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SI 507: Information Policy Analysis and Design

Wk 6: Intellectual Property: Copyright

Intellectual property

- **Copyright**
- Patents
- Trademarks (commercial ownership of signs or symbolic representations)
- Trade secrets (non-public information concerning commercial practices or proprietary knowledge of a firm)

Motivations for intellectual property

- "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries" (U.S. Constitution)

- From **bargain** (the 'limited protection' model) to **property**
- **utilitarian** vs. **natural right** arguments

Core elements of IP regimes

(Pam Samuelson, "Preliminary Thoughts on Copyright Reform")

1. Statement of subject matters /forms that IP applies to
2. Eligibility criteria for specific people and works
   a: who is eligible?
   b: what standards must a work meet to be eligible?
   c: what procedures must be followed to obtain / maintain rights?
3. A set of exclusive rights
4. A duration for the exclusive rights
5. A set of limitations / exceptions to exclusive rights
6. An infringement standard
7. A set of remedies against those who infringe

Core elements of copyright

(Pam Samuelson, "Preliminary Thoughts on Copyright Reform")

1. Subject matter: works of authorship
2. Eligibility: authors (except work for hire), non-useful works of original expression, fixed in a tangible medium; rights attach at moment of creation (registration advised but not required, until bringing case against infringement)
3. Duration: life of author plus 70; 95 years from first publication
4. Limitations: fair use, first sale, educational uses, backup copying of computer programs
5. Infringement standard: substantial similarity in protected expression that does not meet one of the stated exceptions
6. Remedies: injunctive relief (preliminary and permanent); money damages; destruction of infringing copies; court costs; criminal sanctions)

Copyright basics

NB: Copyright protects *expression* of ideas, not the underlying ideas, facts, systems, procedures, principles, discoveries, etc.

Traditional limitations on copyright:

- First sale doctrine
- Private performance or display
- Fair use (quotations, parodies, photocopies for teaching, videotaping of TV programs, etc.)

Copyright history & process (U.S.)

1790 – first copyright law passed

1909 Copyright Act

1976 Copyright Act

1992 Audio Home Recording Act

1998 Digital Millennium Copyright Act

Some characteristics:

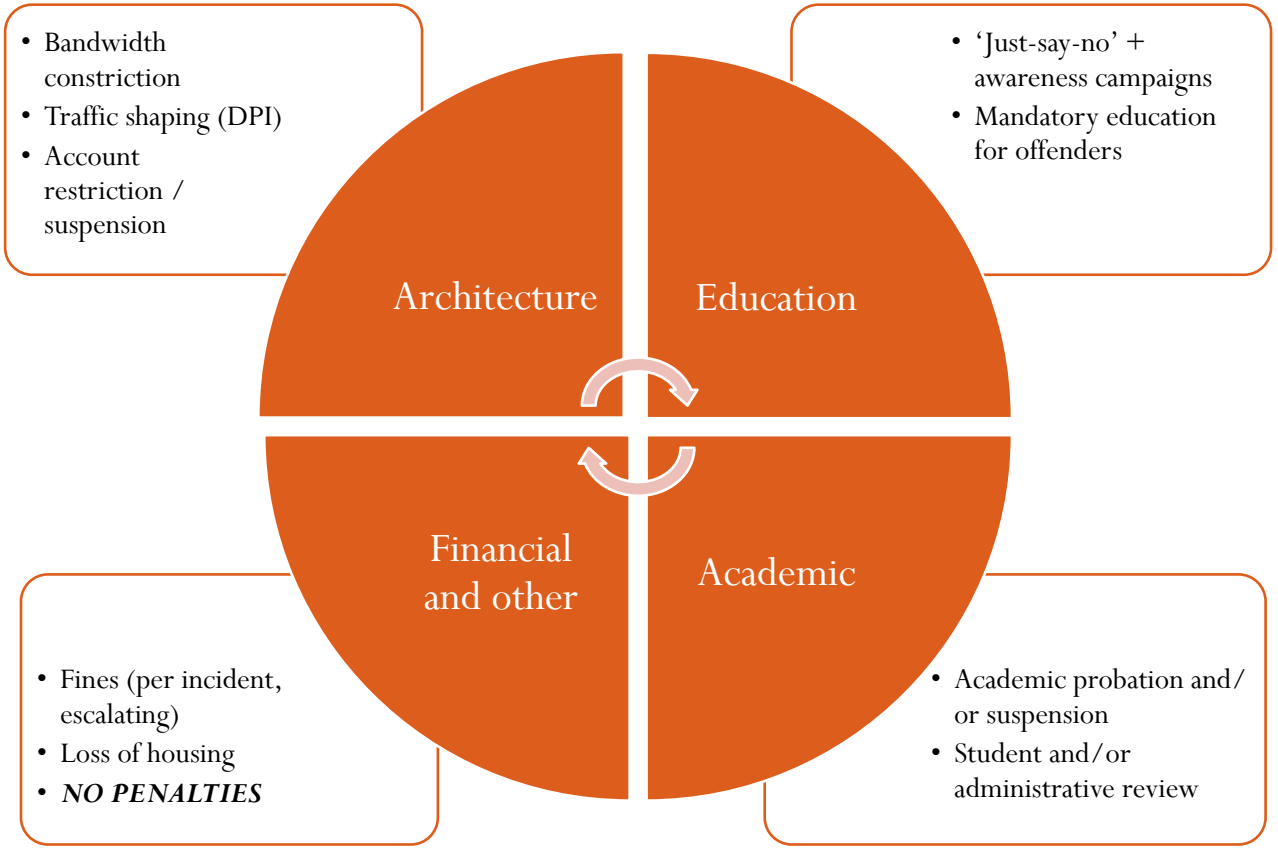
- Driven by negotiated settlements among industry stakeholders (see Litman, pp 35-65)
- Successive rounds of copyright negotiation reflect tension between 'incumbents' and 'upstarts'
- Long history of regulatory capture? (patent and copyright office)

