

## CASE FILE #4: THE ANONYMOUS ARTIST

### LEARNING AIMS

- Be able to discuss the relationship between copyright and new technologies
- Understand some of the challenges related to enforcing copyright in the digital age

### KEY QUESTIONS

The following key questions should be discussed to address the learning aims:

- What is the relationship between copyright law and new technologies and how has it developed over the years?
- Can copyright law be enforced in a technologically advanced world, where copying can be carried out with ease?

Students will be expected to use Case File information to analyse ideas, to give opinions, and to justify opinions. Other questions posed within the Case File can be used to generate further discussion.

### WHAT IS THE RELATIONSHIP BETWEEN COPYRIGHT LAW AND NEW TECHNOLOGIES AND HOW HAS IT DEVELOPED OVER THE YEARS?

- See **TEXT BOX #1 and #2**
- Ever since the printing press came into being, copyright and new technologies have shared an inevitable link. Before the printing press, books and other creative works could only be copied manually, so their reproduction and dissemination were easier to control. But the printing press turned books into easily multipliable commodities. As a result, a legal tool was developed to control the unauthorised copying: copyright.

Since then, technological innovations such as cameras, pianolas, photocopiers, home recording devices, computers, and so on, have made copying more accurate, easier, cheaper, and faster, requiring copyright law to adapt to these rapid changes.

Typically, law makers respond to these challenges mainly with a conservative approach: strengthening copyright and making it last longer and longer.

- Today, copyright law is still trying to adapt to the challenges and opportunities posed by the Internet and digital media production tools, while monitoring current advancements such as 3D printing and Artificial Intelligence (AI).

### CAN COPYRIGHT LAW BE ENFORCED IN A TECHNOLOGICALLY ADVANCED WORLD, WHERE COPYING CAN BE CARRIED OUT WITH EASE?

- See **TEXT BOX #3 and #4**
- Enforcing copyright is particularly challenging in the digital age, when users can easily share and modify protected works. Trying to enforce copyright against each

infringing user would be impossible without interfering with their fundamental right to privacy. Therefore, over the last few years enforcement strategies have focused more on the people and organisations that make unlawful content available, rather than on the users of that content.

- One enforcement system that has become more and more popular are blocking injunctions: following a request from a copyright owner, courts can grant an order to block a website that provides access to unlawful material.

While blocking injunctions have proved to be useful, questions can be asked about their long-term effectiveness (users often can easily bypass the block or find the material they are looking for on other illicit websites) and about their interference with fundamental rights, such as freedom of expression.

- Other enforcement systems currently in use are 'upload filters', such as the YouTube's Content ID: an automated system that enables copyright owners to identify YouTube videos that include content they own. After identifying the infringing content, copyright owners can decide to take the video down or to monetise it by running ads against it.

One controversial aspect of these automated enforcement systems concerns their ability to identify videos in which protected content has been lawfully reused under [copyright exceptions](#) (see also [Case Files #5](#) and [#6](#)).

## SUGGESTED ACTIVITIES

One way of encouraging the lawful consumption of creative works is through legal services that satisfy customer expectations for quick and easy access to content, while rewarding the creators of that content. Think of Spotify, Netflix or iTunes.

After discussing the **KEY QUESTIONS** above, you might ask the students: what do you think is more effective in order to encourage lawful online consumption? Enforcing copyright through blocking injunctions and upload filters, or developing more innovative services such as Netflix and Spotify? Can the students think of other services or business models that would satisfy customer expectations while rewarding creators?

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### 1. INTRODUCTION

Joseph, the toymaker, has asked the police to identify the culprit making 'dreadful images' of his toy, portraying it in violent situations. However, as Joseph tells Holmes, he has been told by the police that 'these anonymous street artists are almost impossible to track down'.

