

Digital Copyright Infringement: US Case Overview, Part II

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Abstract

Technological advance and interconnection networking are one of the necessities in human life. Internet uses in every side of life: technologies, economics, social, law and intellectual property. Nowadays, the Internet grows rapidly, driven by ever-greater amounts of online information, commerce, entertainment and social networking. On the other hand, it also bring new paradigm of regulations, customs and user activities, economic and copyright itself. Infrequently, technological development uses for awful activities, like as digital copyright infringement and illegal file sharing. Even though physical markets continuously decrease in some countries, while the number of digital copyright infringement on entertainment (music and movie) and software extremely increases on the Internet.

On this paper, it will discuss about some cases on digital copyright in United States. They taken place as a comparison sources concerning how authorities adopted, amended, and implemented the policies to solve the suitcases. United States keep promoting the international regulation like the Trans-Pacific Partnership (TPP) to establish uniformity of digital copyright protection among the world. The improvement of the intellectual property enforcement obliges various approaches. Though, this paper attaches deeper on criminal enforcement, it establish that whole method should be developed to undertake the problem effectively. Civil enforcement to grant suitable remedies to the rights holders and administrative enforcement, specifically border control on copyrighted goods in violation should not be neglected. Policy makers should be careful to adopt the copyright-technology provision that may be soon being outdated. The most principal point of copyright enforcement is afford the same protection for online content and off-line. Legislation reform have to conserve the current harmonize among stakeholders', industries' and users' interest.

I. Introduction

Copyright concept began with the invention of the printing press around 1400s.¹ This concept is used on the basis to make a copy or a work of art/writing, which required great effort and cost as most as of the original work. Therefore, some copyright regulations before 1710, the publisher was the one who asked for legal protection to the Kingdom or government. With the enactment of the Statue of Anne in England, copyright

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¹ Grace R. Cooper, *The Invention of Sewing Machine*, Bulletin 254, The Smithsonian Institution Press (e-book 32677), Washington DC, (1968).

protection switched into the author or creator of copyright works, moreover it also set the validity period for the exclusive rights of copyright holders for 28 years and after that it will become public property.² In 1960s, technology was developed with the use of electronic computers as media of telecommunication. Internet was already known in the 1970s. Initial concepts of packet networking developed in several computer science laboratories in the United States, Great Britain, and France. However, because of the media was still relatively expensive, the media was only used in certain areas. The Internet was growing rapidly in the 1980s. It used in the fields of education, research, government and commercial Internet service providers (ISPs). Internet has had revolutionary effects on commerce, culture and communication since the mid-1995s. Electronic mail, instant messaging, voice over Internet Protocol (VoIP) telephone calls, two-way interactive video calls, and the World Wide Web with its discussion forums, blogs, social networking, and online shopping sites were facilities that can be used on the Internet. On 1993 to 2000, the amounts of the data were transmitted at higher speed and fast connection over fiber optic networks and frequency. The Internet took over global communication landscape was almost instant in historical terms: it only communicated 1% of the information flowing through two-way telecommunications networks in 1993, already 51% by 2000, and more than 97% of the telecommunicated information by 2007.³ Nowadays, the Internet grows rapidly, driven by ever-greater amounts of online information, commerce, entertainment and social networking.

The technological networking advances create efficiency and effectiveness without national borders.⁴ Interconnection networking makes public easier to access, acquire and transmit the required data everywhere and every time. On the other hand, it also bring new paradigm of regulations, customs and user activities, economic and copyright itself. Infrequently, technological development uses for awful activities, like as digital copyright infringement and illegal file sharing. Even though Physical markets continuously decrease in some countries, while the number of digital copyright infringement on entertainment (music and movie) and software extremely increases on the Internet.⁵ All digital files might be distributed all over the world with no block, fast and secret. Peer-to-peer network (P2P); downloading, uploading, and distributing the files over the Internet are common in Internet era. By connecting with the Commercial

² Oren Bracha, *The Adventures of the Statute of Anne in the Land of Unlimited Possibilities: The Life of a Legal Transplant*, 25, Berkeley Technology Law Journal, United States, 2010, at 1435-1436.

³ Martin Hilbert & Priscila Lopez, *The World's Technological Capacity to Store, Communicate and Compute Information; Part 1 Result and Scope*, International Journal of Communication, 2012, at. 960-961.

⁴ Saidin OK, *Aspek Hukum Hak Kekayaan Intelektual* (Legal Aspect of Intellectual property), Raja Grafindo Persada Press, Jakarta, 2004, at 519.

⁵ USTR; The Special 301 Report (2014), *supra note 7*, at 20-22.

Internet Service Provider (ISP), those activities could be support the digital copyright infringement productively.⁶

II. The Impact of Digital and Network Technologies

Copyright in the United States was started when the Congress agree to promote the progress of science and arts, by guaranteeing for a limited times to inventors, author and owners' exclusive right concerning their respective writings and discoveries.⁷ The copyright provision of the U.S. Constitution was implemented in the first congress in 1790. The provision known as Copyright Act 1790, an act concerning for the encouragement of learning, by securing the copies of maps, charts and book to the authors and proprietors of such copies.⁸ Foremost amendments to the act were applied in 1831, 1870, 1909, and 1976.

Major changes on digital right recognized in 1973, William and Wilkins, publisher of medical journals took legal action through the National Library of Medicine (NLM) and the National Institutes of Health (NIH).⁹ NLM and NIH charged by making unauthorized photocopies of articles on plaintiff's medical journal and distributing them to medical researcher and physicians. The Court of Claims thought that medicine and medical research would be harmed if this were found to be infringement. In the result, Judge Davis stated:

"...Based on the type and context of use by NIH and NLM as shown by the record, that there has been no infringement, that the challenged use is "fair" in view of combination of all the factors involved in consideration of 'fair' or 'unfair' use enumerated in the opinion, that the record fails to show a significant damage to plaintiff but demonstrates injury to medical and scientific research if photocopying of this kind is held unlawful, and that there is a need for congressional treatment of the problems of photocopying."¹⁰

The "Fair" use was a major part of the revision included in the Copyright Act of 1976. The revision of the Act codified for two main reasons; first is technological advance and their impact on what might be copyrighted, how works might be copied, and what constituted to be addressed. Second is anticipation of Berne Convention devotion by

⁶ See, e.g., *Playboy Enterprises, Inc. v. Frena*, 839 F. Supp. 1552 (M.D. Fla. 1993), *MGM Studios v. Grokster*, 545 U.S. 913 (2005), *BMG Music v. Gonzales*, 430 F. 3d 888 (2005), *RIAA v. Verizon*, 351 v. F.3d 1229 (D.C. Cir. 2003), *A&M Records v. Napster, Inc*, 239 F.3d 1004 (2001) and *UMG Records v. MP3.com*, 92 F. Supp. 2d 349 (2000)

⁷ U.S. Const. Art. I, § 8, cl. 8.

