

Challenges of Digital Music Copyright and the Liability of Internet Service Providers

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ABSTRACT

Today, everything can be googled, copied, pasted, downloaded, shared and replicated without the knowledge of a copyright creator, who may be residing within the neighbourhood of his copyright infringer, let alone on the other side of the world. The nature of the internet has made respecting, protecting and adhering to copyright laws very difficult. Many commentators argue that the digital era has put copyright law under increasing pressure both at national and international levels particularly in respect of musical works and sound recordings. Holding copyright infringers accountable for violating copyright laws, especially on the internet has become a huge issue. In the light of International Initiatives, this work looks at the responsibility and liability of internet service providers for copyright infringement in respect of musical works and sound recordings.

Keywords: *Copyright, infringement, license, digital, music, download, online*

INTRODUCTION

Unlicensed music and the unfair competition it imposes on legitimate services is the biggest challenge for the music business today. The year 2007 was heralded as the year Internet Service Providers (ISPs) responsibility became an accepted principle¹. Since then, various jurisdictions have sought to make holding ISPs responsible for digital copyright infringement a reality. The question is whether alleged individual infringers or ISPs should be primarily liable for illegal file-sharing of copyrighted musical works and sound recordings. In 2007, a Belgian Court ruled that an ISP must take responsibility for stopping illegal file-sharing on its network². The court said that ISPs have the technical means at their disposal to either block or filter copyright infringing material on peer-to-peer networks and gave the ISP Company (Tiscali) six months to implement such measures. There are presently, filtering technologies to filter online contents, and possible solutions which can be utilized by ISPs to block the traffic of unlicensed music. The ISPs, who are internet gate-keepers, have a legal responsibility to help control copyright infringing traffic on their networks. Copyright covers selective, altered, summarized and varied versions of a work, where it still involves substantial reproduction of the original³. Where there has been copying and all or virtually all of the work is taken without alteration, the proof of infringement is straight forward, it becomes an issue where this is not

the case. However, reproducing or copying without license or authorisation a substantial part of a copyright work is an act of copyright infringement. The Copyright, Designs and Patents Act⁴, requires that a substantial part must be copied⁵. Copyright protection is not limited to where the defendant makes an exact copy of the work but also where the defendant has used a substantial part of the copyright work. To infringe a copyright by copying, it is not just sufficient that the copying was without the owners authorisation, but also that the subject be as a result of copying a substantial part of the work. In *Designer Guild v. Williams*⁶, it was suggested that the question whether what has been copied constitutes all or a substantial part of the copyright work, is a matter of impression, for whether the part taken is substantial must be determined by quality rather than quantity and its importance to the copyright work⁷.

The claimant also needs to prove that the defendant's work was derived from the claimant's work⁸. This is to show that there is a link between the work used by the defendant and the copyright work. In determining substantiality, it is relevant to consider what the work is for, the purposes of infringement; and whether the defendant utilized the whole of the claimant's work or a substantial part of it⁹. The plaintiff must prove that, directly or indirectly, the defendant's alleged infringement is taken from the work or subject-matter in which he claims copyright¹⁰. As a defence, a defendant can also establish that the claimant copied from the defendant, that they both copied from the same source, or that they arrived at their results independently¹¹. It is possible for a defendant to infringe copyright where they base their work on the work of a copyright owner¹². The onus of proving that a defendant's work was derived from the claimant's copyright work is on the claimant. The claimant may establish through direct evidence that the defendant utilized the claimant's work in producing their own¹³. Where the inference of copying has been established by the claimant, the onus then shifts on the defendant to prove that they created the work independently.

DIGITAL MUSIC COPYRIGHT

The digital and computer age has greatly influenced copyright and the laws governing copyright. Copyrights of musical works and sound recordings have greatly suffered in this area and the impact of copyright theft on the legitimate music business globally is tremendous. Today, websites often stream and play music on their sites and further create access for individuals to copy or download this musical works with little or no inhibitions. Of course, some sites like iTunes and Amazon, allow for such copying for certain fees. Such copying is devoid of any infringement as such sites always meet copyright standards and requirements with musical works right holder(s). Yet, there are those sites like the copyright infringing network limewire, where individuals download music without inhibition. Portable digital music devices have revolutionized the way consumers listen to music. The expansion of Wi-Fi technology, coupled with 3G, is beginning to allow a much broader music experience. More