The copyright wars: the cultural front

- http://www.music-rules.com/pdf/MusicRulesPoster.pdf
- http://www.music-rules.com/pdf/MusicRulesMidSchActivities.pdf

File-sharing and universities: institutional responses

(general and targeted)



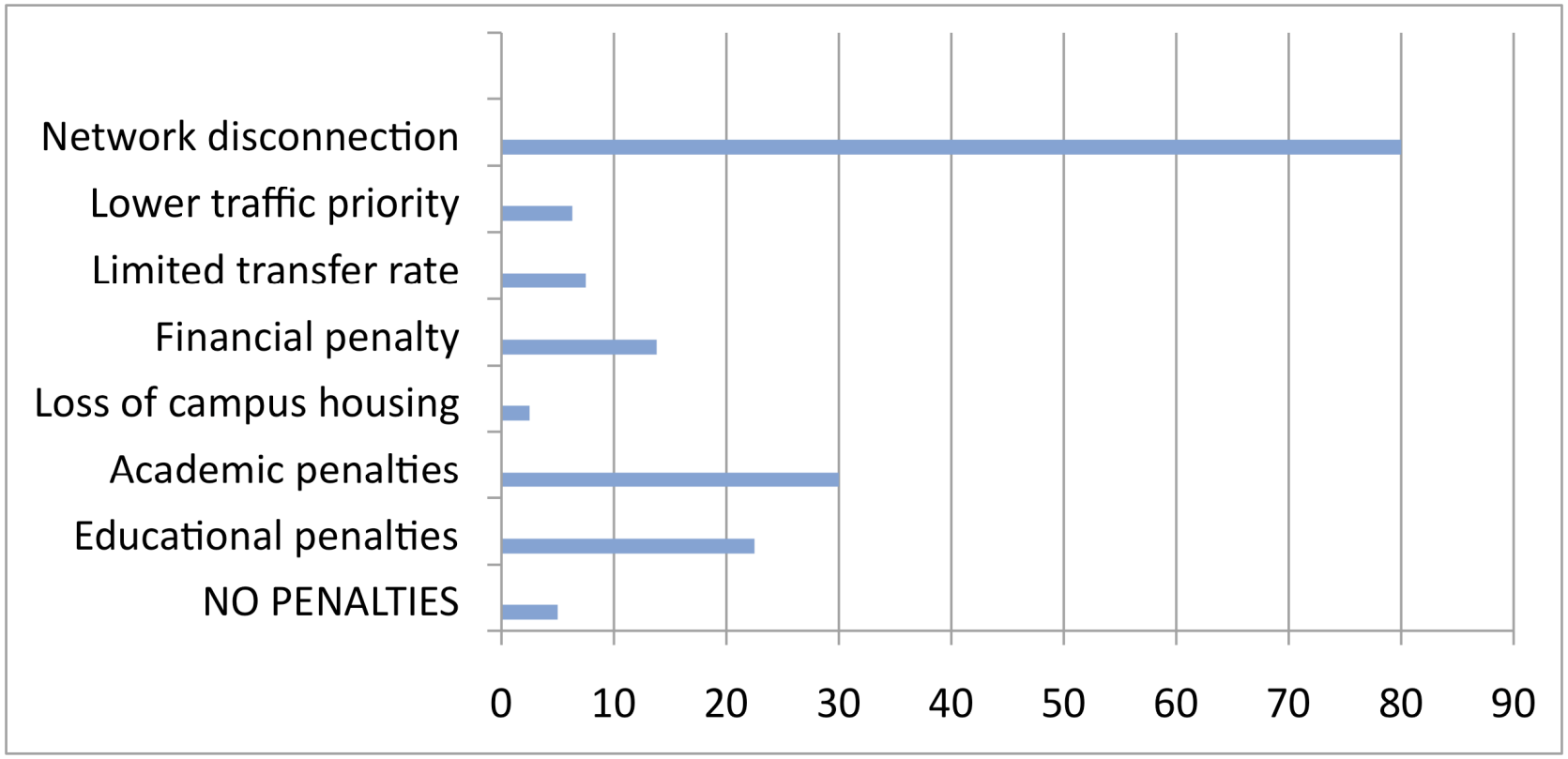
PD-INEL Steve Jackson

DMCA takedown notices.