⁸ The act was modeled on Ann Statute (1710). Copyright Act 1790 allowed American authors for the right to print, re-print, or publish their work for fourteen years and for another fourteen to renew. The law was meant to give an incentive to authors, artists, and scientists to create original works by providing creators with a monopoly. At the same time, the monopoly was limited due to stimulate creativity and the advancement of "science and the useful arts" through wide public access to works in the "public domain."

⁹ *Williams & Wilkins Co v. United States*. 480 F. 2d 1345, (Court of Custom and Patent Appeal 1973).

¹⁰ *Id.*

the United States.¹¹ This amendment organized for the first time concerning fair use and copyright extension of unpublished works. Additionally, one section was added that allowed library, photocopying without permission due to scholarship, preservation, and interlibrary loan under certain circumstances.¹² Whether the use of a work (including reproduction in copies or digital records or by any means categorized in that section,¹³ the four following aspects to be considered; purpose and character of exploitation, nature of the copyrighted works, the amount of the content and substantiality of the percentage used in relation to the whole, and the effect of exploitation to the market.¹⁴

2.1 Betamax Case

When Sony Corporation manufactured the “Betamax” home video tape recorder (VTR) to the market for the first time in 1975,¹⁵ the advancement of technology in copyright reproduction and distribution had major change. The fair use doctrine will used to analyze the development of new technology through the copyright problems. Copyright owner and entertainment industries encounter worries because of it; consumers would be easy to copy and collected the programs from television. The producers opine; in the future, it will be reducing the demand of those programs.¹⁶ Moreover, Jack Valenti, president of Motion Pictures Association said that VTR would have big influence to bother the potential market even made the industry decimated, shrunken and collapsed.¹⁷

The case started when copyright owners of television programs¹⁸ brought copyright infringement action against Sony Corporation America. The United States District Court of California¹⁹ refused all claim sought by copyright owners and entered judgment for manufacturer, thus the respondent appealed. The United States Court of Appeals for the Ninth Circuit²⁰ overturned district court’s verdict on copyright privilege,

¹¹ Association of Research Libraries, Washington D.C., *Copyright Timeline: A History of Copyright Law in the United States*, available at <http://www.arl.org/focus-areas/copyright-ip/2486-copyright-timeline#Top> (The United States became a Berne Convention signatory in 1988). (last visited Feb 12, 2015)

¹² *Id.* (section 108), see also (The National Commission on New Technological Uses of Copyrighted Works (CONTU) was agreed by Congress in 1976 to create guidelines for the "minimum standards of educational fair use" under the Copyright Act 1976. "The CONTU guidelines used to assist librarians and copyright proprietors in understanding the amount of photocopying for use in interlibrary loan arrangements permitted"), available at <http://old.cni.org/docs/infopols/CONTU.html> (last visited May. 21, 2015)

¹³ 17 U.S.C. § 107

¹⁴ *Id.*

¹⁵ <http://www.rewindmuseum.com/betamax.htm>, (last visited May. 21, 2015)

¹⁶ Fred Von Lohmann, *Ipods, Tivo and Fair Use as Innovation Policy*, Presented at the 2005 Fordham Intellectual Property Conference March 31-April 1, 2005, (a paper, on file with author).

¹⁷ Jack Valenti. (Statement on Hearings Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary of the House of Representatives 97th Congress on H.R. 4783, H.R. 4794 H.R. 4808, H.R. 5250, H.R. 5488, and H.R. 5705, Monday, April 12, 1982), available at <http://cryptome.org/hrcw-hear.htm> (last visited, May 24, 2015).

¹⁸ Two respondents become representatives, Universal Studio. Inc. and Walt Disney Production.

¹⁹ *Sony Corp v. Universal Studio. Inc.*, 480 F. Supp. 429.

²⁰ *Sony Corp v. Universal Studio. Inc.*, 659 F.2d 963.

and manufacturer petitioned for *writ of certiorari*.²¹ The Supreme Court of the United States²² held that manufactures of VTR confirm a significant and substantial number of copyright holders who licensed their programs for transmit on free television would not object to having their transmit time shifted by viewers and owners of copyrights on television programs failed to demonstrate that time shifting did not cause any likelihood of no minimal harm to the potential market for, or the value of, their copyrighted works and consequently, VTR was capable of substantial no infringing uses; thus, manufacturers' sale of such equipment to general public did not constitute contributory infringement of respondents' copyrights.²³

On the District Court process, the respondents stated that VTR upon the market has allow millions of Americans to make recording of television programs in their places/homes, for repeated and future viewing at their own convenience. Though, this activity has proved popular with owners of television sets and VTRs, it reasonably has been a problem concern for the holders of copyright in the recorded programs. Curiously, before Sony was filed, Universal Studios began promoting its products on pre-recorded discs and planned to announce the discs before and after the pictures were released. This condition perhaps made Universal Studios was concerned with Sony's entrance into the home-video market; claiming and showing the copyright infringement could have been a way to monopolize the market.²⁴ Sony held that none of the advertisement from the programs warned to the public that recording the copyrighted programs/shows could constitute the infringement. Hence, Sony made announcement at the Betamax's booklet that the television programs, videotapes, films, and other materials may be copyrighted; illegal recording of such material may be contrary to the provisions of United States of Copyright Law.²⁵

Even though both parties did surveys concerning the usage of VTR,²⁶ the respondent conceded that Sony had not damaged its business relationship nor caused any

²¹ *Certiorari* is a Latin word; it means "to be informed of, or to be made certain in regard to". It is also the name given to certain appellate proceedings for re-examination of actions of a trial court, or inferior appeals court. The U.S. Supreme Court still uses the term *certiorari* in the context of appeals. Petition for *Writ of Certiorari*, informally called "*Cert Petition*" is a document, which a losing party files with the Supreme Court asking the Supreme Court to review the decision of a lower court. It includes a list of the parties, a statement of the facts of the case, the legal questions presented for review, and arguments as to why the Court should grant the *writ*, available at <http://www.techlawjournal.com/glossary/legal/certiorari.htm>, (last visited, May 24, 2015).

²² Sony Corp v. Universal Studio. Inc., 464 U.S. 417, 104 S.Ct. 774.

²³ *Id.*

²⁴ Jeffrey J. Escher, *Copyright, Technology & the Boston Strangler: the Seventh Circuit and the Future of Online Music Access*, I Seven Circuit Review, 74, Spring (2006), at 80.

²⁵ Sony Corp v. Universal Studio. Inc., 464 U.S. 417, 104 S.Ct. 774 at 436.