than one third (37%) of mobile internet users frequently obtain illegal music via their mobile phone. This figure rises to 65 per cent among the younger age group of individuals. Nearly 400 million illegal music files are downloaded yearly and nearly 80 per cent of users who obtain illegal music files are doing it with no sense of guilt.¹⁴ The nature of the internet has made respecting, protecting and adhering to copyright laws very difficult. Most copyright laws provide to the effect that there will be copyright infringement when copies of work held in electronic format are copied without the authority of the copyright holder. Infringing copyrighted works without express permission seems to have become the order of the day; this is worsened by lack of education and awareness on the issue. Copyright protects the skill, toil, time and judgment that was expended in creating musical expressions and works and as such brings not only economic but also moral rights and benefits. Downloading music files from the internet without the permission of the right holder(s) is illegal. Just because the internet is a public domain and available to all to use does not mean every article, image, video clip, music and sound recording can be copied at will.

“The music industry is way ahead of other media, broadcast and online companies in getting our content out there – yet ironically we are behind when it comes to getting paid for it”¹⁵. Its digital share is more than twice that of newspapers (7%), films (3%) and books (2%).¹⁶ There are more than 500 legitimate digital music services worldwide, offering over 6 million tracks – over four times the stock of a music megastore. Tens of billions of illegal files are being swapped and the ratio of unlicensed tracks downloaded to legal tracks sold is about 20 to 1.¹⁷ Tens of billions of illegal music files are traded annually worldwide at an estimated ratio of 20 illegal downloads for every track sold. This has had a major impact on the development of legal services and holding back growth in the whole digital sector’s buying behaviour. Research has found that 30 per cent of Peer-to-Peer users bought fewer CDs and DVDs; while only six per cent said they bought more CDs. In Australia, research undertaken for Australian Recording Association (ARIA) shows that 57 per cent of Peer-to-Peer downloaders rarely or never purchase the music they download – pointing to straight substitution of legitimate sales.

Digital piracy in Latin America has expanded rapidly, it is estimated that 2.6 billion illegal music files are downloaded in Mexico and another 1.8 billion in Brazil per year. Online piracy has hit the core music population in the region. Research in Mexico shows that 64 per cent of music downloading is carried out by consumers in the wealthier economic categories, with similar findings in Brazil. In Europe, Spain and the Netherlands have a huge online piracy problem resulting in under performance of their legitimate market sector. According to research, over one third (35%) of all internet users in Spain and 28 per cent in the Netherlands are now regularly engage file sharing of online files. A study by the Spanish Ministry of Culture shows that five million Spaniards, or 13 per cent of the population, have

downloaded music illegally yearly. China, with nearly as many broadband users as the US and little effective enforcement, is one of the biggest sources of illegal downloads in the world¹⁸.

LIABILITY OF INTERNET SERVICE PROVIDERS

Music sales via online and mobile channels have risen from zero to an estimated US\$2.9 billion – 15 per cent of industry sales - over the last five years, making music more digitally advanced than any entertainment sector except games¹⁹. The spread of unlicensed music on ISP networks is choking revenues to record companies and investment in artists; despite a healthy increase in digital sales, independent estimates say up to 80 per cent of ISP traffic comprises distribution of copyright-infringing files²⁰. The major weight of control and regulation of copyright on the internet has fallen on those who provide internet access (ISPs). They have often found themselves the target of legal action by those aggrieved by their customers' behaviours²¹. Right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right. In Europe, Article 8(3) of the Copyright Directive²² provides that member states must ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe copyright.

The whole music sector, governments and even some ISPs themselves are beginning to accept that the carriers of digital content must play a responsible role in curbing the systemic piracy that is threatening the future of all digital commerce²³. An ISP who is merely part of the communication chain and providing only access to the internet, keeps copying received information packets into memory and sending fresh packets on to the next host in the chain, and this temporary hosting is potentially enough to constitute a technical breach of traditional copyright whenever the material being copied is subject to copyright protection²⁴. Other ways of infringement include caching and hosting of third party contents.

