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Google Analytics to allow per-user opt-out

Filed under: [Google](#), [Browsers](#), [Op-Ed](#)

Lovers of privacy and of "not doing evil", rejoice!

The Google Analytics team just announced they are working on a browser-based opt-out mechanism. In simple terms, this means that a user could install an add-on or a plug-in and simply say "I don't want Analytics to track me, ever". Bam -- done deal. No more Analytics tracking for said user on any site.

I think this is a brilliant PR move on the part of Google. Out of a 100% of all browser users, how many know add-ons exist? How many are aware of Analytics? Out of those, how many would go through the trouble of locating and installing anti-Analytics for their browser? I'm guessing it comes down to less than 0.5% of all users. So it's a total win for Google here; privacy lovers can't whine because it's really the only Analytics suite with selective opt-out (to the best of my knowledge, anyway) while on the whole, Analytics won't be affected at all. Genius.

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Windows 7 SP1 details outed: try to contain your excitement

Filed under: [OS Updates](#), [Windows](#)

There's been talk floating around for quite some time about the coming of [Windows 7 SP1](#). Today, [we've got some details out of Redmond](#) -- but if you were waiting for something exciting, you should probably check out [Erez's post about watching Vimeo videos in ASCII format](#).

The short version: Windows 7 SP1 will pretty much just be a rollup of updates that have been previously released. Yay.

The slightly longer version: there will be other 'minor' updates, including support for a kicked-up remote desktop client (using RemoteFX) and Dynamic Memory support. Both of those are [Windows Server technologies](#), so they're not of much interest to anyone running Windows 7 at home.

SP1 does historically act as a 'green light' to system administrators that it's OK to upgrade to the new OS, but according to Brandon LeBlanc that hasn't been the case this time around. In his words, "Many organizations are already in the process of deploying and are receiving benefits from their Windows 7 deployment."

Now if you'll excuse me, I'm going back to watch more blocky videos...

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DLS @ SXSW - Impressions of SXSWi part deux

Filed under: [sxsww](#)

Say hello to [Sunny Thaper](#), production director for [Forty Agency](#), and [Saul Colt](#), lead evangelist at [Thoor](#). They are regular [SXSW](#) attendees (and all-around awesome dudes) and give their thoughts on this year's event. For added atmosphere, I added a real, live foursquare game being held outside of the convention center, and a taste of the crowds you see inside.

If you're interested in a taste of the music side, [here's a field report from the Man or Astro-Man? show](#) where they promise to perform live more often.

For ongoing coverage of the SXSW Interactive festival check out our [SXSW hub page](#).

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8 reasons to love furies, and more, on Linkbait Generator

Filed under: [Blogging](#), [Humor](#)

I'm going to file this one under "social commentary", actually. [Linkbait Generator](#) is a pretty interesting tool I found over at the always-interesting [MakeUseOf](#). It does one thing, and does it quite well: generate titles for blog posts that will probably get clicks.

For some reason, people seem to be obsessed with lists. If you go to Digg's ["Popular" page](#), you are sure to find at least one list (right now I see "10 Ways Women turn Men Off"). But it's more than just lists; there seems to be one simple formula that gets clicks. I think that's kind of sad, really, but it's true. Linkbait Generator lets you capitalize on that formula by generating titles (and ideas) for posts that are likely to get clicks.

If you already have something you'd like to write a post about, you can feed it in a textbox (not shown in the screenshot above), and get ideas. I put in "jogging" and got "The top 7 scariest videos of all time about jogging". I am positive that if I'd write a post like that, it would get tons of clicks. Sad, yet very useful for bloggers who rely on clicks for a living (or extra income).

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Dream Desktop downloads, cycles your favorites from 5,000 beautiful wallpaper images

Filed under: [Fun](#), [Windows](#)

Like having a stash of beautiful wallpaper images on your computer? [Dream Desktop](#) has several thousand to choose from, and their free [Desktop Agent program](#) makes it easy to download and enjoy your favorites.

Install the Agent and head to its configuration screen. There you can choose which images you want to display -- either random selections from those you mark as favorites in the search view (above, left) or anything Dream Desktop has tagged within the categories you choose -- or both!

You can also specify the interval between wallpaper changes, customize the maximum size of your local image cache (the default is 100MB), and enable or disable updates and notifications. Desktop Agent can also be set to launch when Windows starts up, and you can select which category you want to appear first when opening the main program window.

There are plenty of stunning images available, though I do have two small gripes. Resolution could be higher (scaling leads to some predictable graininess on my 1920x1080 display) and there's no support for dual-monitor configs. Still, I'd much rather see this on a customer's desktop than Webshots...

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Web Developer Chrome add-on is a step in the right direction, needs work

Filed under: [Design](#), [Developer](#), [Browsers](#)

The [Web Developer](#) add-on for Chrome tries to complement Chrome's already-excellent developer tools (Ctrl-Shift-I) with some in-page hints and tools. The garbled output you see above is the result of selecting **Information > Display ID & Class Details**. Not very graceful, obviously.

The add-on is missing a screen ruler (I'm sure the developer will add it later). Despite lacking a graceful way to show massive amounts of data, it can still come in handy every now and then. For example, you can disable CSS entirely, or just inline style, browser default styles, etc. That's pretty neat. It's still a fledgling add-on, so don't expect too much. But if you find Chrome's default tools are not enough for you, try giving it a shot.

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Amazon's Kindle for Mac arrives, but it's not pretty

Filed under: [Utilities](#), [Macintosh](#)

Amazon hasn't really made a big deal out of its [Kindle for Mac](#) launch today, but rest assured that you can download the app today and start reading your eBooks. The featureset is basically identical to the other apps in the Kindle family -- it's got Whispersync and page bookmarking, for example -- but Kindle for Mac is kind of the ugly duckling of the bunch.

There was a lot of potential to create an amazing reading experience on the Mac, but what you get is just tossed off. Like the PC version, Kindle for Mac works, and it's readable, but it basically does the bare minimum. You'd hope that a Mac app would at least use the Mac's native font-smoothing, but, [as John Gruber points out](#), the type is sloppily rendered and the text isn't selectable.

I'm not going to complain too much about an app that works, provides access to my Kindle library on yet another one of the devices I own, but come on, Amazon. I'm a snobby Mac user, and I expect better.

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Report: URL shorteners suck, Google's sucks the least

Filed under: [Internet](#)

Download Squad readers haven't been shy about voicing their general distaste for the bazillion different short URL services out there. As if you needed another reason, a new report shows -- in USA Today style graphical goodness -- just how much they suck.

Over at WatchMouse, you'll find [a rundown comparing 14 popular options](#) including goo.gl, tr.im, bit.ly, and the other usual suspects. The bottom line: URL shorteners amplify the suckiness of your Internet experience. To be more specific, availability isn't always great (snurl and tr.im both fell below 99%) and delays are standard fare. We're talking sub-1 second mostly, except for Facebook's fb.me which can add two full seconds to load times. And dangit, I don't have high speed Internet so I can wait an extra two seconds.

Google fares the best, with goo.gl registering the shortest added time (at somewhere around 400ms) and 100% uptime. Not surprising, really, since they run their own DNS servers.

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ASCIImeo lets you watch Vimeo in ASCII (and it's retro-awesome)

Filed under: [Fun](#), [Video](#)

It seems like HD is all the rage these days. A friend of mine recently did a month-long market research before putting down a sizable lump of cash for a 47-inch behemoth. And yes, it really is very impressive.

Still, sometimes I find myself wanting to go back to simpler times; back when men were real men, and ASCII animations were all the rage. Why I remember back in the good old BBS and Fidonet days, how we used to PgDown-PgDown-PgDown a long long text file with screen-sized frames and get it to animate like that. Ah, those were the days!

[ASCIImeo](#) lets you capture that magic again, only this time there's also audio (back then, you had to make the sounds all by yourself). There's not one but *three*, yes three (!), display modes to choose from. I like "simple ASCII" best, but I know some of you guys may like that newfangled "block ASCII" better so that's what I put up in the screenshot.

Enjoy!

[ASCIImeo lets you watch Vimeo in ASCII \(and it's retro-awesome\)](#) originally appeared on [Download Squad](#) on Thu, 18 Mar 2010 13:27:00 EST. Please see our [terms for use of feeds](#).

