NOTE

A PROPOSAL FOR AN INTERNATIONAL LICENSING BODY TO COMBAT FILE SHARING AND DIGITAL COPYRIGHT INFRINGEMENT

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I. INTRODUCTION

Today, through the Internet, a student in Boston can easily communicate and share information with a teacher in Belgium. With the click of a button, an author in Los Angeles can sell his book to a publisher in London.[1] The challenges that accompany these technological advancements are manifold, and before the full potential of a global information infrastructure can be achieved, serious issues must be resolved. [2]

Computer users, through the digital file sharing of copyrighted works, are able to infringe upon a copyright holder's exclusive rights. The *Napster* controversy highlights this problem, and demonstrates some of the dilemmas that lawmakers will need to address in the coming decades.[3] The *Napster* cause of action was initiated by various record companies who contended that Napster's service, which allowed individuals to share MP3 music files through a virtual community without having to pay for the music, unfairly infringed upon their copyright monopoly.[4]

Napster's service was not confined to the United States.[5] When legal proceedings were commenced against the company, an estimated 75 million people worldwide were using its search engine function to gain unauthorized ac-

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[1] *See* Brandon K. Murai, *Online Service Providers and the Digital Millennium Copyright Act: Are Copyright Owners Adequately Protected?*, 40 SANTA CLARA L. REV. 285, 288 (1999) (asking whether the Digital Millennium Copyright Act sufficiently protects artists from the digital piracy of their works).

[2] *See* Keith Aoki, *Intellectual Property and Sovereignty: Notes Towards a Cultural Geography of Authorship*, 48 STAN L. REV. 1293, 1300 (1996) (stating that traditional methods for mapping jurisdictional boundaries may not be able to adequately deal with the issues that the Internet presents).

[3] *See* A & M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1004 (9th Cir. 2001).

[4] *See id.*

[5] *See* Matt Richtel, *Survey Shows Overseas Use of Napster Outstrips U.S.*, N.Y. TIMES, Apr. 5, 2001, at C4.

cess to copyrighted works.[6] At the beginning of 2001, international use of Napster, in fact, outweighed American use.[7] These facts illustrate that viewing Napster as an American phenomenon requiring only domestic solutions is a mistake. An international body with the ability to reach across national lines to regulate the international distribution of copyrighted works through a digital medium must be established. Such a group should create a global licensing scheme that can reach across national borders in order to enforce an artist's copyright privileges worldwide. This organization would need to regulate the dissemination of copyrighted works over the Internet and allow copyright holders to garner the full value for their creative products, without having to closely monitor the digital superhighway for copyright piracy. The ability of computer users throughout the world to obtain unauthorized access to copyrighted works over the Internet requires such a global solution.

This note proposes a method for combating digital copyright infringement through international and domestic file sharing, enforceable against countries that comprise the Berne Convention and the World Intellectual Property Organization ("WIPO"). Part II will discuss the ability of computer users to infringe on an individual's copyright privileges through Internet file sharing, regardless of the country in which any or all of these individuals reside. Part III will focus on the ability of the United States Copyright Act[8] to combat copyright infringement through file sharing. Part IV will then examine the power of the Berne Convention to address digital copyright piracy and file sharing.[9] Finally, Part V suggests the form that an international licensing board should take in order to best address the digital infringing of copyrighted material.

II. FILE SHARING TECHNOLOGY AS IT RELATES TO INTERNATIONAL INTELLECTUAL PROPERTY LAW

In 1996, it was estimated that nearly forty million people worldwide utilized the services of the Internet.[10] By the year 2000, over 200 million individuals were connected to the information superhighway.[11] While this explosion in technology use, both personal and corporate, has brought a myriad of opportunities to computer users, it has also allowed for an unprecedented ability for individuals to view and archive copyrighted works.[12] File sharing has created

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[6] *See* A & M Records, Inc. v. Napster, Inc., 114 F.2d 896, 902 (N.D. Cal. 2000).

[7] *See* Richtel, *supra* note 5, at C4.

[8] 17 U.S.C. § 101 et seq. (2000).

[9] *See* Berne Convention for the Protection of Literary and Artistic Works, Mar. 1, 1989, art. 5, *available at* http://www.wipo.org/treaties/ip/berne/berne.pdf [hereinafter Berne Treaty].

[10] *See* Murai, *supra* note 1, at 285 (stating that Internet use has exploded at an unforeseen rate in the final years of the Twentieth Century).

[11] *See id*. (describing the rate at which Internet use has been expanding in the United States during the 1990s).

[12] *See* M. ETHAN. KATSH, LAW IN A DIGITAL WORLD 216 (1995) (stating that the ability

a situation in which personal viewings of copyrighted works that were once thought to be acceptable under American copyright law could now possibly be ruled as infringing uses in this new technologically advanced age.[13] This portion of the note will detail the advances in file sharing technology with which one must become familiar before the copyright issues facing the international community can be fully understood.

A. *The Development of File Sharing Technology*

The sharing of computer files between individuals is not a new phenomenon. First developed by Sun Microsystems for their UNIX system,[14] file sharing may be defined as the public or private sharing of computer data within a computer network. Within a network, there are various levels of access privileges, allowing certain individuals to view certain data, while prohibiting them from accessing other information.[15] "File sharing" generally refers to the digital sharing of information, as opposed to the mailing or distribution of physical copies of a literary work or a compact disc.[16] The benefit of file sharing is that it allows information to be accessed and distributed more easily.[17]

File sharing has been a common aspect of mainframe and computer systems for many years.[18] With the inventions of the Internet and the file transfer protocol ("FTP") system, the ability of individuals to share information at great distances became possible.[19] FTP sites generally allow the public (or individuals with the necessary passwords) to download and copy files onto their hard drives for later use.[20]

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of individuals to store works on their computers, rather than having to copy a hard document, allows for individuals to view and store copyrighted works with more regularity).

[13] *See id*. at 215.

[14] *See File Sharing*, WHATIS?COM, *at* http://whatis.techtarget.com/definition/0,,sid9_gci212119,00.html (last visited Jan. 7, 2002); *Sun Microsystems, Company Information: Sun History*, *at* http://www.sun.com/aboutsun/coinfo/history.html#1984 (last visited Jan. 7, 2002).

[15] *See File Sharing*, *supra* note 14 (stating that Web sites that allow file sharing, just as any site that wants to restrict access to that site, can easily set up code systems that force users to register with the site before access will be granted).

[16] *See id*.

[17] *See* KATSH, *supra* note 12, at 14 (noting that the Internet allows individuals to access information with greater ease than at any previous point in history); *File Sharing*, *supra* note 14.

[18] *See File Sharing*, *supra* note 14.

[19] *See* Murai, *supra* note 1, at 286 (stating that the advances in computer technology that have occurred over the past five to ten years have allowed for individuals, who had not previously been able to communicate with each other due to geographic considerations, to interact through a digital medium); *File Sharing*, *supra* note 14.

[20] *See File Sharing*, *supra* note 14.

B. *File Sharing Technology: The Napster Music Sharing System*

The *Napster* suit has compelled the legal world to examine and understand file sharing and establish a boundary between the lawful and unlawful digital distribution of computer data.[21] The Napster system creates a network in which individuals allow other users to view and download MP3 files[22] from the host's hard drive onto the visitor's computer, a practice termed peer-to-peer file sharing.[23] The software only allows others to download a host's files when that host is online.[24] As a result, the number of files available for downloading at any time is constantly changing.[25] The service allowed users to download copyrighted works that they would otherwise have had to purchase.[26] Napster distributed the necessary software over the Internet, free of charge,[27] and the Napster service allowed users to search the computers of the "millions" of other Napster users with relatively little effort.[28]

In order to use the Napster system, all one needs to do (after downloading the necessary free software) is to create a login name and password that is registered with the network.[29] Very often, the password that must be entered in order to gain access privileges is merely the word "anonymous."[30] Napster's software includes a search engine and chat functions that operate within Napster's network of computer servers.[31] The Napster system allows users to use

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[21] *See* A & M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1011-12, 1021 (9th Cir. 2001).

[22] *See MP3*, WHATIS?COM, *at* http://whatis. techtarget.com/ definition/0,,sid9_gci 212600,00.html (last visited Jan. 7, 2002) (defining an MP3 as a compressed file within a computer's memory that allows computer users to store larger files).

[23] *See* Bill Machrone, *Peer to Peer: Less Play, More Work*, ZDNET.COM, *at* http://www.zdnet.com/pcmag/stories/columnists/machrone/0,5655,2669190,00.html (Dec. 28, 2000) (defining services like Napster and Gnutella as companies that allow individuals to share files, i.e. to have access privileges to the copyrighted computer files of other individuals who are also on that system).

[24] *See* A & M Records, Inc. v. Napster, Inc., 114 F.2d 896, 904-05 (N.D. Cal. 2000) (explaining that the Napster software only allows its users to share files when that user is online, and when the host who has MP3 files that the user wants to download is also online).

[25] *See id.*

[26] *Id.* at 901 ("It is uncontradicted that Napster users currently upload or download MP3 files without payment to each other, defendant, or copyright owners.").

[27] *See id.* ("[Napster] distributes its proprietary file sharing software free of charge via its Internet Web site.").

[28] *See id.* at 901-02 (finding that Napster executives have boasted that their service allows users "to conduct relatively sophisticated searches for music files on the hard drives of millions of other users.").