²⁶ *Id.*, at 438-439 (According to plaintiffs' survey, 75.4% of the VTR owners use their machines to record for time-shifting purposes half or most of the time. Defendants' survey showed that 96% of the Betamax owners had used the machine to record programs they otherwise would have missed. When plaintiffs asked interviewees how many cassettes were in their library, 55.8% said there were 10 or fewer. In defendants' survey, of the total programs viewed by interviewees in the past month, 70.4% had been viewed only that

market harmed. Sony introduced as evidence showing television programs that could be copied without objection from any copyright holder, stress on sports, religious, and educational programming. Their survey showed that 7.3% of all Betamax used to record sports events, and representatives of baseball, football, basketball, and hockey testified that they had no objection to the recording of their televised events for home use.²⁷

After a lengthy discussion, court found that the Amendment of Copyright Act 1971 permitted home use of audio recording.²⁸ Conclusively, District Court ruled that home VTR recording did not infringe the Studios' copyrights under either the Act of March 4, 1909 (1909 Act), 35 Stat. 1075, as amended (formerly codified as 17 U.S.C. § 1 *et seq.* (1976 ed.)), or the Copyright Revision Act of 1976 (1976 Act). District Court also concluded that non-commercial home use recording of material broadcast over the public airwaves was a fair use of copyrighted works and did not constitute copyright infringement. It emphasized the fact that the material was broadcast free to the public at large, the non-commercial character of the use, and the private character of the activity conducted entirely within the home. Moreover, the court found that the purpose of this use served the public interest in increasing access to television programming, an interest that is consistent with the First Amendment policy of providing the fullest possible access to information through the public airwaves. Even when an entire copyrighted work was recorded, the District Court regarded the copying as fair use because there is no accompanying reduction in the market for plaintiff's original work. The District Court also concluded that Sony could not be held liable as a contributory infringer even if the home use of a VTR was considered an infringing use. The District Court noted that Sony had no direct involvement with any Betamax purchasers who recorded copyrighted works off the air.²⁹

The Court of Appeals reversed the District Court's judgment on respondents' copyright claim. It did not set aside any of the District Court's findings of fact. Rather, it concluded as a matter of law that the VTR was not a fair use because it was not a "productive use." Therefore it was unnecessary for plaintiffs to prove any damage to the potential market for the copyrighted works, however it seemed clear that the cumulative effect of mass reproduction made possible by VTR's would tend to reduce the potential market for respondents' activities.³⁰ The Court of Appeals concluded that VTR's were not suitable for any substantial non-infringing use even though some copyright owners were not chosen to impose their rights. Concerning of contributory infringement, the Court of Appeals rejected the analogy to main articles of commerce such as tape recorders or photocopying machines. VTR may have substantial benefit for some purposes and do not

one time and for 57.9%, there were no plans for further viewing. 81.9% of the defendants' interviewees watched the same amount or more of regular television as they did before owning a Betamax. 83.2% reported their frequency of movie going was unaffected by Betamax.)

²⁷ *id.*, at 424.

²⁸ *Sony Corp v. Universal Studio. Inc.*, 480 F. Supp. 429, at 444.

²⁹ *Sony*, *supra note* 28, at 426.

³⁰ *Id.*, at 428

even remotely raise copyright problems, it sold for the primary purpose of reproducing television programming and practically, almost the programs were copyrighted material.³¹ The Court of Appeals also refused the District Court's reliance on Sony's lack of knowledge that home user constituted infringement. Assuming that the statutory provisions defining the remedies for infringement applied also to the non-statutory tort of contributory infringement, the court stated that a defendant's good faith would merely reduce his damages liability but would not excuse the infringing conduct. It held that Sony was chargeable with knowledge of the home users infringing activity because the reproduction of copyrighted materials was either "the most conspicuous use" or "the major use" of the VTR.³²

From the beginning, the Sony case made the law of copyright has developed to answer the significant alteration in technology. Next, Supreme Court of United States accepted *certiorari*³³ from the Sony and heard the case. In summary, the court responded two conclusions. Firstly, approximately Supreme Court support the District Court's Judgment and secondly, time shifting did by Sony was fair use activity.³⁴ Based on the reason above, we can find that Sony proved a significant likelihood that considerable numbers of copyright holders who license their creativity for broadcast on free television would not have objection to having their broadcast time-shifted by home/private user. Furthermore, the respondents failed to demonstrate that time shifting would cause of non-minimal harm to the potential market for or the value of their creativity. Moreover, the contributory copyright infringement was not well defined. Even though Sony sale the VTR to the general public, Sony had no direct participation with individual VTR user and did not involve in off air copying.

2.2 MP3.com Case

MP3 is the most popular form of downloading digital audio files from the Internet. The mp3 file format compresses data to a greater extent than previous file compressing technologies, allowing for more efficient storage and faster download times. Users make mp3 files and swap them over the Internet via e-mail, newsgroups, chat rooms, or other programs specially developed for mp3 trading.³⁵

³¹ *Id.*

³² *Id.*

³³ *Certiorari* is a Latin word; it means "to be informed of, or to be made certain in regard to". It is also the name given to certain appellate proceedings for re-examination of actions of a trial court, or inferior appeals court. The U.S. Supreme Court still uses the term *certiorari* in the context of appeals. Petition for Writ of *Certiorari*, informally called "Cert Petition" is a document, which a losing party files with the Supreme Court asking the Supreme Court to review the decision of a lower court. It includes a list of the parties, a statement of the facts of the case, the legal questions presented for review, and arguments as to why the Court should grant the writ, available at

<http://www.techlawjournal.com/glossary/legal/certiorari.htm>, (last visited, May 24, 2015).

³⁴ Sony, *supra* note 28, at 442-443.

³⁵ Sara Steetle, *UMG Recordings, Inc. v. MP3.com, Inc.: Signaling the Need for a Deeper Analysis of*

This case was between UMG Recordings as plaintiffs and MP3.com as defendant.³⁶ UMG Recordings composed of Sony Music Entertainment Inc., Warner Bros. Records Inc., Arista Records Inc., Atlantic Recordings Corp., and BMG Music d/b/a The RCA Records Label, Capitol Records, Inc., Elektra Entertainment Group, Inc., Interscope Records, and Sire Records Group Inc., sued internet company (MP3.com)³⁷ which produced MP3 files of recordings available to its subscribers in their websites for infringement. The case was not complex as same as Sony's, however, technology advance returned to the clash with the copyright law. MP3.com case presented that defendant's action of plaintiffs' copyrights was clear enough. Accordingly, on April 28, 2000, the United District Court granted defendant's motion for partial summary judgment holding defendant liable for copyright infringement.³⁸

The Court analyzed the case considered four factors as a fair use for;³⁹ the first is “the purpose and character of the use”. Defendant did not argue that its purpose is commercial, while subscribers to My.MP3.com were not currently charged a fee; defendant seeks to attract a sufficiently large advertising and otherwise make a profit. Second, “the nature of copyrighted work”, the creative copied were close to the main of intended copyright protection.⁴⁰ Third, “the amount and substantiality of the portion (of copyrighted works) used (by the copier) in relation to the copyrighted work as a whole”, it is undisputed that defendants copies, and replays, the entirety of these creativity was in issue, thus again negating any claim of fair use.⁴¹ Fourth, “the effect of the use upon the potential market for or value of the copyrighted work”, defendant's activities invade the recording companies statutory right to licensed their copyrighted sound recordings to others for reproduction.

Finally, it concluded that MP3.com was providing a useful service to the consumers to be pirates. Moreover, as a practical, plaintiffs have indicated no objection in

Copyright Infringement of Digital Right, 21 Loy. L.A. Ent. L. Rev. 31 (2000), at 34.