RIAA/MPAA pre-settlement letters?

Performative functions?

Penalties imposed on students receiving DMCA complaints

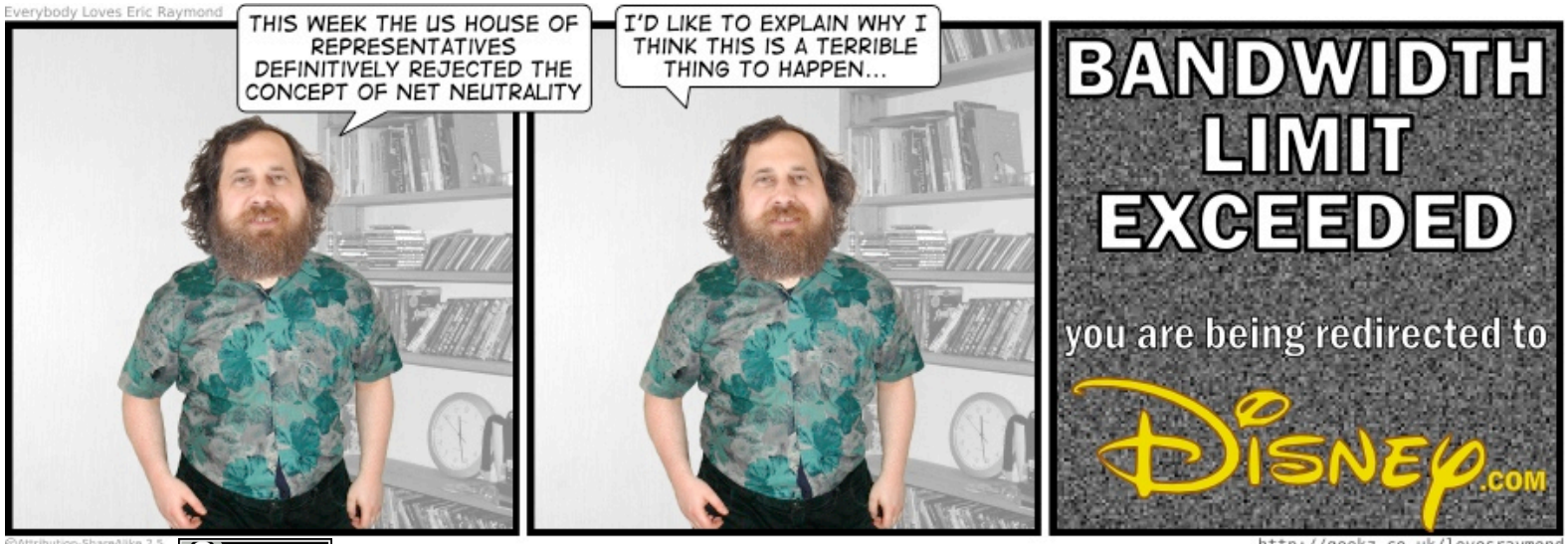


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Elliott Kendall, Brandeis University, 2006 (N=80)
http://people.brandeis.edu/~ekendall/survey/

