

**Forum:** Economic and Social Council

**Issue:** Intellectual Property Rights in User Generated Media

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## **Introduction**

The term 'intellectual property rights' refers to patents, trademarks and copyrights. In relation to user generated media, copyright is the aspect of intellectual property rights that must be focused on. The idea of copyright law is that if one has created, invented or expressed something in a tangible manner, it is that person's right to control the creation on an exclusive basis. The rationale for these laws is to encourage individuals to continue to enrich the community through their creativity and innovation, the belief being that the society on a whole benefits and gains. For an example, if a company invested largely in the creation of a film, but following the creation of the film it was immediately taken from them and shown freely with the filmmakers unacknowledged, those filmmakers would plausibly feel cheated and lose hope in the business. This would greatly hinder the entertainment industry, thereby reducing the benefits that it transfers to society. Intellectual property rights are basically in use to create a balance which steadily upholds the entertainment industry and the storage of shared wealth that it provides.

In the years before the internet, the popular form of copyright infringement would be the taping of movies, television shows or music by individuals to sell. However, these tapings would usually be of lesser quality than those produced by the creators. The new phenomenon is far more complicated and creates greater difficulty in tracking down the aggressor. These are 'user generated content' sites, otherwise referred to as UGCs. A most popular example of a user generated content website would be [www.youtube.com](http://www.youtube.com). There is a variety of different types of content that users upload onto the website for others to see, which can be classified into three levels. The first of which would be that which the user created individually and does not infringe on copyright laws whatsoever, for an example a home video in which the user wished to share. On the other end of the spectrum, which consummates a large majority of user's reasons to watch videos on sites such as youtube are videos, television shows and music which have been placed on the website forgoing the consent of the copyright owner, thereby disobeying the laws relating to the rights of intellectual property owners. Between the two aforementioned levels, also found on the internet would be existing content that users upload with their own creative additions or alterations, usually in order to provide humor. This too infringes on copyright law because the content is not the user's to adapt without the consent of the copyright owner.

The issue faced by lawmakers and the entertainment industry is that what with the continuing abundance of user generated media, allowing individuals to efficiently stream and download, the technology society is beginning to want content 'when they want it, how they want it and where they want it'. This does not relate to the old business model on which the entertainment industry used to rely, where the content is bought by consumers and the money translates to the creators, encouraging these creators to continue in their innovation which creates a balance of enrichment. In the technological era, consumers do not want to spend money on music or movies when they may simply watch or listen on the computer through user generated content websites. The question is who is to blame for this phenomenon and how to tackle it in order to conserve intellectual property rights and salvage the entertainment industry while simultaneously pleasing a technologically savvy and highly demanding public.

## **Key Terms Defined**

### **Copyright**

The exclusive legal right belonging to a creator to publish and share their work or authorize others to do the same. This applies for a limited amount of time, usually spanning the creator's lifetime and two generations afterwards.

### **Intellectual Property**

A product of intellect which has commercial value and is automatically copyrighted.

### **Internet Service Provider (ISP)**

A company that provides access to the internet for client's computers, usually for commercial benefit by collecting a monthly fee from users. Examples are AOL and Singtel.

### **Patent**

The exclusive right to use, make or sell an invention.

### **Trademark**

a symbol or slogan which is legally registered to represent a product or company.

### **User Generated Content**

Content produced by the general public rather than paid professionals or experts, usually found on the internet.

### **User Generated Content Website**

A website in existence in order to allow individuals to upload and watch user generated content. This includes blogs and wikis.

### **WIPO**

World Intellectual Property Organization; an agency of the United Nations which develops an international intellectual property system.

## **General Overview**

The term 'user generated content' can actually embody anything from a 'facebook' profile to a high quality video on youtube, as long as it uploaded onto the internet by someone who is not a 'media professional'. The benefits of these web sites are expansive; they use the value of the internet to connect populations of people together and allow for more efficient communications. Due to User Generated Content web sites, it is not only easier to keep in touch with or meet others, but it also provides more opportunities to more effortlessly promote yourself and your product/commercial value. For an example, a number of now famous singers or actors started their career by regularly uploading self-filmed videos onto YouTube and gaining popularity through hype and increasing 'views' of their videos on the website.

