The Regulation of Peer-to-Peer File Sharing Networks: Legal Convergence v. Perception Divergence

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A P2P: Regulatory Convergence

Millions of people around the globe use peer-to-peer (P2P) file sharing networks. However, as these networks function like search engines, allowing looking into files stored in users' hard discs, many engage in downloading music and movies for free, without compensating copyright holders. Digital technology makes the distribution of multiple perfect copies of copyright material so easy that the entertainment industry has been alerted and brought proceedings before courts in the US, Europe, Canada, Australia and Asia, targeting users and the makers of P2P software for copyright violations, and submitting that it has lost millions as a result of the piracy and counterfeiting taking place in such networks. However, P2P networks are not meant to be primarily designed to promote piracy.[1] They play the role of a new distribution channel to promote music or other kinds of art, or even share personal photos with some million other users, thus advancing cultural expression and creativity. They are also a tool to sample music, make compilation CDs[2] and re-discover music by unknown or forgotten groups of the past.

Controversial as the issue of P2P may be, a number of Directives in the EU, such as the Directive on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society and the Directive on the Enforcement of Intellectual Property Rights,[3] seek to regulate the activities taking place on them, following similar legal

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[1] An analogy may be drawn between P2P programs and the decision in CBS Songs v. Amstrad [1988] 2 All ER, where the question asked was: Is the company manufacturing and marketing a double deck recorder liable for authorising illegal copying according to s. 16 (2) of the the UK Copyright Design and Patents Act 1988? It was crucial that there was an asterisk in the advertisement of the product warning users that they should get permission for engaging in any act that would violate copyright law. Accordingly, the House of Lords held that the machine had substantial legal uses, and it was up to the users to decide how to use the double deck recorder, thus CBS could not be held to have authorised illegal copying. In the USA, the same approach was taken in the Betamax case (Sony v. Universal Studios), where the Supreme Court held that the use of VCRs does not constitute copyright infringement.

[2] It is important to note that in France for example, copyright law allows copying for private use, so it is lawful to copy a CD to a cassette. Levies on the sale of blank cassettes, equipment and hardware aim at compensating creators for any such private copying resulting in prejudicing copyright holders legitimate rights. However, in the UK, copyright law neither permits private copying of CDs to cassettes, nor is there a levy scheme, as the argument is that that such levies unnecessarily interfere with the function of efficient markets. The only relevant provision is Section 70 that allows private copy for time-shifting purposes, in other words for viewing or listening at a more convenient time. On the other hand, as in Canada downloading a song for personal use does not amount to infringement, the court in BMG Canada Inc. v. John Doe decided that there is not a real difference between a library that places a photocopy machine in a room full of copyrighted material and a computer user that places a personal copy on a shared directory linked to a P2P service, see BMG Canada Inc. v. John Doe, 2004 FC 488.

[3] Directive 2001/29/EC on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society; Directive 2004/48/EC on the Enforcement of Intellectual Property Rights.

developments in the USA,[4] and targeting not only P2P companies but also users. For example, the Copyright and Related Rights Regulations 2003,[5] which implement the Information Society Directive in the UK, introduce a civil remedy against a person carrying out an unauthorised act of circumvention of '*effective technological measures'* (other than in respect of a computer program). '*Effective technological measures*' are defined as measures to control the use of a copyright work through an access control or protection process such as encryption or scrambling. In other words, 'cracking' the code of a DVD preventing unauthorised copying is outlawed (which of course is the act the logically precedes the circulation of a video file on P2P networks). Similar provisions apply in respect to the circumvention of '*rights management information systems'* by any device or service. Such rights management information systems present us with a technology designed to detect and impede unauthorized consumer file swapping, as it is used to track any unauthorised use of the work. This is because the rightholder can set requirements (a time limit, financial requirements etc), which should be met for the work to be used.

Although there is no criminal sanction as to rights management information systems*,* it will be a criminal offence to manufacture or sell *a device* primarily designed, produced or adapted for the purpose of enabling or facilitating the *circumvention* of *effective technological measures*, or to provide *a service* primarily designed to enable or facilitate the circumvention of effective technological measures, unless the defendant can prove that she did not know or had no reasonable ground to know what the primary purpose of the device or service is. Furthermore, the Regulations introduce new criminal offences for unauthorised '*communication of protected material to the public'*, either in the course of a business or otherwise, if it is to such an extent as to affect prejudicially the owner of copyright. Obviously file swapping on P2P networks is caught by this provision. Finally, the courts have the power to grant an injunction against a service provider who has actual knowledge of another person using their service to infringe copyright law.

Another important piece of legislation on the EU level is the Directive on the Enforcement of Intellectual Property Rights, which was adopted by the Commission on the 26 of April 2004. Key provisions are the ones relevant to the seizure of evidence, the precautionary seizure of property, and the '*Right of Information*' that grants intellectual

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[4] Digital Millennium Copyright Act, Oct. 20, 1998 (Public Law 105-304) HR.2281.
[5] The Copyright and Related Rights Regulations 2003 (SI 2003 No. 2498) came into force on 31 October 2003.

property owners broad subpoena powers to obtain personal information from, for example, Internet service providers and universities about alleged infringers.[6] These provisions are applicable in respect to infringing acts committed '*on a commercial scale*', which replaced (and narrowed down) the text in the original proposal, which would have made these provisions applicable in respect to acts carried out '*with commercial purposes*' or causing '*significant harm to the rights holder*'. As for the seizure of evidence, in Article 7, the Directive gives courts the right to order the seizure of infringing goods and all relevant evidence relating to the alleged infringement, even before proceedings on the merits of the case have been initiated, and even if there is no demonstrable risk that evidence may be destroyed (subject to the protection of confidential information). If a risk of evidence destruction exists, the seizure may be ordered before the defendant has been heard.[7] As for criminal sanctions, recital 28 provides that criminal sanctions are, in appropriate cases, a means of ensuring the enforcement of intellectual property rights, but it is left to the Member States to decide whether it is desirable to introduce such sanctions or not.

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[6] Similarly broad subpoena powers found in the controversial US Digital Millennium Copyright Act (DMCA), which have been used by the Recording Industry Association of America to obtain personal information on users of P2P. However, the decision by the U.S. Court of Appeals for the District of Columbia in Recording Industry Association of America v. Verizon Internet Services Inc., of 19 December 2003 (No. 02ms00323 and No. 03ms00040) is important as it found that the subpoena provisions of the DMCA do not apply to private communications on a subscriber's computer or the P2P applications and networks used for music file sharing. Under the decision, subpoenas will not be issued without access to judicial supervision in instances in which the privacy rights of individual Internet users are potentially at risk. Before, the fast track subpoena provisions of the DMCA were used, which empowered obtaining personal information about Internet users by filing a form with a court clerk. In particular in page 3 of the decision the court found: '*On appeal Verizon presents three alternative arguments for reversing the orders of the district court: (1) § 512(h) does not authorize the issuance of a subpoena to an ISP acting solely as a conduit for communications the content of which is determined by others; if the statute does authorize such a subpoena, then the statute is unconstitutional because (2) the district court lacked Article III jurisdiction to issue a subpoena with no underlying 'case or controversy' pending before the court; and (3) § 512(h) violates the First Amendment because it lacks sufficient safeguards to protect an internet user's ability to speak and to associate anonymously. Because we agree with Verizon's interpretation of the statute, we reverse the orders of the district court enforcing the subpoenas and do not reach either of Verizon's constitutional arguments.*'   In the Directive on the Enforcement of Intellectual Property Rights, Section 3 Article 9 is not clear as to whether legal proceedings must have already begun before personal information is disclosed. It remains to be seen how the Directive will be implemented and whether there will be a court hearing to decide whether personal information should be turned over (Article 9 requires MS that '*the judicial authorities shall order, at the request of the right holder, unless particular reasons are invoked for not doing so, any person to provide information on the origin of the goods or services which are thought to infringe an intellectual property right and on the networks for their distribution or provision*').

[7] However, in Section 2, Article 7 also provides that '*Where measures to preserve evidence are adopted without the other party having been heard, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the parties affected with a view to deciding, within a reasonable period after the notification of the measures, whether the measures shall be modified, revoked or confirmed.*' Moreover, paragraph 2 provides that '*Member States shall ensure that the measures to preserve evidence may be subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant as provided for in paragraph 4.*'

The above-mentioned legislative measures are not unproblematic and have been heavily criticized. The argument promoted is that criminalisation and the protection of copyrighted material simultaneously by law, software code and contract may undermine fair use. The issue of fair use was especially raised in respect to technical protection measures and digital management information systems. The problem here is that for someone to use a copy-protected work, for example for the purpose of private research in the UK, she would have to go through the cumbersome procedure of making a complaint to the Secretary of State, who will be empowered to give directions to the copyright owner or her licensee to make available the means of carrying out the permitted act, in the absence of a voluntary measure or agreement.[8] Finally, privacy issues may be relevant to the new '*Right of Information*' and the broad subpoena powers to obtain personal information of the new Directive on the Enforcement of Intellectual Property Rights.