[29] *See id.* at 905 (describing the manner in which a computer user could register with the Napster service).

[30] *See File Sharing*, *supra* note 14.

[31] *See Napster Inc.*, 114 F.2d at 905-06 (examining the basic functions that the Napster service provides to those who use it).

certain search tools to locate the desired MP3 files.[32] Individuals simply need to enter the title of a song or the name of an artist, initiate a search command, and then wait to see how many matches the system finds.[33] Once a user views the results that the search has returned, he or she must decide whether any of these matches are worth copying.[34] It should be noted that the Napster service does not organize specific MP3 files, but allows users to search for files matching certain criteria that the individual will set down prior to the search.[35]

Napster also provides a "hotlist" function as an alternative method for searching for MP3 files.[36] This aspect of Napster allows users to save the names of other users, and to then determine whether any of them are on-line at any particular time.[37] Individuals can then browse through the archives of these hotlisted users.[38] "The hotlist function is a feature that helps make Napster users a virtual community. They are not only able to download the music they desire, but also to obtain files from particular users whom they know by user name."[39]

The plaintiffs in the *Napster* suit maintained that the defendant's service, by permitting the functions described above, violated copyright law by facilitating the unauthorized copying and distribution of protected works.[40] The Ninth Circuit ultimately sided with the plaintiffs' contentions, upholding the district court's order for an injunction to preclude access to copyrighted files through Napster.[41] Other systems similar to Napster, however, have been spawned and continue to operate.[42]

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[32] *See id.* at 906 (noting the measures that the Napster service put in place to allow its users to search the computers of other network users in order to locate the desired MP3 files).

[33] *See id*.

[34] *See id.*

[35] *See id.*, at 907 (stating that the basis of the Napster system is to allow those who use its service to quickly search through the databases of the many other individuals who use the system).

[36] *See id.* at 906 (stating that users may archive the user names of other Napster patrons who generally have MP3 files that the individual user would like to download).

[37] *See id.*

[38] *See id.*

[39] *Id.* (describing one way in which the Napster service makes it easy for its users to locate and then copy music files).

[40] *See id.* at 900 (stating that the cause of action set forward by the plaintiffs in this suit maintains that the unauthorized copying and distribution of these copyrighted works infringes upon the plaintiffs' exclusive rights to copy and distribute these songs); 17 U.S.C. § 106 (2000) (stating that, in the absence of one of the recognized exceptions to a copyright holder's exclusive rights, a copyright holder will have the exclusive right to copy and distribute her work).

[41] A & M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1027 (9th Cir. 2001).

[42] *See* Kevin Featherly, *Post-Napster, File-Swapping's Bigger Than Ever — Webnoize*, WASHINGTONPOST.COM, *at* http://www.newsbytes.com/news/01/169823.html (Sept. 6,

File sharing is a relatively new use of the Internet, and lawmakers in the United States as well as in Europe have not sufficiently dealt with the copyright issues that such technology presents. It is now necessary to examine the copyright regimes of the United States and Europe to determine if a feasible solution can be reached that would satisfy various governments, record companies, and copyright holders, while still allowing this valuable service to operate and satisfy public demand.

III. UNITED STATES COPYRIGHT LAW AS IT RELATES TO FILE SHARING ISSUES

This section will examine the ability of United States copyright law to affect and deter digital copyright infringement through file sharing over the Internet, which promises to become only more apparent in the years to come as technology advances. Specifically, this section will discuss United States fair use doctrine, the contributory and vicarious infringement challenges that file sharing necessarily implicates, as well as the effect, if any, that the Digital Millennium Copyright Act will have on the ability of individuals to share files in the future.

A. *The* Napster *Opinion*

A discussion concerning the technological issues that American copyright law is going to have to cope with during this century should begin with the concepts that the *Napster* opinion raises. The line between sharing and theft is a gray one.[43] The Ninth Circuit Court of Appeals held that Napster had, in substantial likelihood, operated on the illegal side of that line.[44]

The court found that Napster could be held liable for contributory infringement with regard to the then current uses of its system, finding that Napster "knowingly encourages and assists the infringement of the plaintiffs' copyrights."[45] The court also determined that Napster's behavior "leads to the imposition of vicariously liability" for infringement of the plaintiffs' copyrights.[46] Judge Beezer's opinion explained that Napster did intend to receive a future financial benefit from its service (although the exact method for obtaining profits was unclear), thus satisfying one of the requirements for vicarious liability.[47] Additionally, the court further concluded that Napster had the right and ability to supervise those using its system, thus subjecting the defendant to vicarious liability for the actions of its end users.[48]

2001).

[43] *See Napster, Inc.*, 114 F.2d at 901.

[44] *See Napster, Inc.*, 239 F.3d at 1004 (9th Cir. 2001) (holding that plaintiffs demonstrated a likelihood of success on their infringement claims and upholding the district court's preliminary injunction, though narrowing its scope).

[45] *See id*. at 1020.

[46] *See id*. at 1024.

[47] *See id*. at 1023.

[48] *See id*. at 1023-24.

The Ninth Circuit, however, modified the preliminary injunction issued by the district court. The court decided that Napster could be subjected to contributory liability if copyright holders specifically notified Napster of infringing acts and Napster failed to act accordingly to curb such infringement.[49] The court stated that, "The mere existence of Napster, absent actual notice and Napster's demonstrated failure to remove the offending materials, is insufficient to impose contributory liability."[50] However, the court further stated that Napster could be held vicariously liable if it did not use the policing powers under its control to monitor those using its system.[51] The Ninth Circuit ruled that upon notice from the plaintiffs under the injunction, Napster would be obligated to take action to prevent access to copyrighted files on its system.[52] On remand, the district court ruled that Napster must block access to all files that infringe plaintiffs' copyrights upon notice of such infringement from the plaintiffs.[53]

B. *United States Copyright Law*

Since the ratification of the Constitution over 200 years ago, the purpose of American copyright law has been to promote the creation of literary and artistic works.[54] United States copyright law underwent a momentous overhaul in 1976 when Congress passed the Copyright Act.[55] One of the primary motivations for amending the copyright laws in 1976 was to harmonize the United States copyright regime with those of Europe.[56] Specifically, American lawmakers sought to bring U.S. copyright law into closer alignment with the countries that were members of the Berne Convention.[57] Although the United States did not become a member of the Berne Union until 1988,[58] the passage

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[49] *See id.* at 1027.

[50] *See id.*

[51] *See id.*

[52] *See id.* at 1027.

[53] *See* A&M Records, Inc. v. Napster, Inc., 2001 U.S. Dist. LEXIS 2186.

[54] *See* U.S. CONST. art. I, § 8, cl. 8; Christina N. Gifford, *The Sonny Bono Copyright Term Extension Act*, 30 U. MEM. L. REV. 363, 366-367 (2000) (stating that copyright laws for the protection of artists' creative works has long been a part of American copyright law since the inception of the United States).

[55] 17 U.S.C. § 106 (2000).

[56] *See* Gifford, *supra* note 54, at 371 (stating that the United States recognized the importance of the Berne Union, and wanted to bring its copyright laws into closer compliance with the mandates of the Convention).

[57] *See id.* (stating that "[t]he Berne Convention for the Protection of Literary and Artistic Works is the oldest international copyright agreement in existence" and that the United States has recognized that there was a need to adopt domestic copyright laws that would be in compliance with Berne's guidelines).

[58] *See id.*; Jenny L. Dixon, *The Copyright Term Extension Act: Is Life Plus Seventy Too Much?*, 18 HASTINGS COMM. & ENT. L.J. 945, 957 (1996) (describing the process through which the United States modified the terms of protection given to copyrighted works so as

of the 1976 Copyright Act brought American law into technical compliance for membership in the Convention.[59]

1. The 1976 Copyright Act

The 1976 statute sets out the rights that owners of a valid copyright are permitted to assert against individuals who wish to use their copyrighted work.[60] Section 102 denotes the types of works that are subject to copyright protection and regulation under the 1976 Act.[61] The categories of production that are relevant to the inquiry of this note, such as literary and musical works, are covered by section 102.[62] It is important to note that the Act was formulated such that the scope of works within its framework would be in accordance with the statutes of the Berne Convention in important areas, such as the nature of the works to be protected, and the terms of protections that those works should receive.[63]

Section 106 lists the rights to which copyright holders are entitled.[64] This section provides copyright holders numerous protections, including the right to reproduce the protected work, to prepare derivative works, and to perform protected works publicly.[65] As it relates to file sharing technology, an important exclusive right is that of distribution formulated in section 106(3). Section 106 states:

> Subject to sections 107 through 118, the owner of any copyright under this title has the exclusive rights to do and to authorize any of the following:
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> . . . .
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> (3) to distribute copies of phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or

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to be in better accord with those of nations comprising the Berne Union).

[59] *See* J.H. Reichman, *The Duration of Copyright and the Limits of Cultural Policy*, 14 CARDOZO ARTS & ENT. L.J. 625, 629-630 (1996) (stating that the United States modified certain aspects of its copyright law in order to come into compliance with Berne, such as the terms of protection that the United States would grant to particular types of works, and gave assurance that it would afford foreign artists who were citizens of Berne member states the same protections that an American artist would receive in the United States).

