

Q1: What do you believe is the appropriate role for search engines to play in combating rogue websites?

Answer:

Far too many companies are profiting, in countless ways, from online piracy and counterfeiting. Until that ends, we cannot effectively address the problem of rogue websites. Search engines and all entities that regularly and predictably profit from online piracy and counterfeiting certainly must play a role in fighting rogue sites.

As things now stand, fighting piracy plays no visible role in the business of search engines. Small wonder. At the same time that search engines take cover under the DMCA's safe harbor protections, they are rewarded for turning a blind eye toward advertisers that plainly facilitate trafficking in stolen books, music and movies.

This simply cannot continue. Asking for voluntary cooperation is clearly not the answer. At this moment, search engines are profiting from companies that forthrightly market copyright infringement services even though the Senate Judiciary Committee, the House Judiciary Committee, and The White House are actively pursuing remedies for rampant online infringement.

To illustrate this point, I'd like to supplement my written testimony with a third case study.

Case Study #3: myPadMedia

Using Search Engine Advertising and Affiliate Networks to Market Copyright Infringement Services

A search earlier this week for "ebooks" at Bing, Google, and Yahoo, yielded the following ads on the first page of results:

Bing:

Download eBooks!

Don't waste your hard earned dough on eBooks from other Websites
www.ibooks-r-us.com

Unlimited Ebooks Download

Books, Comics, Newspapers & More.
One-Time Fee, Full Access Forever.
www.thereadingsite.com

Yahoo:

Download Unlimited Ebooks

Download Unlimited Ebooks Today
Ebooks, Comics, Newspapers, &
More
www.thenovelnetwork.com

Download eBooks!
Don't waste your hard earned dough on eBooks from other Websites
www.ibooks-r-us.com

Biggest eBook Database
Want to Read Thousands of Books
On your New Pad? You are a Click
Away...
www.ePadLibrary.com

Google:

Unlimited eBooks Download
Special offer for New York residents
One time Fee – only \$50/LifeTime
New York
Buy-ebooks.name/newyork

(Figures 1 – 3. All screen shots captured March 2011, except those from Pirate Bay, which were captured February 2011.) Each of these ads lead to websites that are apparently controlled by myPadMedia, including, most frequently, the Novel Network, www.thenovelnetwork.com.

The Novel Network Home Page

Had any major search engine taken the time to set up a rudimentary system of occasionally reviewing the home pages of its advertisers, particularly those that use keywords tied to widely pirated goods, they would have found that the Novel Network boasts in large typeface at the top of its home page:

THOUSANDS OF EBOOKS!
Download, read, and enjoy any eBook from our network!

The page lists six starred benefits of its service:

- The highest-quality eBook downloads on the net!
- Members have unlimited access, no restrictions!
- Unlimited free Novels, Comics, Newspapers & more!
- Free 24 hour Technical Support
- No monthly or 'Pay Per Download' fees
- Huge Media Selection – over 30,000+ titles available!

Above images of an iPhone, Kindle, iPad, and Nook, the home page promises

Unlimited eBooks for iPad, iPhone, Kindle, The Nook, PC, MAC...

The home page also displays a blue starburst proclaiming that the service “Includes Bestselling eBooks!” (Figure 4)

The Novel Network's Answers to Frequently Asked Questions

A search engine employee instructed to conduct a modicum of diligence would then likely take a moment to click the "Learn More!" button, which leads to the frequently asked questions page. Here is a sample from that page:

What is The Novel Network?

The Novel Network is the internet's latest unlimited eBook downloading membership site. We allow our members to access thousands of eBooks, comic books, and newspapers and download them straight to their iPad, Kindle, Nook, or any other eBook reading device or Tablet you may own - without having to pay a cent for any of our downloads! ...

What type of eBooks can members get access to?

Members can download thousands of eBooks in a range of genres, including bestsellers, classics, mystery, thriller, crime, romance, fantasy and children's books. These aren't books by authors you have never heard of. Our network contains bestselling books which are being sold at your local bookstore or on sites like Amazon, Barnes & Noble, Borders and the iTunes iBookstore.

What about comic books?