However, the focus of this paper is not on further discussing the legal implications of the above legal measures in respect to fair use. The purpose of this paper is to ask this question: despite the admittedly draconian legal measures enacted both in the EU and the USA, seeking to regulate illegal conduct on P2P networks, and regardless of the lawsuits brought by the entertainment industry in various countries in the world, millions of users still engage in illegal file sharing. The question then is: Why is this happening? Why do people still engage in illegal activity over P2P networks?

This question is interesting, as it appears that file sharing continues to thrive. Grokster claims 10 million users a month. A recent survey commissioned by the company found that far from being stereotyped college students, 71% of its users are between the ages of 25 and 54, their average household income is over $50,000, and 53% have a college degree.[9] And although some surveys draw attention to a drop in the number of users after the lawsuits in the US, others point to that the data produced in such statistical surveys do not reveal the whole truth.[10] In the light of the above, the following will look at possible ways to explain this phenomenon.

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[8] The Copyright and Related Rights Regulations 2003 (SI 2003 No. 2498).

[9] Thompson, B. (2003) 'Time to end online music battles' *BBC World News Online Version* available at http://news.bbc.co.uk/1/hi/technology/2828565.stm, last updated: Friday, 7 March 2003.

[10] It's difficult to tell whether those figures correspond to the statistics produced by P2P. KaZaa has been downloaded over 310 million times, according to Download.com. But the service has not disclosed other usage statistics. Firms that track file sharing, such as BayTSP and bigChampagne, have recorded steady usage over the past year, while companies specialising in distributing P2P programs claim there was not a significant drop in

B Why do people (dis)obey the law?

For some theorists, such as Austin and Bentham, it is the notion of punishment that should underline any discussion of why people obey or disobey the law.[11] Austin draws heavily on Bentham to argue that the validity of law is premised on the willingness of the sovereign to impose sanctions. This view comes close to arguments presented by some commentators supporting the view that that conduct on P2P networks can be explained on the basis of it being '*the thrill of getting something for nothing - and not getting caught doing it.*' [12] It also appears to be the view of the entertainment industry, which apparently seeks to remind P2P users that the Internet and P2P networks are not a virtual wild west, but law applies and punishment is imminent. Indeed as a P2P user, one can download movies, software and music files, although many times the files would be of poor quality, containing viruses or being corrupted, especially after the entertainment industry has circulated many of these, with a view to deter users from downloading the latest hits and other popular files.

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users downloading P2P programs. In the new analysis section of the BusinessWeek online Brian Hindo wrote that Rosso, the former president of Grokster, argued that '*Optisoft's income has seen little change even as the RIAA lawsuits were rolled out…..the services added over 3 million unique users in the past year, with half a million new copies of the software downloaded each month, mostly by U.S. users. Many users may have resumed downloading after a federal appeals court ruled in December that the RIAA's subpoena tactics were not covered under the 1998 copyright act'*. The same article points out that the surveys disclosed provide an unrealistic view of the situation. '*BayTSP, a Silicon Valley watchdog that works for three of the major record labels, tracks the number of songs available for download worldwide. It sees just a 10% drop since July and also notes steady migration from older, virus-ridden programs like KaZaA to hipper peer-to-peer networks such as eDonkey and Bit Torrent,*' which were not included in most of the surveys disclosed Similarly, '*Los Angeles-based researcher BigChampagne, which monitors millions of global file swappers, actually sees a 35% increase in illegal traffic from 2002 to 2003…. Given BayTSP's and BigChampagne's broader sample sizes, says John Palfrey, of Harvard Law School's Berkman Center for Internet & Society, "They're going to have more accurate empirical data"*'. It has also been pointed out by people like *Pew analyst Mary Madden* that there may be problems with the methodology used by the companies conducting surveys, as they phone U.S. adults, who may be reluctant to self-report an illegal activity. Finally, comScore analyst Graham Mudd said '*he would expect different results had the study included overseas users and more services, whose constantly evolving network architecture make detection more difficult'* while the RIAA declined to comment on the surveys but conceded that its own studies indicate increased public awareness of the legal situation relevant to P2P, http://www.businessweek.com/technology/content/jan2004/tc20040116_9177_tc024.htm page visited on 10 June 2004.

[11] Austin, J. (1977) *Lectures on Jurisprudence and the Philosophy of Positive Law* (St. Clair Shores, MI: Scholarly Press), especially see Lecture XXII: Duty, Injury, and Sanction; Jeremy Bentham, J. (1988) *A Fragment of Government* (Cambridge: Cambridge University Press).

[12] Murphy A (2004) 'Queen Anne and Anarchists: Can Copyright Survive in the Digital Age?' paper presented the Oxford Intellectual Property Research Centre Seminar on 26th February 2002 available at http://www.oiprc.ox.ac.uk/EJWP0202.pdf. According to the author '*the thrill of getting something for nothing - and not getting caught doing it - still draws punters to the new websites which are more sophisticated than Napster - not least because they aren't based on a central file server and are therefore much more difficult to pin down by litigation. And if Shaun Fanning has forsaken the student bedroom for the boardroom then there are others to take his place. The open source or "copyleft" movements are gathering momentum, with New Scientist adding its weight to the bandwagon*', see p. 11. Anthony Murphy is the Director of Copyright, UK Patent Office.

However, other legal philosophers, such as Hart, have moved away from positioning the notion of punishment at the heart the discussion, to raise the issue of legitimacy: People may obey the law for various reasons, as some may engage in a calculation of costs and benefits, others may accept the legitimacy of law in general, just because they do what others do, or follow without question traditional attitudes, while some would commit to promoting the societal welfare.[13] Dworkin also argued that the legal order should be legitimised, and this is done on the basis of a set of commonly accepted principles amongst members of a community.[14] Finally, Rawls came to grips with legal obligations as imposing a necessary restriction to the individual will, if one is to reap communal benefits. Furthering just institutions is a natural duty, [15] and the argument put forward is that a rule is followed as a result of a deontological duty based on conceptions about justice and fairness, which again brings attention to the problem of legitimation of authority in the eyes of citizens bound by rules.[16]

According to this view, a lack of legitimacy can also explain the problematic enforcement of law. Tyler's' empirical work reinforces this point, as by means of survey data he has shown that people are willing to obey legal rules, if they think that these have been enacted by means of fair procedures and by authorities perceived as competent.[17] Embracing this approach, some commentators have argued that copyright law lacks legitimacy, as it is an obscure body of law, having emerged and evolved without the participation of the layman. As such, it presents us with an incomprehensible body of law, difficult to be understood by the average user. The intangible nature of the subject of copyright further adds to the complexity of the relevant laws, as does the fact that property and intellectual property are regulated in a different way, since the mere fact that one owns a CD does not mean that there are no restrictions on the possible ways it can be used, as for example, its communication to the public is controlled.[18] Moreover, the problem of legitimacy is apparent

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[13] Hart, H.L.A. (1994) *The Concept of Law* (Oxford: Oxford University Press, second ed)

[14] Dworkin, R. (1986) *Law's Empire* (Cambridge: Harvard University Press)

[15] Rawls, J. (1971) *Theory of Justice* (Belknap; Harvard University Press)

[16] Rawls, J. (1993) *Political Liberalism* (New York: Columbia University Press).

[17] Tyler, T. R. (2001) 'Trust and Law Abidingness: A Proactive Model of Social Regulation' 81 *Boston University Law Review* 361.

[18] Samuelson, P. (1989) 'Information as Property: Do Ruckelshaus and Carpenter Signal a Changing Direction in Intellectual Property Law? 38 *Catholic University Law Review* 365; Garon, J. M. (2003) 'Normative Copyright: A Conceptual Framework for Copyright Philosophy' (2003) 88 *Cornell Law Review* 1278; Jensen, C. (2003) 'The More Things Change, The More They Stay The Same: Copyright, Digital Technology and Social Norms' (2003) *56 Stanford Law Review 531*; Hunter D. and Lastowka, G. (2004) 92 'The Laws of the Virtual Worlds' *California*

in the context of the widespread feeling that the Recording and Movie Industry are exploiting artists and users, hence rendering file-sharing moral.[19]

Coming back to discussing the reasons why people obey the law, many commentators have used the tools of law and economics to argue that social conventions may co-exist alongside legal norms, and as such the argument is that it may be that the costs of observing legal rules increase when strong divergent social norms result in peer disapproval, as an individual may seek to avoid damaging her reputation. A second scenario would be when an individual may decide to choose from a '*toolkit'* of social norms in order to signal the intention to co-operate, a process again underlined by a cost-benefit analysis.[20] In other words, there is a market for norms, which rational agents use in return for a material advantage, prestige, beneficial co-operation, or some other gain.[21] This position comes close to the extensive literature on the possibility to conceptualise formal law as co-existing with autonomous normative orders emerging from codes of conduct existing in parallel with state law, which can potentially be used as a source of resistance to the dominant ideology[22] Contrary to Hart and Kelsen, anthropologists and sociologists have long ago pointed to that rules governing conduct need not emanate from the state,[23] while

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[footnote section]

Law Review 1; Yu K. P. (2003) 'The Copyright Divide 25 *Cardozo Law Review*; Moohr S. G. (2003) 'The Crime of Copyright Infringement: An Inquiry based on Morality, Harm and Criminal Theory' 83 *Boston University Law Review* 731.