Unfortunately, there are negative aspects to the relatively new world of user generated content websites as well, with regards to the protection of copyright laws and intellectual property rights. The issue is that, just as users are able to upload their own content for the usage of others on the internet, users are also able to upload the content of others. This, of course, infringes upon the rights of the copyright owner. The traditional forms of copyright infringement, such as the burning and selling of DVDs, are relatively easy to prosecute because they can be more easily tracked down. Also, the traditional forms of copyright infringement are not only less efficient to create and

distribute than they are now with UGCs, but the products were often poorer in quality- often slightly altered and substandard with regards to sound or pixelation.

The process of uploading illegal content onto UGCs is fairly simple, anyone with a computer and access to a content source could do it illegally. Then, once the content has been put on the internet, it is available, in most cases, to a huge mass of people- virtually all owners of computers or individuals with access, in some way or another, to the internet. It is not difficult to see why illegal content, which individuals would alternatively have to pay money for, would be attractive to watch illegally online. This is why UGC websites are growing in quantity as well as quality, with new advancements continuing to develop with the increase in user popularity. This growth is despite the fact that much of the occurrence on the user generated content sites are illegal.

To shut down the websites altogether would most likely be an error in judgement. The technological society has become accustomed to these websites, many of us using them often in our everyday lives. Yet, the loss that the entertainment industry is experiencing due to these websites is so great that something must be done if we are to hope that the wealth of intellectual creativity sustains. By cheating companies and individuals out of their rights, we are discouraging them from creating, and it is mostly thought that creation is something that we need maintain the value of our society. This is the concern of the entertainment industry as well as many governments. Yet, site operators of hugely successful UGCs such as 'xunlei.com', 'youku.com' and 'youtube.com' are chiefly concerned with the revenue that their sites rake in (through the entertainment industry's misfortune, site operators are hugely successful). Lastly, individuals are mainly concerned with the efficiency in which they may be entertained. In order to reach a plausible and lasting solution, governments must discuss in depth the opinions and standpoints of their states on the issue at hand and look for innovative action which may merge the desires of the three conflicted parties- the entertainment industry, the UGC site operators and the public.

## **Major Parties Involved and Their Views**

### **Site Operators**

As users post more content, such as movies, which the public can access free of charge at any given time, the popularity of the user generated content website increases. This translates to increased profit for the owner of the site, who gains through advertisement revenue, subscription revenue and money paid by users who wish to enhance their membership, enabling them to take increased advantage of the site. Most site operators of user generated content sites such as youtube.com, xunlei.com and youku.com, where copyright infringement is abundant, view themselves more as money makers rather than violators of the law. While containing the ability to restrict content that is uploaded onto the site, site owners claim that it is difficult to screen all content that is uploaded and be aware of which content is cited as illegal. Site operators do claim, though, that they can block certain material from the site as long as the company gives the site a certain extensive code relating to the content, which, inconveniently, many do not trust to distribute. Nevertheless, these sites are large corporations often equipped with investors, and the punishment for containing content not adhering to the laws of copyright often costs only a fraction of the wealth gained by the site.

### **Internet Service Providers**

When user generated content breaches the laws of copyright, it is often the internet service providers who are asked to accept the blame. The reason for this is because the larger ISPs, such AOL in the USA, are large companies, making them easier to track than individuals. Secondly, prosecutors can trust that these companies have the financial resources to pay the price of a liability judgement, whereas the individual user uploading illegal content may not. Some would question the liability of the ISPs, claiming that they provide an innocent service, but the idea that the ISPs are at

fault is that, technically, they have the ability police the content which is uploaded onto user generated content websites by their users. However, this is an unattractive solution to internet service providers as users would most likely opt for a provider which allows more freedom and privacy. In addition, the stringent policing is inefficient to execute; the ISPs would have an extensive amount of information on their servers, so much that reviewing it regularly would be costly. For these reasons, many ISPs choose to see their liability for copyright infringement as inevitable rather than something that they could work against. They set aside funds for liability cases or apply for liability insurance, which transfers to larger monthly internet fees for users. Most internet service providers are inclined to turn a blind eye to the users that infringe on copyright laws in order to sustain their revenue.

### **Content Owners**

Movie companies, record companies and publishers largely have a solid standpoint against copyright infringement because it translates directly to a decrease in revenue gained from their product. A filmmaking company could commit three years and 100 million dollars into making a hollywood movie, but on occasion an internet user is able to get their hands on the film a week before it's release into theaters and post it online on a user generated content site. This means that many who would have added to the movie company's reimbursement by spending money on seeing the film in the cinema would no longer bother as they have already seen it online. This is a trend which increases along with technology and is of great disturbance to the balance of the entertainment industry. Eventually, the crime of stealing content and infringing on copyright laws could lead to the decline of entertainment products being produced. Content owners wish to continue to gain profit and uphold their rights as intellectual property owners, rather than be cheated by illegal file sharers.