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DooID lets you easily post your contact details in style

Filed under: [Microblogging](#)

[DooID](#) presents a slick solution to an all-too-common problem: it provides people who have accounts on multiple social websites with one single place to post all of their contact information. It strives to act as an online business card, and I must say it does the job quite gracefully.

Ideally, you would be able to meet someone new and give them a single, simple URL (such as <http://dooid.com/perschmitz>), and they would get a short bio of you, as well as all of your contact information and online profiles. It's actually very similar to [Google Profiles](#), but so much nicer-looking (and it does not involve submitting even more personal information to Google).

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Articles for iPhone makes the case for buying a dedicated Wikipedia app

Filed under: [Utilities](#), [Productivity](#), [iPhone](#)

Wikipedia is an amazing tool that delivers a massive chunk of the entire body of human knowledge to your web-enabled device ... for free! We all use it, we all love it, and some of us even contribute our own expertise. Wikipedia's more about the information than the interface, though, and it avoids showy designs in order to keep loading time minimal. However, if you like your Wikipedia a little more sexed-up, you can get a gorgeous \$3 iPhone app called [Articles](#).

Articles, designed by the talented Sophia Teutschler (aka Sophiestication), looks great and features an intuitive, very iPhone-friendly interface. Even the name of the app makes it sound like something Apple would release. Do you really need a Wikipedia app, though, when the website loads quickly and costs nothing?

Articles provides several tempting arguments that you do. Check out, for example, the maps feature: you can quickly pull up nearby locations that have associated Wikipedia entries. It's a tourist's info-laden dream. Articles also provides a multiple-page browsing system, like the one in Safari, so you don't have to hit your back and forward buttons all the time. There are custom views for images and info boxes, and a chapter browser for longer articles.

If you're a serious Wikipedia junkie, you'll probably want to check this out. For casual users, it may be better to hold onto your \$3 and use the website instead. The price tag is very reasonable considering the amount of well-thought-out design work Sophia has done here.

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Official StumbleUpon extension hits Google Chrome, not as good as other versions

Filed under: [Social Software](#), [Browsers](#)

StumbleUpon has officially landed in the [Google Chrome Extensions Gallery](#), but I've got to say -- it's just not the same as its counterpart on other browsers.

In fact, it's little more than the browser-independent toolbar you see on the top of links shortened and shared with their su.pr service. It does tie in to your StumbleUpon account and let you thumbs up/down pages, share them with your friends via email, Facebook, and Twitter, but the whole experience just isn't as smooth (or fun) as I find the Firefox or IE toolbars.

In their official post about the release, [StumbleUpon has this to say](#):

"We've also heard some claim the Chrome extension is no different from web stumbling. Actually, Stumbling via the Chrome extension is quite different from web stumbling in a number of important ways. For one, you can receive shares directly in **Chromebar**; for another, you can add your own discoveries. Also, frame-breaking sites do not remove the Chrome extension; and the overall Stumbling experience is faster and more responsive. Good stuff, huh?"

True, submitting new stumbles and receiving shares is a big part of the experience -- but it just feels to me like "something" is missing.

What do you think? How does the Chrome extension stack up?

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Microsoft opens Windows 7 XP mode to systems without hardware virtualization

Filed under: [OS Updates](#), [Utilities](#), [Windows](#)

One gripe against XP Mode for Windows 7 is that it required hardware-assisted virtualization support. In many cases, it was difficult to tell whether or not a system's hardware was up to snuff -- so Microsoft offered up a free download to help administrators and find out (called [HAV detection tool](#)).

Now, however, the [Windows Team has announced](#) that hardware virtualization is no longer an issue. The new version of XP Mode will run on just about any PC, though HAV will still be utilized if supported.

This should be welcome news for administrators, since it could help reduce upgrade costs -- and headaches.

Several retailers I support use older point-of-sale systems that don't play nice with Vista or Windows 7. With XP mode now able to run on their older Pentium 4 computers, they can transition to a newer OS without worrying about breaking the apps that run their businesses.

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Please, Google, I'm begging: tidy up the Chrome Extensions Gallery!

Filed under: [Google](#), [Op-Ed](#)

Ok, Google, I know your big thing is search. And I know it's a great way to get around my GMail inbox and find stuff on the Internet -- but it's just not that awesome in the [Google Chrome](#) Extension Gallery.

While the number of extensions available might be catching up to Firefox, the Mozilla site is infinitely more enjoyable to explore. There we can browse by tags, categories, sift through the many user-created collections, and see add-ons similar to the one we're currently looking at. Search is available, too, but it's definitely nice to have a wide variety of options.

To be fair, the Chrome Gallery does have **two** categories: extensions and themes. There's no link to the themes, of course, but you can [see it listed on a page like this one](#) in the navigation breadcrumbs. Only one slight problem: the link actually takes you back to the Gallery home page. Not to a listing of only themes as you'd expect.

And yes, we can view lists of popular, recent, and top rated extensions as well as Google's featured picks -- but when you click through to those pages you still wind up with a multi-page dump of extensions with no sorting or filtering options.

So how about it, Google? Can we get a cleanup on aisle five?

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Google's Matt Cutts explains how search works in layman's terms

Being a technical writer, I'm a sucker for simple explanations. It's really not easy to make a video explaining the inner workings of Google search in just over three minutes, but [Matt Cutts](#) managed to do it quite nicely.

I'm sure he wasn't alone -- I would love to have the production and animation budget these guys have. However, budget is one thing, and a proper and clear explanation is something else entirely. In this case, they got both right. You can watch the result after the fold -- and show it to your grandparents, too.

I found the video along with two others for AdWords and Google Apps (not as good, IMHO) over at the [Google Operating System](#) blog.

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Facebook users hit by password-stealing attack: here's how to stay safe!

Filed under: [Security](#), [Social Software](#)

The security pros at [Sophos Labs](#) and [McAfee](#) have noticed a disturbing increase in Facebook phishing attacks lately. Facebook is a juicy target for this type of attack. Why?

For starters, there are 350 million + users to go after. On top of that, many are less computer-savvy users (like your parents and mine, teenagers, etc.) who may not be familiar with malware and how to protect themselves. Add in the fact that Facebook makes a great, centralized location to steal all kinds of information about you -- and a jumping off point to steal from your contacts -- and it's easy to see why malware crews would target the site.

Take the jump for more on this particular attack, and how to avoid trouble (be sure to share with your non-techy friends)!

The message reads as follows:

Dear user of facebook ,

Because of the measures taken to provide safety to our clients, your password has been changed. You can find your new password in attached document.

Thanks,
Your Facebook.

Here are a few clues that this message is (and others like it are) fake:

- **It has an attachment:** big, reputable sites like Facebook never send out emails with attachments -- especially not on password or account alerts
- **It's addressed to "user of facebook":** Facebook knows your real name, and they use it when they email you.
- **The tone is too casual:** an actual "safety alert" from Facebook would be written in a much stronger tone.

- **It's too short:** warnings from popular sites tend to be wordy. Bad guys, on the other hand, are usually lazy and won't bother to write a lengthy message.
- **"facebook" isn't capitalized:** that's a stylistic gaffe you'd never see on an official Facebook message.
- **Facebook doesn't email new passwords:** when you do a reset, for example, they'll send a random code to your inbox and a link to a form where you can create a new password.

If you've got a good antivirus program and you've kept it up-to-date, chances are good that the attachment (and the message itself) will be detected. Not sure you're protected? Take a look at our list of [free antivirus programs for Windows](#).

Another helpful download for less experienced users is a link scanner like WOT or AVG's LinkScanner -- both are part of our list of [10+ tools for safe web browsing](#).

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Mozilla introduces awesome new contacts integration -- get the add-on now!

Filed under: [Utilities](#), [Mozilla](#), [web 2.0](#)

Between address books and buddy lists, our contacts have become some of the most important data that we deal with every day. Mozilla understands this, so they've introduced an [experimental Contacts add-on](#) that gathers up your contacts from multiple sites -- so far it's Twitter, Gmail and Apple's Address Book -- and collects them in a browser-based contacts database. That way, your contacts stay with you across all of the different websites you visit.

