



Copyright Infringement and Piracy

14th November 2023 | Kate Whitman

What do we mean by intellectual property?

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce (WIPO)



Copyright

- Copyright is a type of intellectual property that protects **original works of authorship** as soon as an author **fixes** the work in a **tangible form of expression**
- **Copyright covers** literary works; musical works, dramatic works, pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings and architectural works.
- Ideas, facts, and concepts are not protected by copyright law. Although they are not protectable by copyright, the expression of those ideas, facts, and concepts are protectable, such as in a description, explanation, or illustration or as a database of facts.
- Copyright lasts 70 years after the death of the author

Why does copyright need protecting and why is online copyright theft (piracy) harmful?

“A day will come, when, in the eye of the law, literary property will be as sacred as whiskey, or any other of the necessities of life.” Mark Twain (1881).

Main arguments:

- Loss of earnings and incentives for creatives
- Protecting consumers
- Reducing organised crime revenue

euipo.europa.eu

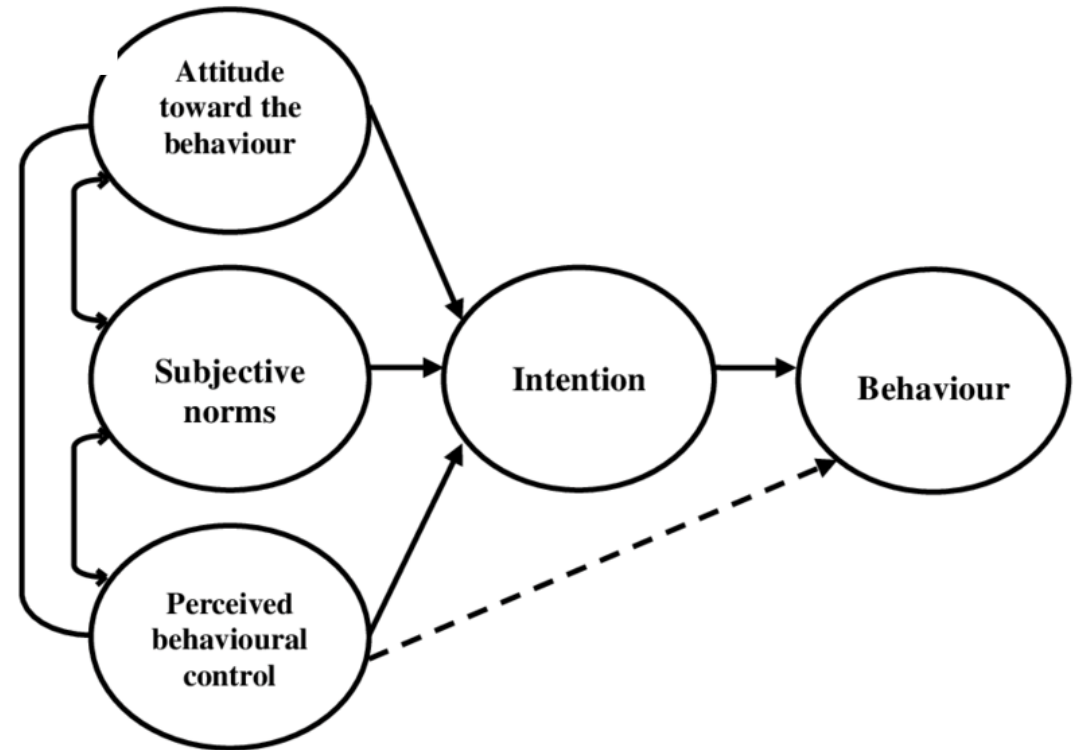
The scale of the problem

- Digitally pirated goods accounting for up to \$213 billion in 2015
- Estimates for 2022: \$856 billion
- According to International Federation of Phonographic Industry 20% of Internet users regularly accessed unauthorised music files
- Motion Picture Association of America claims US film industry is losing more than \$25 Billion from piracy.
- Business Software Alliance claims more than half of software installed and used in computer systems is unlicensed – loss of more than \$52 Billion (see Yar and Steinmetz, 2019)
- Live sports are the fastest growing sector (IPO, 2023)



Models of Behaviour Used in Piracy Research

- Theory of Planned Behaviour (Fishbein & Ajzen, 1975; 1980)
- Neutralization Theory (Sykes & Matza, 1957)
- Rational choice theory (Keel, 1997)
- Many more!



