

Development and Protection of Entertainment Content on the Internet — A Year in Review

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INTRODUCTION

With the emergence of e-commerce, owners of entertainment products, whose commercial interests are staunchly protected by copyright in the world of bricks and mortar, have suffered increasingly bold exploitation of their properties by start up companies in the online marketplace.

When the Internet primarily disseminated information for non-commercial purposes, it was largely esoteric to argue whether downloading a recording constituted making a copy or whether such activity was permissible as a fair use. Debates between perceived dinosaurs, espousing copyright principles around since the Statute of Anne, and cybercowboys, who felt any restriction on the Internet violated Freedom of Speech and other constitutional sacred cows, were intellectually interesting but, until recently, had no significant impact on the marketplace. Books, sound recordings and movies were still more conveniently available through traditional retail chains, in formats superior to those available over the Net.

However, Internet technologies have now evolved to a stage where entertainment content can be instantly delivered, in high quality formats, throughout the globe. The potential for both unprecedented piracy and profit is now a reality. Being able to adapt and enforce copyright and other intellectual property laws in the online environment has become crucial for entertainment companies, both small and large (and getting larger by the day), who want to survive and thrive in the New E-economy.

The financial feasibility of providing online entertainment, and increasingly brazen piracy has resulted this year in The Recording Industry Association of America's (RIAA's) lawsuits against MP3.com, and Napster and entertainment producers and broadcasters lawsuits against icrave.tv.com.

This paper focuses on the complex copyright issues raised in these disputes and comments on how their outcome is likely to spur the distribution of legitimate online entertainment content in future.

WHAT IS CLEAR

Before proceeding with a discussion of these cases, however, I'll recap the copyright basics which clearly apply to protect entertainment content online. Copyright provides an owner of rights in a work, such as a film, CD recording or television show, with the exclusive rights to: reproduce the work, in whole or substantial part; make a derivative work by reproducing a substantial part of that work with new material; telecommunicate the work to the public; perform the work in public and authorize another to do any of these things.¹

In Canada and many other countries, sound producers are granted rights concerning the duplication and broadcast of their sound recordings, performers have limited rights to control the recording and broadcast of their performances and broadcasters have

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Copyright Act, R.S.C. 1985 c. C-42 as amended s. 3(1)

limited rights to control the use of their broadcast signals. This bundle of rights is referred to as neighbouring rights.²

Finally, authors are given moral rights in their works, enabling them to insist on a credit of authorship, or to have their name disassociated from the work and to prevent the modification, or distortion of their work in a manner that would prejudice their honour and reputation as an author.³

Enforcing many of these rights in respect of online distributions of copyrighted content has been relatively easy. Courts and academics are in general agreement that uploading and/or downloading such content results in copies being made,⁴ and that online activities constitute a telecommunication of the content to the public.⁵

Furthermore, creating a website, which itself is a compilation⁶ worthy of separate copyright of its own, typically requires compiling and copying many diverse copyrighted works, and requires clearances and/or licences from many different owners, such as, writers, composers, actors, musicians, producers and, possibly broadcasters, because of these multiple layers of copyright. Some of these clearances can be done through collectives.⁷

WHAT IS NOT SO CLEAR

More complex copyright issues have emerged, however, in the above-mentioned spate of cases where questions of infringement and liability remain rather grey. For example, is file sharing through commercial web entities, such as Napster and MP3.com, permissible as a fair use? Does Canadian copyright law permit online TV broadcasts by internet operators as part of its compulsory licensing scheme for retransmission rights? If so, how does Canada's domestic law effect what is essentially an international service, with webcasts available in jurisdictions where Canadian copyright law has no effect?

These disputes, discussed below, provide excellent opportunities for the courts to begin ruling on these significant issues.

MP3.COM

² Ibid, s. 15, s. 18, s. 21

³ Ibid, s. 14.1(1), s. 28.2(1)

⁴ Copyright and the Information Highway, Copyright Final Report of the Subcommittee on Copyright to the Information Highway Advisory Committee, March 1995, p. 6-7.

