

## **Changing behaviours – Litigation, file sharing and Internet usage patterns**

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### **Abstract**

The following paper presents the findings of a study completed at Charles Sturt University on university students and the perceived change in Internet usage patterns that has arisen from the Australian and American music industry, and its attempts to shut down Kazaa and other file sharing networks. File sharing networks have played a significant role in the development of online piracy since the introduction of Napster in 1999. The people that manage the file sharing networks state they are operating legally as they are the ones building the technology and business models that allow for legal file sharing. Their main argument has centred on their lack of control over their users and the files shared. In late 2003, many Internet users in America who had broken copyright laws using Kazaa and other file sharing products were prosecuted and fined.

Discussed are the methods used by the Australian and American legal systems to combat the practice of illegally downloading material, the effect this is having on a segment of Australian internet users and how their Internet usage has changed. Has the argument for sharing information legally been strengthened or will technology come to the aid of the pirates again? Why have five American library associations supported file sharing networks? What is the impact on Internet users, and are we seeing a shift towards the new legal models for obtaining files (such as ebook for a fee where the authors and the owners of the digital material are receiving royalties)?

### **Keywords**

Peer-to-peer, P2P, Kazaa, file sharing, litigation, university student, internet usage, ebooks, movies, music

### **Paper**

“Can’t catch me, I’m the Gingerbread man”

Comment from a university student on the threat of litigation from downloading illegal files from the Internet using P2P.

A survey of Charles Sturt University students was undertaken to investigate how prevalent the use of peer-to-peer networks (P2P) were, the P2P networks currently used, and the impact of litigation on usage of P2P networks following court cases in Australia, the US and Europe. What distinguishes P2P from the Internet and other methods of downloading files is

that it is a distributed network. There is no central server where files are located; files are stored on users' computers (nodes) which run the same software package, enabling the searching and transfer of files such as music, movies and ebooks. P2P file sharing could be seen as sharing your own library of files (that sit in a certain part of your PC) with other users who are sharing the contents of their library (on their PC). Kazaa (a P2P network) users are downloading 3 billion files every month with an estimated membership of 100 million users/members (Total Telecom, 2004) i.e. 100 million people sharing the contents of their own on line libraries. The ramifications of the court case involving Kazaa will send shudders through the online, music, movie and ebook industries.

### **Litigation, copyright and P2P**

November 29th 2004, was the starting date of Australia's largest copyright court case. The Global recording industry (approximately 30 record labels including Sony BMG and Warner Music) is taking on the owners of Kazaa, the largest P2P file sharing network the Internet has ever seen. Australians make up 2% of Kazaa membership, downloading files such as songs, movies, software and ebooks (Davidson, 2004). P2P file sharing has taken off over the last 6 years with the introduction of Napster (the (in)famous file sharing network that was shutdown in 2002). Once Napster was shutdown a new breed of P2P networks started up offering more files, feeding off the publicity Napster achieved in the courts and the files that were stated to be available. Internet users jumped at the chance to download increasing numbers of files each month. In the United States legal proceedings started against Grokster (another P2P network) which found support in an unlikely ally - the 5 major library associations in America such as the American Library Association and the Special Libraries Association are supporting P2P networks in a court case very similar to the Kazaa court case that has just taken place in Sydney in November and December of 2004. The Recording Industry Association of American (RIAA) failed in its bid to stop Grokster, but this did not stop the RIAA going through other channels to target the users of the P2P networks.

### **The early decisions**

Lawyers for Kazaa are using a 1984 decision in an American supreme courtroom to defend their case. The decision from this court allowed Sony, the company that manufactured Betamax VCRs, to continue making the machines. Arguments from that case centred around the fact that Sony would not be infringing copyright as it "had no direct involvement with an infringing activity".(McCullagh, 2003) The Betamax machines could be used for legal purposes, not just to copy copyrighted material. Kazaa lawyers argue that the principle of the two cases is the same, the software can be used for legal purposes and Kazaa has no direct involvement with an infringing activity.

In 1999, Napster was taken to court at a time when it had approximately 1 billion music files available to be downloaded free of charge. The proportion of the 1 billion files that were under copyright was unknown at that time. A figure submitted to the US Court of Appeals 4 years on stated that 25% of material on P2P networks is not copyrighted material and may be freely

distributed. (Amici Curiae, 2003) Using this figure it would be fair to say that Kazaa held over 250 million files that were not under copyright and could therefore be distributed freely. 56% of the University students surveyed were not aware which files could be downloaded legally using P2P networks.

Napster shut down in May 2002 but soon reopened to provide a similar service under a legal framework. The RIAA, in an attempt to win its court case against Napster, argued that the 1984 laws governing the copying of analog files through the use of a VCR did not apply in the digital medium.(Hoorebeek, 2003)

In 2003 in the U.S. Court of Appeals, the RIAA starting gunning for internet users that were trading copyrighted MP3 files in large quantities. This was a noticeable change from targeting the companies that were running P2P networks such as the Napster's or Kazaa's of the Internet world.