[60] *See* 17 U.S.C. § 106(1)-(6).

[61] *See* 17 U.S.C. § 102.

[62] *See id.* ("Copyright protection subsists, in accordance with this, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.").

[63] *See* Dixon, *supra* note 58, at 958 (noting that these areas of United States copyright law were amended by lawmakers in order to gain membership in the Berne Convention).

[64] *See* 17 U.S.C. § 106.

[65] *See id.* at § 106(1), (2), (4).

lending . . . .[66]

Generally, copying and selling a copyrighted work without the owner's authorization violates both the exclusive distribution right as well as the copyright owner's exclusive right to copy his protected work.[67] The distribution right enunciated in section 106(3) is limited by the fair use defense.[68] Before explaining this defense, an illustration of what constitutes copyright infringement under United States copyright law is appropriate.

a. *Copyright Infringement*

Copyright infringement may take direct, contributory or vicarious forms under United States copyright law.[69] File sharing cases will necessarily involve both a direct and a contributory or vicarious infringement component, mainly because while individual users are directly infringing on a copyright holder's exclusive rights, network servers, such as Napster, will face liability for their actions in facilitating this end user infringement.

i. Direct Infringement

A plaintiff in a direct copyright infringement action must demonstrate that the alleged infringer violated one of the copyright holder's exclusive rights.[70] Intent is not directly relevant to a finding of liability under the 1976 Act.[71] A copyright holder must merely show that his rights have been violated.[72] It is important to note, however, that in an action for direct infringement, if a plaintiff cannot demonstrate that the allegedly infringing Internet site had some intent to facilitate the directly infringing activities of its users, such as by directly placing the infringing materials on the Web site, then it will be difficult to maintain the cause of action.[73]

ii. Contributory Infringement

In an action for contributory infringement, a plaintiff must generally show that the defendant had knowledge of the infringing activities that occurred

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[66] *Id.* § 106(3).

[67] *See* ROBERT P. MERGES ET AL., INTELLECTUAL PROPERTY IN THE NEW TECHNOLOGICAL AGE 470 (2d ed. 2000).

[68] *See id.* at 490; *see also* 17 U.S.C. § 106 (stating that the exclusive rights set down in section 106 are subject to the exceptions to those rights enumerated in sections 107 through 118).

[69] *See* MERGES ET AL., *supra* note 67, at 486.

[70] *See* 17 U.S.C. § 501(a).

[71] *See id.* at § 504(c); Murai, *supra* note 1, at 292 (stating that unauthorized reproductions, and not an intent to infringe on a copyright holder's rights, is crucial in a direct infringement analysis).

[72] *See id.*; *see also* Religious Technical Ctr. v. Netcom On-line Commun. Servs., 907 F. Supp. 1361, 1367 (N.D. Cal. 1995).

[73] *See Religious Technical Ctr.*, 907 F. Supp. at 1368-70.

through the defendant's Web site.[74] This requirement is subject to a standard of reasonableness.[75] It must be reasonable to expect the defendant to have knowledge of the infringing activities in order for that party to be subject to liability.[76] If it was not foreseeable for the offending site to know of the infringing actions of its subscribers, then the defendant will escape liability.[77] In addition, a plaintiff must show substantial participation by the defendant in furthering the spread of the infringing materials.[78] This requirement is met when the defendant knows or has reason to know of the infringing materials and does not then take action to remove the infringing works from its site.[79]

iii. Vicarious Copyright Infringement

For vicarious liability, a plaintiff must be able to demonstrate that an online service provider had the "right and ability" to control any potentially infringing activities.[80] If a plaintiff can show that the online service provider can control the conduct of those who use its services, then vicarious liability can be found.[81] Another key component of a vicarious liability action is that the online provider obtain some type of financial benefit from the infringing activities of its users.[82] This was an important aspect of the *Napster* conflict because, although Napster was initially a free service, the company did intend to create a for-fee service once its user base was large enough.[83]

With an understanding of infringement liability, an examination of the fair use defense as it applies to Internet file sharing is possible. If the practices involved in a case such as *Napster* were found to fall under the fair use provisions of the Act, then a copyright holder's exclusive right to distribute her work over a digital medium would be seriously impaired. This limitation is crucial to any discussion of the legality of file sharing and the possibility of either partially or entirely curtailing the practice on a global scale.[84]

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[74] *See id.* at 1373 (stating that a defendant must have knowledge of the infringing activity of individuals using the defendant's on-line bulletin board system in order for the plaintiff to be able to maintain a claim of contributory copyright infringement).

[75] *See id.* at 1374 (finding that it must be shown that an alleged contributory infringer could reasonably have known of the offending actions in order for the cause of action to be maintained).

[76] *See id.*

[77] *See id.*

[78] *See id.*

[79] *See id.*

[80] *See id.* at 1375.

[81] *See id.*

[82] *See id.*

[83] *See* A & M Records, Inc., et al., v. Napster, Inc., 114 F. Supp. 2d. 896, 902 (N.D. Cal. 2000) (stating that although Napster began as a free service for college roommates to share music with one another, it was never a not-for-profit institution and the creator's intent was always to commercialize the service once its user base was large enough).

[84] *See* Joseph W. Dellapenna, *Law in a Shrinking World: The Interaction of Science and*

b. *The Fair Use Defense*

United States fair use doctrine is governed by section 107 of the Copyright Act.[85] Under American copyright law, a fair use is one that, although technically infringing, is permitted because the benefits of use to society outweigh the costs incurred on the copyright holders.[86] This section codified a common law doctrine that had been developing in the United States since the mid-Nineteenth Century.[87] The House Report that accompanied the statute made clear that the list of fair use factors within section 107 were not meant to serve as an exclusive set of "exact rules."[88] The section was intended to provide further guidance for courts to determine whether an actionable infringement had occurred.[89] The section sets out a list of illustrative factors that should be used by courts to determine whether or not the alleged copyright infringement is justifiable.[90] Section 107 states in part that:

> In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —
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> (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
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> (2) the nature of the copyrighted works;
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> (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
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> (4) the effect of the use upon the potential market for or value of the copyrighted work.
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> The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.[91]

Though not exhaustive, these four factors serve as a good starting point in

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Technology with International Law, 88 KY. L.J. 809, 835 (1999) (recognizing that if file sharing was found to be a fair use, it could seriously affect the incentive that artists have to create new works); *see also* Jane C. Ginsburg, *Putting Cars on the "Information Superhighway": Authors, Exploiters and Copyright in Cyberspace*, 95 COLUM. L. REV. 1466, 1496 (1995).

[85] *See* 17 U.S.C. § 107 (2000).

[86] *See* MERGES ET AL., *supra* note 67, at 491 (stating that the motivation behind the doctrine of fair use is to balance the public's access to copyrighted creative works against the goal of the Copyright Clause in the U.S. Constitution to provide incentives for artists to create copyrightable subject matter).

[87] *See id.* at 490-91.

[88] H.R. REP. NO. 94-1476, at 66 (1976).

[89] *See id.*

[90] *See* MERGES ET AL., *supra* note 67, at 490 (stating that the drafters of section 107 did not want to foreclose the possibility that other factors could be relied upon by a court in determining whether or not a use was in fact fair).

[91] 17 U.S.C § 107 (2000).

examining the issues that file sharing presents both in the United States and internationally.

With respect to the nature and purpose of the unauthorized use, the first factor speaks to whether or not the potential infringer is using a copyrighted work commercially or only for his own personal benefit.[92] As it relates to the *Napster* controversy, a service provider who allows others to copy protected works and turns a profit for the activity will rarely be found to be a fair user under this section.[93] However, groups of individuals who are sharing protected works, not for profit, but for their own personal enjoyment may have nothing to fear under this first subsection because they are not using the works for financial gain.

The second factor in section 107 also weighs in favor of copyright holders.[94] The nature of the works generally involved in file sharing cases, such as musical compositions and literary works, receive thick protection due to their creative content.[95] This point is not hotly debated in file sharing cases (as it was not in *Napster*) due to the clarity of American law on this point.[96] With respect to the amount of the copyrighted work taken, the third factor also favors copyright holders because most individuals, when sharing MP3 files or literary works, will generally copy a substantial portion, if not all, of that work.[97] A finding that a large part of a protected work has been copied is not a per se violation, but it strongly "militates against a finding of fair use."[98] Like the second factor, this factor is not argued at length in fair use and file sharing suits because the alleged infringer usually concedes this point.[99]

i. Factor Four: The Potential Market Effect on the Copyrighted Work

For the purposes of this note, the fourth factor is the most important subsection of section 107. This factor speaks to the potential market effect of the al-

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[92] *See id.* § 107(1).

[93] *See* A & M Records, Inc., et al., v. Napster, Inc., 114 F. Supp. 2d 896, 913 ("[T]he purpose and character of the use militates against a finding of fair use . . . . [and] a finding of commercial use weighs against, but does not preclude, a determination of fairness . . . ."); *see also* Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 584 (1994).

[94] *See* A & M Records, Inc., et al., v. Napster, Inc., 239 F.3d 1004, 1016 (9th Cir. 2001); *see also* Harper & Row Publishers, Inc. v. Nation Enters., 471 U.S. 539, 563 (1985).

[95] *See Napster, Inc.*, 239 F.3d at 1016.

[96] *See generally id.*; *Napster, Inc.*, 114 F. Supp. 2d 896.