Apart from the Internet Service Providers who may be termed innocent in this regard, programmers of peer-to-peer networks and systems pass infringing works to and fro²⁵. They copy works of music on their own hard drive, download such works from others' hard drives to their own and play it. Other times, these networks, do not only copy such works, they also title them and position them on their computer systems in ways that easily allow members or users of their networks to copy these musical works²⁶. These activities can constitute infringement of musical works. Now, when individuals copy and download such musical works from these systems onto their hard drives, such as phones or iPods, the recording is copied and such copying is substantial²⁷. This is a wide spread activity happening every second world wide yet such acts amount to an infringement of the copyright in a sound recording or musical work. The Copyright, Designs and Patents Act of the United Kingdom²⁸ states that Copyright in a work is infringed by a person whom without the license of the copyright owner does, or authorizes another to do, any of

the acts restricted by copyright²⁹. The Act also provides that there will be infringement where the possession is in the course of a business and the defendant knows or has reason to believe that the material held is an infringing copy³⁰. Internet Service Providers hosting a website do so in the course of business and the nature of Internet Service Provider's duties is commercial as most of them provide their services on a commercial basis. However, there is a new dawn of ISP responsibility and co-operation backed by a collective will to mandate their responsibility³¹. Thus, in *SABAM v. Tiscali*³², Belgium ordered Tiscali to implement filtering software to block illicit contents. Right holder bodies have also been campaigning prominently in the UK and other parts of the world to stamp out the sharing of unlawfully copied music³³. Some of these bodies include the International Federation of Phonographic Industry (IFPI) and the British Phonographic Industry (BPI). The International Federation of Phonographic Industry spoke of the wind of change blowing through the music industry as regards ISP responsibility and co-operation backed by a collective will on the part of national legislatures to mandate that responsibility³⁴. The Federation is further launching increasing numbers of law suits against individual and corporate illegal file sharing in Europe and Asia³⁵. National Industrial Associations which have followed suit include the Recording Industry Association of America (RIAA)³⁶ and the Canadian Recording Association (CRIA)³⁷.

Many jurisdictions have through different avenues sought to regulate copyright infringement especially of music and sound recording on the internet. The French music industry backed by the Government adopted an approach of "three strikes and you are out"³⁸. In order to ensure voluntary enforcement of anti-file-sharing policy by ISPs the British Government has proposed to consult on legislation, if voluntary, preferably commercial solutions are not forthcoming in requiring ISPs to co-operate in taking legal action on illegal file-sharing³⁹. The imposition of liability on ISPs is very purposeful from a government perspective, because, with the nature of the internet, it is either to impose liability on ISPs or other secondary parties or the alternative is to impose no effective liability at all⁴⁰.

However, ISP's may avail themselves of liability for copyright infringement in Europe by relying on the E-Commerce Directive⁴¹. Based on these provisions, Internet Service Providers can avail themselves of liability so long as they are mere conduit pipes, had no knowledge of it, were simply passing information accessed by a customer, were merely hosting the infringing material and can demonstrate that they acted quickly and removed the offending material when notified. Further, there is to be no general obligation imposed on ISP's to monitor information which passes through or is hosted on their systems⁴². In *Playboy Enterprises Inc v. Webworld*,⁴³ it was noted that an ISP might not have any control over the information to which it gives access. The volume of material on the systems might make it difficult to monitor or screen and even if an ISP was willing and able to monitor the material on its system, it might be unable to reliably identify infringing

material. While it is important to impose liability on ISP's, failure to shield ISP could impair communication and availability of information, and drive ISP's out of business, causing the net to fail⁴⁴. The European Court of Justice ruled in *Productores de Musica de Espana (Promusicae) v. Teleponica de Espana*⁴⁵ that ISP's cannot be forced to disclose the identities of individual file sharers to right holders seeking to bring civil proceedings against individuals.