The Internet is not a place in which you can hide, as shown by the RIAA. The RIAA have been able to obtain the IP addresses associated with a screen name of a P2P user that can then to be used to trace the user through their ISP. It was initially thought that the 1998 DMCA (Digital Millennium Copyright Act) would allow the RIAA to obtain a subpoena that forced the hand of an ISP to provide the names and details of P2P users who were suspected of violating copyright. However, the U.S. Court of Appeals for the District of Columbia ruled in late 2003 that the ISPs were under no obligation to provide the personal details of their subscribers. To get around this decision the RIAA has filed "John Doe's" suits against individuals who are identified only by their IP address. The court process is used to name them.

In October 2004 the British High Court ordered ISPs to provide the names and addresses of 28 people who are alleged to have been trading hundreds of copyrighted files. A total of 459 lawsuits had been filed against users of P2P networks sharing copyrighted files in Britain, France, Germany, Denmark, Italy and Austria. (Wardell, 2004)

So how are Napster and Kazaa different, and why have other P2P networks survived where Napster failed?

Napster ran on a centralised communication architecture which identified file types such as .mp3's that were available to be downloaded. P2P networks operating today such as Kazaa and Grokster do not have a centralised communication architecture; the software the P2P networks have created allows internet users to search the libraries of other users.(US Court of Appeals, 2003)

The current court case against Kazaa has seen a lawyer representing Kazaa challenge an IT expert from the University of Melbourne Professor Sterling in the claim that Kazaa maintains a list of supernodes which are in effect quite similar to central servers. During the court case in Sydney, a great deal was discussed about how Kazaa collects user statistics and email addresses, with one IT employee from Kazaa stating that a program called Judas is

specifically used to betray the downloading habits of its users. (Montgomery 2004)

### **Searching the collections of P2P networks**

Searching P2P networks for files is an interesting and entertaining activity. From a librarian's point of view, the searching facilities range from poor to very good. Many are grouped by subject or genre, e.g. music, ebooks, software, movies etc. These can be further broken down to subgroups (eg. music – rock, classical, dance etc.) Advanced searching is possible through the use of Boolean logic and searching for specific file types such as mp3, doc, pdf, gif, and jpeg just to name a few. So what range of files can be downloaded? A brief search on a relatively new P2P network called TorrentReactor retrieved a pdf version of Dan Brown's The Da Vinci Code and other works by this author, in addition to management texts, and the guitar transcriptions of the Beatles. Audio books of the entire Harry Potter series, Lord of the Rings Trilogy, and other titles by well-known authors Koontz and Grisham were also retrieved, as was software including many Microsoft products, virus checkers, home design packages, and encyclopaedias (with guides in the ebooks section on how to find registration codes needed to load the software).

Audiobooks make up 15% of ebook piracy, with IT books having the highest ebook piracy levels at almost 73% of the ebook genre. Publisher Addison Wesley is experiencing the highest levels of piracy, while many popular publishers (Prentice Hall, Oxford University Press, McGraw-Hill) are also experiencing this phenomenon. (ITIC, 2004)

Publishers that offer textbooks to University students via a pdf file should note from the Charles Sturt University survey that 84% of students would share this file – a practice that breaches copyright requirements. 75% of students surveyed stated that even if they had purchased this file, they would still share it.

### **Main results from Charles Sturt University Survey**

The anonymous survey was undertaken with ethics approval and 49 students were approached at random and asked to fill in the survey. All students approached completed the survey. Students were not asked their age, course of study or their level of study.

Results from this student survey undertaken over October and November in 2004 indicate that 41% of respondents had downloaded a file for free using a file sharing network in the week prior to the completion of the survey. Over 50% had used a file sharing network in the previous month to download illegal files. Only 17% of respondents had not used a file sharing network. A similar survey undertaken for ARIA (the Australian Record Industry Association) found that approximately "1.8 million (11% of) Australians have illegitimately downloaded music files via file sharing services within the last month (21% or 3.5 million Australians have ever used these services)." (Quantum market

research, 2003) When comparing these sets of figures, the university students are 41% ahead of the Australian figure for downloading files using a file sharing network.

Amongst the university file sharing network users, Kazaa was the preferred network, with over a quarter of all respondents stating they had used it in the past to download files. The next closest was WinMX which was used by 9% of respondents and then BitTorrent (considered by ITIC, 2004 as the next big thing in P2P) with 7% usage. Users searching P2P networks that use .torrent files such as Supernova make up approximately 15% of the P2P networks in use. In most cases, users downloading files using BitTorrent have no choice when they download a file as to whether they wish to share the file as it is being downloaded; this is sometimes referred to as the reciprocity scheme. Other P2P networks have users that can download files but do not share files.