[97] *See Napster, Inc.*, 239 F.3d at 1018.

[98] *See* Worldwide Church of God v. Philadelphia Church of God, 227 F.3d 1110, 1118 (9th Cir. 2000) (quoting Hustler Magazine, Inc. v. Moral Majority, Inc., 796 F.2d 1148, 1155 (9th Cir. 1986)) (stating that finding that a substantial portion of a protected work has been copied does not make a use unfair per se but strongly implies that there should be no finding of fair use).

[99] *See id.*

legedly infringing use.[100] Resolving this issue in a case such as *Napster* is not extremely difficult because the facts of the case clearly show that the defendant could seriously affect the market potential for the copyrighted works involved.[101] The number of users that Napster serviced was extremely large and, because of the functions of Napster, those users no longer had to buy compact discs to listen to their favorite music. The question becomes more complicated, however, when the alleged infringers are a small group of friends or family members, not operating for a profit and sharing protected works for their own enjoyment. To date, no American court has had occasion to discuss this issue.

In *Sony Corporation of America v. Universal City Studios, Inc.*, the Supreme Court discussed whether or not taping television programs or movies with a personal VCR constituted fair use.[102] The case is the closest analogy to one that involves peer-to-peer file sharing. The Court in *Sony* found that, since the defendant's product was capable of substantial non-infringing uses, the private, home use of a VCR to record copyrighted material was acceptable under section 107.[103] The Court in *Napster*, however, denied the defendants the opportunity to succeed through this same line of argument.[104] Furthermore, the Ninth Circuit stated that, despite infringement capability, Napster was also capable of non-infringing uses, thus leaving the defendants with a glimmer of hope that its service might survive.[105]

2. The Digital Millennium Copyright Act and File Sharing Technology

The recent addition of the Digital Millennium Copyright Act ("DMCA") to the doctrine of United States copyright law will also impact the legal issues that file sharing technology presents.[106] The purpose of the DMCA is to allow American copyright law to better define liability for copyright infringement in the digital age.[107]

The DMCA was intended to go beyond the traditional copyright law doc-

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[100] *See* Sony Corp. of Am. v. Universal City Studios, Inc., 464 U.S. 417, 449-50 (1984) (holding that a finding of fair use relies, in large part, on the defendant demonstrating that he garnered no financial benefit from the infringing use, such as one that occurs in one's home for one's personal use).

[101] *See Napster, Inc.*, 114 F. Supp.2d at 913 (stating that it allows millions of users to download MP3 files for free, when they would have had to pay for the music otherwise).

[102] *See Sony Corp. of Am.*, 464 U.S. at 418.

[103] *See id.* (discussing non-infringing uses such as "time shifting").

[104] *See Napster, Inc.*, 239 F.3d at 1016-17.

[105] *See id*. at 1021.

[106] *See* Digital Millennium Copyright Act, Pub. L. No. 105-304, §§ 103(a), 202(a), 112 Stat. 2863, 2877 (1998) (codified as amended at 17 U.S.C. §§ 512, 1201 et seq. (2000)).

[107] *See supra* note 84, at 1495 (stating that the DMCA is a good first step in creating clear copyright rules for a digital world and that the DMCA is beneficial because it defines liability rules for online service providers).

trine to address the infringement issues that exist in the 21st Century.[108] Its primary purpose is to restrict technologies that facilitate the digital copying of protected materials.[109] The DMCA attempts to attack this problem by outlawing the circumvention of copy protection systems and prohibiting the removal or alteration of copyright management information.[110] The Act seeks to discourage infringers from stripping the work of identifying information that allows pirated works to be distributed undetected.[111]

Another key provision of the DMCA that will have a direct bearing on liability for services such as Napster is section 512.[112] This section clarifies the bounds of liability for institutions such as universities, Internet service providers (e.g., America Online, which allows users to gain Internet access through their company, much like the way a telephone company permits access to the telephone lines to its customers), and Internet search engines (e.g., Yahoo, which allows users to search the Internet for Web sites that conform with the criteria that an individual user will specify prior to a search).[113] This section is meant to limit certain types of liability that might arise from the actions of individual users who utilize the services of a particular Internet accessed resource.[114] This section also limits liability in cases in which online service providers ("OSPs") eliminate infringing materials from their servers when they first obtain knowledge of their existence.[115] An OSP must act in a timely fashion to make sure that the infringing works are removed from their system.[116] OSPs are protected from liability only if they act reasonably in removing infringing materials from their sites and in monitoring their services for infringing activities.[117] However, it is important to note that section 512 deals with liability for Internet companies only and not for private users.

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[108] *See id.* at 1496.

[109] *See* MERGES ET AL., *supra* note 67, at 488 (stating that a portion of the DMCA was focused on the decryption of copyright protection systems by computer users).

[110] *See id.*; 17 U.S.C. § 1201 (2001).

[111] *See* MERGES ET AL., *supra* note 67, at 489.

[112] *See* 17 U.S.C. § 512.

[113] *See* Jerome N. Epping, Jr., *Harmonizing the United States and European Community Copyright Terms: Needed Adjustment or Money for Nothing?*, 65 U. CIN. L. REV. 183, 188 (1996) (stating that the DMCA chose to focus its efforts on Web sites that facilitate copyright infringement, rather than honing in on individual computer users).

[114] *See* Charles R. McManis, *Taking TRIPS on the Information Superhighway: International Intellectual Property Protection and Emerging Computer Technology*, 41 VILL. L. REV. 207 (1996) (stating that the creation of new technologies creates new need for legislation for the field).

[115] *See id.*

[116] *See* 17 U.S.C. § 512(c)(1)(A)(iii).

[117] *See* McManis, *supra* note 115, at 270.

a. *Why the DMCA does not Adequately Combat Copyright Infringement through File Sharing*

Although the DMCA is certainly a step in the right direction in terms of updating American copyright law in order to better address the piracy issues that will exist as technology continues to improve, it still does not solve the problems that file sharing on a diffuse, private level presents. Furthermore, while the DMCA takes aim at digital piracy, it does not focus on the issue of individuals who are infringing on a copyright without using unique circumvention technology to reach that goal. However, although the DMCA does not go as far as it should in protecting the digital distribution of copyrighted works, its provisions will still be useful in forming the rules that an international copyright regime will need to implement.

Because of the *Napster* decision, American copyright law regarding file sharing has advanced beyond the statutes in existence in other parts of the world. U.S. doctrine relating to fair use and the digital transmission of copyrighted material will aid any attempt in formulating international copyright rules for the Twenty-first Century. With these American copyright provisions in place, it is possible to examine the current international copyright agreements and begin to dissect the issue of the global sharing of protected materials.

IV. INTERNATIONAL COPYRIGHT AGREEMENTS

Over the past ten to twenty years, the copyright laws of the United States have become more harmonized with those of the nations comprising the Berne Union and the WIPO.[118] Even though the United States is now a member of the Berne Convention, however, significant differences still remain.[119] These differences will have a direct bearing on how the international community addresses the issue of digital copyright infringement through file sharing. This section will examine the international agreements that govern copyright law between the United States and certain foreign nations. It will also examine how the giant advances in information technology that have taken place in recent years will affect the copyright laws of international organizations such as the Berne Convention and the WIPO. Finally, it will determine whether or not the organizations' current rules are equipped to handle acts of infringement that may occur through file sharing activities.

A. *The Berne Convention for the Protection of Literary and Artistic Works*

Any analysis of the international treaties that will have a bearing on the copyright issues that file sharing technology presents must begin with the

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[118] *See* Pamela Samuelson, *The U.S. Digital Agenda at WIPO*, 37 VA. J. INT'L L. 369, 371 (1997).

[119] *See id.* at 371-72.

Berne Convention for the Protection of Literary and Artistic Works.[120] The Berne treaty covers the dramatic, musical, and literary works that this note examines.[121] Article 2, section 1, of the Berne Treaty ("Berne") clearly states that:

> The expression 'literary and artistic works' shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works. . . musical compositions with or without words . . . .[122]

Article 2, sections 2 through 5, also mention that, in the countries of the Berne Union, any other type of work that a nation feels deserves to be protected may receive such protection under the treaty. The only requirement imposed is that the nation also afford the same type of protection to the works of other member states.[123]

Article 5 of Berne begins to set out the jurisdictional issues that the drafters realized would impact any international agreement of this magnitude.[124] Article 5, section 1, states clearly that authors shall enjoy national protection, in any country of the union, meaning the works of foreign authors must be protected to the same extent that the works of domestic authors are in any particular country of the union.[125] Article 5, section 2, further states that protection will be "governed exclusively by the laws of the country where protection is claimed."[126] These standards concern such issues as terms of protection and the breadth of the protection that certain works may receive.[127] These provi-

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[120] *See* Berne Treaty, *supra* note 9, art. 2.

[121] *See id.* at art. 2, § 1.

[122] *See id.*

[122] *See id.* at art. 5, §§ 1-3.

[123] *Id.* at art. 2, §§ 2-6.

[124] *See id*. at art. 5 §§ 1-3.

[125] *See id.* at art. 5, § 1; Andreas P. Reindl, *Choosing Law in Cyberspace: Copyright Conflicts on Global Networks*, 19 MICH. J. INT'L L. 799, 804 (1998) ("Article 5(2) of the Berne Convention provides that copyright protection 'shall be governed exclusively by the laws of the country where protection is claimed.'").