What are the advantages? Well, you'll be able to let sites grab your contacts via API, which makes setting up new social accounts a lot easier. Your Mozilla Contacts database will also stay in sync, which theoretically means you could add a friend as a contact on several new sites at once. Another perk is that email autocomplete will suggest recipients from your contacts on any web form.

It sounds like a pretty good idea and it's built on open standards -- so other browsers can easily implement Contacts, too.

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Will Twitter's twt.tl URL shortener kneecap competitors?

Filed under: [Security](#), [Web services](#), [Social Software](#), [Microblogging](#)

In response to a bunch of recent phishing scams on Twitter -- all of which took advantage of Direct Messages and shortened URLs -- Twitter has decided to launch its own URL shortener to boost security.

The new shortener is called [twt.tl](#) -- little? Twittle? I think I get it! -- and it will allow Twitter to find malicious links as they're shortened, rather than waiting until they've been direct messaged to everyone under the sun.

But what of Twitter's url-shortening partner, Bit.ly?

Twitter elevated Bit.ly to the number one spot in the shortening market by making it the default for shortlinks, but it looks like the service might become a casualty of Twitter's security concerns. That won't happen for a while, though, because twt.tl's initial rollout will be for direct messages -- and email notifications about direct messages -- only. I'd bet on seeing it spread to the public timeline eventually, though.

[Will Twitter's twt.tl URL shortener kneecap competitors?](#) originally appeared on [Download Squad](#) on Wed, 17 Mar 2010 16:07:00 EST. Please see our [terms for use of feeds](#).

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Microsoft's preview release plans for IE9 are a good start, but I want more!

Filed under: [Microsoft](#), [Browsers](#)

Few things get blog commenters as heated as software rivalries -- especially browser wars. With the release of the [IE9 technical preview yesterday and the impressive demos at MIX10](#), Microsoft appears poised to make some serious strides toward being competitive once again. Hardware acceleration. HTML5 support. More standards-friendly. The times they are a-changin' for the once stodgy browser.

One other change is the increased availability of test builds. As Sebastian mentioned after the MIX210 keynote, Microsoft has committed to releasing new previews of IE9 every 8 weeks. That's great, but it probably won't amount to any more releases than we saw with IE8.

With Internet Explorer 8, development began in early 2006 and the first beta arrived about two years later. The final RTM of IE9 will likely arrive in 2011, so that should work out to five or six test builds (including betas and release candidates).

While that's nice, I'd like to see Microsoft get the community a little more involved. With their browser share on the slide, Microsoft can't afford for IE9 to be unimpressive. Community engagement was a huge part of the Windows 7 development process -- so why not take a similar approach to IE9? It works for rivals, and it could definitely work for Microsoft, too. Frequent releases certainly make sense for open source products like Firefox and Chromium. If the source code is out there for everyone to see, you may as well offer nightly builds or automatic drops. But even Opera -- whose browser is closed source like Internet Explorer -- offers "snapshot" builds. Opera's Thomas Ford had this to say about their process:

"We are fortunate to have a large community of external testers. Their input is has, and always will be, vital to us. The testing process simply would not scale as gracefully without them.

We have seen so many benefits by keeping our community an active part of the development cycle."

Google feels pretty much the same way. On their original [blog post explaining the differences in Chrome's channels](#) (stable, beta, and dev) they offered the following:

"Because we don't have those big Dot-Oh release milestones on the calendar, we don't have long periods of Beta testing new features. Instead we use automatic update channels to release Google Chrome to a community of early adopters. The channels are essentially a never-ending Beta test and a continuous feedback loop that lets us rapidly develop new ideas into solid product features."

So what do you think? Is it time for Microsoft to get more test builds in the hands of early adopters? I'd certainly like to see them offer us a few more early looks -- and it could generate some much-needed excitement for IE9.

[Microsoft's preview release plans for IE9 are a good start, but I want more!](#) originally appeared on [Download Squad](#) on Wed, 17 Mar 2010 15:05:00 EST. Please see our [terms for use of feeds](#).

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DLS @ SXSW - Are You Watching This? chooses the best games on TV

Filed under: [sxsxw](#)

Today there are more cable channels offering sports, more sporting in general -- and more interest in sports than ever before! It is, as they say on the web, a firehose of content. Thing is, how do you, the sports fan, choose among the many options? How do you know what games will be duds and which will be can't-miss-watercooler fodder? RUWT? or [Are You Watching This?](#) attempts to solve that problem by using computers to analyze previous game data, current standings and more to choose the "best" games for you to watch at any given time, then alert you to those.

I spoke to founder Mark Phillip about the service and how it works. Like Pandora, it's a cool tech-based solution to the problem of abundance of choice.

Check out the rest of our [SXSW coverage here](#).

[DLS @ SXSW - Are You Watching This? chooses the best games on TV](#) originally appeared on [Download Squad](#) on Wed, 17 Mar 2010 14:00:00 EST. Please see our [terms for use of feeds](#).

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Techdirt

Indie Artists Discuss Dealing With File Sharing

Unfortunately, I can't find who first sent this in, but the site Inieoma recently had an interesting multi-part "discussion" on how independent artists are dealing with the issue of "piracy." Some of the parts are quite interesting. Simon Indelicate has a bit of a bipolar post that does a fantastic job laying out the economic issues of music production and consumption. He notes that the technology has flipped scarcity and abundance on its head -- entirely separate from the file sharing issue. He is pessimistic about new business models working for most musicians (about the only point I disagree with him on), but thinks that the overall world is a better place with the internet and cheaper production of music. Quite a good read.

Then there's an interview of Dan Bull, known around these parts for his musically brilliant open letters to Lily Allen and Peter Mandelson. In the interview, he discusses his views on the music business and things like file sharing. He notes that he's mainly "against... enforcing backwards laws in order to cling onto an obsolete business model."

Next up, is an interview with Matt Stockman who is starting up a new record label, called Sharabang, which plans to give away its music for free to "open up other revenue streams."

No matter what industry you're in, to thrive you must firstly listen to your customers. For Sharabang Music it's about listening to music lovers, how music is now consumed and adapting to this to offer genuine choices. What we're actually doing by offering music fans a choice is trying to put the value back into recorded music by diversifying the product range and offering far more than can simply be sent over the internet.

The whole interview is interesting, as Sharabang is working hard to come up with interesting scarcities. One cool idea is that every concert of a band on the label will be filmed with audience participation encouraged. And there will also be limited edition t-shirts that are tied to

a specific event or group, to encourage people to buy more and "wear them with pride." We keep hearing more and more about companies stepping up to help artists embrace new business models, so it's great to hear of one more that appears to understand the best way to face the modern era.

There are some other parts to the discussion as well -- some I agree with and others I disagree with, but overall there are some great viewpoints and thoughts on this general issue of how musicians can adapt to a changing world. Perhaps none of it's really all that different from what we usually discuss around here, but it's still great to see how different people are expressing their opinions on the issue.

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Courts Stretching Computer Hacking Law In Dangerous Ways

Michael Scott points us to a very interesting analysis of how to different appeals courts have very different interpretations of our federal anti-hacking law. The Computer Fraud and Abuse Act was passed by Congress to create criminal sanctions for malicious computer hacking. The problem, of course, is that whenever you have politicians passing laws about technology, they may be a bit vague. So, the way hacking was defined was effectively to say that the perpetrator accessed info "without authorization" or (more troubling) that the activity "exceeds authorized access." Now, it's pretty obvious what's *meant* by this. If you're breaking into parts of a computer system where you don't belong for nefarious purposes, you're probably violating this law.

But that's not how all courts are interpreting it. The article notes that the Seventh Circuit, in *International Airport Centers, LLC v. Citrin*, found that an employee violated this law by deleting information on his laptop (which would have presented evidence of a breach of contract by the guy), after he had resigned. Obviously, that's a totally different situation than what the CFAA was intended to cover, but the court found that once he quit, he was no longer authorized to use the laptop, and doing so was effectively hacking. That seems like an extreme stretch of the law. But at least some other courts are following suit:

For example, in a case in the U. S. District Court for the Eastern District of Missouri, the district court relied upon the Citrin decision and held that, even if employees were authorized to access their employer's computer records, they cannot use such authorization (and, hence, their access can become "unauthorized"), if they use the information for their own interests.... The court concluded that the employer sufficiently alleged that the employees "acted without authorization when they obtained [the employer's] information for their personal use and in contravention of their fiduciary duty to their employer."

