



# Cinema in a Digital World – Some Legal Issues

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Charlotte McMillan  
Partner, SJ Berwin LLP

siberwin

# Overview

- challenges presented by the digital world
- digital piracy
- copyright infringement actions (Viacom vs YouTube and European developments)
- practical measures
- new business models – cinema and live events

# Challenges presented by the Digital World

- digitisation affecting traditional business models
- ease of copying and redistribution with no discernable loss of quality
- more opportunities for pirates

# Digital Piracy

- piracy = copyright infringement
- digital world increases opportunities...
  - on-line distribution channels (vs “car boot” pirates)
  - peer to peer networks
  - UGC websites
  - concealed identities (via ISPs)
  - beyond the jurisdiction
- and makes enforcement more difficult
- impossible to pursue each individual infringer – what are the options?

# Copyright – Viacom vs YouTube

- March 2007 Viacom claim against YouTube and Google for \$1 billion alleging “massive international copyright infringement”
- defence based on Digital Millennium Copyright Act 1998 “notice and take down safe harbour” provisions
  - service provider must promptly respond to notifications from the copyright owner and remove any infringing material
  - the service provider must not be aware of the facts or circumstances from which infringing activity is apparent and must not receive a financial benefit directly attributable to the infringement
- Viacom argues that YouTube has actively promoted and induced the posting of copyrighted content and has refused to protect or filter such content

# The European Framework

- E-Commerce Directive (2000)
  - absolves:
    - “mere conduits” (transmitter of information), and
    - hosts (storage of information provided by a user of the service)
  - hosts:
    - must not have actual knowledge of illegal activity
    - must not be aware of facts or circumstances from which illegal activity is apparent
    - must act expeditiously to remove upon obtaining knowledge or awareness
- ISPs have no general obligation to monitor

# The European Framework

- 42<sup>nd</sup> Recital E Commerce Directive:  
*“The exemptions from liability ... cover only cases where the activity of the information service provider is limited to the technical process of operating and giving access to a communication network over which information made available by third parties is transmitted or temporarily stored, for the sole purpose of making the transmission more efficient: this activity is of a mere technical, automatic and passive nature, which implies that the information service provider has neither knowledge of nor control over the information which is transmitted or stored.”*

# Application in Member States - Belgium

- *SABAM v. Scarlet (Tiscali)*
  - claim brought by body representing Belgian authors and composers against ISP for hosting file sharing on its network
  - intermediate finding of infringement
  - court appointed an expert to assess the feasibility of adopting technical measures to put an end to infringements
  - expert identified 11 possible technical measures, seven of which were available to Scarlet

(cont over)



# Application in Member States - Belgium

- the Court especially noted the filtering technology developed by Audible Magic (*www.audiblemagic.com*)
- court ordered Scarlet to adopt one of the available technical measures. Scarlet has been given 6 months to implement
- court held that the order did not:
  - impose upon Scarlet a general obligation to monitor
  - mean that Scarlet was at risk of waiving its liability for mere conduit activities

# The UK perspective

- copyright infringement by the “making available to the public” of a work or by “authorising” the copying of a work?
- defences available under the E-Commerce Regulations for “mere conduits” and “hosting”
- “hosting” defence – where the service provider:
  - does not have actual knowledge of unlawful activity or information and is not aware of facts or circumstances from which it would have been apparent to the service provider that the activity or information was unlawful
  - upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information
  - and the recipient of the service was not acting under the authority or the control of the service provider

# Practical Measures for Combating Piracy

- awareness campaigns
- Federation Against Copyright Theft (FACT)
- legitimate models using DRM technology
- technical measures to prevent copying in cinemas
- industry co-operation (e.g. “principles for user-generated content services” agreed between CBS, Dailymotion, Fox Entertainment, Microsoft, MySpace, NBC Universal, Veoh Networks, Disney and Viacom on 18 October 2007)
- altering the traditional release windows

# Contracting Windows

- “day and date” releases across territories
- and also, potentially, across media (e.g. Warner Bros has announced simultaneous release on DVD and VOD)
- limits opportunities for pirates
- but is this an advantage or a threat to cinema operators?

# Cinema – A Changing Business?

- behavioural changes present new business opportunities
- cinema as a venue for relayed live events? (e.g. sports events, opera and other music events)
- what are the potential legal issues?

# Cinema and Live Events

- no method of classification (e.g. BBFC)
- potential liability for issues such as obscenity, defamation etc?
- likely to be “broadcasting” services under the Television without Frontiers Directive/new Audiovisual Media Service Directive
- implications – will be covered by content rules contained in those directives
- who has liability for adherence to these rules? – the provider of the service

# Conclusions

- the digital world increases opportunities for pirates
- enforcement is not clear cut
- practical measures may be more effective
- implications for cinema?
- a changing business model – presents new questions



If you would like a copy of this  
presentation please contact  
Charlotte McMillan at:

[charlotte.mcmillan@sjberwin.com](mailto:charlotte.mcmillan@sjberwin.com)

siberwin