Quantum market research (QMR) results (2003) stated that “51% of file sharers tend not to go out and buy the music they have downloaded (i.e. rarely or never buy), while 37% only buy sometimes...Among the subgroup of file sharing users, there has been a net decrease of 12% in their CD purchasing behaviour as a direct consequence of their use of file sharing services.” In comparison, 65% of university students surveyed claimed that the ability to download files over the Internet actually decreased their spending on electronic files such as music, movies and ebooks. University users stated that only occasionally would they sample the music as a preface to actually buying the CD.

81% of University students had not purchased legal files such as music, ebooks, movies, or software over the Internet. When asked if they would share this file if they had purchased it, 77% of respondents stated they would.

Music and movie files are where the strength of P2P collections lie. Mp3 files from U2's latest album to Coldplay's live DVD are currently available to be downloaded – these are, of course, illegal downloads. The latest movies appear on the P2P networks before they reach our shores in the cinemas. Some of these movies are ripped (burned) copies of DVDs, while others have been filmed in the cinema with a digital camera and therefore have very poor sound and picture definition – in some cases people can be seen getting up and walking out of their seats in the cinema.

Can you be sure that what you are downloading is not an illegal copy of an item such as an audio book, or software that is in German and therefore can't be loaded onto your PC, or worse still, a virus that may destroy important files. When purchasing a file such as an Mp3 from Telstra's Bigpond Music – a legal file sharing network – you can be assured that the file will be what it states, i.e. it will be music by the chosen band with the song title you requested. The RIAA flooded P2P networks with bogus tracks or tracks that were incomplete, in an attempt to deter people from using these networks. However, this feat succeeded in raising the ire of P2P users all over the world. Kazaa was one such P2P network where this occurred.

Surprisingly 42% of university students stated they felt it was ethically incorrect to download illegal files of the file sharing networks, 40% of students stated they were not sure whether it was ethically correct or not, and 18% of students thought it ethically correct to download illegal files. QMR stated that 49% of Australians agree that downloading music from the internet without permission is like stealing a CD from a record store, with 33% agreement among the under 25's.

When asked about their thoughts on sharing illegal files over the Internet (making their own files available to be downloaded by other users), 23% of University students thought it was ok to share illegal files, 39% thought it was ok but only under certain circumstances, and 39% thought it wrong.

Students were then asked if downloading an illegal copy of a file was worse than sharing a copyrighted file on a file sharing network. 55% stated it was worse to share a copyrighted file on a file sharing network.

University students were also asked which was worse when comparing stealing a book from a library with making an illegal copy of an ebook. 79% thought it was worse to steal a book from a library. Stated reasons for this ranged from:

- ebooks can be copied but the library book will need to be reprinted
- only one copy of the book may exist
- stealing a book deprives others of its usage

### **Litigation affecting Internet behaviour**

When asked if the threat of litigation has affected their habits in downloading files from the Internet, 81% of students stated that it had affected them, making comments such as:

“They don't care about little guys like me who download a few songs and movies every now and then. They are more concerned with people distributing the goods in large quantities.”

“ I use an IRC client to move files and will be surprised if anyone will target me due to the large amount of users and multi servers/channels.”

and

“Because there is a strong chance of not being caught”

A large number of responses mentioned that students continued to download illegal files as they felt that the threat of litigation was very low. However, information obtained through the Kazaa court case has shown that the RIAA can monitor the IP addresses of any P2P users downloading illegal files. But the fact that the RIAA has so far only targeted those users who are downloading and sharing large numbers of files, and that the small players who are downloading a file here or there have not been targeted as yet, goes some way to adding to file sharers' feelings of security.

## **P2P's effect on libraries**

“Libraries seek to maximise literacy, education, and entertainment through the free distribution of information. Peer-to-peer systems such as defendants’ (Grokster) can be of massive assistance in achieving that goal.” (Amici Curiae, 2003)

Five library associations in America are tackling the issue of copyright and P2P in a very public sense. Along with the American Civil Liberties Union, Project Gutenberg (who currently use P2P software titled Limewire) and Internet Archive, (who plan to use P2P technology to deliver files and materials to network users) the associations are supporting a balanced approach to both copyright and how these laws are implemented. In a document written to support Grokster (a similar P2P network to Kazaa), the associations state that restrictive laws relating to copyright impact negatively on authors, musicians, artists and librarians. The association argued that the case of MGM Studios versus Grokster would make “all software that utilizes peer-to-peer file exchange illegal unless the software developers agreed to redesign their products and to serve as surrogate copyright enforcers” (Amici Curiae, 2003)

The associations then argued that copyright law must not be used to stop developing technologies and stifle new forms of communication due to the fact that these technologies and software may be used to inappropriately form part of the P2P user base. Further to the ruling mentioned earlier in this paper by Sony and its Betamax VCR's, if the ruling was to change then the onus would fall on the provider of the software or service to monitor breaches of copyright.

