

A Special Report for all digital content developers, publishers, and distributors.

The following is a Special Report prepared for submission to the Software & Information Industry Association (SIIA) for distribution to its membership. The Report covers one of the fastest growing crime epidemics ever to sweep through our economy – Internet Piracy and copyright infringement of digital content. These crimes cost the U.S. economy billions of dollars in lost revenues, taxes, and wages each year, are expanding exponentially, and threaten to totally eliminate thousands of small software publishers, musicians, songwriters, artists, writers, and other creative content developers within the first few years of the new millennium. The Report uses three real life case studies (one currently in litigation) to help illustrate the enormous magnitude of this problem, to expose the identity and size of some of the largest “white collar” infringement networks in the world, to highlight deficiencies in our current copyright laws, and to emphasize the sense of urgency needed to quickly find more workable solutions to these problems.

The Report was prepared in July 2000 for presentation to selected members of Congress, the U.S. Justice Department, the United States Copyright Office, and business executives from various U.S.-based copyright industries, including music, software, motion pictures, video, print publications, and television. The Report was authored by George P. Riddick, III, Chairman of U.S. Copyrights.com, LLC, and President/CEO of graphics software developer Imageline, Inc, of Ashland, Virginia. Mr. Riddick can be reached by e-mail at griddick@imagelineselects.com, by telephone at (804) 264-0731, or by private facsimile at (804) 264-0732.

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The Pirates Web

“The fear of financial penalties, alone, has never stopped organized “white collar” criminal activity in the United States, or abroad. Today’s corps of sophisticated criminals are way too smart for that. They make far more money from their crimes than they could ever possibly be forced to pay back in civil litigation penalties, even in the unlikely event they are caught. Experienced defense lawyers, offshore operations and bank accounts, the anonymity of the Internet, and “loopholes” in our legal system, provide them the perfect alibis and companions. These modern day pirates have infiltrated every possible realm of digital content distribution imaginable. The only truly effective deterrent for this type of criminal activity, as with other types of organized crime, is the reality of spending a substantial amount of time behind bars in jail. Tough laws are on the books. Do we have the guts to enforce them?”

An Unbridled Crime Epidemic Threatens Us All As We Enter the New Digital Millennium

Who’s Web is this anyway? And where is it? Who runs it ... and who sets the rules? Is it ‘The Researchers Web’? Or ‘The Educators Web’? Who pays for this thing? How about ‘The E-tailers Web’? Or has it, indeed, simply become ‘The Pirates Web’? So you think there’s room for all of us? Think again. Pirates tend to be a greedy lot. They don’t like sharing their “space”... even their “cyberspace”.

What was once an enormous “scientific lab” for researchers and educators worldwide, grew into the great “information superhighway”, and, in fact, helped improve communications and information flow around the globe. It was wonderful. Then came the businesses, and a whole new set of rules, and buzzwords, like “zero gravity”, and “bandwidth”, let alone “e-mail”, “e-commerce”, and “e-everythingelseimaginable”. Along with businesses came the advertisers, all somewhat afraid to fall too far behind. After all, all of these new “eyeballs” represented an enormous market of new shoppers, flyers, investors, travelers, and the like. All of a sudden, big money was the name of the game, and these new markets were virtually untapped ... and unregulated. Throw in no taxation and things appeared almost too good to be true.

But another culture was forming as well. A culture that is always lured by large sums of money ... and one that thrives on new business opportunities, particularly those with minimal rules and regulations. Some people call them the “digital mafia”. Others simply call them copyright infringers, or pirates. Yes, this new frontier was easy prey, as thousands of would-be “cyberthieves” set sail to conquer the “cyberseas” and claim their fair share of cyberspace. But they weren’t alone. Sophisticated, organized, and well-financed organizations had already staked out their claims for illicit content distribution in this new world. Yes, they knew the copyright laws, both here in the U.S. and abroad, and how to get around them. With a little luck, and the right game plan, they could seize the lion’s share of what they hoped would become ‘The Pirates Web’. Digital content distribution was a pirate’s dream come true.

But surely we have laws to protect us. Civil and criminal statutes alike. We know how to deal with these digital pirates, don’t we? Oh no, maybe we don’t want to actually hear this answer.