⁵ Reform Party of Canada v. Western Union Insurance Co. (B.C.S.C.), 3 C.P.R. (4th), 289.

⁶ supra, at note 1, see s. 2, i.e. copyright arises from an original selection or arrangement of works or data.

⁷ For example, the Society of Composers Authors and Music Publishers of Canada (SOCAN) licences public performance and telecommunication rights in a broad repertoire of musical rights, The Canadian Musical Reproduction Rights Agency Ltd. (CMRRA) licences synchronization rights in sound recordings and The Electronic Rights Licensing Agency (TERLA) licences electronic rights in publications and visual works, such as photographs and illustrations.

RIAA, which represents most major U.S. record producers, recently scored a victory in its efforts to stop the popular website MP3.com. This site permits users to download their favourite sound recordings. To provide this service, MP3.com created a large database of hundreds of thousands of recordings, compressed into MP3 format. RIAA sued MP3.com for copyright infringement.

The company argued that its activity was legal because the business was simply a storage and retrieval service for its users' own music files. Before downloading, a user had to either provide indicia that it owned the recording requested (the so-called Beam-It service) or that he/she would order the recording for delivery (the so-called Instant Listening service). Providing a storage service for a music listener's personal library of recordings, MP3.com submitted, fit within fair use under the U.S. Copyright Act.⁸

The court rejected this defence⁹ stating that the storage/retrieval analysis was strained at best and a sham at worst, given that it was not legitimately purchased recordings, owned by MP3.com's users, that were stored in digital copies but rather the stored recordings were obtained from the unauthorized copies on MP3.com's database.

In awarding RIAA statutory damages of \$25,000 per CD copied, the court found MP3.com liable for wilful infringement in that it knew from the early stages of the business development that there were serious questions of legality. Due to the secrecy with which the service was launched, the only advice the company received was from its own law firm, which advice MP3.com declined to enter into evidence. The court held, therefore, that MP3.com, with knowledge of the risk, but recklessly indifferent to the consequences, proceeded quickly and secretly to launch its business, amounting to wilful infringement. The ruling is under appeal.

Given that the equivalent defence, under Canadian law, of fair dealing¹⁰, is even more limited in its application¹¹, there appears little doubt that MP3.com's defence would similarly fail if the case had been tried in Canada. Given that the copying of the music was done by MP3.com and not the user, for the purposes of a commercial undertaking, there seems little scope to argue the activity is legitimate because it was for a user's personal study, research or review as contemplated by the fair dealing provisions.

⁸ Title 17 - The Copyright Act of 1976, as amended, s. 107. This section permits reasonable use of works for appropriate, although not exhaustively defined, purposes, such as criticism, comment, teaching or research and sets out certain relevant factors for the Court to consider, such as the nature of the use, (ie. is it non-commercial), the amount of the work taken and the damage to the market for the original work.

⁹ RIAA v. MP3.com, unreported, Southern District Court of New York, September 6, 2000, Judge Jed S. Rakkoff., p. 3 <http://www.law.com>

¹⁰ *supra* at n. 1, s. 29.1, s. 29.2

¹¹ Cases, such as Sillitoe v. McGraw - Hill Book Co. [1983] F.S.R. 545, (Ch.D.), and De Garis v. Neville Jeffress Pidler Pty Ltd. (1990), 37 F.C.R. 99 (F.C. Aust.), have established that for the fair dealing defence to apply the use must fall within one of the enumerated purposes, (ie. private study, research, criticism, review or news reporting,) and it does not matter if the use of the end consumer is personal or non-commercial, if the use doesn't fit within one of these narrowly defined purposes. Furthermore, private study, research and news reporting do not apply to commercial enterprises providing others with content for private uses, even if the content is educational.