[19] Garon, J. M. (2003) 'Normative Copyright: A Conceptual Framework for Copyright Philosophy' (2003) 88 *Cornell Law Review* 1278.

[20] Lessig, L. 'The Regulation of Social Meaning' 62 *University of Chicago Law Review* 943; Posner, E. A. (1996) 'Law, Economics, and Inefficient Norms' 144 *University of Pennsylvania Law Review* 1697; Sunstein, C. (1996) 'Social Norms and Social Roles' 96 *Columbia Law Review* 903; Lessig, L. (1998) 'The New Chicago School' 27 *Journal of Legal Studies* 661.

[21] Posner, E. A. (1996) 'The Regulation of Groups: the Influence of Legal and Nonlegal Sanctions on Collective Action' 63 *University of Chicago Law Review 133*; Posner, E. A. (1997) 'Standards, Rules, and Social Norms' 21 *Harvard Journal of Law & Public Policy* 101; Eric A. Posner, E. A. (1998) 'Symbols, Signals, and Social Norms in Politics and the Law' 27 *Journal of Legal Studies* 765.

[22] Comaroff, J. & Comaroff, J. (1991) *Of Revelation and Revolution: Christianity, Colonialism and Consciousness in South Africa* (Chicago: University of Chicago Press); Hunt, A. (1985) 'The ideology of law: Advances and problems in recent applications of the concept of ideology to the analysis of law' 19 *Law and Society Review* 11-37; Hirsch, S. F. & Lazarus-Black, M. (1994) Introduction: Performance and Paradox: Exploring Law's Role in Hegemony and Resistance' in Hirsch, S. F. & Lazarus-Black, M. (1994) *Contested States: Law, Hegemony and Resistance* (New York: Routledge).

[23] Gurvitch, G. (1947) *Sociology of Law* (Butler and Tanner); Durkheim, E. (1933 orig. 1893) The Division of Labor in Society (New York: Free Press); Malinowski, B. (1935) *Coral Gardens and their Magic* (Allen and Unwin, London); Lévi-Strauss, C. (1963) *Structural Anthropology* (New York: Basic Books, orig. 1958); Gulliver, P. H. (1979) *Disputes and Negotiations: A Cross-Cultural Perspective* (New York: Academic Press); Foucault, M. (1972) *The Archaeology of Knowledge* (London: Tavistock Publications, orig. 1969); Foucault, M. (1979) *Discipline and Punish: The Birth of the Prison (*Harmondsworth: Penguin, orig. 1975); Foucault, M. (1981) *The history of Sexuality Vol 1: An introduction* (Harmondsworth: Penguin, orig. 1976); Foucault, M. (1990) *Madness and Civilisation: A History of Insanity in the Age of Reason* (London: Routledge, orig. 1961); Weber, M. (1978) *Economy and Society* (Berkeley &

the extensive literature on the constitutive role of law[24] is also relevant here as it is concerned not with *formal law*, but with the constitutive quality of instruments embracing a heterarchical understanding of law.

The position of this paper takes on board the understanding that there is a range of sources of law and relevant institutions. However, the thesis advanced here is different from the law and economics approach, as it is based on the assumption that agents are not always rational, engaging in a cost-benefit analysis and acting in their own self-interest. Norms are not externally imposed, constraining the individual, but are part of the history of the cultural setting inhabited by agents. Social meanings and rules of the game are subject to cognition and not automatically performed or externally imposed. Deeply embedded patterns of thinking and acting bound rationality.[25] Looking at repetitive everyday practices capturing normative expectations and coming to grips with the symbolic nature of these, reveals useful insights about why people obey or disobey rules. In the light of the above, the following will argue that preserving recognition and prestige underlines the above processes, as, being a popular insider according to the standards dictated by a certain group, feeds into the

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Los Angeles: University of California Press); Nader, L. and Nader, C. (1985) 'A wide angle on regulation: An anthropological perspective' in Noll R. (ed) (1985) *Regulatory Policy and the Social Sciences* (Berkeley: University of California Press); Nader, L. (1990) *Harmony Ideology* (Stanford: Stanford University Press); Nader, L. (2002) 'Controlling processes. Tracing the dynamic components of power' in M. Mundy (ed), *Law and Anthropology* (Aldershot, Burlington, USA: Ashgate/Dartmouth); Moore, E. P. (1993) `Gender, Power, and Legal Pluralism: Rajasthan, India' 17 *American Ethnologist* 431.

[24] Yngvesson, B (1988) 'Making Law at the Doorway: The Clerk, the Court and the Construction of Community in a New England Town' 22 *Law and Society Review* 409-448; Simon, J. (1988) 'Ideological Effects of Actuarial Practices' 22 *Law and Society Review* 771-800; Starr, J. & Collier J. F. (1989) (eds) *History and Power in the Study of Law: New Directions in the Study of Legal Anthropology* (Ithaca: Cornell University Press); Fitzpatrick, P. (1988) 'The rise of informalism' in Matthews, R. (ed) *Informal Justice?* (London: Sage); Murphy, W. T (1997) The Oldest Social Science?: Configurations of Law and Modernity (Oxford: Oxford University Press).

[25] Bourdieu, P. (1972) *Esquisse d'une Théorie de la Pratique. Precédé de Trois Etudes d'Ethnologie Kabyle* (Geneve: Droz); Bourdieu, P. (1977) *Outline of a Theory of Practice* (Cambridge: Cambridge University Press, orig. 1972); Bourdieu, P. (1979) *Algeria 1960: Essays* (Cambridge [Eng.]; New York: Cambridge University Press); Bourdieu, P. (1980) 'Le capital social' 32 *Actes de la Recherche en Sciences Sociales* 2-21; Bourdieu, P. (1984) *Distinction: A Social Critique of the Judgment of Taste* (London: Routledge & Kegan Paul, orig. 1979); Bourdieu, P. (1986a) 'La force du droit: Eléments pour une sociologie du champ juridique' 64 *Actes de la Recherche en Sciences Sociales* 3-19 ; Bourdieu, P. (1986b) 'The forms of capital' in Richardson, J. G. (ed) (1986) *Handbook of Theory and Research for the Sociology of Education* (New York: Greenwood Press); Bourdieu, P. (1986c) 'Habitus, code et codification' 64 *Actes de la Recherche en Sciences Sociales* 40-44; Bourdieu, P. (1990) *The Logic of Practice* (Cambridge: Polity, orig. 1979); Bourdieu, P. (1990) *In other Words. Essays Towards a Reflexive Sociology* (Oxford: Polity, orig. 1987); Bourdieu, P. (1991) *Language and Symbolic Power* (Cambridge: Polity in association with Basil Blackwell, orig. 1977-1984); Bourdieu, P. (1993) *The Field of Cultural Production: Essays on Art and Literature* (Cambridge: Polity Press, orig. 1992); Bourdieu, P. (1994) 'Rethinking the state: Genesis and structure of the bureaucratic field' 12 *Sociological Theory* 1-18; Bourdieu, P. (1996) *State Nobility: Elite Schools in the Field of Power* (Oxford: Polity Press, orig. 1989); Bourdieu, P. and Wacquant, L. (1992) *An Invitation to Reflexive Sociology* (Chicago: University of Chicago Press).

reinforcement of certain social practices, which may simultaneously result in weakening obedience to law, if there is divergence between the two.

The following will explain how Goffman's work and ethnographic research is relevant to the present exercise to come to grips with the practices of P2P communities with a view to explain divergence on the face of the legislative convergence discussed in the introductory section of this paper.

C The Present of Divergence and the Perception of Legal Norms: An Ethnographic Account of p2p

In what follows the proposition is that P2P users are a group with their own rules and codes of conduct characterised by expectations that govern the behaviour of its members, and which are different from other social groups. Such rules governing behaviour are based upon sustaining a member's reputation. The position of this paper is based on Goffman's understanding that dignity, honour and pride are important variables regulating everyday interaction and therefore the observation of sentiments such as being ashamed or full of pride, should be an integral part of an analysis seeking to explain encounters.[26] Discussing the importance of maintaining social face,[27] Goffman draws attention to that individuals attribute meaning to social life by means of the '*social code of any social circle,*'[28] as individuals are expected to live up to it. Therefore, during interaction, the actor sustains the images conveyed by this social code through expression, an act that may be undertaken at a conscious or unconscious level, as it may be intended or not, but is constructed during playing in a game consisting of rituals, which the agent has to observe.[29] Goffman notes that different social groupings (according to age, sex or class for example) express themselves in distinctive ways reflecting what is thought to be a *proper* way of expression according to a particular cultural configuration. Therefore, to *be* a given kind of person is not merely to

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[26] Goffman, E. (1967) *Interaction Ritual: Essays in Face-to-Face Behavior* (London; Chicago: The Penguin Press: Aldine), at p. 4-45.