Yes, you read that right. If you use your employer's computer simply to access the company's data for your personal use, you may be guilty of computer hacking. That's quite clearly not what the law was intended to cover.

Thankfully, the Ninth Circuit (which all too often comes out with weird decisions) seems to have gotten this one right:

In declining to adopt the Seventh Circuit's interpretation of "without authorization," the court held that a "person uses a computer 'without authorization' ... [only] [1] when the person has not received permission to use the computer for any purpose (such as when a hacker accesses someone's computer without any permission), or [2] when the employer has rescinded to access the computer and the defendant uses the computer anyway."... The Ninth Circuit declined to hold that the "defendant's authorization to obtain information stored in a company computer is 'exceeded' if the defendant breaches a state law duty of loyalty to an employer" because no such language was found in the CFAA.... The Ninth Circuit noted that because the CFAA was "primarily a criminal statute," and because there was ambiguity as to the meaning of the phrase "without authorization," it would construe any ambiguity against the government....

Obviously, I agree that this is the proper interpretation of the law -- and stretching the definition of criminal hacking "without authorization" to things like accessing personal information on an employer's computer is dangerous. Of course, with the split rulings, it's likely that eventually this will get to the Supreme Court to sort out, and hopefully they get it right. Or, in the meantime, Congress could clarify the law -- but chances are they'd just make it worse.

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Verizon Figures If It's Already Involved In A Patent Lawsuit With TiVo, Why Not Sue Cablevision For Its DVR Too

Ah, the patent wars. As you're probably aware, TiVo spent years fighting a big legal battle with EchoStar/Dish Networks over some patents on DVR technology. TiVo won big, and then immediately turned its patent lawyers on some other companies including Verizon. In Verizon's response to TiVo's lawsuit, it went nuclear back, accusing TiVo of violating Verizon's patents on DVR technology -- including a patent that the world's biggest patent hoarding firm, Intellectual Ventures, gave Verizon for the purpose of being used against TiVo.

So is it any surprise to hear via Broadband Reports that Verizon is now suing Cablevision, claiming patent infringement on its set top box/DVR offerings as well? Cablevision and Verizon have had a really nasty battle going for years on Long Island, with all sorts of dirty tricks being played by both sides. But patent infringement? Given the odd timing of this lawsuit coming so quickly on the heels of the counterclaims against TiVo, you have to wonder if Verizon "woke up" to the fact that it could use these patents against Cablevision, only after provoked by TiVo.

Indeed, if you look down the list of patents in the Verizon Cablevision spat, you'll see that there's some overlap with those found in the TiVo suit:

- 5,666,293: Downloading operating system software through a broadcast channel
- 5,635,979: **Dynamically programmable digital entertainment terminal using downloaded software to control broadband data operations**
- 5,608,447: Full service network
- 6,367,078: **Electronic program-guide system with sideways-surfing capability**
- 7,561,214: **Two-dimensional navigation of multiplexed channels in a digital video distribution system**
- 6,055,077: Multimedia distribution system using fiber optic lines
- 5,864,415: Fiber optic network with wavelength-division-multiplexed transmission to customer premises
- 6,381,748: Apparatus and methods for network access using a set-top box and television

The three in bold are found in both lawsuits. Now, to be fair, before looking at the details, I was guessing that Verizon would also be using the patent it got from IV, but that patent (5,410,344) appears to be the one patent that Verizon is asserting against TiVo, but **not** against Cablevision. I have no idea if this is because nothing Cablevision does is covered by that patent, or if Verizon has limitations on what it can do with the IV patent. Still, given the overlap here, the timing, and the fact that many of these patents are pretty old, you really have to wonder if the lawsuit from TiVo and the scouring of patents for a countersuit also gave Verizon the idea to sue its arch-nemesis in the Long Island market over the same issues.

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Georgia Supreme Court Says It's Okay To Put Non-Sex Offenders On The Registered Sex Offender List

The question of registered sex offenders lists is a tricky one -- because for those people who really do commit sexually-driven crimes against minors, it's hard to be even remotely sympathetic to any complaints they have about the punishment they receive. The problem is that so many things are considered sexual offenses these days that many people are put on the list, and must live with it for life, for something that most people may consider a youthful indiscretion, rather than something that automatically should brand them to neighbors as a possible child molester. Things such as kids having sex with each other after only one of the two teens has reached the "legal" limit or even urinating in public can sometimes be classified as a sexual offense.

And, now, it's gone even further, so that *non-sex-offenders* can be put on the list. A law passed a few years back says that sex-offender lists must also include those convicted of "kidnapping or falsely imprisoning minors." Again, if you've done one of those things, you certainly deserve to be punished, but should you be put on a sex offender list? A guy who was convicted of "false imprisonment" of a 17-year-old girl when he was 18, during a drug bust gone bad, was added to the sex offender listings in Georgia and he sued to be taken off the list. However, the Georgia Supreme Court has said that it's perfectly legal to put non-sex-offenders onto a sexual offender list.

Again, no one is saying folks like this shouldn't be punished for their crimes -- but this goes beyond punishment for the crime he committed. And the really bad thing is that including all of these other offenses on such a registry *dilutes the power and value* of any such registry. The purpose behind such a list was supposedly to alert neighbors to be aware -- but when you expand the list to include all sorts of people who are of no risk at all to children, it takes such a list away from its very purpose.

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Kentucky Supreme Court Overturns Ruling That Blocked State Seizure Of Gambling Domain Names

As you may recall, in a move that was blatantly designed to protect local gambling interests (no one denies this particular point), Kentucky passed a law allowing the governor to declare any gambling related website (even parked domains) "illegal gambling devices" and then to seize those domains. The governor moved to do so on over 100 domains -- none of which had anything to do with Kentucky whatsoever. Amazingly, a judge agreed that the governor had every right to seize these domain names, despite the lack of a Kentucky connection. It's not hard to see how problematic a ruling this is from a jurisdictional standpoint. Thankfully, the state's appeals court overturned the lower court ruling. Separately, a UK court ruled that Kentucky had no right to seize UK-based domains.

The state appealed the ruling in the appeals court, and many assumed that the Kentucky Supreme Court would agree with the basic logic of the appeals court. Instead Ragaboo alerts us to the news that the Kentucky Supreme Court has overturned the appeals court ruling, effectively allowing the state to seize the domain names again. The ruling focused on a technicality, rather than on the merits -- arguing that the Interactive Media and Gaming Association (iMEGA) and the Interactive Gaming Council (IGC), two gaming associations who brought the lawsuit in the first place, had no standing in the case and could not bring the case in question.

"Instead of owners, operators, or registrants of the website domain names, the lawyers opposing the Commonwealth claimed to represent two types of entities: (1) the domain names themselves and (2) gaming trade association who profess to include as members registrants of the seized domains, though they have yet to reveal any of their identities."

The court even acknowledged that the lawyers on behalf of the associations made "numerous, compelling arguments endorsing the grant of the writ of prohibition," but that "(a)lthough all such arguments may have merit, none can even be considered unless presented by a party with standing."

Of course, it seems rather ironic that the issue here is standing, when you could just as easily ask what sort of standing the state of Kentucky has to seize a domain name based elsewhere? In the meantime, if any of the actual domain owners is willing to step forward, the case may be reheard -- and hopefully the Kentucky Supreme Court will rule against the state on the merits and the simple fact that seizing domain names that have nothing to do with Kentucky sets an incredibly dangerous precedent.

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Apparently The Word 'Piracy' No Longer Sufficiently Derogatory For Entertainment Industry

We already wrote about the release this week of a highly misleading report about how many jobs "piracy" was going to "cost" Europe. However, a bunch of folks have been sending in the Reuters coverage of the announcement of the report, which included some fascinating comments from Agnete Haaland, the president of the International Actors' Federation, who argues that there needs to be an even stronger word for infringement than "piracy," claiming that the "pirate" connotation is too glamorous:

"We should change the word piracy," she told reporters at the unveiling of the report on Wednesday.