Whether MP3.com will survive, once damages are calculated and appeals exhausted, remains to be seen. The company had been entering into legitimate licensing arrangements with other record companies lately, but the question remains whether this award will so cripple the company financially that it will not be able to continue distributing legitimate content.

NAPSTER

A more contentious and passionately argued issue lies at the heart of the dispute over the wildly popular Napster software program, whose owner has also been sued by RIAA members for contributory infringement¹². A user downloads free software from the Napster site enabling him/her to connect with other users' computers for the purpose of sharing and copying each other's music files. Napster, unlike MP3.com, does not itself copy any recordings - it merely provides software which connects the user to other users and then that user decides if he/she wishes to copy a music file. The site includes a policy that warns the user that copying copyrighted materials is illegal and that liability for infringement lies with the user.

Napster has argued that its activities, including posting this policy, bring it within safe harbour exemptions recently added to the U.S. Copyright Act by the Digital Millennium Copyright Act¹³. These sections give limited liability for internet service providers (ISPs), who act as mere conduits of data between users.

This defence, however, was flatly rejected by the U.S. District Court of the Northern District of California. Justice Patel ruled that, although it operates a server, Napster does not act as an ISP to connect people. The software permits the users to connect to each other. Therefore, the safe harbour provisions do not apply.¹⁴

In granting an interim injunction against further distribution of the plaintiffs' musical recordings, Judge Patel found that the Napster technology's primary function was to facilitate the unlawful copying of sound recordings and any lawful uses it provided, such as chat rooms, were minor. In essence, she held, the development of the software and the business were for the purpose of infringement.

This, she felt, distinguished Napster from Sony in the Sony Corp v. Universal City Studios Inc. case¹⁵ where the court found that the mere supply of a technology,

¹² supra at n. 8, ss. 106, and s. 501(a) provide that a copyright owner has the right to authorize any exercise of its copyright and that it is an infringement to exercise any of the owner's rights, including the right to authorize, without the owner's consent. These sections form the basis of a contributory infringement claim.

¹³ The Digital Millennium Copyright Act of 1998, s. 512

¹⁴ A & M Records, Inc. et al. v. Napster, unreported, Case No. C99 - 5183 - MHP, note that s. 512 (k)(1)(A) of the DMCA defines a "service provider" as "an entity offering the transmission, routing or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing; without modification to the content of the material as sent or received." Justice Patel held Napster not to fall within this definition.

¹⁵ 464 U.S. 417,455 (1984)

capable of being used for infringing purposes, was not sufficient to prove contributory infringement where the technology was also capable of non-infringing uses. In that case, Sony's VCRs were used by the consumer for time shifting television programming, an activity the court found lawful within the ambit of fair use.

Arguably, Judge Patel is right that a technology that permits the time shifting of television programs, which are unlikely to be retained once viewed, is qualitatively different from a service that enables users to hook up to virtually millions of other computers (currently, there are approximately twenty million Napster users) and swap unlimited commercial music files, which are likely to be retained as substitutes for purchasing the CD. Therefore, in addition to failing in its attempts to qualify for the safe harbour provisions as an ISP, Napster could also not avail itself of the fair use provisions under the U.S. Act.

Although Canada does not yet have similar safe harbour provisions in its Copyright Act, Anglo-Canadian jurisprudence on what constitutes authorising infringement (the Canadian equivalent of contributory infringement) takes the same general approach as adopted by the Supreme Court in the Sony case and codified in the U.S. safe harbour provisions, namely, was the alleged authorizer actively involved in the infringing activity itself or did it merely act as a passive conduit in a technological process that enabled the user to infringe. Did the authorizer exercise control over the user's use of the technology?