The Novel Network allows members to download hundreds of superhero, action, manga, anime, and comedy comic books straight to their device! New, weekly releases from Marvel, DC, Image and Dark Horse are always being added to the member's area.

What do you mean by 'Unlimited' downloads?

By unlimited, we mean UNLIMITED! You are free to download as many eBooks, newspapers, comic books and much more to your device, as many times as you like, and all content is yours to keep forever! ...

The same page displays a Nook e-reading device with the names of bestselling authors (Patricia Cornwell, James Patterson, and Janet Evanovich among them) on seven book spines. Shortly above a "Start Downloading Now!" button, we find:

So how much does this cost?

To join The Novel Network, you simply pay the low, low price of \$49.95 and you will get unlimited lifetime access to the member's area and the features it provides. There are no more hidden fees or costs per downloads. The Novel Network is amazing value for money when you consider how expensive individual eBooks are. *Why pay \$15 per eBook when you can get unlimited lifetime access to eBooks for only \$49.95?*

(Emphasis in last answer added. Figures 5, 6.)

Throughout the site are buttons that take one to a secure payment page where one can pay \$49.95 with MasterCard, Visa, or PayPal for a lifetime membership in the Novel Network.

After precisely two clicks (one on the Bing, Yahoo, or Google ad, the second on the frequently asked questions page), it's clear beyond any reasonable conjecture that the Novel Network either provides copyright infringement services or it defrauds purchasers into believing it sells those services. Either way, no search engine should be accepting advertising from myPadMedia. Yet they do so at this very moment.

Novel Network's "membership" business model for piracy services is not new. It's instantly recognizable to anyone with a passing familiarity with online trafficking in stolen books, music and movies. It is, chapter and verse, the business model for Pirate Bay. (See Figures 7 -12.) The Novel Network is a Pirate Bay clone.

So here's where we are: search engines companies, which by all accounts are among the most profitable online businesses, cannot find the motivation to do the most perfunctory of reviews of advertisers buying targeted search terms for a commonly pirated creative work: ebooks.¹ These companies are loaded with top computer engineering talent, yet they fail to deploy simple algorithms and procedures to detect advertisers that are Pirate Bay clones, and are either marketing piracy services or simply defrauding their customers.

But it's far worse than that.

Going Viral: Affiliate Networks + Search Engine Advertising

The Novel Network pays affiliates generously to help market its copyright infringement services. The affiliates page at its website bears the headline "Earn Hundreds of Thousands of Dollars with the Novel Network." This may be a bit of puffery, but it does offer 75% of the Novel Network's earnings per referred sale. "That means you get a massive \$34 for each sale you send us!" (Figure 13.)

To make earning those referral fees easy, The Novel Network provides banner ads (Figure 14) and an embeddable YouTube video² that promises viewers unlimited e-books as it displays covers of "The Cat in the Hat," "The Catcher in the Rye," "The Wizard of Oz," and books from Stephen King and Stephenie Meyer.

The Novel Network encourages affiliates to use pay-per-click advertising at search engines and provide a list of 28 useful search-term phrases for those ads. Here's a sample (we've cut the list in half):

¹ Other media fare no better. A search for "free music downloads" and "limewire" at Bing, Google and Yahoo brings up paid, first-page ads at each of the search engines for many sites purporting to offer versions of Limewire's filesharing software. As a result of a copyright infringement lawsuit brought by music publishers, Limewire has been under a federal court order to stop distributing its software since October. The sites advertised at Bing, Google and Yahoo either actually offer the piracy software or are defrauding purchasers into believing they're offering the piracy software.

² http://www.youtube.com/watch?v=J1H8C7MARao&feature=player_embedded

Feel free to use these keywords for PPC campaigns (like Google Adwords), article writing and blogging.

novel network review
download novels
ipad ebooks
ipad downloads
ipad textbooks
kindle ebooks
nook ebooks
e-reader books
kindle downloads
e-reader downloads
download children books
epub books
download books to kindle
download books to nook
free ebooks sites
net ebooks

(Figure 15.) Authors Guild staff found dozens of sites acting as Novel Network affiliates. A YouTube search for “the novel network” yielded 504 results, with the top ten, ranked by views, containing Novel Network affiliate links. Those ten videos had been viewed more than 25,000 times.