[27] ibid., at p 9-10, where Goffman describes the process behind the creation of *social face*.

[28] ibid., at p. 9.

[29] Goffman, E. (1959) *The Presentation of Self in Everyday Life* (New York: Doubleday; London: Mayflower), at p. 22-30 and 70-76, particular see the '*Social Self,*' at p. 44-45. On the importance of symbols also see Mead, G. H. (1967) *Mind, Self and Society: From the Standpoint of a Social Behaviourist* (Chicago: University of Chicago Press, orig. 1934). However, note that Mead denies structural constraints and views action as providing for unlimited improvisation.

possess the required attributes, '*but also to sustain the standards of conduct and appearance that one's social grouping attaches thereto.*' [30]

The characterisation of P2P users as members of a distinct community brings the position of this paper close to Castells' well-known thesis as to the importance of virtual communities. The author argues that the major transformation of sociability in complex societies should be understood in relation to the substitution of networks for spatial communities. As a result, the structuring of social relations reveals its properties both in the context of territorially defined relationships and networks, which go beyond locally defined relationships. This is due to new means of communication such as the development of telephony and the introduction of the Internet, the latter being at the heart of the network society, as it allows for interaction whose scale and form has no precedent. [31]

On the basis of the above, the analysis of communities may shift to observing cyber-communities with a view to uncover their codes of conduct and patterns of behaviour regulating who is an insider and who is an outsider. [32] But the analysis of this paper is also based upon the understanding that members of such communities may perform a variety of roles, as they are members of a variety of social groupings. To substantiate this latter point requires going back to Goffman's interactionism, as the author further argues that individual actors have a plethora of roles available to them, and may therefore choose amongst them in the course of interaction. This multiplicity of roles exists as the individual carries with her continuity of lines and faces, which owe their existence to events and situations outside the immediate interaction order. [33] Therefore, although the focus of his analysis is on the micro level of interaction, his work also engages in exploring the ways in which social order is sustained, as it accepts that there are structural limits to individuals' action. In other words, the agent does have choice concerning the lines and faces, but within limits imposed by a particular order.

To follow this intuition in the context of P2P communities, members have various identities, as they are active in various social settings. This is happening as a new fluid concept of *community* is emerging, encompassing people who are at the same time members

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[30] Ibid.

[31] Castells, M. (2001) T*he Internet Galaxy* (Oxford, Oxford University Press) at p. 116-136; Wellman, B. (1996). Are personal communities local? A dumptarian reconsideration 18 *Social Networks* 55.

[32] ibid., Bourdieu (1972).

[33] Goffman note 25 above, at p. 7.

of various different communities, while the mobility of members of networks is at the heart of such processes.[34] Based on this reflection, the position here is that youth culture is certainly relevant, [35] as statistics show that approximately 64% of Kazaa users for example, are people up to 24years old, while another 10.42 percent are 25-29 years old.

Similarly important is the culture that underpinned the emergence of the first Internet communities based on open communication and technological experimentation by computer enthusiasts and hackers.[36] Therefore, P2p communities present a subculture that brings together elements from all these different settings, but beyond this amalgamation, distinctive rules regulating conduct emerge, which govern the meaning attached to who is an insider, while in turn, these shared practices underline the conduct of engaging in the illegal copying of files online, as the position here is that peer disapproval is important in order to understand why individuals do not comply with laws. This is not because people engage in a rational calculation of costs and benefits, but because consciously or not they fulfil expectations sustaining constructed understandings of who is an insider, in other words who is popular.

To look at relevant practices, the following will look at how status is earned in the P2P communities. The tools of participant observation, online interviews and textual analysis are employed, as words contained in the argot reveal a normative order that is underlined by assumptions as to who is a popular insider. I am also using historical writings on the subject. I conducted the ethnographic part of the research in forums of discussion dedicated to P2P networks, engaging in textual analysis of the postings in such forums by users,[37] as it is there that they meet to discuss news and programs. I chose to look at such forums, as it is there where one would meet dedicated file sharers, who feel part of a community, and not simply individuals who occasionally use P2P. In these forums, most of

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[34] Boden, D. and Friedland, R ,(1994) 'NowHere. An introduction to space, time and modernity' in Boden D. & Friedland R. (eds.), *Now/Here. Space, Time and Modernity* (Berkeley, University of California Press), at p. 1-60; Urry, J. (2000) *Sociology Beyond Societies: Mobilities for the Twenty-First Century* (New York: Routledge).

[35] Merten, D., and Schwartz, G. (1967) 'Youth Culture' 5 *The American Journal of Sociology* 72.

[36] Mitnick, K. D., Simon W. L. and Wozniak, S. (2001) *The Art of Deception: Controlling the Human Element of Security* (Indianapolis: Wiley Publishing) Himanen, P. (2001) *The Hacker Ethic: A Radical Approach to the Philosophy of Business* (New York: Random House); Levy, S (1984) Hackers: Heroes of the Computer Revolution (Doubleday Books); Abbate, J. (2000) Inventing the Internet. Inside Technology (Cambridge MA; MIT Press); Turkle, S. (1997) *Life on the Screen* (New York: Simon & Schuster); Verton, D. (2002) *The Hacker Diaries* (Osborne/McGraw-Hill).

[37] Mann, C. and Stewart, F. (2000) *Internet Communication and Qualitative Research. A Handbook for Researching Online.* (Thousand Oaks: Sage); Jones, S. (1999) *Doing Internet Research. Critical Issues and Methods for Examining the Net* (Thousand Oaks: Sage Publications).

the threads are devoted to discussing technological issues, but a variety of other themes are also subject to debate by the '*community*',[38] such as P2Ppolitics, general lifestyle, favourite discussion forums, hobbies and music.

Figure 1: Kazaa surveys about its users

Field Summary for Q11:		
Age Bracket		
Answer	Count	Percentage
No Answer	141	3.12%
0 - 15 (A)	583	12.90%
16 - 19 (B)	1259	27.85%
20 - 24 (C)	948	20.97%
25 - 29 (D)	471	10.42%
30 - 34 (E)	316	6.99%
35 - 39 (F)	227	5.02%
40 - 44 (G)	162	3.58%
45 - 49 (H)	112	2.48%
50 - 60 (I)	173	3.83%
60+ (J)	129	2.85%

Field Summary for Q12:		
Continent		
Answer	Count	Percentage
No Answer	111	2.46%
Asia (A)	174	3.85%
Africa (B)	70	1.55%
Antarctica (C)	22	0.49%
Australia/Oceania (D)	143	3.16%
Europe (E)	923	20.42%
North America (F)	2855	63.15%
South America (G)	223	4.93%

 Source: www.kazaa.com webpage visited on 8 June 2004.

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[38] The word community is actually used by the users and forum moderators, see http://www.zeropaid.com/bbs/ webpage visited on 8 June 2004.

Figure 2

Zeropaid Forums Statistics

Most users ever online was 259, April 19th, 2003 at 03:11 PM.
BeatFactory::., Anjin, Azo-999, downloadalot, dubstylee, DudeAsInCool,
kazza123, Lord_of_the_Dense, Muffin_Man, nasrules, nukehella, robherb,
Shadow, Thief of the Sun, syndicate

Threads: 16,233, Posts: 191,731, Members: 192,407
Welcome to our newest member, drgb

Source: http://www.zeropaid.com/bbs/ webpage visited on 8 June 2004.

C. 1 P2P Communities: Culture and History

A few definitions and clarifications should be first provided before looking at the history of file sharing. Most of the people think that Napster was the first network that allowed the sharing of files on the net, or that Kazaa is the only file-sharing network currently available, while the truth is that for one thing, there is a long history of exchanging files, which preceded Napster, and for another, Kazaa is one amongst the many networks. In particular, it may be true that Kazaa has the most users, however, it has been heavily accused of having taken advantage of its users by installing spyware and addware without giving any notice. For this reason,[39] many users have protested and are urging peers in many forums of discussion to use other file-sharing applications, waging a 'war' against Kazaa.