Under Canadian law, a person will be liable for authorising another to infringe a copyright where such person's actions either amount to sanctioning¹⁶ the infringing use of a technology or display a wilful blindness about the infringing activity, coupled with some benefit to the authorising party arising from the infringement itself, and not just from supplying a technology capable of being used to infringe.¹⁷

For example, where a business sold double decker tape decks and blank tapes but made no profit from distributing bootleg recordings made by such tape decks, no infringement was found.¹⁸ It was significant in avoiding liability that the tape deck could also be used for substantial non-infringing purposes and that the vendor had no control over how the user used the tape decks after the sale. In Napster's case, the court found no substantial non-infringing uses for the service.

Control is also the key factor cited by the Copyright Board in its preliminary ruling¹⁹ on Tariff 22, filed by the collective Society of Composers and Music Publishers of Canada

16 authorize is to be given its plain ordinary meaning of "to sanction, approve or countenance" see MUZAK Corp. v. Composers, Authors & Publishers Assn (Canada) [1953], 2 S.C.R., 182; Tervagne v. Ville de Beloeil (1993) 50 C.P.R. (3d) 419 (F.C.T.D.)

17 see Vigneux v. Canadian Performing Rights Society Ltd. [1945] A.C. 108

18 see C.B.S. Songs Ltd. v. Amstrad p/c [1988] A.C. 1013 (H.L.)

19 Re Statement of Royalties to be Collected for the Performance or the Communication by Telecommunication of Musical or Dramatico-Musical Works (Tariff 22 - Transmissions of Musical Works to Subscribers via a Telecommunications Service Not Covered Under Tariff Nos. 16 or 17) (Phase 1 - Legal Issues) (Copyright Board - October 27, 1999), 1 C.P.R. (4th), p. 417

(SOCAN), in respect of the transmission of its members' musical works over the Internet. The tariff was filed in such a broad manner that both ISPs and content providers could have been liable to pay it.

In a preliminary round of Hearings to determine who should pay, the Board reviewed the issue of ISP liability and found that, in most cases, ISPs would not be liable for transmissions of musical works, as long as the ISP acted as a mere conduit of the data.

The Board further ruled that, in most instances, ISPs could claim the protection of an exemption in the Copyright Act,²⁰ introduced in 1989 to exempt intermediaries in the transmission chain from paying retransmission royalties to content owners for cable television services.

The Board found that providing the means of telecommunication, as referred to in the exemption, was broad enough to include much of an ISP's regular activities, such as, providing hardware and routers, **software connection equipment, connectivity services, hosting and other facilities and services without which such communications would not occur, just as much as the switching equipment software and other facilities that are used as part of the infrastructure of a common carrier for the transmission of voice, data or other information.** ²¹

However, this exemption is not a limitless defence as the Board also stated that ISPs could become liable for authorising infringement if their activities exceeded that of a passive conduit:

The liability of an entity participating in any Internet transmission must be assessed as a function of the role the entity plays in that transmission, and not as a function of what it generally does over the Internet...In some cases, as a result of business relationships or other factors, intermediaries will act in concert with others in a different manner. Such is the case where an ISP posts content, creates embedded links or moderates a news group. In these cases, these entities are no longer acting as intermediaries; their liability will be assessed according to the general rules of copyright liability. ²²

Under Canadian law, Napster might have been able to argue that it fit within this exemption, which, unlike the U.S. safe harbour provisions, is not limited to ISPs specifically, but appears to apply any third party intermediary in a transmission chain, provided it can show that its participation in the transmission of copyrighted works was sufficiently passive.

20 supra at n. 1, s. 2.4 (1) (b)

21 supra at n. 19, p. 452

22 supra at n. 19, p. 453

On the other hand, it is arguable that Napster has not displayed sufficiently passive conduct to fit within the exemption as it operates a commercial website to distribute the software, with chat rooms and other features meant to lure music users to the site for the express purpose of exchanging music files. This might be seen as active participation in the infringement itself, with a financial benefit to Napster therefrom (ie advertising revenue). In that case, the statutory exemption would not shelter Napster's activity, and the general principles concerning authorising infringement would prevail.