"To me, piracy is something adventurous, it makes you think about Johnny Depp. We all want to be a bit like Johnny Depp. But we're talking about a criminal act. We're talking about making it impossible to make a living from what you do," she said.

Ok. Pick your jaw up off the floor. First, this is stunning in that it's been the entertainment industry itself that pushed and popularized the term "piracy" for copyright infringement. They did so very deliberately in an attempt to demonize the act of infringement, presenting it as something much worse. That some have since taken that term and embraced it hardly changes that initial fact. Second, she's wrong about the fact that they're "talking about a criminal act." Yes, in some cases copyright infringement may be a criminal act, but in *most* cases the use of "piracy" these days refers to civil issues between two parties and not criminal acts at all.

Then again, given that this was a statement made in favor of a blatantly misleading report, perhaps it's not surprising that the speakers were blatantly misleading as well.

In the meantime, does anyone have any suggestions for Ms. Haaland on what we should call the act of copyright infringement?

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Analysis Of Google And Viacom's Arguments Over YouTube: A Lot Of He Said/She Said

I've spent the last few hours going through the motions for summary judgment from both Google and Viacom in the YouTube case. If you'd like to kill a few hours yourself:

- [Viacom Summary Judgment Motion](#) (pdf)
- [Viacom Statement of Undisputed Facts](#) (pdf)
- [Google Summary Judgment Motion](#) (pdf)

There are few surprises made in the basic arguments by both parties. Viacom claims that YouTube knew about infringing content and should have taken it down (and that Google knew about this and then continued with that policy). Google claims that it's clearly protected by the DMCA's safe harbors. There are some interesting things raised in the filings however:

- Viacom claims that YouTube employees uploaded infringing content themselves, and discussed this over email -- though, the filings carefully provide only fragments of the emails, which could easily have been taken out of context. And, even on top of that nowhere does Viacom explain how YouTube employees could distinguish which content was actually infringing and which was put up for promotional purposes or what was fair use. This is a major weakness in Viacom's motion.
- Viacom's secondary arguments get weaker as you go down the list. It argues that because YouTube uses advertising to make money, that shows the company directly profits from infringement. That argument makes no sense -- because it would effectively wipe out *any safe harbors* for any commercial operation, which clearly was not the intent of Congress. Based on this argument, any ISP that hosts content from a paying customer loses its safe harbors. That's ridiculous on its face.
- Viacom argues that Google could have blocked uploads with fingerprinting technology it had licensed, but fails to note the massive weaknesses in those fingerprinting technologies (which we still see thanks to Google's bad automated takedowns). It tries to bolster this argument by saying that Google refused to use the fingerprinting on Viacom content *unless* Viacom agreed to license its content to YouTube. Perhaps there's more to it than this, but I think that's also taking Google statements out of context. The way the fingerprinting works is that Google would need copies of the

content to be able to recognize them -- and the only way to do that is if Viacom licensed works to them.

- Then the arguments get really weak. Viacom says that Google isn't just a secondary infringer, but a direct infringer, due to the terms of service that say you're granting a license to YouTube, and because to work, YouTube converts uploaded video to Flash. This is a weird legal argument that has been rejected before.
- The crux of Viacom's argument rests on trying to break the DMCA safe harbors because Google and YouTube execs knew that there was a lot of infringing content on the site. But Viacom's argument breaks down entirely when you realize it doesn't explain how Google could ever make the actual determination of which videos are infringing. Viacom tries to get around this with some legal tap dancing, basically saying that it doesn't matter and Google just should have known what was infringing and what was not. But that makes no sense. Viacom is basically saying Google should have had a magic wand to figure out what's infringing and make it disappear. That's impossible. No law could possibly require Google to do the impossible. The fact that some of the videos Viacom sued over were uploaded by Viacom itself proves this point clearly.
- Viacom argues that because YouTube "licensed" its videos to Apple and Verizon Wireless phones, it shows that it's more than just a passive service provider. Again, this seems like a weak overall argument, as what YouTube was doing was licensing access to the videos in a more convenient format, not claiming control over the videos themselves.
- Viacom's lawyers also have a bit of fun at the fact that some old emails relevant to the case were deleted, even though it's not that ridiculous that not everyone keeps all their emails. The motion also mocks Google and YouTube execs for developing "serial amnesia" when presented with "evidence." But, again, Viacom was asking people to remember specific sentence fragments (potentially taken out of context) from years-old emails.
- The "big surprise" in the Google motion is that Viacom apparently tried to buy YouTube itself. While interesting as a historical nugget, I'm not really sure that really helps the case one way or the other. It doesn't change how Viacom may have viewed YouTube as a platform. The attempted purchase may just have

been a way to try to co-opt it into a limited platform, like what happened with Napster.

- Google argues that it has gone above and beyond the DMCA's requirements in providing tools to help copyright holders. Viacom's counter argument, of course, is that those changes are more recent.
- For every claim made by Viacom that Google/YouTube execs made damning statements, it looks like Viacom's statements were even worse. For example:

During these negotiations [to license content] Viacom deliberately allowed its content to remain on YouTube, in part because it thought that "having the content there was valuable in terms of helping the rating of our shows."

Google effectively makes the case that Viacom knew the benefits of having its clips on YouTube, tried to negotiate with YouTube for a deal, and when Google came into the picture, basically Viacom just saw it as an easy money grab and massively upped its demands before suing. Google argues that the mass takedown and subsequent lawsuit was really just a negotiating ploy by Viacom to get an upper hand in the negotiations to squeeze more money out of Google.

- Amusingly, Viacom notes repeatedly in its own filings that YouTube didn't want to take down its videos because traffic to YouTube would suffer -- but Google counters by pointing out that it **did** take down all of Viacom's 100,000 takedown requests within hours and **traffic to the site did not suffer** and, despite Viacom's expectations to the contrary, traffic to Viacom's own sites did not soar. In other words, despite Viacom's over-inflated sense of how important Viacom's videos were to YouTube, the actual evidence suggests that Viacom was very, very wrong.
- Viacom tries to brush off the fact that it uploaded many videos itself, by saying (in a footnote) that most of those videos were clearly designated as being from Viacom. Google counters by pointing out that (a) this is not true and (b) Viacom repeatedly disguised who uploaded those videos on purpose -- even quoting Paramount's SVP of marketing saying that the clips "should definitely not be associated with the studio -- should appear as if a

fan created and posted it." Among the users who uploaded Viacom clips on behalf of Viacom itself?

MMysticalGirl8, Demansr, tesderiw, GossipGirl40, Snackboard and Keithhn

On top of that, they registered with non Viacom email addresses, and even went to the local Kinkos to avoid uploading from Viacom directly. How Google was supposed to distinguish those clips from those uploaded by random users is not explained anywhere by Viacom, which is a hugely damning point against Viacom's case.

- Further damning to Viacom's case -- the fact that Viacom regularly had to backdown on its takedown notices after it was realized that the takedowns were incorrect. This is a point that we've made before and is driven home repeatedly in Google's filing. If Viacom itself can't get it right -- when it holds the copyrights and some of the videos were uploaded by itself -- how the hell is Google supposed to know which videos are legit and which are not?
- Even more amusing is the part that details how Viacom had incredibly complex and detailed rules with BayTSP (who monitored YouTube and sent the takedowns) over what should be taken down and what should be left up. Apparently, those rules changed *every few days* and the folks at BayTSP compared them to *Crime and Punishment*. Again, if Viacom required such a complex list of rules for its own partner, how could it expect Google to know what to do without knowing any of that information?
- Google also points out that many of the clips in question have serious questions over whether or not they could be considered fair use -- and those are questions for a court to determine. It is both unfair and outside the scope of the law to expect a third party like Google to be able to make that kind of decision on the fly.