³⁶ UMG Records v. MP3.com, 92 F. Supp. 2d 349 (2000)

³⁷ *Id.* (MP3.com, around January 12, 2000, launched its “My.MP3.com” service, which is advertised as permitting subscribers to store, customize and listen to the recordings contained on their CDs. Specifically, a subscriber to MP3.com must either “prove” that he already owns the CD version of the recording by inserting his copy of the commercial CD into his computer CD–Rom drive for a few seconds (the “Beam-it Service”) or must purchase the CD from one of defendant's cooperating online retailers (the “instant Listening Service”). Thereafter, however, the subscriber can access via the Internet from a computer anywhere in the world the copy of plaintiffs' recording made by defendant.

³⁸ *Id.*

³⁹ 17 U.S.C. § 107

⁴⁰ UMG Records, *supra note* 36, at 352, *see also* Campbell v. Acuff Rose Music, Inc., 510 U.S. at 586, 114 S.Ct. 1164.

⁴¹ UMG Records, *id.*, *see also* infinity Broad- cast Corp. v. Kirkwood, 150 F.3d 104, 108 (2d Cir.1998), (rejecting the fair use defense by operator of a service that retransmitted copyrighted radio broadcasts over telephone lines)

principle to licensing their recordings to companies like MP3.com; they simply want to make sure they get the remuneration the law reserves for them as holders of copyrights on creative works. The court also found that defendant failed to give evidence to support their affirmative defense.⁴²

2.3 Napster and Aimster Case

Napster⁴³ and Aimster⁴⁴ cases were almost having same analysis from the copyright law point of view. The recording companies and music publisher sued them with brought contributory and vicarious infringement. They were Internet services that facilitated the transmission and retention of digital audio files by its user. Both of United States Court of Appeals affirmed the lower court judgment regarding the cases.

The Court of Appeals, Ninth Circuit for Napster litigation decided to affirm in part, reversed in part and remanded the District Court's Judgment, it held eight points in analyzing the cases: (1) plaintiffs established prima facie case of direct copyright infringement; (2) users' activities did not amount to fair use of the copyrighted works; (3) plaintiffs demonstrated likelihood of success on merits of contributory infringement claim; (4) plaintiffs demonstrated likelihood of success on merits of vicarious infringement claim; (5) Audio Home Recording Act was inapplicable; (6) plaintiffs raised sufficiently serious questions, and established that balance of hardships tipped in its favor, as to service's claim that it was entitled to "safe harbor" under the Digital Millennium Copyright Act; (7) service did not establish defenses of waiver, implied license, or copyright misuse; (8) preliminary injunction was overbroad; (9) \$5 million bond amount was sufficient; and (10) service was not entitled to imposition of compulsory royalties rather than preliminary injunction.⁴⁵ The Court of Appeals, Seven Circuits for Aimster affirmed that Aimster, Inc., was a contributory and vicarious infringer. The Courts held that: (1) evidence supported finding that plaintiffs were likely to prevail on merits and (2) balance of harms favored granting of preliminary injunction.⁴⁶

In addressing the comprehensive arguments from the cases above, the Courts found that both Internet companies facilitated users to transmit audio files (MP3) between and among its users. Commonly called "peer-to-peer" (P2P) file sharing, Napster and Aimster allowed its users to: (1) make MP3 music files stored on individual computer drives/devices available for copying by other Napster users; (2) search for MP3 music

⁴² UMG Records, *id.*, at 352-353.

⁴³ A & M Records, Inc., v. Napster Inc., 239 F.3d 1004 (2001)

⁴⁴ *In re: Aimster*, 334 F.3d 643 (2003)

⁴⁵ A & M Records, Inc., v. Napster Inc., 239 F.3d 1004 (2001)

⁴⁶ *In re: Aimster*, 334 F.3d 643 (2003)

files stored on other users' computers; and (3) transfer exact copies of the contents of other users' MP3 files from one computer to another via the Internet. These processes were made possible by Napster's MusicShare software and Aimster's Software by registering on those systems and entering a password and user name. Those software were available free of charge from Napster's and Aimster's Internet sites. They provided technical support for the indexing and searching of MP3 files, as well as for its other functions, including a "chat room," where users can communicate directly each other and discuss information about their activities.⁴⁷

The Copyright Act provides for various sanctions for infringers.⁴⁸ These statutory sanctions represent a more than adequate legislative solution to the problem created by copyright infringement. Defendants would avoid penalties for any future violation of any injunction, statutory copyright harm and any possible criminal penalties for continuing infringement. The fee structure would grant Napster and Aimster of either choosing to continue and pay royalties or shut down. On the other hand, the wronged parties would be forced to do business with a recording company that profits from the wrongful use of copyright. In the case of Napster, plaintiffs would lose their intellectual property: they could not make a business decision, not to license their property to Napster, and, in the event they planned to do business with Napster, compulsory royalties would take away the copyright holders' ability to negotiate the terms of any contractual arrangement.⁴⁹

2.4 Verizon Case

In the early 1990s, copyright owners began suing to stop Internet infringement, targeting electronics bulletin in boards (BBSs) operated from personal computers connected to the Internet by ISPs.⁵⁰ In some cases, they sued both the person running the BBS and the ISP that linked the BBS to the Internet.⁵¹ Early 1993, the Department of Justice prosecuted infringers who offered pirated software from BBSs operated from home computers.⁵²

As technology has advanced, digital piracy has continued to grow. A new transformation digital format became the medium of choice for infringers. P2P systems like their technological predecessors BBS, File Transfer Protocol (FTP) and (Internet Relay Chat) IRC software allowed users, under the anonymity, to distributed files stored

⁴⁷ *Id.*, at 646, *see also* Napster, *supra* note 45, at 1011.

⁴⁸ 17 U.S.C. § 502, 504 & 506, *see also* 18 U.S.C. § 2319A. (502 for injunctions, 504 for damages and 506 for criminal penalties; 18 U.S.C. § 2319A (criminal penalties for the unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances)).

⁴⁹ Napster, *id.*, at 1029.

⁵⁰ *See* Sega Enters. Ltd. v. MAPHIA, 857 F. Supp. 679, 682-83 (N.D. Cal. 1994) and Playboy Enters, Inc. v. Frena, 839 F. Supp. 1552, 1555-56 (M.D. Fla. 1993)

⁵¹ *Religious Tech. Ctr. v. Netcom On-Line Communication Servs., Inc.*, 907 F. Supp. 1361 (N.D. Cal. 1995)

⁵² *United States v. Stowe*, No. 96C2702, 1996 WL 467238

on their personal computers (and not on ISP's server) to other Internet users. Napster was the first and most notorious P2P system, until the courts shut it down. The Napster P2P system simply combined FTP software (which can turn a personal computer into a server that allowed Internet users to download files) and IRC software (which enables direct communication among Internet users).

