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So, You're Being Sued for Piracy

By Sarah Jacobsson Purewal, PCWorld Jun 16, 2011 6:00 PM



Artwork: Chip Taylor

Hollywood may have stopped its massive litigation campaigns against illegal file swappers in 2008, but the piracy lawsuits are still flying. Now teams of lawyers working for certain small businesses are going after illegal file swappers. These businesses, often referred to as "copyright trolls," are attempting to turn the threat of suing pirates into a profitable cottage industry.

Today these entrepreneurs are increasingly hunting for new business on peer-to-peer networks. Lawyers working for these firms have been known to sue first and ask questions later--and sometimes they make controversial legal maneuvers. If you're illegally downloading the latest Mumford and Sons album and you aren't worried, maybe you should be.

In this article I'll discuss the rise of copyright trolls, and how they work. For any pirates out there, I'll describe what happens when the jackbooted copyright lawyers come knocking on your door to serve you a settlement letter. And lastly, we spoke with legal experts to gain insight into illegal file sharing from the mind of a lawyer.

Are Copyright Trolls the New Ambulance Chasers?

Copyright trolls work in a few different ways, but the end goal is the same: Threaten, scare, and embarrass people into paying a neat sum (usually between \$1000 and \$3000) without ever actually going to court.

One way copyright attorneys work is by first identifying copyright-protected content being swapped online. Next, working independently of the Recording Industry Association of America and the Motion Picture Association of America, they contact the owners of the content, usually a movie- or music-production company, and ink a deal to have alleged pirates sued on their behalf and to split any monetary damages recouped.

Interestingly, some copyright trolls are known to target porn pirates because, experts say, they are more apt to settle and be done with the illegal-download accusation rather than have their name dragged through the gutter during a court proceeding.



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'Hurt Locker' Lawsuit Targets 24,583 BitTorrent Users



Copyright Group to Sue 23,000 People this Week

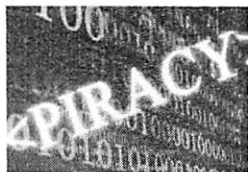


Copyright Trolls: 200,000 BitTorrent Users Sued Since 2010

EXHIBIT C

In other instances, companies will purchase the rights to illegally swapped content after the fact, and then go lawsuit-happy chasing after file swappers to make money from penalties and from out-of-court settlements.

Of course, some Hollywood production companies hire copyright trolls to go after people who are illegally swapping their content.



The most recent case involves Voltage Pictures, which is working with U.S. Copyright Group and going after 25,000 anonymous BitTorrent users whose IPs allegedly downloaded a copy of the film *The Hurt Locker*. U.S. Copyright Group sent out letters that demanded between \$1000 and \$3000 in settlement money from alleged violators--and threatened to sue users for up to \$150,000 if

they didn't settle.

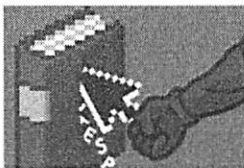
Just a few weeks before the *Hurt Locker* case, U.S. Copyright Group targeted about 23,300 torrent users for downloading Nu Image's *The Expendables*.

Copyright Cases Far From Slam Dunks

Much to the chagrin of U.S. Copyright Group and other copyright trolls, however, the legal actions haven't always gone as planned.

In both cases U.S. Copyright Group was allowed to subpoena offending Internet service providers for the personal details of the account holders associated with the IP addresses, though the court recently revoked the subpoenas for the *Expendables* case. The subpoenas were revoked because U.S. Copyright Group failed to serve the clients quickly, and because the judge realized that most of the IP addresses probably do not belong to residents of the district in which the case was filed (Washington, D.C.).

More recently a firm called Righthaven was accused of being intentionally "dishonest" by a federal judge in a copyright-infringement lawsuit over content taken from the *Las Vegas Review-Journal's* Website and used elsewhere. Righthaven issued as many as 300 lawsuits related to content that it claimed it owned.



According to U.S. District Judge Roger Hunt of Nevada, who was presiding over the case, Righthaven did not own the content, and the rightful owner of the content wasn't identified in the suit. According to reports on the matter, Hunt threatened to sanction Righthaven for what he called "disingenuous, if not outright deceitful" litigation efforts, at the same time questioning the company's business model.

Wired.com reports that more than 100 bloggers have settled with Righthaven for undisclosed sums related to the *Review-Journal* infringement case. Those bloggers are now mulling their own legal action against Righthaven.

Threats, Settlements, and Lawyering Up

Copyright trolls don't want to go to court. Doing so is costly and risky--neither of those things is good from the standpoint of a copyright troll. It's much cheaper and easier for them if people who receive letters simply pay up, instead of forcing an actual court case.

If you are ever on the receiving end of a copyright-infringement accusation from a troll, it will likely be in the form of a settlement letter. A letter is *not* a lawsuit, and you will face no legal repercussions if you ignore it. However, Art Neill, lawyer and executive director of New Media Rights, says that this doesn't mean you *should* ignore it.