[126] Berne Treaty, *supra* note 9, art. 5, § 2; *see also* Tyler G. Newby, *What is Fair Here is not Fair Everywhere: Does the American Fair Use Doctrine Violate International Copyright La?*, 51 STAN. L. REV. 1633, 1647 (1999) (stating that the Berne Convention provides for certain fair practices that serve as exceptions to the convention's exclusive rights provisions).

[127] *See* Berne Treaty, *supra* note 9, art. 36, § 2; *see* Alexander A. Caviedes, *International Copyright Law: Should the European Union Dictate its Development?*, 16 B.U. INT'L L. J. 165, 172 (1998) (stating that members to the Berne Convention may provide more protection than is provided for under the treaty, but not less); *see* Crystal D. Talley, *Japan's Retreat From Reverse Engineering: An Unnecessary Surrender*, 29 CORNELL INT'L L. J. 807, 815 (1996) (stating that the Berne Convention provides for a base level of protection for

sions are particularly important for the purpose of discussing the copyright issues that file sharing technology presents, as where a document is viewed or where a musical work is heard will have a major bearing on the copyright laws to be employed in any infringement litigation involving that work.[128] The Internet knows no boundaries, and therefore, will create the most serious jurisdictional issues that the member states have ever had to confront.[129] That Berne promulgates the rule that foreign authors shall enjoy national protection, but this is only a starting point.[130] Determining where an act of infringement has taken place is a much more difficult question to answer in the digital age.

1. The Enforcement of International Agreements: Article 6 of the Berne Treaty

Article 6 of Berne addresses the problem of enforcement of international treaties.[131] Article 6, section 1, begins to set out the various remedies that may be sought by member nations who feel that the intellectual property rights of that nation's creative minds have been infringed. Section 1 states that:

> Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not habitually resident in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first protection.[132]

Article 6, section 3, also details a term that will become significant to the issues that this note will discuss: Any country that intends to restrict the copyright privileges of any author must give prior notice to the Director General of the WIPO.[133] Because the WIPO drafted a new copyright treaty in 1997, this provision of the Berne Directive will be of greater importance in the coming years.

2. International Fair Use

Article 9 of the Berne Treaty deals with the issue of fair use, although not

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member states).

[128] *See* Caviedes, *supra* note 128, at 171-72.

[129] *See* Samuelson, *supra* note 119, at 370 (stating that issues of state sovereignty and national autonomy will become more important in the coming years as the Internet continues to blur the boundary lines of the world).

[130] *See* Berne Treaty, *supra* note 9, art. 5, § 1.

[131] *See id.* at art. 6, §§ 1-3.

[132] *Id.* at art. 6, § 1.

[133] *See id.* at art. 6, § 3.

directly.[134] Article 9, section 2, states broadly that each country of the Union may provide for the unauthorized reproduction of copyrighted works so long as such a reproduction does not "unreasonably prejudice the legitimate interests of the author."[135] This phrasing implies that the underlying rights that an author maintains can be infringed upon by statutorily granted fair practices.[136]

It is important to note that article 9 does not establish a standard of fair use.[137] It allows the members of the Berne Union to create such exceptions as they believe are necessary. Because cases involving file sharing will likely revolve around the issue of fair use and the problems that such uses present, the lack of any uniform standard of fair use is troubling. The discussions that took place regarding fair use on the international scene centered on the reverse engineering of copyrighted computer programs, a practice that was held a fair use in the United States,[138] but file sharing implicates different issues. A consensus regarding fair use as applied in multiple contexts must be reached. To eliminate the defense of fair use would create serious access problems that may unduly broaden the statutorily granted copyright holder's monopoly. To allow the defense, given the ability of individuals to use technology to reproduce copyrighted works, might seriously decrease the value of the monopoly granted to copyright holders. The question that remains is how to strike a balance.

3. Digital Transmission of Protected Works

Article 11 of the Treaty demonstrates that the drafters of Berne recognized that new technological mediums, which were not in existence at the time of the treaty's commencement, could be created. Article 11, section 1, subsection (i), states that "the broadcasting of [authors'] works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds of images" shall be controlled exclusively by the author of that artistic work.[139] This section complements the exceptions provisions of article 9 and establishes the debate which this note attempts to resolve. In this digital age, where is the line to be drawn between a fair use and an infringing one? With the Berne Treaty as a backdrop, it is now necessary to consider the international copyright treaty put into effect by the WIPO in 1997.[140]

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[134] *Id.* at art. 9 §§ 1-3.

[135] *Id.* at art. 9, § 1.

[136] *See id.*

[137] *See* Newby, *supra* note 127, at 1643 (1999) (stating that most civil law countries do not have the broad, judicially created doctrine of fair use that exists in the United States, and that no coherent international system of fair use has resulted from these differences).

[138] *See id.* at 1645.

[139] Berne Treaty, *supra* note 9, art. 11, § 1, cl. i.

[140] *See* WIPO Copyright Treaty, WIPO Doc. CRNR/DC/94 (Dec. 20, 1996); WIPO Performances and Phonograms Treaty, WIPO Doc. CRNR/DC/95 (Dec. 20, 1996); Agreed Statements Concerning the World Intellectual Property Organization Copyright Treaty,

B. *The WIPO and International Copyright Protection*

When the WIPO convened in December 1996 to update its provisions, one of the major issues discussed was the protection of copyrighted sound recordings within the emerging digital medium of the Internet.[141] One of the conflicts at Geneva concerned the dichotomy between the desired amendments proposed by the United States and those requested by the countries of the European Union regarding digital transmission of copyrighted materials and fair use.[142] Once an agreement was reached, it was clear that the WIPO, while recognizing that digital transmissions of copyrighted works needed to be addressed in order to fully maintain a creator's copyright rights,[143] did not go as far as either the United States or the European Union wanted to in outlawing the unauthorized use of copyrighted works over the Internet.[144]

1. Digital Agenda at the WIPO

As the negotiations progressed, it was clear that all parties involved desired to strengthen copyright protection for the digital age.[145] It was evident that earlier treaties were deficient in this area, mainly because the technologies that were, in the past, only experimental are now widely used.[146] The agreement resulting from the 1996 negotiations reflected a strong adherence to principles that were long held in the United States regarding the balance of interests between copyright holders and the public,[147] while not going as far as the

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WIPO Doc. CRNR/DC/96 (Dec. 20, 1996).

[141] *See* Samuelson, *supra* note 119, at 369-70 (describing the motives that many of the member states brought to the negotiations, focusing on the digital transmission of protected materials as well as the possible exceptions that member states could create to shield certain types of users from liability).

[142] *See id.*

[143] *See* WIPO Copyright Treaty, WIPO Doc. CRNR/DC/94 (Dec. 20, 1996); WIPO Performances and Phonograms Treaty,Dec. WIPO Doc. CRNR/DC/95 (Dec. 20, 1996); Agreed Statements Concerning the World Intellectual Property Organization Copyright Treaty, CRNR/DC/96.WIPO Doc. CRNR/DC/96 (Dec. 20, 1996).

[144] *See* Samuelson, *supra* note 119, at 377 (stating that the U.S. delegation came to the conference with higher expectations of curtailing copyright infringement in a digital age).

[145] *See* Jan Corbet, *The Law of the EEC and Intellectual Property*, 13 J.L. & COM. 327, 359-69 (1994) (discussing Commission's initiatives on copyright term extensions, satellite broadcasting, industrial designs, and patents for biotechnology inventions).

[146] *See* Basic Proposal for the Substantive Provisions of the Treaty on Certain Questions Concerning the Protection of Literary and Artistic Works to Be Considered by the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions [hereinafter WIPO Draft Treaty], WIPO Doc. CRNR/DC/4 (Aug. 30, 1996). This proposal was the draft treaty initially considered at the diplomatic conference in Geneva, and the final treaty was intended to be a "special agreement" (or protocol) to supplement the major international copyright treaty, known as the Berne Convention, under article 20 of that convention. *See id.*

[147] *See* Samuelson, *supra* note 119, at 434-35.

American delegation hoped.[148] The remainder of this section will discuss the international accord that resulted from these meetings, and how the international framework that was established will affect file sharing technology and copyright infringement.

2. The Digital Transmission of Protected Works as Temporary Copies

One major point of contention at Geneva, and an issue that was constantly pressed by the American delegation dealt with the digital transmission of copyrighted works and how temporary copies in the computers of individuals were to be viewed by international copyright law.[149] The origin of this point can be found in the United States' White Paper,[150] which outlines the American agenda for the digital age as it pertained to copyright law.[151] The basic problem the drafters had to confront was at what point a digital transmission of a musical or literary work was to be considered a "copy" for the purposes of copyright law.[152]

The United States' first proposition was the "establishment of an international right in copyright owners to control temporary copies of their works in computer memory."[153] This provision was also strongly supported by the Europeans.[154] Such an amendment would allow a possible right to be created for copyright owners in all digital transmissions of their works.[155] Furthermore, such language could create strict liability for online service providers,[156] a possibility that is strongly supported by "copyright industries."[157]

Although such a provision was greeted with support, no treaty language was initially submitted to this effect, because some parties believed that article 9, section 1 of Berne covered the transmission of copyrighted works in any manner or form.[158] Draft article 7, section 1 of the WIPO copyright treaty stated, "The exclusive right accorded to authors of literary and artistic works in article 9, section 1 of the Berne Convention authorizing the reproduction of their

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[148] *See id.*

[149] *See Seth Greenstein for the Home Recording Rights Coalition*, day by day reports of the negotiations at the WIPO, Oct. 1, 1997, *available at* http://www.hrrc.org/newswipo.html.