Verizon case is the first lawsuit, which sued the ISPs as a contributory infringer. The lawsuit between Verizon Internet Service and the Recording Industry Association of America (RIAA) started when a Verizon Internet user downloaded over 600 copyrighted songs using *KaZaA* P2P software.⁵³ RIAA has moved to enforce a subpoena served on Verizon Internet Services under the Digital Millennium Copyright Act of 1998.⁵⁴ On behalf of copyright holders, RIAA pursued the identity of an anonymous user of Verizon's service. The copyright owners (and thus RIAA) can distinguish the Internet Protocol address, but not the identity, of the suspected infringer, only the service provider can identify the user. Verizon argued that the subpoena connected to material transmitted over Verizon's network, not stored on it, and thus falls outside the scope of the subpoena power authorized in the DMCA.⁵⁵ Based on the fact, text and structure of the Digital Millennium Copyright Act, as confirmed by the purpose and history of the Act, the Supreme Court concluded that the subpoena authority of section 512(h) applied to all service providers, including Verizon and other service providers falling within subsection. Therefore, the Court granted Writ of Certiorari RIAA's motion to enforce its subpoena, and orders Verizon to obey the subpoena.⁵⁶

The D.C. Circuit's decision was too far beyond the District of Columbia. The Supreme Court's judgment has effectively stopped the issuance of DMCA subpoenas in the context of peer-to-peer copyright infringement. A deep aspect of DMCA 512(h) is Congress' express and repeated direction that clerks issue subpoenas expeditiously and ISPs respond obediently, so the copyright owners can protect their rights. In the wake of the D.C. Circuit's opinion, however, court clerks are unsure whether they can issue such subpoenas, and ISPs have made clear that they will not comply with them. Moreover, this important issue is likely to recur. Certainly, the issue already was recurring in other jurisdictions, including in courts in the Fourth and Eighth Circuits. This case presented a straight-forward question of legal construction, applied to a narrow set of material facts that are significantly the same in every case. The Court already has the benefit of

⁵³ RIAA v. Verizon Internet Service, 240 F.Supp.2d 24, 2003, at 26. (RIAA's subpoena to Verizon). *KaZaA* was a media desktop was generally used to exchange MP3 music files and other file types, such as videos, applications, and documents via Internet. The *KaZaA* Media Desktop user could be downloaded freely; however, it was bundled with adware (advertising supporter software) and for a period there were "No spyware" warnings found on *KaZaA's* website. It started as a P2P application using the Fast Track Protocol).

⁵⁴ 17 U.S.C. § 512

⁵⁵ Verizon, *id.*

⁵⁶ RIAA v. Verizon Internet Service, 2004 WL 1175134, at 29.

thorough discussions (reaching opposite conclusions) by the district court and the D.C. Circuit, and it can obtain the considered views of the United States and the Copyright Office.⁵⁷

2.5 Grokster Case

Following the previous case, Grokster case⁵⁸ was more like Napster and Aimster cases. In Grokster, copyright owners including songwriters, music publishers and motion picture studios sued the software distributor of peer-to-peer file sharing by computer networking software. Grokster distributed free software that allowed the public to download songs by P2P file sharing network. Grokster claimed based on Sony case that software was capable of non-infringing uses of copyright holders.⁵⁹ However, MGM's evidence gave important reason that the vast majority of users' downloads were acts of infringement, and because over 100 million copies of the software in question are known to have been downloaded, and billions of files are shared across the FastTrack and Gnutella networks each month, the probable scope of copyright infringement is incredible.⁶⁰

The United States District Court of California held partial summary judgment⁶¹ in favor of the distributor concerning contributory and vicarious infringement. Next, plaintiffs appealed to the Ninth Circuits and it was affirmed.⁶² Finally, the Supreme Court granted *certiorari* considering that anyone who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties.⁶³

2.6 Gonzales Case

The Recording Industry Association of America sued randomly of more 260 American music user/fans for sharing files, specifically music by P2P file sharing networks in 2003.⁶⁴ The targets were not commercial copyright pirates, nevertheless children, grandparents, single mothers, college professors or workers. The industry shows lawsuit campaign, with the members of the Recording Industry Association of America

⁵⁷ *Id.*, at 28

⁵⁸ Grokster, LTD., et al. v. Metro Goldwyn Mayer Studios Inc., 545 U.S. 913, 125 S.Ct. 2764 (2005).

⁵⁹ *Id.*, at 2772

⁶⁰ *Id.*

⁶¹ Grokster, LTD., et al. v. Metro Goldwyn Mayer Studios Inc., 259 F.Supp.2d 1029

⁶² Grokster, LTD., et al. v. Metro Goldwyn Mayer Studios Inc., 380 F.3d 1154

⁶³ Grokster, LTD., et al. v. Metro Goldwyn Mayer Studios Inc., 545 U.S. 913, 125 S.Ct. 2764 (2005)..

⁶⁴ David Kravets, *Copyright Lawsuits Plummet in Aftermath of RIAA Campaign*, available at <http://www.wired.com/2010/05/riaa-bump/>, (last visited, May 31, 2015)

(RIAA) by filing hundreds of new lawsuits in every month, including, mostly 400 per month targeted against college students.⁶⁵ However, the lawsuits were not working. Currently, downloading by P2P networks is well-liked common and continuously, despite the socialization public awareness of lawsuits. At the same time, the lawsuit campaign has enhanced only lawyers, rather than compensating artists for file sharing. One thing that we can conclude that: suing music fans is no answer to the P2P dilemma.⁶⁶

P2P file sharing was responded by the music industries as they have often responded as disruptive innovation. Starting with 1999, they sued Napster, Aimster and followed by the P2P technology companies among others: Scour, Aimster, AudioGalaxy, Morpheus, Grokster, Kazaa, iMesh, and LimeWire.⁶⁷ Though, the fact the P2P technologies were also used for legal purpose, like sharing of authorized files. The legal action against P2P software industries did not make the recording industry got victories on the courts. It was true that Napster was shut down by the court but continuously new network software quickly showed; Aimster, AudioGalaxy which transformed to Morpheus and KaZaa and well known as eDonkey and BitTorrent.⁶⁸ Nowadays, in some countries has different system to enforce the illegal file sharing websites. BitTorrent is no longer the dominant file-sharing software on the Internet. Cyberlockers known as centralized file-hosting website services to swapping files are all related to. The Pirate Bay and Torrentz are the only BitTorrent sites that managed to secure a spot in the Internet.⁶⁹ The number of file sharers/internet users, as well as the number of P2P software applications, has kept increasing, in spite of the recording industry's early courtroom victories. Today, P2P networks that rely on open Internet protocols and open source software continue to flourish independently of any software vendor. Additionally, music fans have been turning to "darknet" solutions, such as swapping iPods, burning CD-Rs, modifying Apple's iTunes software to permit downloading of other users' libraries, spreading the Firefox Web browser and social medias like Facebook, YouTube, and twitter to facilitate file sharing.⁷⁰

Back to the Gonzales case, owners of copyright in musical brought infringement action against Cecilia Gonzales of recordings through Internet file-sharing network.