Piracy Consumer Motivations

- Cheap and convenient
- Social norms
- Piracy sites appear legitimate (e.g. stream rippers)
- Access to content is not possible through legitimate means (e.g. back catalogues)
- Too many subscriptions for film/sport
- Too many restrictions in sport (3pm blackout)



Anti-Piracy Consumer Campaigns – Threaten or Educate?

Threaten

- You wouldn't steal a car?

Educate

- Jamal Edwards | Josh Sinclair-Evans



YOU WOULDN'T
STEAL A CAR

Piracy Supplier Motivations

- Profit, either from adverts or subscriptions (potentially funding larger illegal operations)
- Datamining/hacking
- Hacker ethic – information should be free
- Anti-capitalist critique of modern business – artist exploitation
- Bittorrent – community reciprocity



Why is piracy hard to police?

- Detection: piracy sites legally hide their IP address with sites such as Cloudflare & consumers hide their IP addresses with VPNs
- “Iffy” legal status: piracy sites use techniques such as proxy aggregators which combine legal and illegal links on one page. Streamrippers provide technology which can be used for illegal or legal stream ripping
- Copyright holders keen to avoid reputational effects of coming after their consumers (see RIAA in the 1990s!)

Sony Corp. of America v. Universal City Studios, Inc. 1984

Universal City Studios, argued that the VCR facilitated copyright infringement because it allowed users to make unauthorized copies of copyrighted content.

The Supreme Court ruled in favour of Sony, stating that the sale of VCRs did not constitute contributory copyright infringement.

This decision had a profound impact on the development of the home video market and established the concept of "fair use" with respect to recording copyrighted content for personal use.

CBS Songs v. Amstrad Case 1988

- CBS Songs, a music publishing company, sued Amstrad, a British electronics manufacturer, over Amstrad's production of dual-cassette decks
- The House of Lords found in favour of Amstrad that producing equipment that facilitated the dubbing of cassettes, in this case a high-speed twin cassette deck that allowed one cassette to be copied directly onto another, did not constitute copyright infringement by the manufacturer.

The birth of Napster

- Created by Shawn Fanning and Sean Parker, Napster was launched in June 1999 and quickly gained widespread popularity. File Sharing: Napster allowed users to share music files (MP3 format) with one another over the internet. Users could search for specific songs or artists and download the music files shared by other users.
- Peer-to-Peer Network: Napster used a decentralized P2P network, meaning that files were not hosted on a central server
- Music Library: Napster's vast library of music made it a treasure trove for music enthusiasts. Users could access an extensive collection of songs, many of which were not available through legal online music services at the time.
- ***A&M Records, Inc. v. Napster, Inc.***, 239 F.3d 1004 (2001) Napster found liable for contributory infringement and vicarious infringement



Napster video

The birth of Bittorrent & The Pirate Bay

You open a Web page and click a link to download a file to your computer.

The Web browser software on your computer (which is called the client) tells the server (a central computer that holds the Web page and the file you want to download) to transfer a copy of the file to your computer.

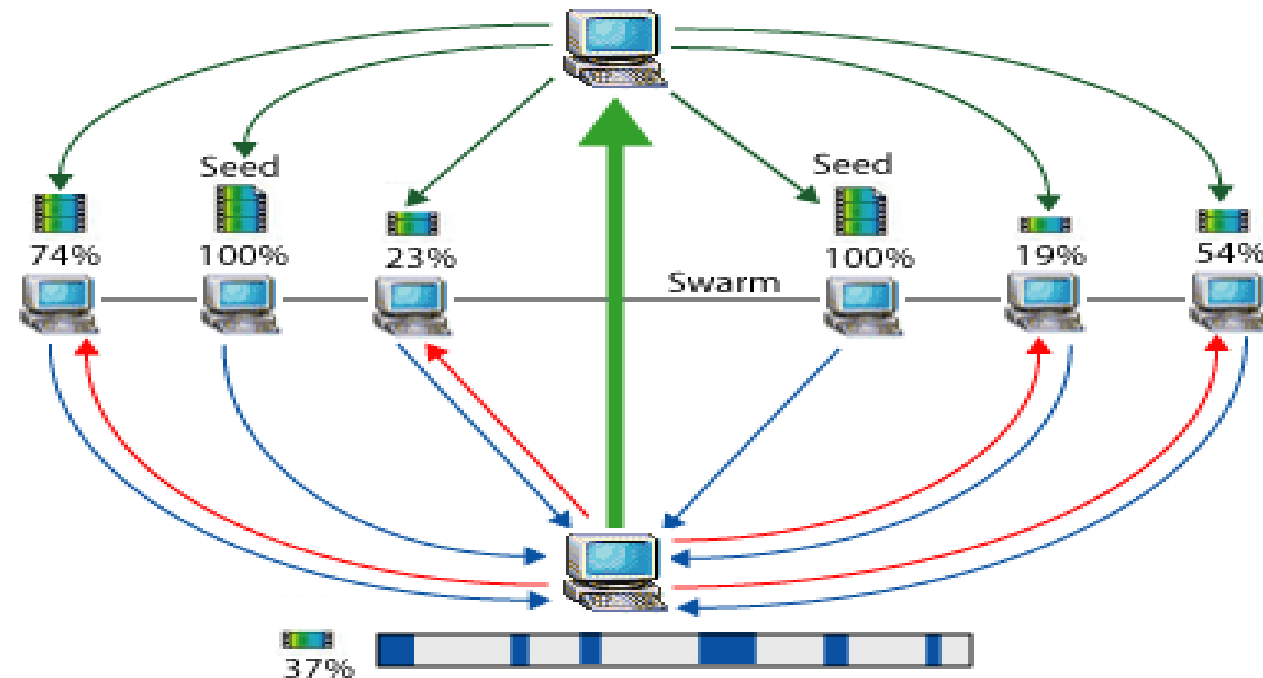
The transfer speed is affected by a number of variables, including the type of protocol, the amount of traffic on the server, and the number of other computers that are downloading the file.