[150] *See* Bruce A. Lehman, Information Infrastructure Task Force, Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights 64-66 (1995).

[151] *See id.*

[152] *See id.*

[153] Samuelson, s*upra* note 119, at 383 (noting that the U.S. members of the conference desired a clear statement that the temporary copying of protected works in a computer's memory constituted a reproduction for the purposes of copyright law).

[154] *See id.*

[155] *See* WIPO Draft Treaty, *supra* note 147.

[156] *See* Samuelson, s*upra* note 119, at 383.

[157] *Id.*

[158] *See id.* at 384-85.

works shall include direct and indirect reproduction of their works, whether permanent or temporary, in any manner or form."[159] This language was thought necessary because differences of opinion existed among different members of the Convention as to whether article 9, section 1 of Berne would apply to digital transmissions.[160]

3. Digital Transmissions and Fair Use

Draft article 7, section 2 of the WIPO copyright treaty dealt with possible exemptions that member states could create for alleged infringers.[161] It allowed for temporary copying of protected digital works that were bought legally,[162] but the provision was met with significant opposition because it was thought to rely too heavily on adherence to article 9, section 2 of Berne, which was drafted before computers were widely used.[163] The fervor created mainly by certain African Bloc countries, Denmark, and Australia, led to the eventual dropping of article 7 from the conference's agenda.[164] As a result, the WIPO treaty on copyright does not contain a provision dealing with the temporary copying of protected works digitally transmitted over the Internet.[165]

In the final hours of the conference, the American delegation proposed a three-sentence phrase that would seem to allow for the protection of digitally transmitted works.[166] The proposal was a reaffirmation of article 9 of the Berne Convention, stating that article 9 was meant to, and did in fact, apply to a digital world.[167] Furthermore, the U.S. proposal stated that it was "understood" that article 9 was supposed to define temporary copies on a computer as reproductions under article 9 of the Berne Convention.[168] Even with this approach, the final sentence of the American proposal, providing that the uploading and downloading of copyrighted works was a reproduction under article 9, was not ratified.[169]

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[159] WIPO Draft Treaty, *supra* note 147.

[160] *See* Samuelson, *supra* note 119, at 385.

[161] *See* WIPO Draft Treaty, *supra* note 147, art. 8.

[162] *See id.*

[163] *See* WIPO Draft Treaty, *supra* note 147, art. 7, § 2.

[164] *See* Samuelson, *supra* note 119, at 390 n.117 ("Another factor that may have affected the mood of the African delegations regarding the favor that the Chairman was showing to U.S. proposals was displeasure over the U.S. opposition to a second term for U.N. Secretary-General Boutros Boutros Ghali, which occurred around the time of the WIPO diplomatic conference.").

[165] *See id.* at 390.

[166] *Id.* at 390-91 n.121. The U.S. proposal read: "The reproduction right, as set out in Article 9 of the Berne Convention, and the exceptions permitted thereunder, fully apply in the digital environment, in particular to the use of works in digital form." Agreed Statements Concerning the WIPO Copyright Treaty, WIPO Doc. CRNR/DC/96 (Dec. 20, 1996).

[167] *See id.* at 390-91.

[168] *See id.* at 392.

[169] *See* Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 332

Another hot topic for debate in Geneva was the treatment of digital transmissions in general,[170] and the rights copyright holders could maintain in a digital world.[171] The American and European proposals on this issue differed slightly. The United States preferred to refer to digital transmissions as "distributing copies" to the public, while the Europeans preferred to term them as "communicating works" to the public.[172] This difference posed a problem, because United States copyright law granted copyright owners the exclusive right to distribute copies to the public, but not an exclusive right to communicate those works publicly.[173] The copyright laws of the European Union, by contrast, contain no exclusive distribution right, but do allow for the exclusive right to communicate their works to the public.[174]

Ultimately, the treaty draft contained both of these rights: an exclusive right to distribute copies and an exclusive right to communicate one's works to the public.[175] This view was favored, in part, because such language was thought to allow for the private transmission of copyrighted works, such as "an exchange between two friends."[176] Such language is crucial because it specifically allows for the small-scale reproduction of copyrighted works between private parties, so long as the scope of the copying is not too broad.[177]

In the end, the treaty was ratified and contained language that did not go as far as those who adhered to the principles set forth in the U.S. White Paper had hoped (with the omission of draft article 7 and with the communications/distributions argument), but did begin to address the issues that a digital medium presents.[178]

(entered into force Jan. 27, 1980); Samuelson, *supra* note 119, at 391-92 n.127 ("The argument that a mere majority resolution can serve as an agreed-upon statement of interpretation relies upon the notion that the diplomatic conference's own rules may permit resolutions supported by a bare majority as being agreed-upon statements. Such a rule had been adopted at the WIPO diplomatic conference.").

[170] *See* Samuelson, *supra* note 119, at 392-94.

[171] *See id.* at 394.

[172] *See id.* at 393-94.

[173] *See* Corbet, *supra* note 145, at 359-69 (stating that the United States' conception of public distribution is distinct from the European view of public communication mainly because the American stance focuses more heavily on an artist's right to profit from the public dissemination of his work, while the European view stresses an artist's right to decide where, when and how that particular work is communicated publicly).

[174] *See id.*

[175] *See* WIPO Draft Treaty, *supra* note 147, art. 8.

[176] *See* Samuelson, *supra* note 119, at 435 (stating that some members of the convention wanted to preserve economically insignificant fair uses and certain temporary copies on the hard drives of an individual computer user).

[177] *See id.*

[178] *See id.* at 435 (stating that the U.S. delegates were mainly pleased with the outcome of the WIPO negotiations but that the final draft of the treaty was not as proactive as they had hoped it would be).

4. American Opposition to the Expansion of the Fair Use Doctrine

American proposals at Geneva did not overtly seek to curtail the doctrines of first sale and fair use, but did attempt to limit the possible expansion of exceptions and limitations to a copyright holder's monopoly.[179] Draft article 12 of the WIPO copyright treaty provided for the following:

> (1) contracting parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this treaty only in certain special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.
>
> (2) Contracting parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases which do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.[180]

The debate surrounding this article focused primarily on whether or not it stated any new principle of international copyright law or simply restated the obligations set forth in article 9, section of Berne.[181] The main problem presented by draft article 12 was that some feared it would destroy the fair use doctrine altogether, although many of the proponents of the article assured them that this was not the article's purpose.[182] Opponents believed that the article could be construed so broadly as to give a copyright holder nearly total rights over the distribution and exploitation of her works.[183] While article 9, section 2 of Berne was thought to only apply to a copyright holder's reproduction right, draft article 12 was to apply to all exclusive rights maintained by copyright holders.[184]

In the end, article 12 incorporated the views set down by article 9, section 2 of Berne, allowing for individual member states to carve out exceptions to a copyright holder's rights in that state.[185] This occurred, in large part, because of the intimations by British officials that, if draft article 12 was implemented as originally drafted, Britain would commence proceedings against the United States for copyright infringement resulting from uses that are viewed as fair in the United States.[186] In the final analysis, the treaty did not substantially affect

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[179] *See id.*

[180] WIPO Draft Copyright Treaty, *supra* note 147, art. 12.

[181] *See* June Besek, Remarks at the National Research Council Symposium on Proposed Changes to Intellectual Property Law: Balancing the Diverse Interests (Nov. 21, 1996).

[182] *See* Samuelson, s*upra* note 119, at 400-01.

[183] *See id* at 401.

[184] *See id.* at 402.

[185] *See id.* at 407-08.

[186] *See id.* at 406 ("Had article 12 been adopted, major British publishers might have used it to persuade their government to file a complaint against the United States challeng-

the doctrine of fair use enough to keep the problem of computer piracy contained.

With these international treaties as a background, whether the scheme that exists will be sufficient to deal with file sharing technology, or if it is merely another obsolete agreement that needs to be revised, must be evaluated.

V. CAN A VIABLE INTERNATIONAL STRUCTURE THAT ENCOMPASSES FILE SHARING BE CREATED?

Digital file sharing allows computer users to infringe on the distribution rights granted to copyright holders. Although American law on this subject is becoming more refined through the *Napster* decision and through statutes such as the DMCA, categorizing digital copyright infringement through file sharing as an American problem is incorrect.

Tens of millions of individuals around the world use Napster, and Napster-like systems are not illegal in many countries.[187] As a result, in order to combat the possibility of international "Napsters" springing up and operating in nations where the copyright laws do not reach that type of conduct, a solution will have to be global in scale. American record companies striking licensing agreements with American sites such as Napster disregard the ability of individuals worldwide to pirate copyrighted material through file sharing over the Internet. One solution is an international licensing group that would be entrusted with monitoring the dissemination of copyrighted works throughout the world. A licensing system on an international level would be difficult to implement. It would certainly be possible, however, and the remainder of this note will describe how such a licensing scheme should be operated.