Making ISPs liable for copyright acts outwit their control is not very fruitful. The Bern Declaration of 8th July 1997 states that "...third party contents hosting services should not be expected to exercise prior control on contents which they have no reason to believe is illegal". It has been held that even where software is used to copy copyright works, it does not mean the ISP is purporting to grant rights to copy a particular file. In *CBS Songs Ltd v. Amstrad Consumer Electronics Plc*⁴⁶, Lord Templeman gave the leading speech, stating: "...an authorization means a grant or purported grant, which may be express or implied, of the right to do the act complained of. Amstrad conferred on the purchaser the power to copy but did not grant or purport to grant the right to copy. However, some search engines, web inks and Internet Cafés have been held liable for copyright infringement as regards music and sound recordings. In *Metro Goldwyn Mayer Studios Inc. v. Grockster Ltd*⁴⁷ the Supreme court held that anyone who distributes a product which is primarily intended to infringe copyright, cannot avoid liability for copyright infringement in the event that a user of that product uses it to infringe copyright; In the Dutch case of *Brien v. Techno Design 'Internet Programming' BV*⁴⁸, concerning the website ZoeKMP3.NL, the court found the operators liable for providing links to infringing MP3 files. Similarly in *Cooper v. Universal Music Australia Pty Ltd*⁴⁹, an Australian Full Federal Court found the host of the website 'mp3s4free' liable for authorizing copyright infringement because it provided access to illegal MP3 files. A UK High Court, in the case of *Sony Music Entertainment (UK) Limited and Ors v. Easy Internet Café Limited*⁵⁰, found EasyInternet Café guilty of copyright Infringement for allowing customers to download music from the internet to CD's.

CHALLENGES FOR DIGITAL MUSIC COPYRIGHT

In this digital age, copyright enforcement is becoming more of a myth rather than reality in so many fronts. The internet poses a fundamental challenge for the regulation of copyright and the situation is likened to an approach of governance without government⁵¹. For example, there is an ongoing war by the Nigerian Copyrights Commission towards copyright infringement however mostly for acts of piracy. The list of convictions for acts of copyright infringement range from book piracy, software piracy to sound recording piracy, there has been no conviction for unlicensed online or digital musical works download or infringement. One obvious problem that has grossly been an impediment to the regulation of copyright on the Internet is that of jurisdiction, applicable law, and enforcement. If an author has a copyright in Germany, it becomes of no use if that right is infringed in Zimbabwe

because there is no universal law for regulating online copyright infringement. The enforcement of copyright laws and rights online, is an area to be given attention to if enforcing liability for infringement is going to be achieved. According to MacQueen⁵². “laws can be written in the most draconian terms, but the critical question is whether they can be enforced”. As regards jurisdiction, copyright is territorial, while the internet cannot be limited to any territory and jurisdiction. The courts are trying to resolve the conflict of laws where the copyright infringement is dealt with in a territory other than the one that granted the right initially⁵³. The problem of jurisdiction arises because it is only in the real world that there exists a mechanism to confer rights, immunities, privileges etc. with no corresponding equivalent in the internet world⁵⁴. Difference in laws also creates a problem. What might constitute copyright infringement in country ‘X’ might not be same in country ‘Y’. The problem of knowledge is also problematic⁵⁵. In many cases users are unaware of copyright restrictions and the fact that they can be held liable for copyright infringements. Although the judiciary in the UK and US tend towards a position that lack of intention to infringe is not a defence in copyright actions, in places like Nigeria, music copyright on the internet is not today the business of the judiciary. Most Nigerians especially the young ones see the copying of music electronically as vogue rather than crime.

Mobile network companies are making huge amounts of money from music file sharing, one might wonder if any percentage of those sums is rebated back to copyright owners in the form of royalties. Of course, many of such copyright owners are far away in foreign lands and are unaware of happenings in this part of the globe. Another problem is that it has long been acknowledged that the use of the internet has long outstripped the development of legislation⁵⁶. Technology is ahead of our laws, and issues that emerge everyday from the use of the internet are ahead of legislations. It is also extremely difficult to police the internet and establishing where a copyright infringement occurred proves difficult. It is not only difficult to find the culprits and overcome jurisdictional issues associated with bringing an action but there are also the legal hurdles of demonstrating a clear chain of liability between the service of ISPs and the actions of and materials provided not by them, but the users themselves⁵⁷.