Have you ever wondered why we hear so little about “digital piracy” ... or about any of these individuals, or companies, who have actually lost a civil litigation lawsuit involving these “crimes of the new

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millennium”, such as Internet securities fraud, stock manipulation, Internet false advertising, digital software/music piracy, or even copyright infringement? And yet we read more and more every day about how these illegal activities have grown exponentially over the last few years. It makes you wonder. Are our current copyright laws adequate to protect some of our most profitable and fastest growing U.S. industries as we begin the 21st Century? What will be the impact on the U.S. economy as a whole if these industries begin to falter?

Three “real life” case studies will help you understand the enormous risks to survival we all face.

To examine both the magnitude, and the risks, of these modern day digital piracy networks more closely, let’s take a “real life” look at three extraordinary willful copyright infringement cases involving Internet software and entertainment publisher, NBCi/Xoom.com, U.S. based software and book publisher, Macmillan Publishing, and European book and software publisher, Sybex Verlag of Germany, part of the global Sybex Publishing network. Surely, these well respected pillars of international copyright protection aren’t involved are they? Read on. You draw your own conclusions. I’ll try to simply give you the facts.

Xoom.com, as many of you probably already know, is now a key component of the new NBC Internet (or NBCi, for short), and part of the expansive General Electric/NBC global empire. Just a few short years ago, Xoom.com did not even exist. Today, NBCi is the 7th largest Internet company in the world in terms of membership and traffic. Since its inception in 1996, Xoom.com’s most successful claim to fame has been as the owner of “the world’s largest library of proprietary, copyright-cleared clip art images for the Web”, which Xoom.com and dozens of its business partners have either sold or given away, mostly for “FREE”, over the Internet. Xoom.com has also run one of the largest digital content piracy networks ever uncovered for the past three years. They are truly one of the charter members of ‘The Pirates Web’.

Macmillan Publishing, based in Indiana, is one of the oldest, and most successful, book publishing companies in the United States. Many of Macmillan’s most popular imprints focus on computer technology, software, and Internet titles. Macmillan Software has also become one of the leading software publishers in the United States. Many Macmillan Software titles provide solutions for desktop publishers, Internet webmasters, and graphics arts content (clip art illustrations, animations, design templates, etc.) consumers. Macmillan Publishing, now a division of Pearson Education, was sold by Viacom to Pearson PLC of London, England, in early 1999. Watch how cleverly, and easily, even some of our oldest publishing institutions got caught up in this vicious cycle of piracy and cover-up activities.

And finally, there’s Sybex International. Learn how easy it is to conceal a piracy ring once a beachhead is established overseas. Sybex Verlag of Germany is an affiliate in the global software and book publishing empire started by Sybex, Inc., based in Berkeley, California. Other affiliated Sybex offices operate out of France, the Netherlands, and the United Kingdom. Independent Sybex distributors operate in dozens of other countries, worldwide. Sybex claims to be one of the largest and most successful independent publishing companies in the world. It, too, like Macmillan, specializes in technical and computer industry publications and software. Sybex Verlag also licenses its digital content to other software, book, and web site publishers throughout Germany and other parts of the European Union. Sybex Verlag began its piracy operations in 1997, and they’re still going strong today. ‘The Pirates Web’ has no jurisdictional borders.

If anyone should be concerned about the dangers of unbridled software and Internet piracy of U.S. originated copyrighted works, you would think that NBC, Pearson, and Sybex would be among them. You might be surprised by what you learn. Seems there’s often a double standard when it comes to copyright

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infringement and digital content issues concerning CD/DVD products and the Internet. Size matters. You see, many of these larger publishers routinely “procure” their content from their smaller counterparts, often to help build and defend their precious market share in ‘The Pirates Web’. You don’t believe it? Read on, and gather some facts. Also, keep a close eye on the digital content you produce or publish.

First, let’s take a look at Xoom.com’s history. They’re by far the youngest player in the game.