ICRAVETV.COM

Retransmission rights under the Canadian Copyright Act were also key in the furor created last year by icravetv.com, which offered website transmissions of 17 on-air television signals. The signals were displayed in a corner of the user's computer in real time. The company obtained no authorization from either the broadcasters of the signals (which included US giants, such as Fox and ABC) or the programming producers, such as Time Warner and Disney.

icravetv.com defended by arguing that its service was for viewing by Canadians only and online webcasts were permitted retransmissions under section 31 of the *Copyright Act*. This section provides a regulatory scheme for the retransmission of both distant and local signals²³ by retransmitters. The scheme was adopted in the late 1980s to meet Canada's obligation under The Free Trade Agreement to provide reciprocal compensation to U.S. copyright owners for the retransmission of off-air television signals by cable operators.

Under section 31, it is not an infringement to retransmit both types of signals provided the transmissions comply with the following criteria: (a) the communication is a retransmission of local or distant signals, (b) the retransmission is lawful under the *Broadcast Act*, (c) the signal is retransmitted simultaneously and in its entirety... and (d) in the case of the retransmission of a distant signal, the retransmitter has paid any royalties...fixed under the Act.

icravetv.com claimed that it was a retransmitter, (which, given the statutory definition²⁴, could be broad enough to include a website operator) and that the streaming technology used by the site constituted a retransmission of either or both local and distant signals. For local signals, no compensation need be paid and for distant signals, icravetv need only file a tariff for approval by the Copyright Board, since the retransmission of such signals was subject to a compulsory licensing scheme, set out in sections 71.(1)-76.2 of the *Copyright Act*

23 What constitutes a "distant and local" signal is set out in Local Signal and Distant Signal Regulations. A local signal is "in respect of the entire service area of a cable retransmission system, the signal of a terrestrial radio or television station the area of transmission of which covers all of that area". A distant signal is defined as not being a "local signal", (ie. any signal of a terrestrial radio or television station that transmits outside that service area).

24 supra at n. 1, s. 31(1) defines a retransmitter in the negative only, as not including "a person who uses Hertzian waves to retransmit a signal but does not perform a function comparable to that of a cable retransmission system".

In the end, though, this very interesting issue was not litigated. Regardless of what the outcome of the Canadian law might have been, U.S. law prohibited such unauthorized webcasts.²⁵ Therefore, U.S. media giants, including 10 motion picture studios and three network broadcasters, filed a suit for unfair competition and trade mark and copyright infringement against icravetv in Pennsylvania State District Court. The plaintiffs motion for a temporary restraining order to prohibit any further internet transmissions of the plaintiffs programming into the U.S. was granted.

Faced with the technological impossibility of effectively blocking access to U.S. users and the launch a few days later of a second copyright and trade mark infringement suit in Canada by Canadian broadcasters and producers, icravetv voluntarily withdrew its service in order to settle the U.S. case.

However, icravetv s President, William Craig, has vowed to start the service again once he has perfected use of software that blocks access to the U.S. Therefore, the legality of this service under Canadian law may yet be heard.

Although, at first blush, icravetv appears to fit within the definition of a retransmitter and streaming of the programming would likely be considered a transmission of a signal ²⁶, the following arguments illustrate the case that could be made by Canadian broadcasters and/or producers as to why section 31 does not apply to webcasts. Section 31 stipulates that the signals must be retransmitted simultaneously and unaltered. If the Internet streaming process involves a momentary delay in the signal as the content is broken down and reassembled into data packets for Internet transmission, it could be argued that the signal is not sent simultaneously with the broadcast.

Furthermore, although the signals run in the corner of a computer screen with no obvious alterations (ie deletion of commercials etc.), it could be argued that by placing the signal into that broader context (ie. surrounding it with advertising and other graphic works) the signal has been altered from the way it appears in regular on-air broadcasts.