### **Governments**

It is the governing systems of countries which are faced with the task of upholding the laws relating to Intellectual Property Rights. These rights work in the country's favor as content produced within the country provides monetary and cultural wealth for that country. It is the government's judicial system that companies turn to when their content has been exploited illegally through UGC websites, as companies would like to either sue or create a lawsuit against the individual, site operator or internet service provider responsible for infringing on their intellectual property rights. This creates a clear picture for most governments that copyright law must be governed with more severity in order to reduce risk of infringement. However, some governments have differing views. For an example, China treats user generated content sites with more acceptability. This is because in China, due to cultural reasons, only 20 movies per year are legally allowed into the country from abroad. However, what with the possibilities presented by the internet, the Chinese suddenly have a virtually limitless access to movies viewed online via user generated content sites. While this does pose the problem that the Chinese are unable to censor everything that the people are watching online, it does quietly and subtly content the population, as it enables greater development through greater connection. The World Intellectual Property Organization, an agency of the UN, was created in hopes of coordinating governments and their differing ideas on intellectual property rights.

### **User Generated Content Consumers**

According to Frank Rittman, lawyer for the Motion Picture Association of America, there is a 'bell curve' within the society connected to the internet with regard to downloading or sharing illegal content. Approximately 10% firmly would not infringe on copyright laws and violate the intellectual property rights of others, while another 10% whole heartedly believes that the entertainment industry is redundant and old fashioned and that it is their right to basically steal the intellectual content of others. The other 80% of the population tends to fall somewhere in the middle. For many, especially teenagers who have grown and developed with computers in the 'technological era', downloading illegal content is common and normal. They have become

accustomed to having 'what they want, when they want it and how they want it', and simply want to acquire or watch the songs, TV shows and movies that they enjoy, thinking not of the laws that it breaches upon. Though internet service providers and site operators would often point the finger of blame with regard to copyright infringement to the individuals who upload, download, share and stream existing content, unfortunately the volume of these individuals is excessively large, making prosecution very difficult. It may also often be the case that these individuals do not have the financial resources to reimburse companies wishing to sue due to copyright infringement.

## Timeline of Events

Date	Event	Further Information
1883	Paris Convention for the Protection of Industrial Property	The first effort at coordinating industrial property rights (property rights for inventors etc.) amongst member countries
1886	The Berne Convention for the Protection of Literary and Artistic Works	An agreement to honor the property rights of all creators who belong to member nations of the convention- affirms exclusive rights for copyright owners to authorize translations, reproductions and adaptations of their work
1967	World Intellectual Property Organization (WIPO) established	See 'UN Involvement'
1986-94	TRIPS (Trade Related Aspects of Intellectual Property Rights) negotiated by the World Trade Organization	See 'UN Involvement'
1990	Tim Berners-Lee launched the world wide web	This opens up a whole new set of complications with regards to copyright law, as efficiency of copyright infringement (e.g. through User Generated Content websites) is increased
2000 (January)	Record companies (UMG Recordings INC., Sony Music Entertainment, BMG Music, Capitol Records and Interscope Records) sued file sharing/streaming site MP3.com for copyright infringement of their intellectual property	The web site had been converting CDs into MP3 files and provided access to these files to users. The court ruled this illegal as the acts of the website infringed on copyright laws.

2000 (July)	Music sharing website 'Napster' shuts down due to injunction ruled by the court in conclusion of legal battle against the Recording Industry Association of America (RIAA) in defense of Intellectual Property Rights	The RIAA claimed that Napster cost the industry over 300 million US dollars in lost sales, and a survey amongst Napster users displayed evidence that those who frequently use Napster are less likely to purchase music in the legal manner than non-Napster users. However, the website was credited with promoting artists, such as Radiohead, to the billboard charts. Following the court's ruling, Napster was shut down.
2003 (May)	Itunes Music Store launched by Apple	Sells individual tracks legally in attempt to dispel illegal file sharing
2005	The music industry lost approximately 645 million US dollars in sales due to file sharing	According to <a href="http://sandbox.opsi.gov.uk/paper/gowers_review_of_intellectual_property/chapter/2">http://sandbox.opsi.gov.uk/paper/gowers_review_of_intellectual_property/chapter/2</a>
2005 (february)	Youtube.com is created	An extremely successful User Generated Content website with regards to popularity and traffic, though much of the content violates copyright law
2008	RIAA exchanges it's Peer to Peer litigation campaign for a three strikes campaign	Peer to Peer campaign was costing the RIAA too much financially