CONCLUSION AND RECOMMENDATIONS

Until now, suing an infringer for online music copyrights is simply a case of viewing the act as a tort and proceeding on the basis of a tort committed within the jurisdiction⁵⁸. How do you serve an individual who is outside the jurisdiction? The Brussels Regulation⁵⁹ permits an action to be brought and heard by English Courts for infringements of signatory countries copyrights committed in a signatory country⁶⁰. Thus, the Regulation permits actions to be commenced in England even though the dispute relates to copyright infringement which occurred abroad. Uncertainty has

however been generated by this development, people have wondered why a foreign court should adjudicate on matters of foreign copyrights being infringed in other countries⁶¹. However, the decision of the English Court of Appeal in *Pearce v. Ove Arup Partnership*⁶² has affirmed that the English court can hear an action for copyright works in signatory countries infringed in a signatory country. This is huge and significant for the law and for internet users and abusers.

Thus, infringers may not avoid the English courts merely because the infringing activities take place abroad or outside that particular jurisdiction. Now infringers may find themselves facing claims under a foreign law. Notwithstanding, some have argued that with the nature of the internet, little can be done and the burden of regulation on ISPs and their liability for online copyright infringement will get more extensive with time. The court ruling in the *SABAM v Tiscali*⁶³ case set an extremely important precedent. It does not only confirm that the ISP should take proactive steps to block infringing contents; it also confirms expert evidence on a range of feasible blocking and filtering solutions available to ISPs. Until date, ISPs are exercising a considerable degree of supervision over their customers for fear that they will be the ones to blame for the wrong doings of their customers⁶⁴.

With consideration to the nature of the Internet, the problems associated with enforcing laws in the online world, and the huge amount of complaints and litigations, the liability of Internet Service Providers becoming a reality might be a great milestone towards the achievement of a copyright infringement free internet. For now there has to be a 'scapegoat' for the law, until individuals can be held fully accountable and there is a means to fish out the real culprits, someone must be held liable to reduce incidents of digital music copyright infringement. "The Internet must not become a high-tech Wild West, a lawless zone where outlaws can pillage works with abandon or, worse, trade in them in total impunity"⁶⁵. Governments are starting to accept that ISPs should take a far bigger role in protecting music on the internet, but urgent action is needed to translate this into reality. There is only one acceptable moment for ISPs to start taking responsibility for protecting online content – and that moment is now. ISP cooperation, via systematic disconnection of infringers and the use of filtering technologies, is the most effective way copyright theft can be controlled.

There is however, no single solution to the issue. Moves such as restricting internet content and holding ISPs primarily responsible might not be the sole solution. Such move might adversely affect users and might seem forceful to ISPs⁶⁶ there should be legislations which will serve as serious deterrents. Internet users who infringe copyright should be held liable. Presently, internet users not only copy for themselves but also make available copies of the work to the public. Thus if it is argued that ISP's should be held liable, the individuals should be held liable too, because it follows that users are purporting to confer on all the other users of the network, the right to copy without authorisation. Holding individual users liable for

infringement will introduce certainty in the internet environment as individuals will then seek to understand precisely what they can or cannot do and will act accordingly⁶⁷. Projects and policies on comprehensive public education work should be undertaken by government, policy makers and all stakeholders both nationally and internationally to improve awareness of legal online sites and of copyright. Most individuals are infringing copyright without an iota of knowledge of copyright laws, the effects of such act and with no accompanying guilt for their actions. Yet, continuous copyright will in the long run adversely affect copyright owners, consumers, the music business industry and the societal economy. “The fact is that in a commercial culture that doesn’t protect intellectual property, today’s violator is tomorrow’s victim. There are no long-term winners from growing intellectual property theft”⁶⁸. More so, numerous studies in different markets confirm that the effect of illegal downloading is overwhelmingly negative. Unlicensed internet services risk spyware, adware, malware and even identity theft and these dangers are often unknown to downloaders and the security risks of downloading unlicensed music have been well-publicized, but awareness of them still appears very low. Educational policies in this area will be a welcome relief.