⁶⁵ Eliot Van Buskirk, *A Pen Poison From RIAA*, March 1, 2007, available at <http://www.pp-international.net/node/165>, (last visited, May 31, 2015)

⁶⁶ Electronic Frontier Foundation, *RIAA v the People*, available at https://www.eff.org/files/filenode/riaa_at_four.pdf, (last visited, May 31, 2015)

⁶⁷ Courtney Macavinta, *Recording Industry Sues Music Start-up, Cites Black Market*, CNET News, December 7, 1999., available at http://news.cnet.com/Recording-industry-sues-music-start-up.-cites-black-market/2100-1023_3-234092.html (last visited, May 31, 2015)

⁶⁸ John Borland, *Peer-to-Peer: As the Revolution Recedes*, December 31, 2001, available at http://news.cnet.com/Peer-to-peer-As-the-revolution-recedes/2100-1023_3-277478.html, (last visited, May 31, 2015)

⁶⁹ Ernesto, August 27, 2011., *Top 10 Largest File Sharing Sites*, available at <https://torrentfreak.com/top-10-largest-file-sharing-sites-110828/>, (last visited, May 31, 2015)

⁷⁰ Marry Madden & Lee Raine, *PEW Internet Project Data Memo*, Pew Internet & American Life Project, March 2005., available at http://www.pewinternet.org/files/old-media/Files/Reports/2005/PIP_Filesharing_March05.pdf, (last visited, May 31, 2015)

Cecilia Gonzalez was laid-off mother of five, who owed five major record companies \$22,500 for illegally downloading through the Internet. Gonzalez mainly downloaded songs she already owned on CD, her purpose were to help her avoid the labor of manually loading the 250 CDs she owned onto her device. In fact, the record companies are going after a continual customer. Gonzalez spent about \$30 per month on CDs. However, the RIAA claimed that it would not consider a settlement for less than \$3000, a huge amount for the Gonzalez family.⁷¹ Gonzalez's argumentation has relied on the doctrine of "fair use" preserved in the U.S. Copyright Act and she defense that she was an "innocent infringer" upon the record companies' copyright.

The United States District Court for the Northern District of Illinois granted summary judgment for owners.⁷² Gonzales' lawyer appealed the summary judgment in the Seventh Circuit Court of Appeals, hoping to get the case brought before a jury; fair use consideration failed to save Napster, Aimster, and MP3.com, and there were no precedents including individual. None of the downloading suited against individuals has yet gone to court so far more than 1,800 defendants have settled and paid up the compensation without a trial. Many haven't even bothered to hire lawyers.⁷³ The Court of Appeals held 4 consideration through this case; (1) downloading was not "fair use" of copy- righted material, (2) downloader did not qualify for "innocent infringer" reduction in amount of statutory damages, (3) downloader was not entitled to jury trial on question of amount of statutory damages; and (4) award of injunctive relief was not abuse of discretion.

Addressing her fair use defense, the Seventh Circuit realized that because of the history and the circumstances of the case, the only avenue for Gonzalez was argued that her use of the songs did not affect the potential market for or the value of the copyrighted works.⁷⁴ Gonzalez tried to prove that her action were beneficial to the recording industry because they served as advertising for the right holders.⁷⁵ Nevertheless, the court noted, "As file sharing has increased over the last four years, the sales of recorded music have dropped by almost 30%."⁷⁶ Based on the statistic, the court could not bring itself to believe that downloading copies of copyrighted music constituted fair use.⁷⁷

⁷¹ Bob Mehr, *Gnat, Meet Canon*, February 3, 2005, available at <http://www.chicagoreader.com/chicago/gnat-meet-cannon/Content?oid=917905>, (last visited, May 31, 2015)

⁷² *Gonzales v RIAA*, 430 F.3d 888, 2005 WL 106592.

⁷³ Bob Mehr, *id.* (Gonzalez's attorney saw the case as something bigger than a dispute over copyright law. A founding partner of the Oak Park firm Dowell Baker, which specializes in intellectual-property matters, he's working pro bono because he doesn't like the record companies' tactics. "In our view, Cecilia should have the right does have the right under the Seventh Amendment of the Constitution to have a jury decide whether or not she is an innocent infringer and to have a jury decide whether or not she should have to pay any damages whatsoever," he says. In issuing a summary judgment, "the judge took that right away from her")

⁷⁴ *Gonzales, id.* at 890.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

2.7 Sega Case

Manufacturer and distributor of computer video games brought action against computer bulletin board companies and individual in control of bulletin board for copyright and trademark infringement and unfair competition.⁷⁸ On motion for preliminary injunction, the District Court stated that: (1) manufacturer was entitled to preliminary injunction accessing facilitation of copying of all copyrighted video games; (2) manufacturer's employee's access to computer bulletin board did not constitute violation of statute making it illegal to intentionally access without authorization facility through which electronic communication service is provided; and (3) seizure of copies of computer video games in possession of defendants was appropriate procedure under Lanham Act. Therefore, United States District Court N.D. California granted for summary judgment and permanent injunction.

On the trial process, in establishing *prima facie* case of copyright infringement, plaintiffs have to prove ownership of valid copyright in infringed work and copying by defendants.⁷⁹ While, complaint for copyright infringement listed specific copyrights supposedly infringed by computer bulletin board company and individual in control of bulletin board, owner of copyrighted video games was entitled to preliminary injunction with respect to all of owner's copyrighted video games.⁸⁰ Purposing of preliminary injunction, copyrighted holder of computer video games established *prima facie* case of direct copyright infringement by computer bulletin board company and individual in control of bulletin board; illegal copies of video games were made when games were uploaded to bulletin board by unknown users and then downloaded by users to make extra copies, which reproducing was known and facilitated by defendants. One who, with knowledge of infringing activity, induces, causes or materially contributes to infringing conduct of another may be held liable as contributory infringer.⁸¹ Even though defendants did not know precisely when games would be uploaded or downloaded from bulletin board by unidentified users, defendants role in the copying, including provision of facilities, direction, knowledge and encouragement, amounted to contributory infringement, as did defendants' promoting, sale and distribution of video game copies.⁸²

⁷⁸ Sega Enterprises Ltd. And Sega of America, v. MAPHIA, 857 F.Supp. 679 (1994), (MAPHIA, a business of unknown structure; Parsac, a business of unknown structure; Psychosis, a business of unknown structure; Chad Scherman aka Chad Sherman aka "Brujjo Digital," and Does 2-6 aka "Operator," "Firehead," "Lion," "Hard Core," "Candyman," all individually and d/b/a Maphia and Parsac; Howard Silberg by his mother and next friend Ilene Silberg, aka "Caffeine," and Does 14-18 aka "Apache," "Maelstrom," "Gazzer," "Paranoid/Chryseis," "Doom" all individually and d/b/a Psychosis and Parsac; Does 7-12; Does 19-25, as defendants)

⁷⁹ 17 U.S.C.A. § 501.

⁸⁰ Lanham Trade-Mark Act, § 34, 15 U.S.C.A. § 1116.

