

Don't shoot the publisher: legal issues of UGC

New(s) generation. Exploring the opportunities of user generated content.

“Out of legal control”

FLEET - Flemish E-publishing Trends, DeBuren, Brussels, 31 January 2008.

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Prophecy: Eben Moglen's corollary to Faraday's Law

“If you wrap the Internet around every brain on the planet, knowledge flows in the network.”

New Orleans, Louisiana, January 5, 1995



Observation: Fred von Lohmann's “Darknet” principle (2004)

1) Any widely distributed object will be available to some fraction of users in a form that permits copying. 2) Users will copy objects if it is possible and interesting to do so. 3) Users are connected by high-bandwidth channels.

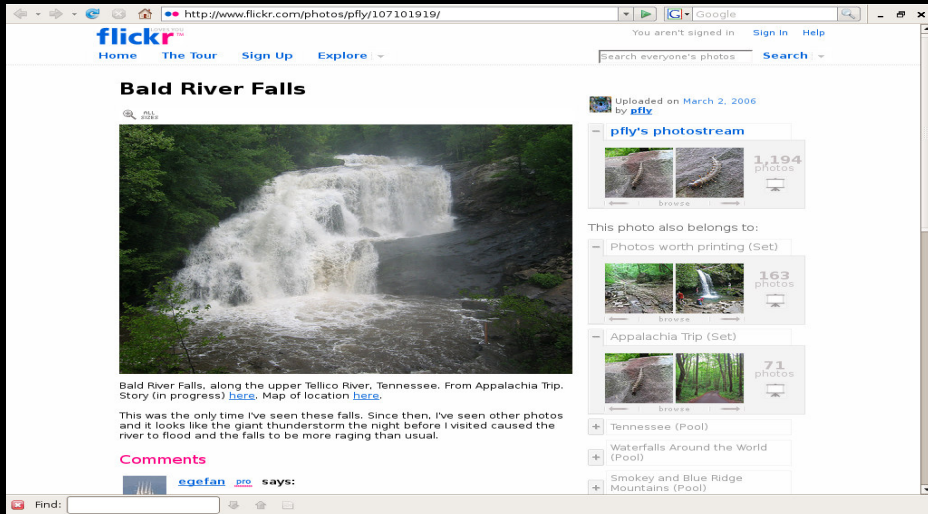
“All it takes is “one leak” to neutralize a TPM entirely—and all TPMs leak”.



Faraday + 1) 2) 3) + a GPL phone...

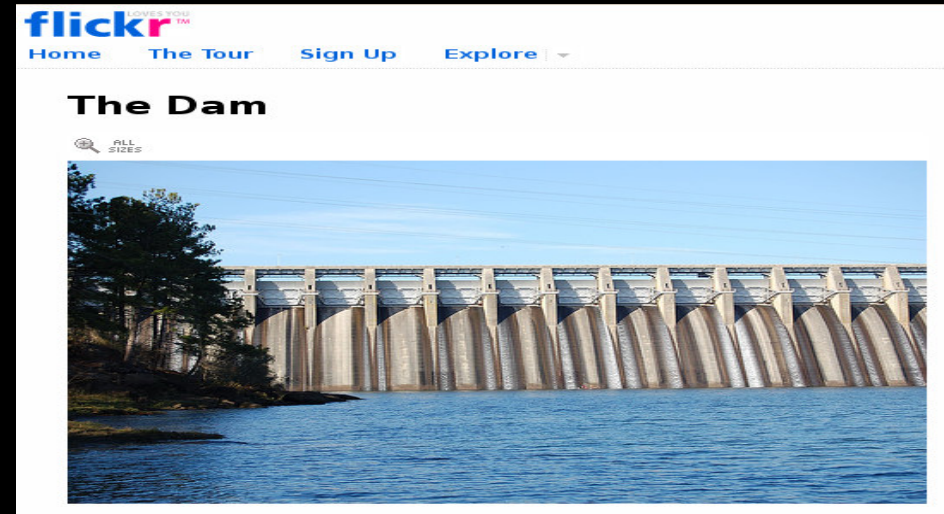


...knowledge flows... ↗



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...in the network...