It has been argued that a uniformed copyright law for internet or electronic infringement might be a solution⁶⁹. Given the global reach of the internet, it is necessary to take international action to enable copyright law to respond and adapt in a reasonably uniform and harmonized way around the world, an example is the Intellectual Property and National Information Infrastructure report by the Information Infrastructure task force of USA and the World Intellectual Property Organisation Treaty. A mixture of national and International legislation could bring about some solution, but legislation alone cannot bring change, perhaps, education, self imposed regulation and cooperation by ISPs and on-line users could be immensely positive. ISPs, Search engines, Internet Cafés, employers and schools should try to exercise control. Employers and Schools should have codes of conduct and Acceptable use policy which reflect prohibition of downloading illegal music and sound recordings. Perhaps going in the way of holding employers vicariously liable for such acts of their employees may coerce them into ensuring their employees do not infringe copyright while at work or even in schools for the Institutional Authorities. However, some parties are reluctant to tow this line.⁷⁰

NOTES

¹ IFPI Digital Music Report 2008, Press Release: available online at: http://www.ifpi.org/content/section_resources/dmr2008.html Accessed 05/09/2013

² *SCRL Societe Belge des Auteurs, compositeurs et editeurs v. SA Scarlet* [2007] ECDR 19

³ W. Cornish and D. Llewelyn. *Intellectual Property: Patents, Copyright, Trademarks and Allied Rights*. 2003 (5th Edition, Sweet and Maxwell, London pg 767

⁴ Copyright, Designs and Patents Act 1988 (Hereinafter ‘CDPA’)

- ⁵ CDPA 1988 s.16 (3) Based on its provisions, a claimant is to show that the defendant carried out one of the activities which falls within the copyright owner's control, that the defendant's work was derived from the copyright work and the restricted act was carried out in relation to the work or a substantial part thereof.
- ⁶ [2001] 1 WLR 2426
- ⁷ *Ladbroke v. William Hill* [1964] 1 W.L.R 273 AT 276; *Ludlow Music v. Robbie Williams* [2001] F.S.R 271
- ⁸ L Bently and B Sherman *Intellectual Property Law* (3rd edn, Oxford, New York 2009) pg 171
- ⁹ Ibid p. 175
- ¹⁰ CDPA 1988 s.16(2)
- ¹¹ CDPA 1988 S. 9; see also *Corelli v. Gray* (1913) 29 TLR 116
- ¹² L Bently and B Sherman *Intellectual Property Law* (3rd edn, Oxford, New York 2009) pg 172
- ¹³ ibid
- ¹⁴ IFPI Digital Music Report 2008, Revolution, Innovation, Responsibility: Making ISP Responsibility a Reality in 2008. See Footnote 1
- ¹⁵ Simon Gunning. Senior Vice President of Digital EMI UK and Ireland in IFPI Digital Music Report 2008, Revolution, Innovation, Responsibility: (Section 2) A New Deal for Consumers, pg12: available online at: http://www.ifpi.org/content/section_resources/dmr2008.html Accessed 05/09/2013
- ¹⁶ See footnote 14
- ¹⁷ Ibid.
- ¹⁸ All Research data culled from IFPI Digital Music Report 2008, Press Release: available online at: http://www.ifpi.org/content/section_resources/dmr2008.html Accessed 05/09/2013
- ¹⁹ Ibid
- ²⁰ ibid
- ²¹ S Hedley *The Law of Electronic Commerce and the Internet in the UK and Ireland* (Cavendish, London 2006); (see UK Copyright, Designs and Patents Act 1988, Section 16(1), Berne Convention, Article 9(1)
- ²² The Copyright Directive (Directive 2001/29/EC.) Directive on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society.
- ²³ J Kennedy, *Making ISP Responsibility a Reality in 2008: IFPI Digital Music Report 2008*, Press Release, pg 3: available online at: http://www.ifpi.org/content/section_resources/dmr2008.html Accessed 05/09/2013
- ²⁴ C Reed and J Angel. *Computer Law; The Law and Regulation of Information Technology*. (6th Edn, oxford, New York 2007)
- ²⁵ C Gringras, *The Laws of the Internet*. (2nd Edn, Butterworths LexisNexis, London 2003) pg 271
- ²⁶ Ibid pg 270
- ²⁷ ibid
- ²⁸ Copyright, Designs and Patents Act 1988
- ²⁹ Ibid. Section 16(2)
- ³⁰ Ibid. Section 23.
- ³¹ R Massey 'Independent Service Providers or Industry's Secret Police? The Role of The ISP's in Relation to Users Infringing Copyright' [2008] Ent.L.R 19(7), 160-162, 160
- ³² *SCRL Societe Belge des Auteurs, compositeurs et editeurs v. SA Scarlet* [2007] ECDR 19
- ³³ P Pedley *Digital Copyright* (2nd Edn, facet, London 2007) pg 44