In addition, the transmission must be lawful under the *Broadcasting Act*. At the time the service was launched, the CRTC had tabled a draft exemption²⁷ which, once adopted, would exclude New Media ventures, such as icravetv, from regulation under the *Broadcasting Act*. Therefore, last winter at least, there was a reasonable argument that the service needed a CRTC licence as a distribution undertaking in order to lawfully operate under the *Broadcasting Act*.

²⁵ supra at n. 13, s 405 which extended the rights of sound recording copyright owners provided for in The Digital Performance Right in Sound Recordings Act of 1995 to include “webcasting” activities

²⁶ supra at n. 1, s. 31(1) defines a “signal” as a “signal that carries a literary, dramatic, musical or artistic work and is transmitted for free reception by the public by a terrestrial radio or terrestrial television station”.

²⁷ see CRTC Public Notice 1999 - 118

However, since then, this exemption has come into effect,²⁸ providing icravetv with a much stronger argument that it is lawful under the *Broadcasting Act*, which exempts its service from regulation.

Looking at it another way, though, one could argue that the legislative intent behind Section 31 was to provide a compulsory licensing scheme for a specific technology, (ie. cable) or ones similar, which clearly fall within the *Broadcasting Act*'s jurisdiction. If you had a licence as a cable operator, then you were lawful under the *Broadcasting Act*. If the *Broadcasting Act* simply does not apply to a certain type of technology service, then that service is neither lawful or unlawful under that Act. The Act is simply not relevant. Therefore, perhaps, the inclusion of the factor of being lawful under the *Broadcasting Act* is an indicator that the Section 31 regulatory scheme was contemplated by legislators to apply only to broadcasts that were territorial in nature and could be effectively regulated by Canadian broadcasting law.

This point leads to a general policy argument that section 31, so specifically drafted for cable retransmissions, with no knowledge at the time of Internet applications, still years away in development, should not be so broadly interpreted as to provide a compulsory licence for a medium which has a significantly different impact on the marketplace, being international in scope, and therefore not capable of territorial regulation.

Furthermore, if these webcasts are legal in Canada, what is the point of providing broadcasters rights in their signals²⁹ in order to comply with the Rome Convention. In other words, if these new rights were meant to enable Canadian broadcasters to regulate use of their signals by foreign broadcasters, are they not seriously undermined if the signals can be exploited without consent on the Net, which is accessible internationally.

However, even if Mr. Craig is correct that Internet webcasts are within the Canadian retransmission scheme, broadcasters/producers still have trade marks rights they can assert to try to prohibit the service. The signals, of course, display the owner's logos and trade names and are, arguably, being used without authorization in association with icravetv.com's business. It could be argued that such unauthorized use on competing entertainment services, constitutes trade mark infringement, passing off (ie. the public would mistakenly believe the icrave service was licensed or at least authorised by the broadcaster and/or producer) and depreciation of the goodwill in the marks under Section 22 of the *Trade Marks Act*³⁰ given the poor quality of the broadcast signal on icrave's website. To summarize then, even if icravetv can block U.S. access, its legal position in Canada is far from assured.

28 see CRTC Public Notice 1999 - 197.

29 Supra at n. 1, s. 21 gives broadcasters copyright in their communication signals, including the right to fix the signal, to reproduce a copy of that fixation made without consent and, to authorize another broadcaster to retransmit the signal to the public simultaneously with its broadcast..

30 Section 22 states that no person shall use a registered trade mark of another in a manner that is likely to have the effect of depreciating the value of the goodwill attaching thereto.

JURISDICTION

The other interesting issue touched on in the icravetv squirmish is that of jurisdiction. Certainly, the U.S. District Court of Pennsylvania had no trouble asserting personal jurisdiction on the basis that the icrave.com domain name was registered in Pennsylvania and Mr. Craig was a U.S. as well as a Canadian citizen. However, such advantageous facts will not exist in all cases where an online service originating in one jurisdiction has a detrimental effect in another or several other jurisdictions.