In the end, it will surprise no one that I find Google's arguments significantly more compelling than Viacom's. The one point on which Viacom is strongest is the emails from the very early days of YouTube, where the founders and some employees admit that they know there's a fair amount of infringement on the site, and they debate what to do about it, before taking a fairly liberal approach -- though, never an approach that removes their safe harbors (Viacom disagrees on that point). In fact, the weaknesses of Viacom's argument are driven home in

that nowhere was it able to produce a single bit of evidence of YouTube founders/execs being aware of a *specific* infringing video. All of the quotes are about general infringement. The lack of a smoking gun email to the contrary really weakens Viacom's case -- and is a glaring absence in the motion.

What this comes down to in the end is a basic interpretation of what the DMCA really says and means with its safe harbor provisions. Viacom's interpretation would effectively gut the entire purpose of the safe harbor provisions, disqualifying pretty much any commercial entity that allows user created content from gaining safe harbor protections. Such a reading makes no sense as it would make the DMCA safe harbors effectively meaningless.

Google's motion, on the other hand, is quite compelling and highlights how even if execs are aware of general infringement across the site, it was impossible for them to distinguish what was authorized and what was not, as well as what was fair use and what was not. To require a third party like Google to make such determinations would effectively gut the ability of pretty much any user-generated content site to exist -- which, again, would clearly go against Congress' intentions.

Still, with these sorts of lawsuits, you really never know how things will play out -- and judges often get blinded by "infringement bad, must punish!" type arguments. Hopefully, in this case, reason prevails.

Update: Eriq Gardner over at The Hollywood Reporter basically came to the opposite conclusion and found Viacom's arguments persuasive. To him the discussions among YouTube founders is damning, though I still think there's a massive difference between saying "yes, there are infringing videos on the site" and "we know which videos are infringing" is a large and important gap -- and Viacom failed to close it.

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Steve Albini Explains Why Royalties Don't Make Sense

Beyond being a world famous musician, engineer, producer and journalist, Steve Albini has long been pretty outspoken about the music business itself -- and while I don't always agree with him, I appreciate that he speaks his mind and often presents his arguments in ways that make me think and reconsider some of my own positions. herodotus points us to the news of some comments Albini recently made at a conference about the music business, with a great quote about the focus of so many on royalties:

"Royalties are a means to pay producers in the future -- and in perpetuity -- based on record sales," said Albini, who is also a music journalist. "If a band does a show, blows a whole bunch of minds and a bunch of people become fans and go out and buy millions of records, the producer gets paid. I think that's ethically unsustainable.

"I don't think you should pay a doctor extra because a patient doesn't die. I think the doctor should be busting his ass for every patient. I don't think I should get paid for someone else's success."

I'm guessing that we'll get a fair amount of disagreement in the comments, but I think it's a point worth considering. So many creative industries get really hung up on royalties and collective licensing and other aspects -- when those are basically lottery tickets, relying very much on what other people do, not on the work you actually do. And it leads to this entitlement mentality that we see all the time, where certain content creators feel they need to get paid every time their content is used -- even if they didn't do any additional work on it. This is what all the ongoing legal battles about collective licensing and royalty rates are about. This is what the Hollywood writers' strike from a few years ago were about. They're ongoing attempts to keep getting paid over and over again for one thing you did in the past. Most jobs don't work that way -- and that's the point that Albini is making.

Now, some will argue, of course, that the entertainment industry is "different," because it involves more speculation: no one knows if the content you create will be a hit, so the concept of royalties is a way to deal with that. But that assumes a rather static market, and pays little attention to the entitlement mentality that it creates. If you have a hit,

charge more for future work -- rather than focusing so much on getting paid over and over and over again just for that one piece of work you did in the past.

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WikiPremed Shows How To Make Money From Free Test Prep

Glyn Moody alerts us to his interesting writeup of how WikiPremed is successfully making money while offering free premed test prep materials. The story is actually somewhat similar to the story of the free and open textbook publishers, Flatworld Knowledge. Basically, provide absolutely all of the content for free online, but at the same time, offer up scarce physical products in a useful format as study aids:

*Everything is licensed creative commons attribution, and we make the online methods freely available, so for example, you can find the entire set of Physics Flash Cards online. We offer the printed versions of the things for which print may be appropriate for sale for a very reasonable price, and **students do buy them because print has its own advantages**. We put the whole set of physics cards online (three years of work!) and the students still buy the printed cards any way. Even if they want to support the work, I think they like to have a commercial arrangement and a simple value proposition.*

There is one work, however, the Premedical Learning System, which sells for \$32.95, where the advantages of the print version are so great, compared to the online presentations of the content, which are extensive, that we call the printed work 'essential' for the course, and it is definitely a good value. It's also a board game!

*Students need printed study materials, and they get sick of the computer, so I definitely think there is room for creative commons educational content supported by print publications. **I think there is an ethic to not holding content hostage to purchases, but I think there are commercial advantages to the open model as well.** I don't doubt that the average customer at WikiPremed has 1000 page views before purchasing anything.*

I am sure that if there were registration walls and missing chapters I would have fewer customers.

One of the interesting points raised by John Wetzel, the creator of the site, is this idea that his average customer has probably viewed more than 1,000 pages before purchasing anything. This goes back to the

discussion we had about about ad blocking, where some insisted that anyone not viewing an ad is of no value at all to a community. But that takes a very static view of the world. In a dynamic view, you realize that anyone viewing your website has the potential to pay you back *at some point in the future* -- and that payment may come in many forms. You don't focus on getting paid for every single transaction, but recognize the value of a loyal, lifetime relationship.

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EU Proposes Criminalizing Inducing Infringement In ACTA Draft; Could Outlaw Google

While the EU Parliament has decisively denounced ACTA -- both in terms of the process *and* the substance of the (still secret) draft agreement, it appears that the EU negotiators are still pushing to include draconian provisions in ACTA. KEI has discovered that the EU is proposing to make inducement a *criminal* offense, rather than just a civil one:

KEI has learned that the European Union has proposed language in the ACTA negotiations to require criminal penalties for "inciting, aiding and abetting" certain offenses, including "at least in cases of willful trademark counterfeiting and copyright or related rights piracy on a commercial scale."

Of course, definitions matter here. In this case, the question is what constitutes "rights piracy on a commercial scale." Beyond the troubling notion that these negotiators are using such an inaccurate and imprecise word as "piracy" in such a big agreement, the commercial scale definition is quite broad:

"significant willful copyright or related rights infringements that have no direct or indirect motivation of financial gain"

Consider this the "let's criminalize The Pirate Bay" clause. Of course, it could also be read as the "let's criminalize the VCR clause" as well -- which is why this is so troubling. It's one thing to add civil penalties and liability to third parties through some sort of misguided secondary liability policy -- but it's really pushing to dangerous extremes to add criminal liability to that as well.

Now, let's look at the potential unintended consequences of such language. It effectively could outlaw Google. Google, without a doubt, can be used to "aid" or "abet" "copyright... piracy on a commercial scale... that have no direct or indirect motivation of financial gain. Now, those in support of this bill will quickly insist that no one is going to use it to shut down Google. And they're probably right, given Google's brand recognition. But the fear is that they would almost certainly use this to shut down the *next* Google-like company before it had a chance to get

very big. This is what happens when you have technologically, economically clueless bureaucrats trying to protect a dying industry. You get bad regulations that have massively dangerous unintended consequences.

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How Google's Anti-Microsoft Lobbying Effort Came Back To Bite Them

Two years ago, as Microsoft was trying to buy Yahoo, we were *really* surprised to find Google making a proactive lobbying and marketing effort to scuttle the deal. As we noted at the time, it seemed pretty likely to come back to haunt Google. Indeed, Chris Thompson is now taking a look back and believes that Google's decision to stir the pot over the Microsoft/Yahoo deal has probably been Google's biggest blunder to date. Not only did it eventually lead to Microsoft working out a much, much better deal for itself, it directly resulted in Google getting significantly more antitrust scrutiny, both in the US and abroad. Now, some of that scrutiny likely would have come anyway eventually, but Google definitely helped call much more attention to the situation and its own market position. The whole thing made no sense. Google should have known to keep its mouth shut and watched as Microsoft and Yahoo screwed up the deal on their own.