As the following will show, when discussing P2P, it is also important to be able to distinguish between '*clients*' and '*networks*'. A network, like *Fast Track*, support various *clients* (programs), like Kazaa, iMesh and Grokster, with Kazaa being the dominant Fast Track client. As of the 14 of May 2004, Kazaa had 2.95 million users, well below last year when it boasted an average four million-user population. iMesh, had an additional 986.000, so Fast Track now has a total of approximately 3.8 million. Fast Track is in competition with other networks such as the eDonkey and Overnet networks. E-donkey has 2.01 million users and

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[39] Addware is a separate program installed at the same time as a shareware or similar program, and usually continues to generate advertising (as in pop-ups for example) even when the user is not running the shareware program. Spyware is addware that also sends information to the marketing agency or subscriber. Free software programs such as Spybot, Search and Destroy, circulate on the web and aim at removing these from users' computers, see http://security.kolla.de/.webpage visited on 10 June 2004.

Overnet 802.000. The two networks are independent, but users are able to upload and download from the respective clients.[40] Very useful information about the various file sharing programs are given on Zeropaid's website.

Figure 3: Zeropaid.com - File Sharing Soldiers

Freenet Network 2 items	**Edonkey2000 Network** 3 items	**Paid Service** 2 items	**Fast Track Network** 5 items under 1 subcatagory
Gnutella Network 11 items under 2 subcatagories	**Direct Connect** 2 items	**Web Based Services** 3 items	**Multi-Network Support** 6 items
MP2P Network 3 items	**Other Networks** 16 items	**OpenNap** 3 items	

Top File Sharing Programs

Windows	**Macintosh**	**Linux**
1. Shareaza Comments: 426	1. BitTorrent Comments: 60	1. BitTorrent Comments: 60
2. BitTorrent Comments: 60	2. Poisoned Comments: 12	2. xMule Comments: 31
3. KaZaA Lite Comments: 540	3. Overnet Comments: 54	3. Freenet Comments: 65
4. SoulSeek Comments: 31	4. Acquisition Comments: 38	4. Overnet Comments: 54
5. Ares Comments: 243	5. LimeWire Comments: 149	5. eDonkey Comments: 326

View PC | View Mac | View Linux | View All | View Tools | New User Guide | Interviews | P2P Forums | Link Locker | Project W.O.S.

Source: http://www.zeropaid.com/php/filesharing.php?id=58 webpage visited on 17 May 2004

As for the competition amongst networks, although Kazaa is the one mostly used, it is considered to be for '*newbies*'. As one user said

Hawkburn January 6th, 2004, 12:16 AM Zeropaid forums
'Well most of these news reporters and channels think theyre real high-tech when they mention "KazaA!" Of course it's the most used, but the hard-core sharers and downloaders dont use FastTrack…... alot use edonkey... mIRC [Internet Relay Chat] is for more advanced users, and newsgroups usually require you to pay monthly, plus you dont have to upload'.

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[40] Mennecke, T (2004) 'eDonkey/Overnet Rapidly Approaching FastTrack' 13 May 2004 *Slyck News* available at http://www.slyck.com/news.php?story=477 , webpage visited on 8 June 2004.

To this point I will come back later in this paper. However, for the purposes of the following section, I will look at what the user quoted earlier referred to as '*newsgroups*' and '*mIRC*', which are services that require more advanced users or monthly subscription. It appears that P2P file sharing is more than Kazaa and the P2P networks and programs discussed earlier, as they were preceded by what is called '*traditional file sharing*'.

C. 2 The history of file sharing

Discussing with P2P users the history of file sharing networks certainly requires mastering acronyms like BBS's, IRCs, FTP's and argot language such as '*AOL Warez', 'lame', 'newbies', 'leechers'*. The following will try to come to grips with these.

It appears that the notion of file sharing is closely linked to Bulletin Board Services (BBS), where one could dial into an access number and download files, a process which was very slow, due to the existing dial up connections and modems. Then, the USENET newsgroups were born. Usenet is a board for public network messages, allowing for instant messaging (unlike email and BBSs), sent by people who have access to it, and which is directed to various different, thematically organised, newsgroups. To access the Usenet, one need not access the Internet, as the two are different networks, while the same applies to BBSs. Both BBSs and USENET became places to trade files. But, curiously enough, it is AOL that became one of the most popular places to do this, as the (in) famous *AOL Warez* scene was established in mid 1995. '*Warez*' is a word commonly used on the net to indicate cracked software or application made available to others on the Internet, USENET or BBSs. Technology allowed faster modems, while public as well as private chat rooms were formed, hosted by on-line services such as America On-line and CompuServe. In such chat rooms, which are again thematically organised, users talk to each other in real time having first paid a subscription. Public chat rooms are the ones that are created and maintained by AOL, while private ones are created by members who choose the topic around which the group is organised, and the rules of the discussion. Such online chat rooms are like 'clubs' where subscription is paid to maintain membership and close-knit communities were formed dedicated to offering cracked software.

> **Q.** *What is the link between the old days of BBSs, USENET AOL Warez and today's file sharing?*
> **A.** *Young, adolescent boys, with a curiosity to learn about technology and sense of adventure. All these groups have been responsible for obtaining and cracking if neccessary movies, software, and everything else. The thing you always have to keep in mind with all of these groups is that nobody really in the warez made money from the warez scene, and people really into the scene didn't even use the files. For example, when I was into the AOL warez scene, I would get thousands of programs and games in my aol inbox, and I would keep trading for others, but it was extraordinarily rare for me to actually download any of them. The only time I ever downloaded anything was after I quit. The corporations had a very hard time grasping this phenemenon, and I think they still might. Eventually, I quite, but I was never a major player, and plenty of others have come.*

According to the interesting account given by another member of the scene, the news spread that trading of files was taking place on AOL, and many young people began using the chat rooms to find free programs and above all to be part of the *'in'* club as in the old days of file sharing the chat groups were for users who had some technical knowledge, unlike today where the user friendly interface of Kazaa for example allows everyone, even with a very basic understanding of computers, to use P2P programs.[41] An innovative program created by one of the members of the scene allowed the creation of fake AOL accounts and helped the dissemination of cracked files. From 1997 to 2000, around a thousand groups appeared and disappeared, whose purpose was to crack and transfer as much as possible and to experiment with technologies, which would make this easier to achieve. These groups were allied with each other, had 'security' personnel, and consisted of a President, Vice-President, and members. Groups at this time began experimenting with various other ways to transfer files such as through IRC and FTP usage.[42]

Nowadays, to be a member of file sharing communities by trading files, participating in forums of discussion and instant messaging, is much easier, as Kazaa can be used by anybody with very basic knowledge. Nevertheless, the hierarchy between '*newbies*' on the one side and the ones with more advanced knowledge about computers on the other is carried over to the present time, as there are still today more closed file sharing communities than the P2P networks, where to be part of the *'in'* club requires technical skills. Users who use traditional file sharing in USENET Groups, Internet Relay Chat (IRC), and File Transfer

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[41] http://www.rajuabju.com/warezirc/historyofaolwarez.htm), webpage visited on 14 May 2004. The author, a member of the AOL Warez scene, designed a website with the aim to discuss experiences with Warez and write the history of the scene, inviting other members to contribute by sending comments.
[42] ibid.

Protocol (FTP) programs enjoy a prominent position amongst P2P users.[43] Various threads in discussion forums are devoted to explaining how IRC, USENET and FTP work and what the differences are between P2P and these programs. Moreover, the ones with more advanced knowledge assist '*newbies*' with using them. Being able to use all these different programs certainly adds to the status of a user as a *genuine file sharer*.

C. 3 AOL, FTPs and IRC Today

A user complained that FTP users are elitist as they do not allow for unlimited downloading (there is a ratio between uploading and downloading) and control who is to become a member. The following is the response by other participants:

Thread: FTPs Thu Dec 04, 2003 3:00 pm P2P forums

---SlyckTom *There are those who will heavily disagree with you, Gter. In fact, many will say that FTP's is where the cutting edge of file-sharing is. Think about how many trade groups are out there, that use FTP and nothing but FTP to trade. These groups are, by comparison to P2P networks, small, and very tightly controlled. You have to know someone to get in, and are among trusted comrades so the chances of you getting in trouble with the authorities is slim to none...*

As far as uploading, is it not the same for a P2P network? If, for example, I am using a P2P app and happen to be sharing 100 songs, would I not expect the person who is downloading off of me to also share?
Besides, many FTP's are generous when it comes to sharing. Most I've seen have ratios on the order of 4:1...and thats for ones advertised on IRC. Trade groups have varying rules...

---Jeffool

I've actually talked to people who would agree with Gter. But I think a lot of that isn't intentional downtalk to FTP'ers, but rather an ignorance of the landscape as a whole.

They think that FTP'ers only trade amongst themselves and do it solely to keep the 'good stuff' with the 'in' crowd. Well, that's been my experience talking with people. Is that accurate Gter?

If so, let me tell you that you're a bit off. A large part of releasers for P2P networks are made up of FTP'ers these days. Sure, there's bound to be some elitests, but the reason Kazaa and such are relegated to being the 'dregs' of the scene are entirely their own fault. When was the last time, using Kazaa, you sent a message to someone DLing something from you, recommending something else you think they'd like? I've done it a couple of times, and the majority either have messages turned off or never reply. That's okay. With all the ads people send, I completely understand.