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Reply: [out of] legal control

1. content filtering
2. protocol blocking
3. blocking access to infringing on-line locations



ISPs - Technical Options for addressing online copyright infringement

IFPI estimated in 2006 that there are 20 billion illegal downloads of music files each year, far outstripping the developing legitimate digital market and presenting enforcement challenges for right holders. Developing cooperation with ISPs to address illegal downloads is key to the future of the music business.

This cooperation has not been sufficiently forthcoming from ISPs in Europe so far. In general, ISPs do cooperate with right holders in the specific circumstances where infringing content is hosted on their own servers, by removing or disabling access to the content in response to a notice (conduct incentivised by the safe harbour for hosting activity in the E-Commerce Directive). By contrast, infringing content hosted

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Bono Report

Amendment:

*Calls upon internet service providers to cooperate in the fight against internet piracy by enforcing their contractual terms and conditions, which permit them to **remove or block access** to infringing material and to **suspend and terminate accounts** with subscribers who infringe intellectual property rights;*

Cultural industries in Europe (INI/2007/2153)

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Bono Report

Amendment:

*in the same vein, calls on internet service providers to **apply filtering measures** to prevent copyright infringements;*

Cultural industries in Europe (INI/2007/2153)



Graça Moura Report

Amendment:

whereas new media technologies, including open source based internet portals and services and their development, require an increasing amount of content to fill them,

European agenda for culture in a globalising world (INI/2007/2211)



Graça Moura Report

Amendment:

*whereas these developments **pose unprecedented threats** that deserve attention from the EU and its Member states with regard to the infringement of intellectual property rights, piracy, and **unauthorised digitalisation**,*

European agenda for culture in a globalising world (INI/2007/2211)



Graça Moura Report

Amendment:

*Calls on the Commission to take the appropriate measures to strengthen the protection of intellectual property rights [...] in order to **eradicate counterfeiting and piracy***

European agenda for culture in a globalising world (INI/2007/2211)



IPRED2 – Commission proposal

Article 3 - Offences

Member States shall ensure that all intentional infringements of an intellectual property right on a **commercial scale**, and **attempting, aiding or abetting and inciting** such infringements, are treated as **criminal offences**.

IPRED2 – Commission proposal

Article 7: The Member States must ensure that the holders of intellectual property rights concerned, or their representatives, and experts, are allowed to assist the investigations carried out by **joint investigation teams** into the offences referred to in Article 3.

IPRED2 in the European Parliament

Is this really protecting consumers?

(b) “infringements on a commercial scale” means any infringement of an intellectual property right committed to **obtain a commercial advantage**; this excludes acts carried out by private users for personal and not-for-profit purposes;

IPRED2 - the EP amendments...

(c) 'intentional infringements of an intellectual property right' means deliberate and conscious infringement of the right concerned for the purpose of obtaining an economic advantage on a commercial scale, or **acceptance** of such infringement .

Who wrote this amendment?

UGC and ISP-filtering?

The screenshot shows a YouTube video player for the video 'A Fair(y) Use Tale' by the channel 'me.f'. The video title is 'A Fair(y) Use Tale' and the description is 'A short film by Eric Faden'. The video has 619,412 views and 238 comments. The channel 'me.f' has 3 videos and was joined 2 years ago. The video is from the 'MEDIA EDUCATION FOUNDATION' and is part of a series 'CHALLENGING MEDIA PRESENTS'. The video player shows a progress bar at 00:07 / 10:12. Below the video player, there are options to share, favorite, add to playlists, and flag. The video is also featured in a 'Related Videos' section with titles like 'Disney Classics', 'The Non-Disney Princess...', 'Lambert Disney', and 'Disney Classics 2'.

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Creative Content Online...

The screenshot shows a document from the Commission of the European Communities. The document is titled 'COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on Creative Content Online in the Single Market'. The document is dated Brussels, COM(2007) 836 final. The document is also identified by the reference number {SEC(2007) 1710}. The document is presented in a browser window with a menu bar (File, Edit, View, Go, Help) and a toolbar (Previous, Next, 2 of 12, 200%).

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