If the file is both large and popular, the demands on the server are great and the download will be slow.

The transfer is handled by a protocol (set of rules), such as FTP (File Transfer Protocol) or HTTP (HyperText Transfer Protocol).

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BitTorrent tracker identifies the swarm and helps the client software trade pieces of the file you want with other computers.



Computer with BitTorrent client software receives and sends multiple pieces of the file simultaneously.

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HADOPI/Graduated Response

- The 'three strikes' French anti-piracy measure, introduced under Nicolas Sarkozy, cut off users' access to the internet on the third strike
- The part of the HADOPI law that allowed for suspension of Internet access to a repeat infringer was revoked on 8 July 2013 by the French government because that penalty was considered to be disproportionate.
- The UK implemented a softer approach which threatened consumers via their ISP
- Arnold, Darmon, Dejean & Penard, (2014) *“Our econometric results indicate that the law has no substantial deterrent effect.”*

S.97A of the CDPA 1988 – WEBSITE BLOCKING

- The High Court shall have power to grant an injunction against a service provider,
- Is it practicable for ISPs to implement?
- Danaher, Hersh, Smith, & Telang, (2019) suggested *“We show that blocking 53 sites in 2014 caused treated users to decrease piracy and to increase their usage of legal subscription sites by 7-12%.”*
- Does it work with VPNs?



White Bullet Campaign

- White Bullet has already stopped millions of dollars of ad spend from funding piracy by collaborating with brands, advertisers, regulators and rights owners.
- It has now launched the Intellectual Property Infringement Platform (IPIP) as its flagship anti-piracy service, designed to make the job of detecting fraudulent content easier.




You mean a woman can open it?

Easy—without a built-in handle, a little know-how, and a little luck! Alcoa Aluminum is the only one that's easy to open, and it's easy to use.

No, it's not a built-in handle, it's a little know-how, and a little luck. Alcoa Aluminum is the only one that's easy to open, and it's easy to use.