- ³⁴ Op cit. R Massey pg 160
- ³⁵ N Davis. "The Digital Music Revolution – How will Traditional Rights Operate in the O-Line Music World? [2005] Ent.L.R, 16(6), 137 -143
- ³⁶ Ibid
- ³⁷ R Piasentin "Unlawful? Innovative" Unstoppable? A comparative analysis of the potential legal liability facing P2P End-Users in the United States, UK and Canada. [2006] I.J.L&IT, 14(2), 195 -241
- ³⁸ Op cit. R Massey, 160
- ³⁹ Ibid.
- ⁴⁰ See G Sutter 'Internet Service Providers and Liability' in M Klang and A Murray (eds), *Human Rights in the Digital Age* (Cavendish, London 2005)pg 72
- ⁴¹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) Art.12-14.
- ⁴² Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) Art.15; This prevention of the imposition of any duty to monitor does not, however, prevent Member states of the European Union from imposing duties which require that some level of care be taken in relation to what is stored or transmitted. see G Sutter 'Internet Service Providers and Liability' in M Klang and A Murray (eds), *Human Rights in the Digital Age* (Cavendish, London 2005)pg 72
- ⁴³ 968 F. Supp. 1171 (N.D. Tex. 1997)
- ⁴⁴ Some Countries, especially the United States of America seek to protect ISP's from liability mostly because of commercial reasons as stated above.
- ⁴⁵ Case C-275/06 *Productores de Musica de Espana (Promusicae) v. Teleponica de Espana* [2007] E.C.D.R. CN1
- ⁴⁶ [1998] AC 1013 at 1054
- ⁴⁷ supra
- ⁴⁸ [2006] ECDR 21,
- ⁴⁹ [2006] FCAFC 187
- ⁵⁰ [2003] EWHC 62 (*Ch*)
- ⁵¹ Y Akdeniz 'Governance of Ponography and Child Ponography on the Global Internet:A Multilayered Approach' in L Edwards and C Waelde *Law and the Internet Regulating Cyberspace* (Hart, Oxford 1997) pg 226 See H MacQueen 'Copyright and the Internet' in L Edwards and C Waelde *Law and the Internet Regulating Cyberspace* (Hart, Oxford 1997) pg 93
- ⁵³ E Todd *Gringras: The Laws of the Internet* (3rd edn, Tottel ,West Sussex 2008) pg 279
- ⁵⁴ A Sachdeva, 'International Jurisdiction in Cyberspace: A comparative perspective' [2007] C.T.L.R, 13(8),245-248, pg. 245
- ⁵⁵ Op cit E Todd pg 279
- ⁵⁶ C Stromdale 'Regulating Online Content: A global View' C.T.L.R [2007], 13(6), 173-178.
- ⁵⁷ Ibid pg 270
- ⁵⁸ Op cit C Gringras pg 282
- ⁵⁹ Council Regulation (EC) No 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters.
- ⁶⁰ ibid
- ⁶¹ *Pearce v. Ove Arup Partnership* [1997] 3 All ER 31 at 34; *Mother Bertha Music Ltd v. Bourne Music Ltd* [1997] EMLR 457; See also Ibid.

⁶² Supra

⁶³ *SCRL Societe Belge des Auteurs, compositeurs et editeurs v. SA Scarlet* [2007] ECDR 19

⁶⁴ Op cit S Hedley pg 9

⁶⁵ Nicolas Sarkozy, Immediate Past President of France in IFPI Digital Music Report 2008, Press Release pg 21: available online at: http://www.ifpi.org/content/section_resources/dmr2008.html Accessed 05/09/2013

⁶⁶ Op cit S Hedley pg 141

⁶⁷ Op cit R Piaesentin, pg 214

⁶⁸ P Mandelson, EU Trade Commissioner in IFPI Digital Music Report 2008, Press Release pg 18: available online at: http://www.ifpi.org/content/section_resources/dmr2008.html Accessed 05/09/2013

⁶⁹. See footnote 27 pg 91

⁷⁰ On the issue of Industrial Regulation, some ISPs have refused to regulate on the excuse that policing internet is not ISP job and further stressing that its role as a mere conduct is given users access to the internet, rather than an operation that controls what users do on the internet. See Op cit. R Massey, 160