In the video, this sentiment is visualised by numerous copies of the Guy Fawkes mask, from the graphic novel *V for Vendetta* written by Alan Moore and illustrated by David Lloyd. Moore and Lloyd appropriated the legacy, myth and image of Fawkes for their story. In turn, their own Fawkes mask was subsequently co-opted by the hacktivist group *Anonymous* and has become an icon of protest movements around the world. (*Anonymous*, among other things, are known for their virtual attacks on media conglomerates and copyright industry organisations.)

This Case File #4 considers the often problematic relationship between copyright and digital technology, as well as how copyright law is enforced in the online world.

### 2. UNLAWFUL USE OF COPYRIGHT MATERIAL ONLINE

Copyright law and policy has a close relationship with the advancement of new technology. Recent developments in online technologies have had a significant effect on the copyright landscape, bringing benefits and challenges for creators, copyright owners and the public.

Technology provides new opportunities for the production and spread of knowledge by creating new ways to innovate. Whether people are recording music in their bedroom or creating video mash-ups to post online, it is now cheaper and easier than ever before to make new work which, in turn, can encourage people to be more creative. New technologies have also made it much easier and cheaper for creators and copyright owners to make their work available online to a global audience. And, digital technologies can be used to help safeguard copyright work, for example, by using tools that notify the owner when their work has been uploaded online without permission.

On the other hand it is now also easier to access, copy and share copyright protected material unlawfully, and this has caused considerable difficulties for copyright owners. If creators cannot rely on their copyright to benefit financially from their creations, they may decide not to create any work at all which could have a negative impact on the development and spread of knowledge and culture in general.

### 3. BLOCKING INJUNCTIONS

One way that creators and rightsholders have tried to overcome the challenge of online copyright infringement in the UK is to ask courts to grant an order to block a website that provides access to unlawful material.

To do this, copyright owners apply to the court for an injunction against Internet Service Providers. If the injunction is granted the Internet Service Provider must take technical steps to block access to the infringing website which means their customers will not be able to access that particular website.

Website blocking is becoming more and more common. However, it is considered by some to be a controversial measure. Some believe that this type of copyright enforcement is too strong and interferes with people's fundamental rights, such as free speech and the freedom to access and distribute information.

It is also unclear how effective website blocking is as a long term solution because users often can easily bypass the block or find the material they are looking for on other illicit websites. In addition, the process of securing an injunction takes time and this gives website operators the opportunity to change the location of the website long before any injunction comes into force.

#### **4. THE CASE: *Dramatico Entertainment v British Sky Broadcasting* [2012] EWHC 268**

This case concerned a well-known website called The Pirate Bay. This website provided links to infringing content, much in the same way that a search engine does to legal content.

The *Pirate Bay* argued that they were not infringing copyright because they did not actually host any illegal content on their website. However, the Court decided that as they were providing links to illegal content they were facilitating infringement.

As a result, the court ordered five leading British Internet Service Providers (ISPs) to take steps to prevent their users from accessing *The Pirate Bay* website.

This did not stop users from accessing *The Pirate Bay* site, however. Indeed, *The Pirate Bay* claimed that it received [12 million more visitors](#) on the day *after* the court order came into effect than it had received before the ISPs took steps to block access to their site. This demonstrates the limitations that legal and technological mechanisms alone can achieve in trying to overcome the challenge of online infringement.

#### **5. FOR DISCUSSION: ENFORCE, ENGAGE, ENABLE**

The case above demonstrates some of the tensions between copyright and technology. New innovation does not always promote compliance with copyright, and using technological enforcement measures to protect work is not always effective.

Recently, though, some creators and copyright industries have been developing new ways to continue to benefit from copyright works while also making these works more easily accessible to their customers online.

Can you think of any examples of innovative ways of rewarding creators while satisfying customer expectations for quick and easy access to copyright works?

#### **6. USEFUL REFERENCES**

*Dramatico Entertainment Ltd and Others v British Sky Broadcasting Ltd and Others* [2012] EWHC 268 (CH) is available here: <http://www.bailii.org/ew/cases/EWHC/Ch/2012/268.html>

For a list of websites that have been blocked in the UK by court orders to protect the interests of copyright owners, see: <http://www.ukispcourtorders.co.uk/>