Enter Plimus of Silicon Valley

Prospective Novel Network affiliates are instructed to create an affiliate account at Plimus, “one of the largest retailers of digital products online” where affiliates are paid “by check, wire transfer, PayPal, and even prepaid Mastercards.” (Figure 16.)

Plimus, according to its website, was founded in 2001 and is headquartered in Silicon Valley. (<http://home.plimus.com/ecommerce/company/about-us>). If one registers as a prospective affiliate and goes to the “marketplace” tab, one finds a list of online goods one can help sell, sorted by “Marketplace Score,” which “reflects a comparative item grading according to the level of affiliate revenues generated, current number of active affiliates promoting the item and its refund ratio. Rating runs from 1 (low) to 5 (high).”

The Novel Network ranks #9 out of 3,184 in Marketplace Score, with “Lots” of Active Affiliates. Its listing at Plimus couldn’t be plainer:

The Novel Network
Seller: myPadMedia

The Novel Network lets members download Unlimited eBooks, Comic Books and Newspapers straight to the iPad, iPhone, Kindle, Nook, or any other e-Reader! Fiction, Nonfiction, Bestsellers, Mystery, Thrillers, Romance, and more! Also works with PC & Mac.

The top twenty offerings, by Marketplace Score, in the Plimus affiliate marketplace include the following thirteen:

1. Download iPad Movies (Seller: AffiBank Network LTD)
2. Your iPad Downloads (Seller: AffiBank Network LTD)
4. Wii Games Download Services (Seller: AffiBank Network LTD)
5. MyDSiDownloads (Seller: "Self")
6. Unlimited PS3 Downloads (Seller: AffiBank Network LTD)
7. myPadMedia.com (Seller: myPadMedia)
9. The Novel Network (Seller: myPadMedia)
- 10 The Reading Site (Seller: myPadMedia)
12. eAudioLibrary (Seller: eGameDownloads)
13. YourPadCenter (Seller: Giga Publishing)
14. ePadLibrary (Seller: ePadLibrary)
18. All PSP Games (Seller: AffiBank Network LTD)
20. UnlimitedDSDownloads.com (Seller: Unlimitedddsdownload.com)

(Figures 17-21.) A quick look at these top-ranked products promoted by Plimus discloses uncanny similarities to the offerings of Pirate Bay clone Novel Network.

DownloadiPadMovies.com, for example, claims to provide unlimited free movies for iPads for a \$129.95 lifetime fee, listing "The Green Hornet," "True Grit," and "Black Swan" among its current most popular downloads. (Figures 22 - 24.)

Plimus also provides e-commerce services for myPadMedia's Novel Network.

Putting it Together: NovelNetworkExposed.com

A person currently searching Yahoo for "net ebooks" (one of the search phrases recommended by the Novel Network for its affiliates) would find on the first page of search results ads for the Novel Network and ePad Library (Nos. 9 and 14 on the Plimus list). That person would also find an ad for:

Unlimited Ebook Downloads
Scam Of The Century? Do Not Buy
Before You Read My Experiences.
NovelNetworkExposed.com

(Figure 25.) Novel Network Exposed, far from uncovering a scam, turns out to be an affiliate of the Novel Network. "Brian," the purported owner of the site, gives an exceedingly positive "review" of the site. (Figure 26.) If our search-engine user is intrigued enough by Brian's review to click on one of its many embedded links to the Novel Network, our user is taken momentarily

through Plimus (to record the affiliate referral, no doubt) before being redirected to the Novel Network.

If that user then buys a “membership” in this Pirate Bay clone for \$49.95 with a Visa card, the following companies and perhaps one individual profit:

1. myPadMedia, apparent owner of the Novel Network
2. “Brian,” owner of Novel Network Exposed
3. Yahoo, which sold the ad to “Brian”
4. Plimus, which must take a transaction fee for its affiliate and e-commerce services
5. Visa, which takes a transaction fee for use of its services

If the Novel Network actually does teach its members how to infringe copyright, then each of these five parties has profited from facilitating the trafficking in stolen books. If it does not deliver on its promises, then they’ve all participated, knowingly or not, in a fraud.