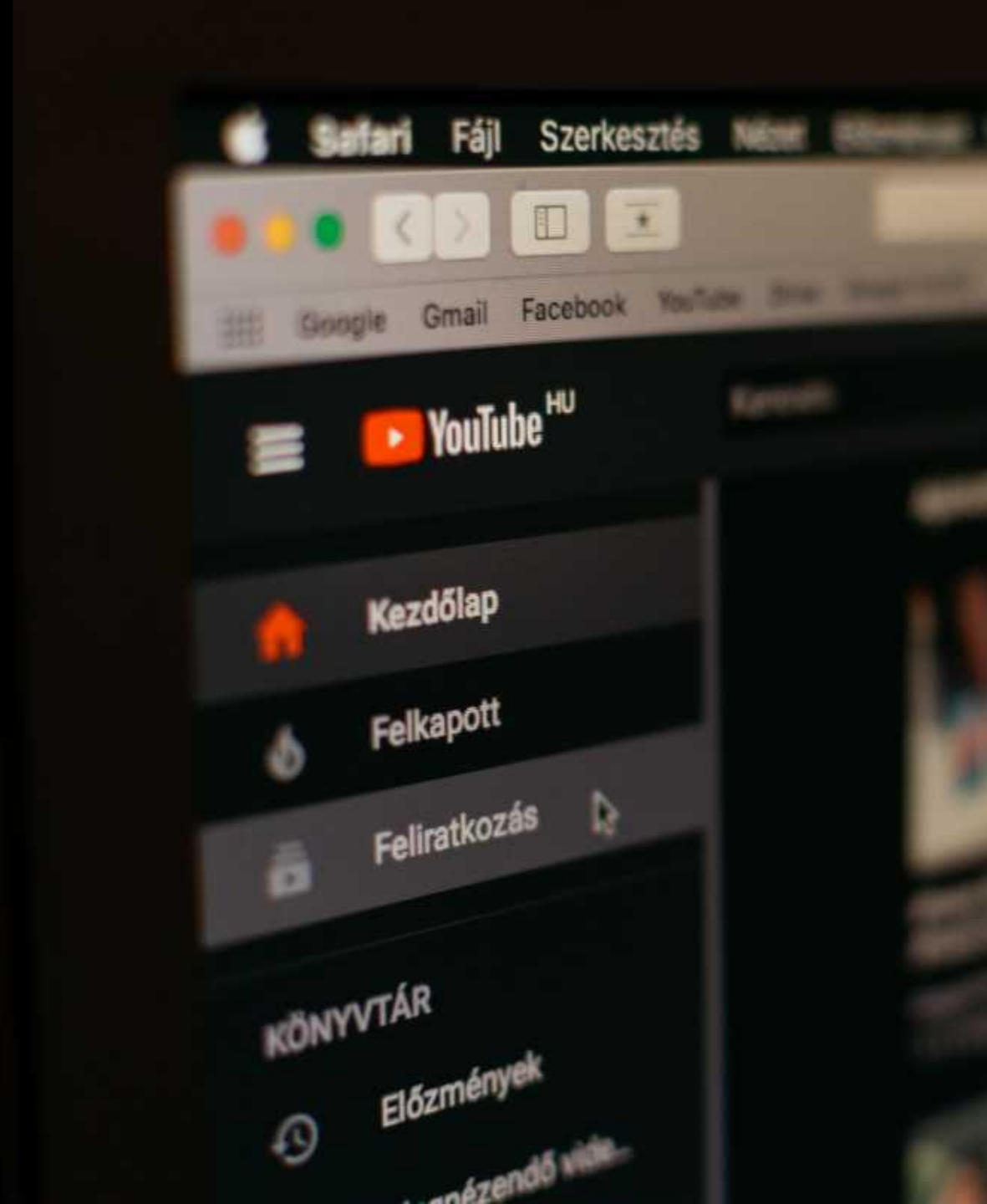
After all, it's so easy to use, it's almost a little hard to open. Alcoa Aluminum is the only one that's easy to open, and it's easy to use.


You'll recognize the aluminum, because it's the only one that's easy to open, and it's easy to use. Alcoa Aluminum is the only one that's easy to open, and it's easy to use.

Alcoa 
Aluminum

Streamripping

- Streamripping is the newest form of piracy
- It is legal as long as the content is outside of copyright – creating a legal grey area for streamripper sites
- In 2017, YouTube-MP3.org settled a lawsuit with the RIAA & the BPI which initially had an impact in stream-ripping consumption





Current Threats – Live Sport Piracy

- £1m of sponsorship is lost per Premier League game (MUSO, 2019)
- Illegal consumption is increasing (IPO, 2023)
- In 2021, illegal live streaming was reported to cost legitimate EU TV businesses €3.21 billion and in turn made pirates a €1.06 billion profit in 2021 (Bournemouth, 2022).
- 20% of an individual's live-sport content comes from an illegal source, rising to 30% for men under 34 (Whitman, Murad, Cox and Cox (2023)
- Sports is one of the top categories for counterfeit goods, with 15% of the UK population reporting it (IPO, 2023).
- Why is illegal streaming so popular?

The Role of DSPs & Government

- Google delisting programme implemented by anti-piracy agencies removed piracy links from first page of search engines
- Youtube's ContentID
- But should YouTube, Google, Facebook etc do more to protect rights holders from
- Safe Harbour provisions included in the EU E-Commerce Directive, 2000/31/EC
- Anti-piracy agencies lobby the EU Union believing they should do more to protect rights holders



Conclusion

- Piracy is costly to the global economy and creative industries
- Piracy consumption is high and socially acceptable
- Anti-piracy strategies have included messaging campaigns, website blocking, Google delisting, advertising disruption, website takedowns
- Piracy still poses a significant threat, particularly for live sports, TV & films
- DSPs and the European Union are lobbied to do more to tackle piracy