⁸¹ *Id.*

⁸² *Id.*

Hence, computer bulletin board company and individual in control of bulletin board failed in fair use defense with regard to unproven copyright infringement of computer video games by uploading and downloading games allowed users to avoid having to purchase games, defendants got commercial profit from illegal copying of entertainment games. On the other hand, computer video game company employee's access to computer bulletin board did not constitute violation of statute making it illegal to intentionally access without authorization facility through which electronic communication service is provided; bulletin board was open to public and normally accessed by use of code-named or pseudonym, and thus employee's pseudonym access was authorized, and statute contained exception for access authorized by user of service and employees access appeared to have been authorized directly or indirectly by authorized bulletin board user.⁸³

2.8 Michael Perry Case

The State of Ohio sued Michael Perry⁸⁴ for unauthorized use of property, theft, and possession of criminal tools in connection with his use of computer software on his bulletin board moved to dismiss the indictment, alleging preemption by federal copyright law. The Hamilton County Court of Common Pleas denied the motion. After defendant pleaded no contest and was convicted of unauthorized use, he appealed from the denial of the motion. The Court of Appeals reversed, and the state was allowed a discretionary appeal. The Supreme Court held that federal copyright law preempted the prosecution.

Defendant's acts of "switching and moving" computer software through his bulletin board without the permission from the copyright holders was nothing more than "reproduction" and "distribution" by means of uploading and downloading; thus, federal copyright law preempted a state prosecution for unauthorized use of property based on the acts.⁸⁵ Federal copyright law preempted a state prosecution for unauthorized use of property based on defendant's unauthorized use of computer software to "let his bulletin board work," absent evidence that defendant without authorization used a disk, CD-ROM, or other tangible, physical manifestation of the software to set up his bulletin board.⁸⁶

Michael Perry charged under R.C. 2913.04 on two counts of unauthorized use, two counts of theft, and one count of possession of criminal tools in connection with his operation of a computer bulletin board. Perry filed a motion to dismiss the charges, claiming that federal copyright laws preempt prosecution of a violation of the unauthorized use statute. The trial court denied the motion. Thus, Perry pled no contest to

⁸³ 18 U.S.C.A. § 2701(a), (c)(2).

⁸⁴ The State of Ohio v. Michael Perry, 83 Ohio St.3d 41, 697 N.E.2d 624 (1998)

⁸⁵ 17 U.S.C.A. §§ 106, 301(a); R.C. § 2913.04.

⁸⁶ *Id.*

the indictment and was found guilty on both counts of unauthorized use and not guilty on the remaining charges.

The question was appeared, then, is what property is being used? The record in this case does not validate a finding that Perry used someone else's hard copy of the software, so the property at issue could not be tangible property in the form of a disk or CD-ROM. If the state were relying on tangible property to fulfill this element, its claim would fail as a matter of law based on insufficiency of the evidence. Therefore, the property at issue must be the actual program that is contained on the disk or CD-ROM or whatever other tangible form of the software was discovered in Perry's home.⁸⁷

Supposing that the property is the intangible program contained in the software, we have the next analogy, who owns the program? The answer is problematic. No one owns the program exclusively. Clark most likely owns a copyright on the program (though this was not established on the record), but no one owns the actual information. Copyright is a property right in an “ ‘original work of authorship’ ” that is fixed in a “ ‘tangible form.’ ”. A copyright holder does not have exclusive dominion over the thing owned. The property interest in copyrighted materials is purposefully limited in nature, conferred not to provide reward or profit to the owners of the copyright. While, to promote the Progress of Science and Useful Arts,⁸⁸ the United States Supreme Court has disapproved the imposition of criminal sanctions for claims of “unauthorized use” in the context of copyright infringement.

The Government's theory would make theft, conversion, or fraud equivalent to wrongful appropriation of statutorily protected rights in copyright. The copyright owner, however, holds no ordinary chattel. A copyright, like other intellectual property, comprises a series of carefully defined and carefully delimited interests to whom the law affords correspondingly exact protections.⁸⁹

The only “property” at issue in Perry's case that has an owner and therefore could fulfill the elements of unauthorized use is the property right conferred by copyright law. Fatal to the state's argument, the federal copyright laws expressly preempt any state law actions, which govern “legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright.”⁹⁰ Therefore, in the absence of any facts on the record that would indicate that Perry, without authorization, used a disk, CD-ROM, or other tangible, physical manifestation of the Clark software belonging to someone else in order to set up his bulletin board, there can be no “unauthorized use” in this case that is not preempted.

We acknowledge that there were factual situations where prosecution of “unauthorized use” under the state statute would not be preempted, but this case does not present those facts. It was important to recognize that preemption of Perry's criminal

⁸⁷ The State of Ohio v. Michael Perry, *supra* note 84, at 49-50.

⁸⁸ *Id.*

⁸⁹ *Id.*, see also Dowling, 473 U.S. at 216, 105 S.Ct. at 3133, 87 L.Ed.2d at 160.

⁹⁰ *Id.*, see also Section 301(a), Title 17, U.S. Code.

prosecution under the state statute does not leave without a remedy. They may pursue their rights under civil copyright law. Nor does preemption necessarily relieve Perry of criminal culpability. The federal copyright law includes a criminal cause of action, and charges could have been brought under that federal law.⁹¹ For the previous reasons and consideration, Supreme Court held that federal copyright laws in this case preempt prosecution of the state charge of “unauthorized use”. The judgment of the court of appeals is affirmed.

III. Enforcement of Illegal File Sharing and Prevention Policy

The sophisticatedly mobile technology and Internet connectivity around the world are producing substantial advantages; extending new business model on economic purposes and necessity of information access. Though, the advancement of these technologies have also created an efficient machines for distributing unlicensed content on-line and harm the copyright holders as a legitimate person whose deliver licensed content. While, optical disc piracy is still continuing in some countries including China, India, Paraguay, Indonesia and Vietnam. Piracy market over the Internet has become the priority enforcement issue in many trading markets. In some countries and regions, the unauthorized broadcasting and streaming of live sports, movies and live music programming by the Internet increase significantly. Websites and pirate servers, which allow users to play illegal types of cloud-based entertainment software and huge number of online distribution by mobile devices including game copiers and mod chips present intense enforcement for right holders and stake holders.⁹²

The United States endures to work with other governments to establish strategies to address global IPR issues. The United States persuades trading partners to adopt measures against these challenges by implementing the WIPO Internet Treaties, which include certain exclusive rights, legal protection and effective legal solutions against the circumvention of technological measures. Increasing number of trading partners are applying the provisions of the WIPO Internet Treaties to create a conducive legal environment, investment and growth in legitimate Internet-related businesses, services, and technologies.⁹³

Due to the occurrence of digital copyright violation, which seriously damages economic business prosperity and harms copyright holders’ interest, the concept of intellectual property enforcement has progressed from economic and civil issue to criminal paradigm. In the last period, some countries have implemented their digital

⁹¹ *Id.*, see also Section 506, Title 17, U.S.Code; Section 2319, Title 18, U.S.Code; No Electronic Theft (NET) Act, Section 2311 note, Title 18, U.S.Code, as amended by P.L. 105–147 (H.R. 2265) (Dec. 16, 1997), 111 Stat 2678.

⁹² United States Trade Representative (USTR), 2015 Special 301 Report, at 17-18.

⁹³ *Id.* at 18.

copyright legislation to complement the civil remedies by deliver strict penalties. Nonetheless, statistical data presents digital copyright infringement is still increase.⁹⁴ Hence, it starts to consider on progressive approach to copyright enforcement.