Anyone caring to look could uncover this illegal activity in a matter of minutes. It seems that no one does, or bothers to act on the information if they do. Everyone, it appears, takes the money and the DMCA safe harbor, and looks the other way. We need to remove the profit from promoting the theft of books, music and movies. A big part of the profit is going to search engines, through advertising by sites that promote the theft of books, movies, and music, and their countless affiliates.

I will describe how to take the profit out of facilitating piracy, for search engines and others, in my answer to Question 3.

Q2: What role should payment processors play in combating rogue websites?

Answer:

The web of facilitation of piracy or fraud described in my answer to Question 1 is fueled by online payments at every step. Taking reasonable measures to assure that online payment processors are not used to reward plainly illegal behavior is critical to taking the profit out of trafficking in stolen books, music, and movies.

I will describe the role of payment processors in fighting online piracy in my next answer.

Q3: Do you believe a private right of action should be included in any bill combating online infringement?

Answer:

It is critical, above all, to remove two impediments to private causes of action. These impediments serve no useful governmental or commercial purpose and are exploited on a

massive scale to facilitate nearly all online traffic in stolen books, music, and movies, allowing those who promote piracy to avoid all legal responsibility for their actions.

Impediment #1: Offshore, frequently anonymous enterprises have, through the Internet, become virtual participants in our domestic economy, yet they are beyond the reach of our laws.

Impediment #2: The DMCA protects definable, distinct breeds of online services that exploit the act's safe harbors to facilitate trafficking in stolen books, music, and movies.

Removing these impediments would, overnight, clean up much of the metastasizing online networks that traffic in stolen creative works. We urge the Committee to allow our justice system to do its work by:

1. Providing our courts with in personam jurisdiction for copyright infringement actions against foreign, often anonymous enterprises that engage in activities that nearly always promote widespread trafficking in stolen books, music, and movies. A targeted list of online services should be required to register an agent for service of process for copyright infringement actions with the Copyright Office before online payment processors and ad service providers are authorized to do business with them. These high-risk online services include:

- A. Services that offer (or purport to offer) online access to copyright protected works in digital form for a fee. These services include Pirate Bay clones, such as the Novel Network, and services that offer downloads and streams of copyright-protected creative works. They should not be able to receive online payments from the U.S., nor should they be able to host advertising from U.S.-based ad service providers, until they have subjected themselves to U.S. jurisdiction for copyright infringement actions.
- B. Anonymous file-sharing services. The file-sharing services that are problematic are a narrow category. They uniformly allow anonymous uploading and downloading of works, storage of files in online "lockers," so they are hidden from those visiting the service, and wide sharing of links that allow nearly anyone to download files. While there are legitimate uses for such services, they are so frequently subject to abuse that anyone operating such a service needs to take special care to assure that they do not become nests of online piracy. U.S. based enterprises running such services need to take care, or they are subject to lawsuits in our courts. Foreign enterprises, which have become a virtual part of our domestic economy, should also be legally responsible for their actions before they can accept online payments or online advertising from the U.S.
- C. Services that facilitate the anonymous downloading and streaming of copyright-protected creative works. A cottage industry of offshore service providers work to cloak and speed the transfer stolen creative works. They should be subject to our copyright laws before they are allowed to accept payments or advertising from the U.S.

This obligation simply recognizes that receiving financial benefits from operating in the U.S. economy is not a right for offshore enterprises, but a privilege that carries responsibilities. Each of these types of services could still exist, of course, without registering a U.S. agent for service of process, but their ability to easily profit from U.S. customers would cut off.