If you receive a settlement letter *through* your ISP, your name has not yet been revealed to the group that is trying to get your money. Keep it that way. Maintain your privacy at all costs, says Neill, and contact the plaintiff's attorney only through your own attorney or anonymously (that is, through an email address that won't identify you personally).

Here's why anonymity is so important: Judge Harold Baker recently ruled in *VPR Internationale v.*

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Does 1-1017 that an IP address was not a person, and blocked Canadian film company VPR Internationale from forcing ISPs to give up personal information tied to IP addresses. In this case, if people had given up their names to the film company before the judgment was passed, the company would still be able to sue them—using their names.

That said, if you decide to settle, it isn't wise to do so anonymously. Some copyright trolls give you the option of settling through a website or over a phone number, and identifying yourself only by your IP address. This is a bad idea, Neill says, because IP addresses can be dynamic, and keeping your name out of the settlement may get you sued again.

Don't Waste Your Time and Money (You'll Need It)

If you're innocent, or if you think you have a case, the goal is to spend as little money as possible. If you did download files, deleting them won't save you (though you may receive a "cease and desist" letter requesting that you remove them).

Also, running out and purchasing a physical copy of the material you've downloaded will do no good—though it might help you make the (irrelevant) argument that piracy helps sell products, says Jason Rosenfield of Scenic Labs. If you already own a copy of the material, and you can prove that you purchased the copy before you downloaded the file, you may be protected under "fair use."

Though a settlement letter is not a lawsuit, it's still a good idea to contact an attorney.

The Electronic Frontier Foundation has assembled a list of defense resources for people who have been contacted by their ISP or by a copyright troll. The list includes a number of lawyers in 33 states who will be willing to assist you, and who have experience with these types of cases. Neill, who is named on the EFF's list, recommends contacting a lawyer in your state or in the state in which you are being sued.

What If You're Innocent?

What's that? You've been contacted, but you have no idea what they're talking about? You've never downloaded a song or a movie in your life, and you use your computer only once a week?

Unfortunately, you should still contact an attorney. Even if you are truly innocent, you'll need someone to defend your innocence. Plus, copyright-troll groups are usually spearheaded by attorneys—U.S. Copyright Group, for example, is a business registered by the law firm Dunlap, Grubb & Weaver.

It's worth noting that copyright trolls do not want to spend money for nothing. Rosenfield says these groups are "terrified of losing," and will thus probably not move forward unless their case is airtight. Still, Rosenfield says, you'll want to back up your innocence with proof (such as evidence that your Wi-Fi was stolen), if you have it.

Consider Settling

If you're not innocent, you may want to consider settling, depending on the settlement offer. Your attorney will be able to coach you through this decision, but it can help to look at some past cases for precedent.

In 2005, Jammie Thomas-Rasset and Joel Tenenbaum made headlines by being the first two people who received settlement letters from the RIAA and refused to settle, which forced their cases into court. Unfortunately, the tactic didn't go over too well: Both have had multiple trials, yet still face extremely large fines.

In the case of the *Hurt Locker* group lawsuit, the judge overseeing the case is a former RIAA lobbyist. In other words, although she pledges to be unbiased, she may not be terribly sympathetic toward alleged file sharers.

If you have illegally downloaded files, and you are primarily concerned with the financial costs you might incur, it may be in your best interest to settle. Copyright trolls usually ask for between \$1000 and \$3000, and the minimum fine for statutory damages for files is \$750. If you've downloaded more than a couple of files, you could wind up with a hefty fine if you go to court—

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not including the court fees

So, You're Being Sued

Let's say you decided not to settle, and now someone is taking you to court. Here's what you can do.

1. If you haven't yet contacted an attorney, definitely do that now. If you cannot afford an attorney, consider looking for a pro bono attorney or contacting a local law school. Many law-school teams—including those of Harvard, the University of Maine, University of New Hampshire, and the University of San Francisco—have helped out with file-sharing cases.
2. Don't ignore being served, because if you fail to show up in court, you will automatically lose. You have 30 days to respond to a lawsuit.

That said, automatically losing may be cheaper than showing up: In 2009, four defendants who failed to appear were fined the minimum statutory damages of \$750 per song. Each of the four had downloaded around ten songs, which meant that they owed the record labels around \$7500. While that isn't cheap, it's certainly better than \$675,000 or \$1.92 million, which is what the defendants who did appear in court that year were fined.

Need an example to understand what happens when you ignore a court order? In 2008, Mavis Roy ignored a lawsuit because she "thought it was a scam." Luckily, Roy later received help from the professors and students at the Franklin Pierce Law Center of the University of New Hampshire, and her case was eventually dismissed (with prejudice).

3. This is a civil case--not a criminal one. This means that the group suing you has only to prove that it's "more likely than not" that you downloaded the files, and the jury does not have to be unanimous in its decision.

Resources

- EFF Guide to Intellectual Property
- EFF Subpoena Defense Resources
- Recording Industry vs. The People Blog by Ray Beckerman
- New Media Rights
- Chilling Effects

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