Over one hundred years copyright law in the United States did not cover criminal provisions till Congress added criminal authorization in 1897,⁹⁵ even it initially performed to limited issues of copyright infringement. The Provisions ruled criminal sanction for unlawful public performances and representation of dramatic or musical compositions.⁹⁶ Congress approved the Piracy and Counterfeiting Amendments Act in 1982, which rearranged criminal sanctions under title 17 and 18.⁹⁷ Next, in 1992 by introducing additional criminal sanction on Copyright Felony Act, the bill provided the software piracy, sound recordings and movies.⁹⁸ In 1997, a federal law passed No Electronic Theft Act (NET Act) provided for criminal sanctions for person who engages in copyright infringement under certain conditions. However, the amendment stated that there was no subject of criminal liability for non-commercial or non-profit copyright infringement no matter how big a loss the copyright holder hurt.⁹⁹ The controversial issue held between The WIPO Copyright and Performance and Phonograms Treaties Implementation Act of 1998¹⁰⁰ and DMCA¹⁰¹ concerning prohibited the circumvention of copyright protection system were not only civil measure but also criminal sanctions.¹⁰² Criminal penalties for the illegal recording of motion pictures in theaters also provided by The Artists' Rights and Theft Prevention Act of 2005.¹⁰³ In 2008, the Enforcement of Intellectual Property Rights Act reinforced criminal sanctions for repeat copyright infringer with eighteen months in prison for selling pirated software worth more than \$250,000.¹⁰⁴

Basically, the concept of digital copyright protection is already sufficient by implementing international copyright regulations, which is then ratified by every member. However, harmonization undertaken by some countries was inconsistent with their practice. Indonesia for instance, the number of digital copyright infringement and conventional market piracy are increasing every year. Local government and copyright

⁹⁴ Santanee Ditsayabut, *International Harmonization of National Laws and Policies for Effective Prevention and Suppression of Intellectual Property Violation*, IIP Bulletin 2010, at 1.

⁹⁵ Lydia Pallas Loren, *Digitization, Commodification, and Criminalization: The Evolution of Criminal Copyright Infringement and the Importance of the Willfulness Requirement*, 77 Wash. U. L. Q. 835, 840 (1999).

⁹⁶ *Id.*

⁹⁷ Pub. L. No. 97-180, 96 Stat. 91 (1982).

⁹⁸ Pub. L. No. 102-561, § 1, 106 Stat. 4233, 4233 (1992) (amending 18 U.S.C. § 2319(b) (2006 & Supp. II 2008)).

⁹⁹ *See* United States v. LaMacchia, 871 F. Supp. 535, 545 (D. Mass. 1994).

¹⁰⁰ Pub. L. No. 105-304, tit. I, 112 Stat. 2860, 2861–77.

¹⁰¹ Pub. L. No. 105-304, 112 Stat. 2860 (1998).

¹⁰² *See id.* § 103, 112 Stat. at 2876., *see also*, Jacqueline Lipton, *The Law of Unintended Consequences: The Digital Millennium Copyright Act and Interoperability*, 62 WASH. & LEE L. REV. 487 (2005).

¹⁰³ Pub. L. No. 109-9, tit. I, 119 Stat. 218, 218–23.

¹⁰⁴ *See id.* tit. II, 122 Stat. at 4260–64.

association are less able to participate active to decrease the copyright infringement. Conversely, in Japan and United States, cooperating between the stakeholders and non-governmental organization can reduce the number of copyright infringements. RIAA movements and “Doe Lawsuits” against the file-sharer in the United States were active role from the copyright non-governmental organization concerning on copyright enforcement. As a comparison, Japanese ISPs and the interest groups are also playing a part in reducing illegal file sharing on the Internet. Another strategies to change the users’ behavior on illegal file sharing, RIAJ and MPAA and other organizations have intensified their efforts to socialize that illegal file sharing is wrong. They also cooperate with the police department to reduce the number of copyright infringement on digital technology.

Moreover, fighting the threat of digital copyright crime entails the intensive actions from all the countries. Appropriated regulation has to be in place and in line with international practice. Yet, the situations between countries are not always similar, economic, and politic and harmonization itself sometimes bring the obstacles to implement the regulation. International community and other countries cannot intervene too hard to follow the provision, because every country has sovereignty to manage their home. The objective way is always promote and attract users globally to stop the piracy.

IV. Concluding Remarks

There are possibly no measures to completely control file-sharing movement through networks. So far, no country has successfully managed to totally terminate illegal file sharing network. Law and technology had big effect to support file-sharing performance. Establishing huge devices and PC with high connection speeds had made file sharer distribute easily the content through the net. Many people access the Internet mostly by their devices or smartphones and those are able to save and distribute the content with huge storage space.

Somehow, attempting to shutdown the Internet piracy, both countries; Japan, United States and Indonesia will commit to create health Internet environment. Japanese Copyright Law enforcement has been increasing struggle in recent years, amendment the copyright law to make downloading for private use illegal was a big step for digital copyright enforcement. Even United States and Indonesia are not ready yet to take that path. Copyright Association and Japanese Cyber Police in NPA have broadened method to catch their targets, tracking illegal file sharer from various demographic and resulting in arrest nationwide. In the United States, the large number of lawsuit from RIAA and other movie and recording association to illegal random users were took place as a concrete action form the government to educate people and stop the illegal download. Unluckily, the number of illegal file sharer quickly rocketed in some years. The Copyright law amendment and broadened the international regulation for digital copyright are always promoted and informed to all the nations by their reports in every year. The legal challenges against the law firms who represent the (recording and movies

companies), and mass lawsuit (illegal file sharer) are keep occur as a dilemmatic business and copyright enforcement. On the other hand, Indonesia had more serious problem both digital piracy and physical piracy. Enforcing the illegal digital file sharing and physical piracy, Indonesia already harmonized the international copyright regulation into national provision. The amendment of Copyright Law on 2014 took place as a phase to adjust the current situation, though it was slightly late. However, the important changes of regulation are not followed by the practices and market condition. The massive number of illegal web and link, which provide free and illegal content, still exist in the Internet, deteriorated by physical piracy market in some areas.

The improvement of the intellectual property enforcement obliges various approaches. Though, this paper attaches deeper on criminal enforcement, it establish that whole method should be developed to undertake the problem effectively. Civil enforcement to grant suitable remedies to the rights holders and administrative enforcement, specifically border control on copyrighted goods in violation should not be neglected. Policy makers should be careful to adopt the copyright-technology provision that may be soon being outdated. The most principal point of copyright enforcement is afford the same protection for online content and off-line. Legislation reform have to conserve the current harmonize among stakeholders', industries' and users' interest. Through the effective actions and strong political wills from all the countries to compete with intellectual property violation, the goal of copyright enforcement will not be impossible to achieve. It is also valuable that copyright legislation alone will not answer all the Internet's challenges. A concrete harmonization both, efficient enforcement system, technology, procedurally and institutionally, is required. Finally, it is not as a merely as a copyright legal issue, but also as a social environment too.