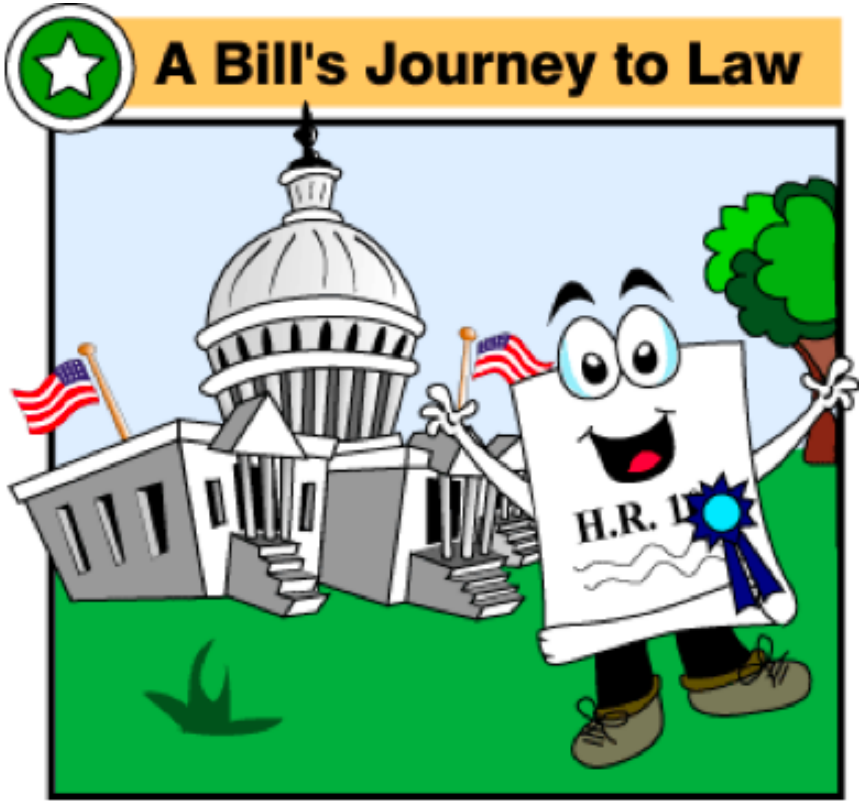
Comcast, net neutrality and the end of scarcity

- FCC took action against Comcast in August 2008 for degrading p2p transfers
- 75% of university networks engage in blocking or degradation of p2p
- Should the same rules as Comcast apply to universities?
- Increased demand for "neutral networks"
- Impact on research that require real-time communications (remote medicine, telephony, IPTV, etc)



Eric Raymond

Higher Education Act of 2008



PD-GOV U.S. Representative Eliot L. Engel
http://engel.house.gov/index.cfm?sectionid=90

- Signed into law on August 14, 2008
- Requires universities to develop plans for "**technology-based deterrents**" to digital copyright infringement
  - Technological arms race
- Also requires universities to develop plans to offer "**legal alternatives**" to file sharing
  - Low adoption rate
  - Not compatible with the iPod
- Who is paying for these new requirements?

Perfect 10 v. Google

- The claim: Perfect 10, a pornographic image company, accuses Google (and Amazon) of direct, contributory, and vicarious copyright infringement of its display and distribution rights to Perfect 10's copyrighted images. Perfect 10 challenges Google's production of thumbnails and in-line links through its image search process (direct), and Google's role in directing searchers to copyright violating materials on third party websites (contributory and vicarious). Google invokes fair use defense (on thumbnail question), and DMCA safe harbor (on contributory and vicarious claims).
- Findings (Dec 2007): Court *upholds* Google's fair use defense, remands to the lower court on questions of contributory and vicarious infringement.

Viacom v. Youtube

- The claim: Viacom accuses of Youtube (and its parent, Google) of contributory and vicarious copyright infringement for its posting of Viacom-owned copyrighted materials, sharing of extensive data related to Youtube and wider Google search processes as part of discovery, and damages of $1 billion. Youtube/Google invokes DMCA safe harbor defense, and argues against release of sensitive information in court as violation of company's trade secrets.
- Findings: Court rejects Viacom's injunctive relief claims and most of Viacom's data requests, but does force sharing of Youtube viewership data, removed videos, etc.

International IP: WIPO

- 1883 Paris Convention for the Protection of Industrial Property
- 1893 Berne Convention for the Protection of Literary and Artistic Works
- **World Intellectual Property Organization (1967)** – UN agency since 1974. Goal: to "promote the protection of intellectual property throughout the world." consensus decision-making, one-country one-vote.

International IP: WTO (TRIPs) and beyond

- **General Agreement on Trade and Tariffs (GATT) / World Trade Organization** – Trade-related intellectual property (TRIPs) introduced under the Uruguay Round (1986-1994).
  * Copyright granted *automatically* and extended to death + 50;
  * Full copyright protection for computer programs;
  * Patents extended to all fields of technology and for 20 yr min;
  * Exceptions to copyright strictly limited (Berne '3-step test');
- Beyond TRIPs: IP bilateralism (e.g. Anti-Counterfeiting Trade Agreement (ACTA)?)

International IP: North-South controversies

- Regressive net transfer of resources
- Access to knowledge
- Agriculture-related IP, universal patents on pharmaceuticals, software patents
- The WIPO Development Agenda and the "Doha Declaration" (WTO)