P2P technology enables libraries to transfer files without having to wear high bandwidth costs as these are shared through redirecting traffic throughout the Internet and collections in some cases not held in a central server.

## **Conclusion**

Even though students thought it ethically incorrect to download files they still used the P2P networks to do this. Over 50% of the sample group had used a P2P network to download files in the last month. This figure is very high and shows the popularity of these networks and the large variety of files that can be found through the networks.

The RIAA has not been successful in shutting down P2P networks which operate without a central server, however they have been successful in fining individuals who use this technology to share copyrighted files. RIAA and similar organisations would benefit from investigating business models (such as Apple's iTunes and Telstra's BigPond Music) that enable users to download files legally that do not infringe copyright with the companies and the authors, artists etc still obtaining royalties.

The statement from the Amici group supporting P2P technologies is a very bold and brave statement which shows their support for fighting against rulings that will inhibit innovation in the future. It also shows that this group see P2P technologies as a major force in the future in the way libraries and associated organisations transfer and distribute files or collections. With more P2P networks sprouting up everyday it would appear that this technology is here to stay, irrespective of decisions made in court rooms around the world. Builders of the P2P technology have learnt (e.g. from Napster) how to operate legitimately. The push for new users, more files and more advertising dollars push this technology ahead leaving the law and the lawyers playing catch-up.

**Changing behaviours**  
**Litigation, file sharing and internet usage patterns survey**

**Survey and Results**

**Question 1**

When was the last time you downloaded files (such as music, movies, ebooks) for free via a file sharing network? (Question taken from Quantum market research, 2003)

Please **tick** one box

41%	11%	24%	17%	7%
Within the last week	Within the last Month	More than a month ago	Never	Don't know

**Question 2**

Are you aware that organisations such as ARIA (the Australian Recording Industry Association) could take legal action against individuals who are downloading illegal files via file sharing networks?

65%	35%
Yes	No

If yes to Question 2, has the threat of litigation affected your internet habits in downloading files off the Internet?

19%	81%
Yes	No

Why?

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How has this affected your Internet habits?

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**Question 3**

What files sharing networks have you used

Kazaa	27%
Grokster	3%
Blubster	4%
eDonkey	6%
Please list other	mIRC 3% , eMule 1%, BitTorrent 7%, Supernova 1%, Uni

networks/services you have used	network 4%, Morpheus 2%, WINMX 9%, A friend 1%, Grokster 3%, Napster 4%, Private servers 1%, iMesh 2%, desitorrents.com 2%, Shareaze 2%, Ares 3%, Bearshare 1%, Limewire 2%, Souseek 1%, Audiogallery 1%, Gnutella 1%, Hugginhaw 1%, FTP's 2%, IRC Client 1%
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**Question 4**

Do you consider sharing illegal files over the internet:

Ok	23%
Ok, but only under certain circumstances	39%
Wrong	39%

Why?

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**Question 5**

Have you ever bought legal files such as music, ebooks, movies, software over the Internet?

19%	81%
Yes	No

If yes what service/company/website did you purchase the file from?

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Would you share this file with a friend?

77%	23%
Yes	No

**Question 6**

If one of your textbooks was in pdf format on the internet would you share it with your class mates?

84%	16%
Yes	No

**Question 7**

If you had purchased this file would you still share it?

75%	25%
Yes	No

Why?

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**Question 8**

Has the ability to download files (such as music, movies, ebooks) over file sharing networks increased or decreased your spending in these areas?

35%	65%
Increased	Decreased

People that use file sharing networks state they are using these networks to sample the files before purchasing them. Would the chance of litigation against the people sampling the files affect their buying behaviour?

46%	54%
Yes	No

If yes how?

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**Question 9**

Are you aware of what files you can download legally when using file sharing networks?

44%	56%
Yes	No

**Question 10**

If you found an illegal copy of a file on the Internet that interested you, would you:

Report it to the site owner	7%
Download it	60%
Buy the file legally from a reputable site	33%

**Question 11**

Should the individuals that download illegal files off file sharing networks be sued for breaking copyright or the file sharing networks that offer the technology to make the files available to Internet users?

28%	72%
Individuals	File sharing networks

**Question 12**

Do you consider it ethically correct to download illegal files of the file sharing networks?

18%	40%	42%
Yes	Maybe	No

Why?

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**Question 13**

Which is worse?

Out of these two:

Stealing a book from a library      79%

Making an illegal copy of an ebook      21%

Why?

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Out of these two:

Downloading an illegal copy of a file      45%

Sharing a copyrighted file to a file sharing network      55%

Why?

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