Policy Frameworks for Curbing Illegal File Sharing

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Informal principles for success
1. Create a clear and unambiguous acceptable use policy
2. Ensure all users are made aware of the policy
3. Strictly and consistently enforce the policy
4. Implement a graduated response supported by available technology
5. Policy enforcement must result in tangible consequences

Unofficial comments from David Hughes, RIAA SVP-Technology (with permission)

The higher education and entertainment communities
- Our mission as higher education is fundamentally different from that of the entertainment industry
  - Yet we share a common ground: IP
  - This is a student life issue, not an IT one
  - Part of our educational mission to prepare students for life beyond our walls as ethical and informed citizens
  - We want to durably shift student behavior, and not just for the ~20% who live in our residential halls
  - Consider violations in light of the Student Conduct Code, not of the network Acceptable Use Policy

Scope
- Focusing on students rather than faculty and staff, as that’s where the vast majority of the issue is, such as it is
  - 15% × 20% = 3%
Higher education

What do we do?

It’s all about education
- Awareness
  - Presentations, flyers, ads, articles, parents’ orientation, etc.
  - BAYU (Michigan), Think Twice (UCLA), metered network use (Cornell), etc.
- Academic
  - ID and IP as part of the curriculum
  - Research
- Judicial
  - Due process
  - Escalated response (e.g., “two strikes” or “three strikes”)
  - Teachable moments
  - Policies and sanctions (e.g., reconnection fees – Stanford)

UCLA teachable moments
- Judicial sanctions are set in the context of all judicial matters.
  - Academic implications versus legal ones
- Students receiving a first allegation must attend a group discussion session led by the Dean of Students.
- Students receiving a subsequent allegation must meet with the Dean of Students for sanctioning and attend ethical decision-making workshop; write a five-page essay on misunderstandings and what would make things better; have a mandatory technical review of their computer.
Supportive technology

- Standard network technologies: bandwidth management, security and network instrumentation
- Technologies deployed on an institution’s network to curb illegal file sharing (e.g., Audible Magic, Red Lambda)
- Automation: ACNS, etc. (http://mpto.unistudios.com/xml/)
  - Process framework
  - XML schema for standardized DMCA claims of infringement
  - Joint Committee Technology Task Force working group on specifying “ACNS 2.0”

Copyright and ISP liability

- Contributory infringement: “[O]ne who, with knowledge of the infringing activity, induces, causes or materially contributes to the infringing conduct of another, may be held liable as a ‘contributory infringer.’”

The law says...

- Digital Millennium Copyright Act offers optional safe harbors relevant to us:
  - §512(a): Transitory Digital Network Communications (Conduit)
  - §512(c): Information Residing on Systems or Networks At Direction of Users (Hosted Content)
- Typically, we all do something ... voluntarily?
- Entertainment industry working with commercial ISPs to implement graduated/escalated response.

Infringement detection methodology/What is infringement

- Legal implications
  - e.g., Atlantic v. Howell
    http://www.eff.org/deeplinks/2008/04/big-victory-atlantic-v-howell-court-rejects-making
  - Judicial implications
Beyond DMCA takedown notices
- RIAA early settlement offers (pre-litigation letters)
  - Do you pass them along to students as requested?
  - Privacy
    - Student legal services
  - RIAA preservation notices
  - RIAA subpoenas
    - Intersection with FERPA
- Records management

Legal options for digital entertainment services
- Ruckus, iTunes, etc.
  - But misalignments
    - But lots of experimentation
      - Every episode of South Park ever online for free!
      - Every episode of Lost online in HD for free!
      - hulu.com
      - and so on...

Research and partnerships
- ISU Digital Citizen Project
- UCLA Anderson School field study project
- Campus Computing Project
  - internetentertainmentworkshop.com
- Partnering where we do best: education and research

Advocacy
- Legislative activity
- Realities
Related factors

- Outsource resnet
- Market forces
  - Get the business model right – what is the consumer environment and business model that meets expectations?

Infringement metrics

- By default, the current metric is number of DMCA infringement notices received ("Top 25" lists)
  - Flaws galore
  - Recidivism
  - Feedback loop
- Joint Committee Technology Task Force working group

Student life metrics

- Are we really changing behavior? What is the obligation/appropriate role of the institution?
  - Alcoholism
  - Plagiarism
- What are the psychological levers?
  - Institutional environment
  - Peer exposure
  - Dean of students (academic record)
- What are we hearing from students?
  - Many (not all) confused
Concerns of the academy

Privacy
- Safeguarding privacy is important to preventing a chill on academic freedom... the right to inquire, the right to learn, the right to teach.
- It’s not content monitoring that’s of concern per se, but when the routine, automated inspection of traffic crosses the threshold into surveillance, or the monitoring of behavior.

Privacy (2)
- Desirable services or assistance (grocery store card)
  -Redirection
  -Help with legal content
  -Easy enough to do the right thing
- Mandatory “grocery store potato chip” assistance crosses a threshold
- The fear of collateral effects

Respect for intellectual property
- IP ≠ tactics used to protect IP
- IP ≠ ©
- © ≠ DMCA ≠ infringement
What message are we sending?

- “downloading” ≠ bad
- P2P ≠ bad

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