2. Tighten up the DMCA's safe harbor *for the high-risk online services described above* to allow such service providers to be stripped of their safe harbor status and their ability to accept online payments and advertising after a reasonable notice period. If one of these high-risk online services receives a prescribed number of DMCA take-down notices that have been registered with the Copyright Office, then an author, publisher or other copyright holder whose work has been unlawfully used by the service provider should be empowered to serve notice, through the registered agent for service of process, that the service provider's DMCA safe harbor status is on probation. The high-risk online service provider would then have 30 days to challenge its probationary status and the validity of the requisite DMCA take-down notices. If the high-risk online service provider doesn't successfully challenge its probationary status and it again, after that 30-day period, receives the prescribed number of DMCA take-down notices, a copyright holder may serve notice that the service provider will automatically (1) lose its DMCA safe harbor and (2) be barred from receiving online payments or hosting online advertising from the U.S. unless the service provider appears to challenge the validity of the new set of DMCA take-down notices within 30 days.

For this to work, online payment processors and ad service providers need to be obligated to abide by these rules. These obligations should allow payment processors and ad networks ample opportunity to remedy inadvertent errors. So, a third provision is needed:

3. Online payment processors and ad service providers should be subject to the loss of their DMCA safe harbor protections if they repeatedly process payments for high-risk online services that don't play by the rules. The Copyright Office should maintain a registry of such providers that have failed to register an agent for service of process for copyright actions or who have, through the procedure described above, been stripped of their privilege to receive online payments or host online ads. Payment processors and ad service providers should consult the registry before entering into transactions with high-risk online service providers, but they shouldn't be penalized for inadvertent, occasional transactions with such providers, and they should have ample opportunity to cure such errors.

Further recommendations are contained in my written testimony.

Q4: In 2008, the Ryan Haight Online Pharmacy Consumer Protection Act was signed into law. That law allows States to bring civil actions against websites that deliver or distribute controlled substances over the Internet without a valid prescription. The law also allows courts to enjoin those websites from operating. Shouldn't the government have the same authority to combat websites that sell counterfeit goods that may pose a danger to consumers? Why or why not?

Answer:

Yes it should. Protecting the public safety is a fundamental function of government.

Q5: If the government already has the authority to domestically seize domain names of rogue websites, why shouldn't we authorize the government to take measures to combat these websites when they move outside our borders? Is it appropriate to ask corporate citizens to help us in the fight against counterfeiting and piracy?

Answer:

We firmly believe that strong, effective actions are critical to fighting offshore piracy that undermines domestic copyright markets. Businesses are essential to that effort.

Q6: On November 29, 2010, ICE executed seizure orders against 82 domain names of websites engaged in the illegal sale and distribution of counterfeit goods and copyrighted works. Prior to Super Bowl 45, government authorities in New York seized several streaming websites that they accused of illegally showing live and pay-per-view sports events. Opponents of further legislation efforts argue that these actions were an overreach and that additional authority will lead to further abuse. What measures can be included in legislation to ensure DOJ does not overreach when exercising its authority?

Answer:

We believe the best answer is outlined in our written testimony and above: in personam jurisdiction with the notice and cure periods described answer all reasonable objections.

Q7: First Amendment constitutional concerns have been raised about last year's bill. Do you agree? Do you believe the narrow definition of infringing websites, remedies directed at preventing only infringing content and the incorporation of the relevant Federal Rules of Civil Procedure alleviate concerns that the bill is overbroad?

Answer:

The First Amendment does not protect copyright violations, nor would it shield operations dedicated to infringing copyright or selling counterfeit goods. That said, I question the potential effectiveness of efforts to re-route the domain names of websites dedicated to piracy and believe that last year's proposed legislation does not go nearly far enough to protect markets in creative works.

Q8: The Federal Rules of Civil Procedure incorporated in last year's bill require advance notice for preliminary injunctions. For temporary restraining orders, they require a specific factual showing of immediate and irreparable damage and written certification explaining efforts made to give notice and the reason it is not required in a specific instance. Does the incorporation of these rules alleviate concerns that the bill does not protect process?

Answer:

The Federal Rules of Civil Procedure's requirements for preliminary injunctions and temporary restraining orders have repeatedly been found constitutional for actions brought against parties engaged in copyright infringement and counterfeiting in the real world. The virtual world is not entitled to a greater degree of due process protections.

Still, in personam jurisdiction is preferable, and we urge the Committee to fashion legislation that will make it routinely available for authors, artists, musicians, filmmakers and other copyright holders pursuing offshore traffickers in stolen books, music, and movies.