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As Expected, Ridiculous, Wrong, Exaggerating And Misleading Report Claims That 'Piracy' Is Killing Jobs

As was leaked earlier this week, a study paid for by the International Chamber of Commerce has come out with ridiculously misleading and misguided report about how "piracy" is killing jobs all through Europe. The tagline is that it's "costing" 1.2 million jobs and about \$330 million. And, of course, that sort of report is the kind that the press loves, and so we get a series of headlines:

- Net piracy puts 1.2m EU jobs in peril, study shows
- Internet piracy taking big toll on jobs
- Illegal-file sharing could 'cost billions' by 2015
- Piracy threatens Europe's creative industries
- EU must take 'urgent' action on piracy, report warns

And on and on and on and on. Of course, it's not even close to true. The *real* story is that **for certain companies who refuse to adapt and refuse to embrace what consumers want and what technology allows**, modern technology will cause them to fail. However, at the same time, it has already opened up **new opportunities** and **created new jobs** while making it **easier and more efficient to create, promote, distribute and consume content**. Somehow, however, none of that seems to show up in these studies.

Honestly, the claims by this research firm, TERA, read like "automobiles costing buggy makers jobs and money, something must be done!" It's based on a fundamental misunderstanding of basic economics and the nature of dynamic markets (and, frankly, calls into question anything put out by this particular firm). The only thing "costing" companies money are their own actions. If they are failing to adapt to a changing market, that's their fault. Don't try to pin the blame on new technologies and consumers getting better access to content.

Even worse, when you start to dig into the report you find all sorts of highly questionable or downright incorrect assumptions. TorrentFreak put together a starter list of problems (feel free to add more in the comments):

- *The report suggests that there's a direct correlation between Internet traffic growth and lost jobs. That is, the more traffic that is generated on the Internet, the more money will be lost. This correlation is 1 according*

to the report, which assumes that all growth in Internet traffic will increase piracy at the same rate.

- The report makes another bogus assumption by stating that more traffic will mean more piracy and thus more lost revenue. It does not account for the fact that people might consume higher quality files which are greater in file-size. All projections are based on bandwidth and not the number of pirated goods.
- The report cites some academic literature which suggests that piracy leads to a decrease in sales. Studies that reported the opposite or a null-effect were carefully left out. This bias defines the entire outcome of the report. If they used studies that found a positive effect they would have found that piracy would **create** hundreds of thousands of jobs in the years to come.
- The report uses fixed substitution rates. They assume that 10 downloaded albums results in one lost sale and this figure is not adjusted for the projected increase in piracy. One would think that the public's budget for entertainment is limited and that the substitution rate would go down as piracy goes up.
- Related to the previous point, if the industry did indeed lose over €240 billion in revenue by 2015, consumers would have a lot of extra cash to spend. Depending on where this money was spent it might create more jobs than the entertainment industry claims it is losing. As a report commissioned by the Dutch Government showed last year, the overall effect of piracy on the economy might actually be positive.
- It gets even more ridiculous when we take a closer look at the claims. In the UK consumers spent €6.3 on audiovisual products. If the projected trends continued, the 'lost' revenue because of piracy would exceed the actual revenue, meaning that the music and movie industries would end up having to pay people for pirating their products.
- Lastly, the researchers seem to have trouble putting a decent report together as they messed up the legend of one of the critical figures. In this figure the bars for "file-sharing" and "global Internet traffic" are switched around. This makes us skeptical about the other statistics that are published in the report.

In other words, it looks like a typical study where the folks who created the study had the answer before they did the study, and then just needed to fill in the blanks carefully to make sure they got the results they wanted. It's basically a blatant lie. The unwillingness to look at studies that suggest job increases or that look at the positive impacts from greater and easier distribution and promotion is clearly a joke.

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Court Rejects PA DAs Attempt To Charge Teens For Sexting Themselves

About a year ago a prosecutor in Pennsylvania wanted to bring child porn charges against some teenage girls who had taken some "nude and seminude" photos of themselves with cameraphones and sent them to others. The case was complicated in that after school officials turned over the evidence to the district attorney, the DA's office told the girls that they could avoid charges if they agreed to a special afterschool "education program." Some of the girls refused, and the prosecutor tried to charge them. This raised an outcry from many who felt it was ridiculous to charge kids with child pornography for taking photos of themselves. The judges in the case blocked the prosecutor from filing charges, but rather than take the hint, the prosecutor tried again with an appeal.

It looks like that was a dead end too. The appeals court unanimously ruled against the DA and criticized them for their efforts to bring charges against these girls. This case won't necessarily directly apply to other similar cases -- as much of the reasoning had to do with the requirement to take this class and write an essay about why what they did was "wrong," which was judged to be compelled speech, violating the First Amendment. Furthermore, the fact that the lawsuit was seen as retaliating for not obeying the order to take the class was also problematic. So, it's likely we'll still see other cases involving "sexting," where teenagers are accused of creating child porn of themselves.

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Viacom Still Can't Figure Out Which Video Clips Actually Infringed On YouTube

As we get ready to see more details about the filings from both Viacom and Google in the YouTube fight, [Eric Goldman](#) notes that Viacom has dropped another 187 videos from its complaint. This isn't the first time either. Late last year, Viacom dropped a bunch of videos from the lawsuit after realizing that many had been *uploaded by Viacom employees*. As Goldman notes, the fact that it's taken Viacom three years to even realize that some of these videos don't belong in the lawsuit is incredibly telling. If it takes Viacom three years to realize that such videos may or may not infringe, how is it reasonable to expect Google/YouTube to be able to make snap judgments and automatically know what infringes on all the videos uploaded to its site? Viacom, of course, is just claiming that it's removing these 187 videos to "streamline" the issues. However, considering that there are 63,000 videos involved in the lawsuit, it's not like this makes any difference at all. Basically, Viacom knows that it has highly questionable claims on those videos it's trying to drop from the case -- which proves the point. Even Viacom has no idea what is and is not infringing, despite having three years to figure it out. Yet it thinks that the law should require a third party to know immediately?

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Disgruntled Ex-Auto Dealer Employee Hacks Computer System To Disable Over 100 Cars

Ah, the fun of the electronic age. A few years back we started hearing about tools to remotely disable a car. These were talked about as a security system to recover stolen vehicles, but also as a device to put on leased cars, in case they need to be repossessed. Of course, once you put that technology on the car, what's to stop someone from abusing it? Turns out that a disgruntled ex-employee of a car dealership that put such a technology on its cars, was able to log into the computer system using a former co-workers account and then started methodically targeting the cars that used that system:

Ramos-Lopez's account had been closed when he was terminated from Texas Auto Center in a workforce reduction last month, but he allegedly got in through another employee's account, Garcia says. At first, the intruder targeted vehicles by searching on the names of specific customers. Then he discovered he could pull up a database of all 1,100 Auto Center customers whose cars were equipped with the device. He started going down the list in alphabetical order, vandalizing the records, disabling the cars and setting off the horns.

Good thing he wasn't fired from a hospital that used internet-connected pacemakers, huh?

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Reporting On Someone Claiming An Opponent 'Lies' In A Heated Debate Is Not Libel

Reporter Amy Wallace wrote an article late last year for Wired Magazine about the extremely heated and somewhat controversial debate over child vaccinations. In the course of the article, she quotes people from both sides. At one point, when one of the main doctors who supports vaccinations discusses the woman who has become the face (and voice) of the anti-vaccination crew, he responds to some of her claims by noting "she lies." Apparently, those two words resulted in her filing a defamation lawsuit against the doctor and the reporter, Amy Wallace. Thankfully, the court was quick to totally reject this argument (pdf):

Several Fourth Circuit cases make clear that including a remark by one of the key participants in a heated public-health debate stating that his adversary "lies" is not an actionable defamation. Indeed, both the nature of the statement -- including that it was quoting an advocate with a particular scientific viewpoint and policy position -- and the statement's context -- a very brief passage in a lengthy description of an ongoing, heated public health controversy -- confirm that this is a protected expression of opinion.

The ruling goes on to discuss this in much more detail, pointing out that "she lies" is not the sort of statement that the court should be spending its time on, to determine its veracity. Instead, for there to be libel, there needs to be an actual statement of fact that is provable one way or the other. Looks like another lawsuit that appears to have been filed more to silence a critic than for any legitimate reason has been quickly shot down by the courts. Good for them.