## UN Involvement

### World Intellectual Property Organization (WIPO)

WIPO is a specialized agency of the United Nations located in Geneva. It was established in 1967 as a platform for countries to congregate and contract treaties, agreements and agendas focused on addressing international intellectual property rights. This is necessary because property rights laws are national in scope, and it is crucial to coordinate these laws to an extent in order to facilitate fair and peaceful trade of intellectual property amongst nations. There is an ongoing schedule of what WIPO will cover and goals that the organization hopes to attain. At the moment, WIPO is striving to attain a 'Medium Term Strategic Plan'; a set of nine strategic goals that are to be ongoing through to the year 2015. Key goals include: 'Provision of Premier Global IP Services', 'Facilitating the Use of IP for Development', 'Coordination and Development of Global IP Infrastructure' and 'International Cooperation on Building Respect for IP'.

## **World Trade Organization (WTO)**

The World Trade Organization, or WTO, is another agency of the UN also located in Geneva. This organization was created with the aim of 'liberalizing' trade between countries. It ascribes to a set of protocols and works to resolve trade related disputes between member countries. This also embodies the trade of intellectual property as the international rules of the trade of intellectual property requires regulating just as the trade of concrete goods and products do.

The 'Trade Related Aspects of Intellectual Property Rights' (TRIPS) is an important related agreement of the World Trade Organization. It was formed based on the idea of the WTO that intellectual property is an increasingly important aspect of trade, and therefore it must be traded fairly to enable the sustaining of healthy trade of intellectual property rights between countries. The TRIPS agreement covers key topics such as copyrights, trademarks, geographical indications, patents and undisclosed information- also referred to as 'trade secrets'.

## **Possible Solutions**

### **Education and Persecution of Individuals**

One possible solution to the issue at hand would be to educate individuals on the value of intellectual property. This is because it is widely thought that one reason as to why so many individuals, including teenagers and even children, download and upload illegal content is because they do not know the harm that is being done. Perhaps they don't even know that what they are doing is illegal, and this, of course, would be the first issue as to why so many people violate copyright laws individually. Alternatively, the individuals may in fact be vaguely aware that downloading and uploading copyright protected content of others is illegal, but they may not know why. Children are educated when they are young about what is right and wrong, and perhaps it is time, what with the increase in copyright infringement and exploitation of the internet, that the government steps in to educate about why copyright infringement harms us as a society.

With this education, another conjoining solution would probably be the persecution of individuals. Once individuals are educated on why what they do in copyright infringement is illegal, they may then be better held liable for the consequences. It would be attractive to punish individuals because ridding user generated content websites of the 'users' would result in the illumination of the websites, or at least the legalizing or reorganizing of the websites. This would, in effect, tackle the issue at hand. An obstruction standing at the way of this, though, is that there is a huge population of up-loaders on user generated content websites, and these individuals may be hard to track down or unable to be prosecuted.

### **New Business Model**

Alternatively, all of this illegal action taking place may symbolize the end of the entertainment industry as we know it. Perhaps the only way in which we may salvage intellectual property rights would be to create a new business model for the entertainment industry. The 'technological generation' of today wants to get 'what they want, when they want, how they want'. Going to a movie store to buy a movie to watch on the living room television set is not as attractive as sitting in bed and downloading content to watch or listen to, for free, on a laptop. It may be feasible for organizations and companies to adjust to this demand of the people by finding ways to make money through the medium of the internet while maintaining a highly accessible resource for individuals to obtain entertainment. Perhaps companies can obtain revenue on the websites through advertising, as youtube.com often does. Another solution would be to set up websites where, if a user pays a certain relatively cheap amount, that user can gain unlimited access to movies/tv shows/ music. Though these solutions are untraditional, they may be what the times are calling for.

## Content Owners Address User Generated Content Issues through WIPO or WTO

User generated content websites are fairly new as an issue, and governments have been relatively resistant to the active addressing of the issue through international means. One solution, though hopeful, would be for content owners to prevail upon governments in promoting their issue of user generated content websites as dire so that it could be addressed formally and therefore more radically through the World Intellectual Property Rights Organization or the World Trade Organization. New agreements, or at least alterations to old agreements, could be designed to tackle the global issue of copyright infringement through UGCs through the above mentioned international organizations.

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