To date, the Canadian courts have been willing to take jurisdiction according to general principles of conflicts of laws.³¹ (ie. is there a real and substantial connection with the chosen jurisdiction, for example, one of the parties resides there or the breach of contract or tort was committed within that jurisdiction.)

The Copyright Board opined in its decision on Tariff 22 that jurisdiction for assessing tariff liability was to be determined by the place where the server transmitting the work was located. Therefore, if a foreign entity operated a website located on a Canadian server, it would be liable to pay the royalty even though the Board, who approves the tariff, and SOCAN, who collects it, have no jurisdiction over persons outside Canada.

In the United States, where there have been more cases, the emerging law supports a finding of jurisdiction where the website is interactive as opposed to passive and, in some way, purposefully avails itself of a foreign jurisdiction.³² Where the cases diverge somewhat is on the level of interactivity required to pull a foreign site's operator into the chosen jurisdiction. For example, in some cases there had to be online sales into the foreign forum or at least offers of mail order sales before the court would take jurisdiction.³³ In other cases, advertising a toll free number on the site and soliciting charitable donations generally was enough for the court to decide the site had availed itself of the foreign jurisdiction.³⁴

As further creative jurisprudence emerges on the issue of jurisdiction, the Internet will no doubt become a more certain place on which to distribute entertainment content.

CONCLUSION

In my opinion, the last year has seen the most significant advances to date in global efforts to set the ground rules for e-commerce. It is clear that new technologies and the entrepreneurial businesses launched by them cannot be stopped, nor should they be.

31 "Jurisdiction in Cyberspace", Dr. Sunny Handa, IT-CAN Conference, Toronto. April 27-29, 2000.

32 "The Evolving Test for Jurisdiction", Christopher Wolfe, Proskaver Rose LLP, 1999, http://profs.findlaw/netjuris/netjuris_1.html

33 Bensusan Restaurant Corp. v. King, 126 F. 3d 25 (2d Cir. 1997),
Hearst Corp. v. Goldberger, 89 F. 3d 1257 (6th Cir. 1996)

34 Inset Systems, Inc. v. Instructions Set, Inc., 937 F. Supp. 161 (D. Conn. 1996),
Heroes Inc. v. Heroes Foundation, 958 F. Supp. 1 (D.D.C. 1996).

There are clearly advantages to online distribution, including broader access of material to the public, potentially greater economic gain by young artists, who previously could not get work seen without the patronage of a producer, and exciting new products. However, despite the rather arrogant claims by the young that copyright is dead, the fact is, without such protection, without these lawsuits, the wheels would eventually fall off the bus.

If owners cannot protect their respective contributions by asserting their copyright, the public would eventually lose since failure to compensate all parties in the creative process is bound to lead to less quality products being made available. On the other hand, the new e-preneurs are equally passionate in asserting that their services must be protected, and not squashed by rigid industries bent on retaining the status quo which clearly provides them with the lion's share of the profits.

Hopefully, the Net effect of these disputes will be to bring the parties together to develop fair licensing arrangements. Producer/broadcasters will no doubt abandon their feudal lords approach and realize that these services will not go away, that the public has accepted them and therefore the only way to succeed is to also jump into the Internet marketplace. For example, look at the recent agreements between MP3.com and record producers, the adoption of online music services by Universal Music and Time Warner and CTV's public announcement that it will soon transmit its own signal over its website.

However, without lawsuits like these, the incentive to refrain from unbridled theft of material, would not exist. Just because these entrepreneurs are often young, small companies, does not mean they are always the David of the story out to slay the amoral Goliath. The fairness and legality of their activities needs to be closely scrutinised and, where necessary, reined in.

So at the end of the day, I think copyright is continuing to do what it has done well for centuries: redress imbalances that exist between creators and users for the economic protection of the former and greater access for the latter. Not so stone age as concept as many may think.