Though recently I started sending a website offering free downloads of a particular artist to people who were DLing that artist from me, and some actually responded. Interesting experiment.

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[43] FTP is software that connects to a host or server and allows the downloading of files form the host/server to one's computer. IRC, as explained earlier, allows for instant communication unlike email and USENET.

But I'm off base. Gter, it's not that FTP'ers are elitest, it's that other types of filesharing aren't as cohesive. Kazaa completely lacks the community of eDonkey, BitTorrent, or FTPs. Kazaa is the McDonald's of filesharing. eD and BT are the fine restuarants. And FTP is the best place ever... Grandma's house. Smaller, tighter communities, sharing higher quality goods, because they care for each other and the good of the community. Do you care if McD's goes out of business? What if your Grandmother stopped cooking? This is why Napster was truly great. They had chatrooms that were full of of people. Sure they'd often resort to childish homophobic and racist namecalling, but there was plenty of good talk as well. And talk back and forth between traders, recommending music. Now eD [e-Donkey] and BT [Bit Torrent] use links, building communities up around link depots. I don't know if it was intentional, but it's wonderful. You can point people exactly to a great file you want to share, and in doing so, can often make it DL faster for you. Talk about win/win. In short, these things rock: speed, friends, security, good files, FTPs, and grandma's cooking. Kazaa is McDonald's. It gives me the runs. eD is the local comic or record shop I hang out in to get the cool stuff from my friends.

The above posting suggests that there is a hierarchy amongst P2P programs and between traditional file sharing and p2p. This hierarchy is established on the basis of where a true community of file sharers may thrive, as e-Donkey and Bit Torrent for example allow exchanging views about the quality of a music file and generaly behave as one would behave with friends at home, that is listen to 'cool' music and exchange music files. The following will show that not only FTPs, but also using IRC is still very popular today. In a poll by P2P forums it was revealed that 86% of the participants of the forum who voted use IRC.
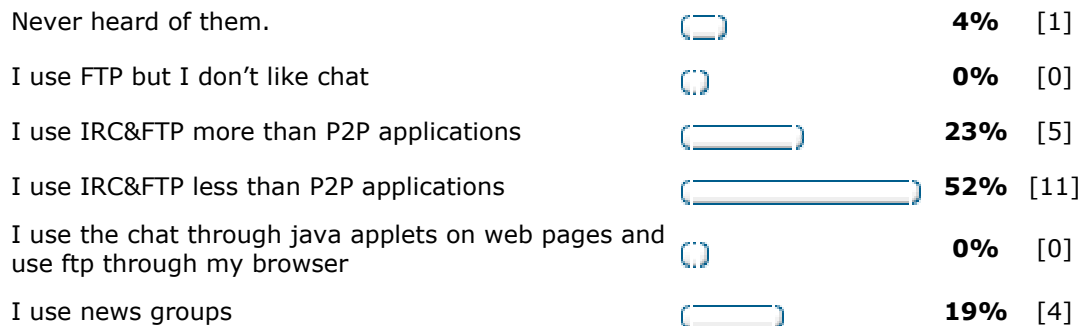
Do you use IRC at all?

Yes	▉▯▯▯▯▯▯▯▯▯▯▯▯▯▯	**86%**	[45]
No	▉▯▯	**13%**	[7]
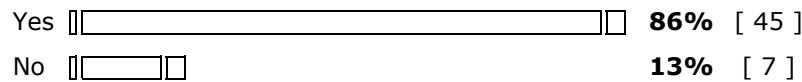
Total Votes : 52

A different poll by Slyck Forums similarly reveals the extent to which P2P users use IRC and FTP

Do you use IRC and ftp:// to get files?

Never heard of them.	(▬)	**4%**	[1]
I use FTP but I don't like chat	()	**0%**	[0]
I use IRC&FTP more than P2P applications	(▭▭▭)	**23%**	[5]
I use IRC&FTP less than P2P applications	(▭▭▭▭▭▭)	**52%**	[11]
I use the chat through java applets on web pages and use ftp through my browser	()	**0%**	[0]
I use news groups	(▭▭▭)	**19%**	[4]

Total Votes: 21

Beyond the above-mentioned ways to share files, youngsters and adults would always find ways to copy for their friends. Cultural categories that shape what is *'fair'* are different as is underlined by understandings about how one's reputation is measured.

Thread: Priracy February 27th, 2004, 02:51 AM Zeropaid Forums

---wingnut2600
I remember using Apple II's in grade school, the cool kids with C-64's and how cool it was to see a Mac in 1984. I had an Amiga in Junior high... that was when I started copying games with my friends... I remember copying the manual of WINGS by Cinemaware so that my friend could find the word on page 76 paragraph 3 sentence 4 word 3. I don't do that anymore; I have enough cash to pay for a lousy game and I think the money is cool to go to the programmers.

Using computers and having the last model was considered to be 'cool'. Similarly copying games for friends is 'cool', and a boy or young person who could do that would certainly become more popular amongst peers. Many users in the various discussions I participated would remember copying albums for friends.

Thread: Priracy February 27th, 2004, 02:51 AM Zeropaid Forums

---Siskabush
ahh, piracy, unbeleiveably, we got a 2x CD burner before the napster days began (400$ for that thing, newest technology). Copied albums for friens here and there.

---kleenr

My first experience was my friend's dad copying a cassette tape game for a tape drive on my Commodore 64. It was called Radar Rat race. That was 1985 and I was 10 years old. A couple of years later I actually got a 5 1/4" disk drive. I met some guys at school whos dad's got games from their friends at work. We used a program call Fast Hack 'Em. It had what was called a "Nibbler". It had the copy protection schemes for various games stored on one of the program disks, and you would load that up before copying the game. It then "nibbled" away the protection from the data as it was copied. I remember having to swap disks (original and copy) out like 10 times or more to get a copy. So basically, piracy for me at that time was all about going to someone's house with a box full of disks. Later a program came out called "Maverick" that was even cooler. It copied everything. EVERYTHING.
Around 1988 I got my first 1200 Baud modem. That sounds slow, but most people I knew were still running 300 baud. I dialed into lots of local BBSs and engaged in mostly what goes on in most forums today: discussion and flaming with a few role playing games played via message boards………..
I didn't do much beyond hack out calling cards, download and upload games, but that got me into a group that caleld themselves "The White Collar Criminals" or WCC. Lots of people were getting out of the scene around 1992 because ANI (automatic number identification) was being used by most phone companies to find out who was dialing in hundreds of times a night. ….Shortly thereafter I started college and moved on to being a PC user. Sure, I got a few games here and

there for free... but nothing was as cool as being a member of WCC and seeing my handle "Dracandros" (it was Dungeons and Dragons thing-geek alert) in their demos. …Oh yeah, and in 6th grade I copied my Beastie Boys vinyl of "License to Ill" onto tapes for all my friends. Heh !

Programs are '*cool*' when they allow to '*copy everyhting*' for friends. The proposition here is that to come to grips with the phenomenon of file sharing one would have to also locate it in the context of youth cultute. Youngsters compete in rather competitive terrains for a higher rank in the established hierarchy of popularity, esteem and recognition.[44] If one accepts that the cultural core of their cultural system is formed on the basis of categories in respect to status and recognition, then obviously peer approval or disapproval is important in order to explain deviant behaviour. Being a '*cool*' youngster requires doing certain things Using certain language signifiers, for example is important. But the presence of internet culture is equally important. This is the Kazaa culture, open sourcing, instant messaging, IRC and USENET chatroom communication culture.[45]

In short, P2P users bring with them various dispositions: the disposition of the people who were fascinated by technological experimentation and the vast potential of computer technologies, where in the early days of AOL Warez prestige and recognition was earned by means of both being proficient at using computers and illegally sharing files with peers; the disposition of making compilations, copying and sharing for friends and family in the real

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[44] Schwartz, G. and Merten D., (1967) ,Youth Culture' 5 *The American Journal of Sociology* 72.