A. *International File Sharing Issues*

Napster is not a system that affected only American copyright holders. After the service became popular, it became clear that Napster was an international phenomenon. By spring, 2001, overseas uses of Napster outnumbered domestic utilization of the service.[188] Over 65 million individuals around the world used the Napster system when it was up and running before the court ruling.[189] As of February, 2001, Canadian use of Napster outstripped U.S. use of the network as a percentage of use by Internet-connected households, and many believe that with Napster's shut down completely in the United States, a service like that of Napster could exist in Canada free from the threat of Cana-

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ing its fair use doctrine.").

[187] *See* David F. Gallagher, *Users Test File-Sharing Alternatives*, N.Y. Times, April 5, 2001, at G3.

[188] *See* Richtel, *supra* note 5, at C4.

[189] *See* David Kirkpatrick, In Napster's Void: You've Got Misery!, FORTUNE, April 2001, *available at* http://www.business2.com/articles/mag/0,1640,9761,00.html (last visited Jan. 12, 2002).

dian litigation.[190] Brazil, Argentina, and Spain further constitute a major bulk of Napster uses worldwide.[191] Since Napster's demise, individuals in those countries have found like services in order to pirate copyrighted music.[192] Those nations are relatively new users of the Internet, as the global information infrastructure is only now reaching the masses of many countries. As a result, the need to regulate digital file sharing on an international level is evident now more than ever.

Because the Internet is a new phenomenon in many countries, domestic laws concerning digital copyright infringement in those nations are unrefined, if they exist at all. The United States and other more developed countries must therefore take the lead in aiding these new Internet states in forming a regime that combats digital copyright infringement through file sharing.

In Thailand, for example, digital copyright infringement through file sharing occurs on a very large scale.[193] Bangkok specifically,[194] and Southeast Asia more generally, are considered by many to be havens for individuals seeking to gain unauthorized access to copyrighted files over the Internet.[195] File sharing is one of the main vehicles for these acts of infringement.[196] To believe that digital copyright infringement through file sharing is a problem only for the United States, requiring only an American solution, is provincial and short-sighted. The Internet allows individuals to share files over the entire expanse of the globe. Therefore, any solution will have to aim at reaching all points globally.

1. Why a Government Group is Necessary

With the settlement agreement and licensing plan reached between Napster and BMG,[197] it is unclear whether a government agency is necessary to combat

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[190] *See id.* (stating that, in Canada, 30.3% of all home Internet users utilized the Napster system, as opposed to 16.1% of Internet users in the United States, validating a general understanding that, "Napster is an international phenomenon").

[191] *See* Gwendolyn Mariano, *Napster Fans Stretch Across the Border*, CNET NEWS.COM, *at* http://news.com.com/2100-1023-255378.html?legacy=cnet (Apr. 5, 2001).

[192] *See* Gallagher, *supra* note 187, at G3.

[193] *See* John Clewly, Thai Police No Longer Raiding Pirate Boot Vendors, BILLBOARD, Nov. 14, 1998 (indicating a high level of music piracy in Bangkok), *available at* http://www.grayzone.com/1298.htm (last visited Jan. 12, 2002).

[194] *See id.*

[195] Ann Tsang & Victor Wong, Debt-Ridden Chain Store Forced into Receivership: Increase in Piracy Feared, BILLBOARD, Nov. 21, 1998, *available at* http://www.grayzone.com/1298.htm (last visited Jan. 12, 2002).

[196] *See* The Sloan Ranger, *If Your Music is Hot, Get the Music You Want, on the Media You Want*, THE BANGKOK POST, April 11, 2001 (noting the ability of individuals to receive copyrighted music without authorization through file sharing, ripping, and then burning of musical compositions).

[197] *See* Brad King, *Napster's Future Tough to Label*, WIRED.COM, *at* http://www.wired.com/news/business/0,1367,39899,00.html (Nov. 1, 2000).

copyright infringement through digital file sharing or if private settlements will effectively eliminate that need. Another Internet music site, MP3.com, has also entered into licensing agreements with various record companies for the distribution of copyrighted music. However, governments around the world must be involved in regulating file sharing in order to protect the public's ability to access copyrighted materials. It is true that acts of infringement by the public have necessitated the actions that are being taken by copyright holders to protect their rights. To allow copyright industries to regulate themselves, however, would create a real danger of curbing access to too great of an extent.

Under the current regime of international copyright, actions that constitute infringement in one nation may not amount to illegal activity in another country. This is a further reason why government involvement at the international level is required. Just as certain copyright holders might be able to exert too much influence over the control of their works, these same copyright holders would be at a major disadvantage in countries where the actions copyright owners sought to control were not considered infringing. For this reason, a government agency, and not private copyright industries, should be the body that regulates the digital sharing of copyrighted files. A group comprised of various government agencies in Berne-participating countries, having the ability to reach across national lines, would serve to protect the public's interest in access to creative works, while at the same time aiding copyright holders in regions of the world where their rights are not respected.

Accountability is another factor that sways in favor of allowing an international body, rather than the private sector, to regulate the digital sharing of copyrighted materials. A corporation, such as a record company, is primarily concerned with its bottom line. So long as companies turn a profit, there would be very little reason for them to be wary of public opinion with regard to the services they provide. However, government officials are subject to the strictest of scrutiny. Public servants are constantly bound by the views and opinions of their constituencies. Any international board empowered with the ability to regulate the digital distributions of copyrighted materials must be publicly accountable for its actions. Such accountability cannot truly exist if the private copyright industry is left to its own devices in regulating its own business. To allow this area to remain unregulated would lead to the private sector regulating itself. The possibility of abuse is too high to permit such a result.

B. *Harmonization of Laws Among Member States*

A harmonization of policy between the member states of the Berne Convention and the WIPO is the first step to securing international copyright protection for the world's creative minds. Berne and the WIPO have the foundation for forging a coherent set of copyright laws that would afford the member states of those organizations the ability to control the distribution of protected works through a digital medium.

First, the members of these groups should settle on a set of copyright rules

that will apply to their membership. These rules should attempt to strike a balance between the copyright theories of the United States and those of Europe. The current system of reciprocity, in place through the Berne Convention and the WIPO, is a decent starting point, but will not be sufficient to cope with file sharing technology and the ability of individuals to share protected information with one another.

1. Proposals for International Copyright Laws

The copyright laws to be employed should stem from the Berne directive. The works that receive protection under this new international copyright regime should be the same works that receive protection under the Berne Convention. Because Berne has been in existence longer than any other international copyright treaty, and because the category of work that is covered by Berne is well known by its members, it will decrease confusion among member states to start with a group of works with which all participating states are familiar.[198]

Next, the new international copyright laws to be implemented should go one step further than the recent amendments to the WIPO copyright treaty discussed above in protecting digital distributions of copyrighted material. The copyright laws to be employed should recognize explicitly that the digital transmission of copyrighted works constitutes a reproduction and is thus subject to regulation by this international board. A clear statement announcing that digital transmissions are in fact reproduction and distribution for the purposes of copyright law is a necessary step in solving the copyright issues that file sharing technology presents. Furthermore, these new copyright rules should state clearly that the downloading or uploading of copyrighted material constitutes reproductions and distributions under this new regime. It is imperative that any set of copyright rules to be adopted state explicitly that these types of activity on an individual's computer are subject to regulation.

Also necessary to this new copyright regime will be setting out certain exceptions and defenses to the rules that it creates. It is clear that it will be necessary for the countries that comprise the Berne Convention and the WIPO to clearly state whether the American defense of fair use will be applicable under the new regime. An international body should state that file sharing, even with members of ones family, will not be permitted. To eliminate the doctrine of fair use from the lexicon of copyright law would not be an easy task, however, eliminating this defense would draw a clear line, stating that copyrighted works must be legally purchased.

Public access is the rationale behind the defense in the United States. An international licensing group controlling the distribution of copyrighted works throughout the world would not injure the public. This international organization would simply attempt to regulate the world's digital community, so that copyright holders as well as individual computer users would be able to benefit

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[198] *See* Dixon, *supra* note 58, at 948 & n.20.

from the technological advances that have taken place over the past decade. Such a group would ultimately allow for greater public access in an environment that continues to promote the creative minds of the world.

Finally, this international organization should look to the DMCA in combating digital piracy.[199] The copyright laws for this group should include provisions that make it illegal for individuals to decrypt coded works on an international scale. Furthermore, the provisions should be framed in such a way so as to prohibit individuals, not only OSPs and Internet sites, from facilitating the downloading of protected works. These prohibitions should be subject to a standard of reasonableness. If an individual allows others to download protected works from his hard drive, he should be given a reasonable opportunity to block access to such works from his computer.

However, it should be made clear that these provisions will go beyond the DMCA in outlawing the facilitation of infringing activity by individual computer users, as well as OSPs and Internet sites such as Napster. Such a move would allow the international group to have the ability to regulate not only larger sites, but also individuals who share files on a smaller scale. Although, as a practical matter, it is difficult to sue each individual for infringing activities occurring through file sharing, the threat of litigation alone should act as some deterrent to possible infringers. Until the possibility of legal sanctions is created for individual computer users, there will be no incentive at all for them to cease any infringing activities.

