
Is a Breach of the Copyright Act 1994 an Act of Piracy and a Crime of Theft?

Chris McCarthy
CPIT
Madras Street
Christchurch
Chris.McCarthy@cpit.ac.nz

Abstract

Piracy and theft seem strong words for something that many people throughout New Zealand (one report has it that about 200,000 movie and television files are shared (illegally) each month in New Zealand alone. Copyright laws have existed in New Zealand since 1994 but until recently have been relatively ineffective. Even the Crimes Act 1961 has done little to enforce the situation. Various organisations have been developed around the world, including New Zealand, to promote the idea that file sharing is wrong, that it is piracy and that it is theft. This poster paper examines these issues and attempts to establish the appropriateness of the terms piracy and theft.

Keywords

Breach of copyright, piracy, theft, file sharing

Background

New Zealand law includes the Copyright Act 1994, the Copyright (New Technologies) Amendment Act 2008 and the recently passed Copyright (Infringing File Sharing) Act 2011

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which, although passed in April, 2011 does not come into effect until 1 September, 2011. The New Zealand Ministry of Economic Affairs administers the Copyright Act 1994 and breaches are enforced either by the copyright holder in a civil action or, where criminal offences have been committed, the New Zealand Police may investigate and prosecute offenders.

The Copyright Council of New Zealand was established in 1983 to provide copyright-based industries with a range of services including liaising with Government and to protect, preserve, develop and promote the rights of copyright creators and owners. The Council has also adopted an educational role, aiming to enhance the knowledge and understanding of copyright among New Zealand creators, copyright owners, users and the general public.

NZFA©T was established in 2005 by the Motion Picture Association to protect the film industry in New Zealand from the impact of breaches of copyright. NZFA©T works closely with its members, the New Zealand Government and the New Zealand Police to protect the New Zealand film and television industry, and video/DVD retailers – and movie fans. Make a Difference (New Zealand) was established by the Motion Picture Association (International) and aims to educate the public on, and protect their members from, the illegal copying of movies being made in cinemas.

When the New Zealand Government first introduced the Copyright (Infringing File Sharing) Amendment Bill early in 2010, people were incensed by the idea of being deprived access to their internet accounts if found guilty of a breach of

copyright. Many people even argued it was their right to download and view movies from overseas on the ground that because they were not released in this country there was no other way to see them (Keall & Walls, 2011).

Literature Review

The New Zealand Ministry of Economic Development uses the term piracy in its statement on Intellectual Property Enforcement to be found in the passage ... "For example, the World Customs Organization estimates counterfeiting and piracy accounts for five to seven percent of global merchandise trade, estimated to be equivalent to lost sales of as much as US\$512 billion per annum." They also uses the term piracy in the same document as in the passage ... "New technologies have facilitated the copying, distribution and sale of pirated movies, music and software".

Under the Copyright Act 1994, and its subsequent amendments, the ownership of copyright is clearly defined in Clauses (1) to (4) of Section 21. Duration of that ownership or copyright is clearly defined in Clauses (1) and (2) of Section 23 of the Act. Infringement of copyright is set out and defined by Sections 29 to 34 of the Act. A clear example of primary infringement is Clause (1) of Section 29 which states that "copyright in a work is infringed by a person who, other than pursuant to a copyright licence, does any restricted act." This is enhanced by Section 30 which states "the copying of a work is a restricted act in relation to every description of copyright work". According to these three sections of the Copyright Act 1994 we now have details of the rights of ownership and meaning of infringement. Of course, inherent in the rights of ownership are the rights of pecuniary advantage – namely any income that may be derived from that ownership. This is supported by Clauses (1) to (3) of Section 5 of the Copyright Act 1994.

The Crimes Act 1961 defines ownership under Clause (1)((a) to (c) of Section 218 Matters of Ownership, which states that "a person is to be regarded as the owner of property that is stolen if, at the time of the theft, that person has (a) possession or control of the property, or (b) any interest in the property, or (c) the right to take possession or control of the property. Once again pecuniary advantage is implied in the sense of ownership – that income may be derived from that ownership. The Crimes Act 1961 goes on to define theft in Clauses (1) (a) of Section 219 Theft or stealing which states that "(1) theft or stealing is the act of (a) dishonestly ... taking any property with intent to deprive any owner permanently of that property or of any interest in that property". So, in common terms, theft is the act of depriving an owner of an interest (say pecuniary) in property (say a movie or DVD).

The New Zealand Ministry of Economic Development, commissioned a report in 1998 entitled "Theft of Intellectual Property" (Park, 1998). The NZ MED believed then that breach of copyright was nothing other than theft of the copyright owners' pecuniary advantage – monies that might otherwise been made by the copyright owner from the legal sale or licenced viewing of the, say, movie.

Findings

"There is no difference from going into a shop and taking the thing and then walking out without paying for it" Michael Hurst, Actor and Director, in a video made by the Copyright Council of New Zealand.

"An average of 200,000 movie and television files are shared each month in this country according to figures released by the New Zealand Federation Against Copyright Theft", Paseta Sam Lotu-liga, National-Maungakiekie, first reading of the

Copyright (Infringing File Sharing) Amendment Bill, 14 April 2011 in a televised recording of the debate.

There is no doubt that the problem in New Zealand is real and extensive and that it appears to be classified as piracy – and by many as theft. Certainly the Crimes Act 1961 (1961) defines ownership under Clause (1)(a) to (c) of Section 218 Matters of Ownership, which states that “a person is to be regarded as the owner of property that is stolen if, at the time of the theft, that person has (a) possession or control of the property, or (b) any interest in the property, or (c) the right to take possession or control of the property. Once again pecuniary advantage is implied in the sense of ownership – that income may be derived from that ownership. The Crimes Act 1961 goes on to define theft in Clauses (1) (a) of Section 219 Theft or stealing which states that “(1) theft or stealing is the act of (a) dishonestly ... taking any property with intent to deprive any owner permanently of that property or of any interest in that property”. So, in common terms, theft is the act of depriving an owner of an interest (say pecuniary) in property (say a movie or DVD).

Conclusions

It would appear that, long before the Copyright (Infringing File Sharing) Amendment Act 2011 was enacted in April 2011 to come into effect on 1 September 2011 that all the laws were in place to create an environment where a breach of copyright was illegal, was an act of piracy and was a crime of theft. All the Copyright (Infringing File Sharing) Amendment Act 2011 has given or will give teeth to those who own the copyright to seek redress in the case of piracy and theft.

References

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