[45] Epstein, J. S. (1998) 'Generation X, youth culture, and identity' in Epstein, J. S. (1998) (ed) *Youth Culture: Identity in a Postmodern World* (Oxford: Blackwell); Kasesniemi, Eija-Liisa and Rautiainen, P. (2002) 'Mobile culture of children and teenagers in Finland' in Katz, J. and Aakhus, M. (eds) *Perpetual Contact: Mobile Communication, Private Talk, Public Performance* (Cambridge : Cambridge University Press); Gross, E. F., Juvonen, J. and Gable, S. (2002) 'Internet use and well-being in adolescence' 58 *Journal of Social Issues* 75; Sefton-Green, J. (1998) *Digital Diversions: Youth Culture in the Age of Multi-Media* (London: UCL Press); Tapscott, D. (1998) *Growing Up Digital. The Rise of the Net Generation* (San Francisco: McGraw-Hill). An interesting observation in support of the point that new forms of communication is an integral part of today's youth culture is that the top 50 search terms for 2003, as reported by Terra Lycos, were as follows: 1) Kazaa 2) Britney Spears, 3) Dragonball, 4) Paris Hilton, 5) IRS (Internet Relay Chat) 6) Kobe Bryant, 7) Christmas, 8) NFL, 9) Pamela Anderson, and 10) Brooke Burke, see http://50.lycos.com/2003review.asp webpage visited on 14 May 2004. Similarly, in Yahoo, the most searched terms for 2003 were 1) Kazaa 2) Harry Potter 3) American Idol 4) Britney Spears 5) 50 Cent 6) Eminem 7) WWE 8) Paris Hilton 9) NASSER 10) Christina Aguilera, see http://searchenginewatch.com/searchday/article.php/3296341 Interestingly, Kazaa did not appear on Google's top 10 list. Moreover, more than 2 million 6-17 year old young people in the US have their own websites. According to data released from '*Children, Families and the Internet,*' a survey by Grunwald Associates (2003), this figure represents fully 10 percent of the 23 million children and teenagers who have Internet access from home in the US, which presents us with a threefold increase since 2000. Four in ten children online from home say they either have or plan to build their own sites. Moreover, the researchers project that more than 6 million American children and teenagers, more than one in four of kids online from home, will have their own personal websites by 2005, see http://www.grunwald.com/surveys/cfi/newsrelease.html webpage visited on 14 May 2004.

world; finally the disposition that requires being able to use Kazaa, open sourcing, instant messaging, IRC and USENET chatroom communication, to be a *'cool'* young person. The following will look at how more dispositions, roles to be performed, emerge as a result of socialising in P2P communities.

C. 4 File Sharing Today: Support and community: being a 'newbie' and a 'leecher'.

Being a *'newbie'* can take various meanings. A *'newbie'* is someone who is a beginner in file sharing, has little technological knowledge and as such deserves help. Newbies themselves request help very often, and for this purpose they start treads posing a question and inviting others to give their views, while most of the time acknowledging their status as beginners. In response to their request, many jump in the discussion to offer advice, reinforcing the sense that in a community one should help each other. The word *'community'* is used very often by participants in forums of discussion, but also by the moderators of the discussions hosted on the website of the various forums. For example, people regularly refer to *eDonkey/Overnet communities*, *Napster communities* and the RIAA shutting down *communities*, while IRC and USENET newsgroups are the *traditional* file sharing *communites*. With RIAA shutting down *communities*, it appears that a war between *'us'* and *'them'* is waging. The RIAA takes young people to courts, or try to scare them, and in response there is a thriving number of posts which give suggestions as to how one is to hide its IP address to avoid detection on the part of the authorities. *'IP spoofing'* is a popular theme, while newbies are adviced as to how to use hardware firewalls, such as Peer Guardian, that block *'enemy'* IP addresses.

These communities are egalitarian, in the sense that class or family background do not matter, however, there are other qualities, the posession of which establish a hierachy of who is more popular. Being a newbie is not necessarity a bad thing, but can take a bad connotation if one does fails to adhere to certain understandings about how things should be done. Being a Kazaa user is charactersitic of the derogatory meaning that may be attached, as *'newbies'* are now users who have downloaded this particular P2P program simply by virtue of it being the one that everybody knows. A newbie then is someone who does not care about things that she *should* care about, such as whether a network or client has a tight community, the problem with Kazaa being that it has taken advantage of users and betrayed their trust by installing addware and spyware, as already explained. Kazaa has thus betrayed the sense of the word *'community'*. In all the forums of discussion I participated, many threads were

devoted to discussing which will be the P2P that will replace Kazaa, and participants fiercely debated this, while everybody agreed that Kazza should '*die*'. One cannot be in the '*in club*' and say that Kazaa is a good place to find files.

In the light of the above, there is a hierarhcy amongst various kinds of users; First, there are the users who are proficent at new technologies, have participated in AOL Warez scene or now use IRC, USENET newsgroups and FTPs, and who are considered to be responsible for feeding P2P networks with files and breaking news. Then, there are the users who seek to participate in tighter P2P communities like Ares, eMule and Soul Seek, moving away from what they consider to be for the 'uneducated' masses of users, that is Kazaa. Finally, there are the users who use Kazaa to dowload their favourite MP3s, as it is easy to do so while at the same time copying everything for friends online or in the real world adds to one's prestige.

Ares is a popular p2p, alternative to Kazaa, and this is how its success was discussed:

Posted: Thu Mar 25, 2004 10:10 pm Slyck Forums

---Dogg

Ares is largely popular with people new too file sharing due to it's user friendly GUI [User Interface] (much like kazaa.) Ares is a tight community and you get great technical support. The bonus with Ares is that it is not crippled like kazaa (No forced ad/spyware, better hashing, no PL rating.)

The two things that could bring Ares down is a mass migration of the newbie crowd off of FT [Fast Track] to Ares. ...Or a mass onslaught of the RIAA on the Ares network. (It seems as though this is already starting to happen though. So I'd recommend Protowall or PG [Peer Guardian] if your using it.

Posted: 03-12-2004 - 09:03 PM Unite the Cows Forum
---ladybunnybear

ARES does it all for you...I just installed it and was reluctant to loose all the great tools from Kazaalite...
Another good news is that you can download and upload partial files... It's true that, since it is fairly new, there's less users than on the fasttrack network, but if your file is available, the download happens much faster than with KL... There's a real good looking future...

And if a member reduces his upload bandwith, he is labeled as a leech...
I don't think you can cut in line when a file is queued and you know where you are in the queue (ex: (6) 6th) No more fake participation levels: everybody equal (more or less).

Ares can be spy/adware free. Just uncheck navhelp and tool bar when you install.

The only thing that it does have that kazaalite had, is the privacy option in regards to your shared
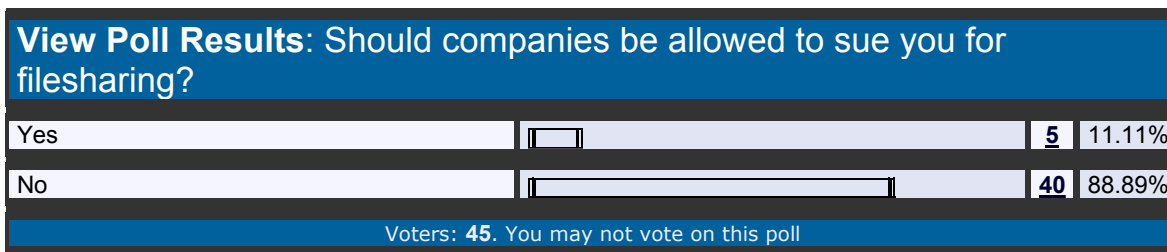
folder. When someone uploads from you, they can go into your shared folder.

Just keep yourself protected (peerguardian etc...) and you should be fine
So far, I'm very satisfied and IMPRESSED...

Hate the RIAA

Part of the common language used is the 'hate the RIAA' language. Users are very upset with the role of the Recording Industry in the process and consider that it is the industry and not the artists who get advantage of intellectual property laws. As such, there is a growing sentiment that the current legal system is unfair.

Figure 5 Zeropaid Forums April 2004

View Poll Results: Should companies be allowed to sue you for filesharing?		
Yes	**5**	11.11%
No	**40**	88.89%
Voters: **45**. You may not vote on this poll		

The argument then is that young artists may promote their music for example very well through P2P networks, or that artists could be compensated through compulsory licences or a monthly fee that can be paid to the Internet Service Provider. This view understands the RIAA lawsuits as a battle amongst users (the word '*guerrillas'* is often used in this context), governments, and corporate titans over control of information. Responses as to how artists should be compensated or whether the copying of files should be illegal vary. There are 'clean cut' answers and revolutionary ones.

The latter position assumes that there is a war with the corporate, monopolistic companies that dominate the arts. Indeed, most of the users argue that there is nothing wrong with file sharing and many point to that sharing MP3s with friends (which now number in millions) has nothing to do with piracy, as there is no commercial gain. Many say that they continue to buy CDs anyway, but now they only buy the good ones after having sampled music online. According to this view, a compilation of MP3s should be taken to resemble compilation tapes, as very few people would engage in downloading an entire album. If an album is good and offers attractive packaging (like photographs and other extras) then it simply cannot be replaced by downloading a couple of songs. Finally, users

argue that musicians may access a global audience instantly and P2P technology can function as a new disctribution channel where less money will be paid to cover promotion costs, as P2P networks already function as a way to discover new music.