The framework discussed above could be termed one of reverse copyright law harmonization. Instead of the states that comprise the Berne Union and the WIPO retreating separately to their respective governments to amend their copyright regimes so that they might become more consistent, these states would change the nature of the organizations of which they are members. The system of reciprocity that is currently in place is a workable starting point. The current system, however, allows for a decentralized international copyright regime in which one artist's work is subject to as many different sets of copyright laws as there are nations in the world.

It is essential that a coherent set of copyright rules that reaches across national boundaries be formulated such that artists might better be able to assert their rights in a digital world. Furthermore, by establishing an international copyright consortium, instead of attempting to redraft each member state's copyright laws individually, years worth of time and effort would be saved. Although it is true that passing new copyright laws for the Berne Convention or the WIPO would not be completed quickly, it would centralize the debate process, instead of forcing each state to argue over the merits of their different copyright laws. Rather than allowing technology to move even farther ahead

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[199] *See Piracy*, WHATIS?COM, *at* http://searchsecurity.techtarget.com/sDefinition/0,sid14_gci213592,00.html (last visited Jan. 12, 2002) (stating that computer piracy is the illegal copying, distribution, or use of software or other copyrighted material currently existing on the Internet).

of the law, the members of Berne and the WIPO could consolidate their efforts in an attempt to keep pace with advances in information science.

A copyright structure fusing the categories of protection set out by Berne and the regulation of digital transmissions through the theories of the WIPO copyright treaty would allow a global licensing group to make a legitimate claim to both the right and the need to regulate the unauthorized distribution of copyrighted works over the Internet. Setting up an international licensing organization with which copyright holders could register their works would demonstrate to the artists of the world that their works can be protected on a global scale and through a digital medium. However, forming this doctrine of copyright law is only the first step in combating the copyright problems that are relevant for the future. It is also necessary to determine how an international licensing group could function under the theories of copyright law discussed above.

2. Registering the Artistic Community

In this age of advancing technology, this international licensing group would need to create a database of the copyrighted works that are registered through the system. That group could then license out the registered works to various Internet sites that allow people to download protected information. This group could form an agreement with a system such as Napster that would allow the service to grant access to these works to those that subscribe to its system.

Copyright holders would first register their works with this international organization. The international board would then license the works to a system such as Napster. Next, Napster would in turn pay the international group a licensing fee for the right to distribute the works. The fee charged by the licensing group would be conditioned on two codependent facts. First, the price charged would reflect the number of users who would be gaining access to copyrighted works through the entity paying the fee to the international group. A large site such as Napster would have to pay more than smaller sites that service fewer individuals. Second, the fee charged would reflect the quantity of copyrighted material desired by the party. If a site only wants to distribute musical compositions, or only a certain type of musical composition, then they would be charged accordingly. However, if such a group wanted access to other materials, the price would be different. Internet sites such as Napster would then begin to charge those who are using its service, so that the company could meet its financial obligations to the international licensing group. Finally, the licensing board would then pay royalties to those artists who register their works through the organization. These royalties would be distributed through the fees paid by Internet sites such as Napster.

It should be noted that such a scheme may not affect Internet entities that assist file sharing in a completely decentralized manner, such as through Gnutella.[200] However, if an international governing body was established that

[200] *See What is Gnutella?*, *at* http://www.gnutellanews.com/information/what_is_

could efficiently regulate the distribution of copyrighted files over the Internet, then, ideally, services such as Gnutella would become obsolete, as convenience and legality would sway the public away from such free sites. An inexpensive, secure system, operating within international guidelines, would allow individuals to receive music safely and at a low cost. Just as with individuals who get their cable for free, those who use services like Gnutella would become the minority; a well run international licensing group would be able to organize and control the digital dissemination of copyrighted materials, thus better protecting a copyright holder's rights while at the same time fostering public access to the works that are registered through its system.

Over time, it would become natural for artists to register their songs with the international licensing committee. As the Internet becomes even more widely used, as connection speeds increase, and as more entertainment industries utilize the World Wide Web, it will likewise become imperative for artists to register with a global licensing group that allows individuals in many countries to have access to their work. With the growing popularity of the Internet as a means of distributing information, any artist who desires to make her works available over the Web would be well served to register with such an international organization. To not register would be financially disastrous for any artist who wished to maximize the value from her creative endeavors.

The advantage of such a licensing scheme is that it would allow artists to maintain a valuable property right in their works, while at the same time permitting individuals to gain access to the artistic pieces of the world most conveniently. Whether one is operating under an American or European view of copyright law, the necessity of balancing public access to creative works with an artist's right to control the use of those works is paramount in importance.[201] A global licensing scheme would serve the purpose of protecting artists while allowing the public to view copyrighted material.

Additionally, an international licensing committee could take advantage of a mode of communication that is still in its infant stages. If an international board were created in the next few years, its members would be able to use a method of transmission that allows for individual exchanges with greater ease then ever before. As more artists register their works with the committee, more individuals would be compelled to subscribe to services that allow access to those works. As a result, a cycle would develop to benefit both artists and the public.

In the United States, the BMG Entertainment service, one of the plaintiffs in the *Napster* suit, has already entered into a licensing agreement with Napster, allowing Napster to continue its business.[202] As part of the agreement, Napster

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gnutella.shtml (last visited Jan. 7, 2002) (explaining the concept of such decentralized systems).

[201] *See* MERGES, *supra* note 67, at 484.

[202] *See* Reuters, *BMG Ramps up Digital Downloads*, Jan. 15, 2001, *available at ZDNET.COM:* http://wwwzdnet.com/pcmag/stories/columnists/reuters/0,5655,2669190,00.html.

will be required to charge a fee for its service, proceeds from which will be turned over, in part, to the music company.[203] The BMG contract could serve as a model for the international body as it begins to formulate its own operating procedures. However, as previously stated, it would be a mistake to allow the copyright industry to regulate itself. The type of agreement reached by BMG and Napster is a good starting point, but the potential for abuse by the private sector in regulating its own activities is too great to allow such actions to continue.

3. Enforcement

An international licensing group must also be prepared to discover and sanction those Internet sites that distribute licensed material without authorization. Enforcing such a system will be difficult, but it is certainly possible.

If the only obstacle facing the United States and the European Union were merely harmonizing its laws, the problem would be relatively easy. A simple governing law could be formulated: "The unauthorized sharing of copyrighted files over a digital medium, either between members of the same country or between members of different countries, is prohibited." The real problem lies in the enforcement of such a statute. The infringement of company such as Napster is easier to detect than that of an individual user because a large corporation services millions of customers with an obvious presence in the marketplace. Individual users, however, could also create a gradual weakening of the value of a copyright holder's protection through file sharing over the Internet. It is therefore necessary to rein in as many sites like Napster as possible so that eventually, anyone who obtains copyrighted work over the Internet will only be doing so through services regulated by an international governing body. Maintaining an international group that can monitor large sites, would cut off the single end user from unauthorized reproductions before the opportunity for infringement arises. Such an organization would still foster public access by working with large sites such as Napster, instead of banning these types of Internet utilities.

Encryption technologies and a statute such as the DMCA can further aid an international organization in protecting artists' work over the Internet. An international licensing group should explicitly state that the decryption of copyright protection material is prohibited. Although individuals knowledgeable in the use of computers would most likely be able to find a way around such measures, a clearly stated rule followed by explicit demonstration that the international committee will not tolerate such action may prove to be effective.

Even though copyright firms could implement their own encryption measures to protect against infringement, on the international stage, it is necessary for lawmakers to sanction those who subvert encryption technology in countries that have not yet passed statutes like the DMCA. The private development of encryption technology will certainly be an important aspect of any

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[203] *See id.*

digital security system for copyrighted materials, but it is also crucial that the circumvention of such actions be made a criminal offense at the international level. This is yet another reason why government involvement is imperative.

It might be suggested that a group that polices the digital highways for copyright bandits is more desirable than the licensing scheme discussed above because it would be more proactive in ferreting out copyright infringement. However, unlike a police squad, the benefit of a licensing scheme is that it could attract large Internet sites such as Napster to register with its system because it would create a legal way for them to charge individuals for the right to gain access to their Web sites. In turn, many of the individual users of these sites would be willing to pay a small fee for the right to continued use, rather than the alternative of searching the Internet for the works that they desire. Given these factors, it is more realistic to attempt to bring file-sharing entities under the control of an international licensing body than it is for a police squad to search out copyright infringement.

Finally, it would be imperative for an international licensing group to maintain the resources necessary for monitoring the Internet for unauthorized uses of licensed works. The licensing committee would have to be vigilant in discovering digital copyright infringement, because to fail to do so would signal to the artists of the world that the group was not committed to protecting artists' property rights. Therefore, it must always be remembered that although access would be denied to the individual user through one medium, it would be made available to that same user through a different method.

VI. CONCLUSION

A solution to the problem of the Internet and copyright protection is going to have to endure numerous steps. First, European and American lawmakers must form a coherent body of copyright law to deal with the problems that file sharing technology present. Next, an international group must register the world's copyrighted works and distribute royalties accordingly. Finally, this group will need to find a way to enforce these newly created rights.

The copyright infringement issues of the digital age know no borders. Because infringing activity does not stop at jurisdictional boundaries, any agreement must be reached with an eye on the world as a whole. An international licensing body would serve this purpose. Once implemented, it would create a new environment for the planet's creative minds, and would foster artistic achievement to an extent never before reached.