concerted effort—utilizing a three-pronged strategy focusing on education, policy, and technology—colleges and universities should be able to prevent the collision.

### Notes

1. “Hollywood’s Lament: Movie Piracy Hits Mainstream,” *International Herald Tribune*, January 21, 2002; Philip Shenon, “U.S. Expands Investigation into Piracy of Software,” *New York Times*, December 19, 2001, <<http://www.nytimes.com/2001/12/19/technology/19PIRA.html>> (accessed April 25, 2002); Scott Carlson, “New Company Besieges Colleges with Notices about Copyright Violations,” *Chronicle of Higher Education*, November 30, 2001, <<http://chronicle.com/free/v48/i14/14a02901.htm>> (accessed April 25, 2002).
2. Shenon, “U.S. Expands Investigations into Piracy of Software.”
3. Charles C. Mann, “Who Will Own Your Next Good Idea?” *Atlantic Monthly*, September 1998, <<http://www.theatlantic.com/issues/98sep/copy.htm>> (accessed April 25, 2002).
4. See the Business Software Alliance (BSA) press releases on the BSA Web site: <<http://www.bsa.org>>.
5. D. Gardetta, “21st Century Music Fan,” *Los Angeles Magazine*, November 2001.
6. Though some institutions may actively monitor for illicit activity and/or content, many have policies that forbid doing so.
7. For a very creative approach to an educational tool, see Andrea L. Foster, “U. of Virginia Turns to Parody to Warn Students about Misusing Computers,” *Chronicle of Higher Education*, August 30, 2001, <<http://chronicle.com/free/2001/08/2001083001t.htm>> (accessed April 25, 2002).
8. RIAA Soundbyting Campaign: <<http://www.soundbyting.com>>.
9. Jennifer Sullivan, “MP3 Pirate Gets Probation,” *Wired News*, November 24, 1999, <<http://www.wired.com/news/politics/0,1283,32276,00.html>> (accessed April 25, 2002).
10. Gardetta, “21st Century Music Fan,” 76.

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