Posted: Sat Sep 06, 2003 9:21 am/ Slyck forums

---The_CopyCat

The Movie industry claimed that the VCR was going to hurt their bussiness, they were wrong. The RIAA claims that file sharing will hurt them and they are just as wrong. What will hurt them is sueing the very people that buy their music, which just so happens to be alot of file sharers. People are not buying cd's now because the RIAA is trying to dictate and control us. I believe the copyright laws were put in place to keep people from redistributing mass amounts of material and profiting from it. Not to tell me how and when I can copy something I already paid for. If the RIAA would concentrate on delivering a quality product at a fair price and left file sharing alone, I think the music industry would do just fine. Instead they would rather call us all thieves, and try to pressure us into buying their garbage at ridiculous prices. They have nobody to thank for the current situation, but themselves.

---Freedom of Thought

It all started when you started liking music. You went to the store and spent your whole allowance on some cds that you heard played on the radio. In the store, you were looked upon as a potential shoplifter, being young and probably not having any money. When you got home you listened to the cds and felt ripped off because there was only one good song and the rest were crap. You tried to return the cds, but they wouldn't accept them back because they were open. Later on you found out that it only cost $0.75 to make the cd that you bought for $20 that only had one good song. You thought music was about how it made you feel, how much fun you and your friends had while listening, not about money. Frustrated you talked with some friends about it and one of them suggested downloading music and movies for free off the net. You thought, piracy isn't that illegal? You jumped at the idea, sharing files was fun, you met a lot of friends online, and you would help each other out. You found what you needed and got the best technical support there was, your share friends on forums. Then one of your favorite link sites was taken down. With disbelief you realized how much this community meant to you and that you were a part of something real. It was shut down by the 'industry', the same people, (yes, people because corporations the whole industry is made up of people, not some abstract idea) that sold you your first cds. ……… The community of millions of sharers is strong and growing. The industry is raping the artists and making enormous profits and peer to peer is taking it back. How can you steal something that is already stolen by the industry? There will be no stopping us, the harder they try, the harder they will be setback. Let's cut this cyst out once and for all, the industry will fall. Something new will take its place, something that will put back the way you felt while listening when you first fell in love with sound. *Business has no place in creativity. There are subtle ways that we can fight back with. Being aware and constantly conscious of businesses that support copyright, intellectual property, the industry, and boycotting them. Being unafraid of intimidation and bulling, together we are strong in numbers. Our communities have already shown how well we can support our causes by donating in great numbers financially and in every other way. Peers, all of us, stand up for your freedom of thought, for that can never be taken away.*

Figure 6: Opinion poll by Kazaa

Kazaa Emerging Artists Channel	22.85 % (4020)
Radio	22.14 % (3895)
Sample new CDs in-store	18.00 % (3167)
30 second samples online	11.61 % (2042)
Other	8.73 % (1535)
Friends	8.54 % (1503)
Concerts	6.46 % (1136)
Reviews in newspapers & magazines	1.67 % (294)
Total votes: 17592	

Source: http://www.kazaa.com/revolution/morethings_voteinpoll.htm webpage visited on 10/02/2004

Is file sharing wrong? Be brave and answer.

Other users argue that the Internet would have never been what it is today without technological experimentation. This view reminds us that the first modem was invented by teenagers as was the file transfer protocol and it is on the basis of inventions as these that messaging and instant chatting became possible.[46] Technology then gives vast opportunities and people exploit them. Moreover, users point to that copying files is the continuation of a practice that has always been exercised in the context of private copying for friends and family, but of course had never reached todays levels. Others, being a very small miniroty, hold a different opinion, saying that basically P2P users (including themselves) are egotistical, getting advantage of the situation and ripping off MP3s, without considering the harm to artists. All opinions are heard and debated with respect, even the last one that obviously presents a '*clean cut*' opinion about file sharing, as long as arguments are presented with eagerness, without fear or regret. For example, the users who argue for the action taken by the RIAA, themselves admit that they copy files. The same people who point to the dark side of file sharing have long been engaged in it and have earned the right to criticize it.

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[46] Castells note 31 above.

However, acting like a 'child' and using terminology that points for example to asking '*forgiveness*' for illegal trade of files can seriously heart one's reputation. The following thread exemplifies this:

Thread: Forgive people for downloading Zeropaid Forums
 March 10th, 2004, 11:28 PM

 ---music500 Registered User, Joined: Feb 2004
I think it is a time where the MPAA and RIAA should forgive them. Well hell I love free stuff as well. They need to make a plan where they can get paid. Design a new bussiness and never be against there consumers people who buy there products. One thing lowering the cost of movies and music is for starters.

---ROCKAMANIAC 2 Yrs @ Zeropaid
With RIAA & MPAA loosing millions over .mp3 downloads.... You expecting them to forgive us!

---rebirth Schematics Master Joined: Nov 2003 Location: Layton City, Utah
ur stoopid

---Arch Stanton Registered User Joined: Feb 2004 Location: Vatican City

reading is fun
The Hunter I like tan lines Joined: Apr 2002 Location: Nova Scotia

 thread moved.

Ne007 Registered User Joined: May 2003 Location: Mexico (hehe)
The RIAA and MPAA are loosing millions because their business model is flawed.

Looking at supply and demand.....how could a company with an endless supply of a product have much of a demand?

---baghdad_steve15 One of the Intellectuals Joined: Aug 2003 Location: Andorra

They can "forgive" (I think pardon is the better word) all they want, but people won't stop downloading.

---shawners
Registered User Joined: Dec 2002 Location: In the Big Dallas

Actually after the lawsuits, and the stupidity they go through, im hopeing i can forgive them.

D. Conclusions

Certain understandings underline conduct in P2P communites, which attribute meaning as to who is an insider and who is an outsider. The thesis of this paper is that coming to grips with these is important, as legal disobedience, and in particular, the puzzle of millions of users engaging in illegal activity on P2P networks, may be explained on the basis

of approval or disaproval by peers. This is because, if one accepts that earning prestige and status underline conduct, then belonging to P2P communities, simulatenously implies that one is to behave in certain ways to achieve this, as P2P users compete in competitive terrains for a higher rank in the established hierarchy of popularity, esteem and recognition.

The analysis of this paper suggested that the social system of P2P groups promotes an undertanding of prestige and recognition reflected in words such as 'warez', 'lame', 'newbies', 'leechers'. Copying for friends in the real world, sharing with (potentially millions of) friends one's files online, feeding the networks with breaking news and files, using the latest, technology or even better being able to engage in technological experimentation, all these adds to one's status as a genuine file sharer and what is one's worth in such communities. Users refer to themselves as a '*community*' and through chat, instant messaging and postings in forums of discussion, the private realm of home has expanded to include the fellow users online. Community support in P2P networks and clients certainly is a key element to the above. For example, Ares/Warez P2P provide for a community where users engage in dialogue with each other, and the Ares/Warez P2P developer himself maintains an open dialogue with the population, keeping it up-to-date with new features and bug fixes, and allowing it to give feedback to further improve the network.

P2P communities are underlined by a social system characterised by 'sharing' and 'giving', which, for one thing, always characterised the private conduct of young people (and not only) from the times of making compilation tapes for friends, while now, such 'private' conduct is being transformed to 'public', as one can make available to the public the entire contents of her computer's hard disc, if she wishes. Still, it is interesting that users' do not quite perceive this as 'making available to the public' but as sharing with peers tracks they like, while some do not even quite realise that this is illegal conduct, being unable to come to grips with the difference between *property* and *intellectual property*. It is for this reason that the entertainment industry is viewed as unfairly attacking users.

But P2P communities are not only underlined by sharing *per se*, but also by the fact that sharing online has been made possible and easy due to new technologies being themselves the result of technological experimentation on the part of a group of young people, who, in the past made possible the invention of the modem and the creation of the first USENET groups. In this respect, prestige and reputation are measured according to how much one uses P2P as well as how much one knows about it. At minimum, one would have to be able

to download a DivX from a P2P program, while advanced users would be able to run an IRC server, and to stream an Internet radio station. Finally, P2P communities are underlined by certain understandings as to what the hierarchical relationship is amongst P2P programs and between traditional file sharing and p2p. This hierarchy is established on the basis of where a true community of file sharers may thrive, as e-Donkey and Bit Torrent for example allow exchanging views about the quality of a music file and generally behave as one would behave with friends at home, that is listen to 'cool' music and exchange music files. And there is also a hierarchy amongst various kinds of users; First, there are the users who are proficient at new technologies, have participated in AOL Warez scene or now use IRC, USENET newsgroups and FTPs, and who are considered to be responsible for feeding P2P networks with files and breaking news. Then, there are the users who seek to participate in tighter P2P communities like Ares and eMule, and unlike Kazaa. Finally, there are the users who use Kazaa to download their favourite MP3s, as it is easy to do so while at the same time copying everything for friends online or in the real world adds to one's prestige. '*Newbies*' are assisted when they ask for help, but being a '*leecher*', not sharing but only taking, is unforgivable.

In a nutshell, P2P programs present us with an interesting instance, where we are called to simultaneously study legislative convergence and divergence of practices and social norms relevant to what constitutes copyright violation, as the latter are underpinned by social conventions, performed consciously or not, as to how prestige and reputation is earned over P2P networks.

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