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Peeling The Layers Off 'Piracy'

We often see critics or industry folks make absolute statements like, "copyright infringement is stealing and it's bad." Of course, this is wrong for any number of reasons, but rather than jumping all the way to why such statements are obviously wrong and misleading, why not peel back that onion one layer at a time. [Ross Pruden](#) points us to an interesting blog post by Luci Temple, where she begins the process of questioning the assumptions around "piracy is bad." It starts out with that premise (it's bad!) and then starts asking questions:

Purchaser: This person has already paid for a legal copy of the film. Now, the Purchaser might want to do a number of things that are technically in breach of copyright:

- a) Burn a copy of the dvd for personal use, so that their original copy won't get scratched.*
- b) Create a digital copy for use on a portable MP4 player, media gate, or computer.*
- c) Lend the burned dvd to a friend for their personal use (their friend being a Previewer).*
- d) Lend the digital copy to a friend for personal use (which actually involves making another digital copy).*

All these things are technically acts of "piracy," however, are they all morally "wrong"? Is copyright law applicable to the mores of the digital age, or does it need to be updated?

She goes on to discuss "lending" to a friend, noting how it's fine to lend a physical copy, but why not a digital copy? The thing is, the more you play this game, the more you'll realize how many situations that are automatically lumped in with what's considered "bad," almost certainly aren't "bad" in anyway at all.

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UK's Times Online Starts Blocking Aggregators Hours After Aggregators Win Copyright Tribunal Ruling Against Newspapers

There's been something of a battle going on in the UK over news aggregators. Obviously, we've all heard about the various threats by companies like News Corp. in the US to sue Google over its Google News product, but a lot of this has already been playing out on a smaller scale in the UK. Last year we wrote about newspapers in the UK threatening aggregators like NewsNow, leading some to start blocking NewsNow crawlers. This is silly in the extreme. These aggregators offer *links* to the news. The "issue" with NewsNow is that it sells this as a service to companies -- and the newspapers claim they deserve a cut. Note that NewsNow provides just a link and a headline and the tiniest of blurbs. It's much less than even Google News provides. The newspapers seem to think that no one can profit from advertising their own stories unless they get a direct cut.

In fact, last year the NLA (Newspaper Licensing Association) in the UK decided to start charging all such services just for linking. This is, of course, ridiculous. One of the largest services of this type is called Meltwater News, and it decided to protest this ridiculous license on linking. It was joined in this effort by the Public Relations Consultants Association (PRCA), who noted that there is no copyright on headlines and links -- and the NLA's license amounted to an illegal tax. The NLA responded by saying that Meltwater and PRCA had no right to protest these licenses.

Earlier this week, however, the Copyright Tribunal in the UK ruled in favor of the PRCA and Meltwater in protesting these new licenses, and it ordered the NLA to pay the costs of both organizations. Now there will be a full trial concerning the legality of the licenses.

What's interesting, however, is that hours after this decision came out, the Times Online in the UK just so happened to update its robots.txt file to block Meltwater (along with NewsNow, who had already been blocked). Basically, it was a quiet threat: if you don't pay, we'll block you.

The newspapers are walking a very thin line here. They're trying to

charge for the most basic element of the web: linking and sharing links with others. I would imagine that if they actually win this fight, they're going to end up regretting it even more -- because if they start linking to other sites themselves, how long will it take before those linked sites start demanding money back from the newspapers as well. It's an incredibly short-sited view that a newspaper takes to think that others must pay you to promote you.

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ACS:Law Keeps Sending Out More Threat Letters -- Condemned By Politicians, ISPs And General Common Sense

Just as Davenport Lyons lawyers are being sent for disciplinary action over the firm's practice of sending large numbers of "pay up or we sue" pre-settlement letters, ACS:Law, the shady firm that effectively spun out of Davenport Lyons to do the same thing is ramping up its efforts. This isn't a huge surprise. Late last year, the firm said it was preparing to send out 30,000 letters, despite numerous studies showing that these letters regularly target innocent people, but scare many people into just paying to avoid a lawsuit.

The practice is being condemned widely. UK politicians have called it a scam. Even (believe it or not) the *record labels* are criticizing the practice, saying that it's not productive (most of the firms that use ACS:Law/Davenport Lyons/DigiProtect tend to be porn studios and small software providers). The latest is that O2, the UK ISP is condemning these letters as being pure bullying for money.

What's amusing is how ACS:Law tries to defend itself:

"Neither we nor our clients threaten or bully anyone. We send out letters of claim to account holders of internet connections where those internet connections have been identified as being utilised for illegal file-sharing of our clients' copyrighted works.... Our letter makes an enquiry in that regard and invites the recipient of our letter to respond to this evidence. In addition they are invited to enter into a compromise to avoid litigation,"

This is disingenuous in almost every possible way. Sending a legal letter saying that you've been caught breaking the law, and likely will be taken to court (even though ACS:Law almost never seems to actually follow through on that threat), is absolutely a threat. And notice how he calls it "an enquiry," which is again misleading. It's an accusation, and a typical shakedown offer. It's not a "compromise," and it's not an afterthought as presented in the quote above. It's the key point of the letter, and the entirety of the business model put forth by the companies involved, who describe it as a way to "profit" from people sharing their content.

In responding to the fact that even the record labels (via BPI) have

condemned these letters, the guy from ACS:Law responds with more ridiculousness:

"I think the BPI is letting its members down. I think they are scared of alienating their customers. My clients don't have the same fear. They take the view that the people they target aren't their customers because they are stealing from them."

Of course, if they were "stealing" from his clients, then it's a criminal, not a civil, matter, and as he must know, the proper response is to go to the police. Not demand they pay up via some sort of shakedown letter.

Finally, the guy from ACS:Law basically admits that he's the one getting rich off of this, noting that *he gets more money from this than the copyright holders*:

"After my expenses the copyright owner is the largest single beneficiary."

Nice little trick there with the "after my expenses." This is a classic shakedown with a weak attempt at giving it legitimacy by using copyright law as a cover.

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Kodak Says Intellectual Ventures Behind Patent Lawsuit Filed By Shell Company

Last year, Zusha Elinson broke the story that, despite Nathan Myhrvold hiding behind the claim that Intellectual Ventures hadn't sued anyone over patent infringement, IV's patents were miraculously showing up in lawsuits being filed by shell companies. Of course, IV and the shell companies have been completely silent over how this all works, so IV can pretend to be totally separate. However, multiple reports have come out claiming that IV "sells" these patents to patent attorneys, who set up shell companies with which to sue, and IV gets a cut of any money won. In other words, it's hiding behind these shell companies to pretend it's not suing, when the truth is quite different.

It seems that at least one company sued over such a patent is hitting back. [Joe Mullin](#) points us to the Legal Pad blog, which notes that Kodak, who has been sued for patent infringement by a shell company (PFI) being represented by Ray Niro (famous for, among other things, being the first person labeled a "patent troll," as well as suing a bunch of companies he didn't like with a bogus patent -- finally rejected for good, recently -- that he claimed covered any website that used a JPEG image), doesn't believe that it's really the shell company that's behind this lawsuit. It's demanding that Intellectual Ventures take part:

"Kodak should be accorded the right to sit down across the table from IV as well as PFI, so that it can inquire as to IV's intentions," Jones Day lawyers write. "It should come as no surprise that Kodak's attitude towards settlement may be affected by learning whether or not this case is the first of a series of patent litigation salvos to be launched against it by IV, whether directly or through a proxy like PFI."

IV's response, as per usual, is to play dumb:

"At this point, we haven't made a decision yet. We don't know what Kodak wants or why they want us there. We don't have a say in the litigation nor do we have control over Picture Frame Innovation or the patent."

Note that this doesn't actually answer the question of whether or not IV has a financial interest in the lawsuit. Of course it doesn't have actual

control over the shell company or the lawsuit. No one thinks IV is so stupid to leave a trail that direct. But that doesn't mean it didn't sell this patent with the plan of profiting from such a lawsuit. The whole thing is so *wink* *wink* *nudge* *nudge* it just shows off IV's total arrogance. It thinks that it's smarter than everyone else and can play the system to its (very profitable) advantage -- even if it's stifling innovation left and right.

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