In 1995, Xoom’s two co-founders, Chris Kitze (Chairman) and Laurent Massa (CEO), as well as Xoom Publisher and original board of directors’ member Bob Ellis, were all publishing executives at Softkey International in Cambridge, Massachusetts. At the time, Softkey published some fifteen (15) popular software titles that included vector clip art images provided by Imageline, Inc. of Richmond, Virginia exclusively. Although some of the products included digital photographs copyrighted by Chris Kitze, no other vector clip art was in these original Softkey products. Softkey was also not granted rights to further “sub-license” the Imageline clip art illustrations to other publishers, and was required to acknowledge Imageline’s copyrights on all software packaging, diskettes and CD-ROM media. One of the most successful of the Softkey products was called the PC Paintbrush 3003 Ultimate ClipArt Library, which Softkey initially sold for a Suggested Retail Price (SRP) of \$79.95. All 3,000 or so of the clip art illustrations in this Softkey clip art product were provided under a restrictive license by Imageline.

Xoom (now “Xoom.com”) was formed in September 1996, after Mssrs. Kitze, Massa, and Ellis had left Softkey for other ventures. That same month, Xoom and Softkey officials executed their first of several software cross-licensing agreements involving electronic multimedia clip art content and software. Were the 3,000 Imageline clip art illustrations part of that “deal”, or did one of the Xoom.com founders simply “borrow” the product content for future use when they left Softkey for new Internet ventures in late 1995?

Nine months later, in June 1997, Xoom.com claims it licensed a collection of 4500 vector clip art illustrations, for unlimited further sub-licensing and publishing, from a small shareware company in Australia, called Sprint Software. According to Xoom, this collection, named the “Sprint CD” by Xoom, included virtually all of the exact same Imageline clip art illustrations (2966 in all), in the exact same file formats, and with the exact same file names, as those Imageline clip art illustrations that were in the original Softkey PC Paintbrush 3003 ClipArt Library product. What a coincidence! Sprint officials in Australia now vehemently deny that they provided all of these Imageline clip art illustrations to Xoom.com in 1997.

According to Chris Seepe, former CEO of Xoom clip art licensee Aztech New Media of Ontario, Canada, Xoom provided Aztech with clip art CDs that included approximately 3,000 Imageline clip art illustrations in March or April 1997, several months before Xoom even claims to have obtained the infringing clip art from Sprint. How could this be? Were they perhaps taken by Xoom from the Softkey product instead?

Within ninety (90) days, by October 1997, Xoom had sub-licensed the “Sprint CD” images to at least twelve (12) different prominent software publishers around the world, established “co-branded” clip art web sites with nine (9) of the most popular web site operators on the Internet, and published several of its own CD products (the Web Clip Empire) that all included the “Sprint CD” clip art images. In short, in just a few short months, Xoom had made back many times its original “investment”, or the total licensing fees it claims to have paid to Sprint and others, for its new “massive” clip art library. Xoom.com had finally found the “claim to fame” it so badly needed to establish its brand recognition over the Internet. Now Xoom.com could become the king of Internet content ... the digital clip art king.

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Xoom.com was so successful, in fact, that it began to promote itself everywhere as owning “the world’s largest library of copyright-cleared, proprietary web clip art images”. Webster’s defines proprietary as “made and sold by one having the exclusive right to manufacture and sell.” Xoom.com created its own definition. Xoom’s executives continued to make these false ownership claims, in their press releases and elsewhere, long after they knew that they were not true. Over the next twelve (12) months, Xoom.com used its new found “claim to fame” to execute over sixty (60) additional clip art sub-licensing agreements, distribute hundreds of thousands of clip art CD products, and, by July 1998, to become the 2nd fastest growing Internet company in the world (Media Metrix-June 1998).

So where did Xoom’s original financing come from? Traditional Venture Capitalists?

In its first two years of operations (mid-1996 to mid-1998), virtually all of Xoom’s revenues, and other financing, came from the licensing, publishing, bartering, and distribution of pirated clip art software, primarily those “web clip art libraries” that included the Imageline clip art illustrations. In short, unlike most of their competitors, stolen software became Xoom’s primary source of venture capital funding. Playing off of this initial success, Xoom.com completed a successful IPO in December 1998, achieved a market valuation of over \$1.8 billion, and announced in May 1999 that it planned to merge with Snap.com and a variety of other NBC properties to become NBC Internet (NBCi). Chris Kitze was named CEO of NBCi, which began trading as a new public company (NASDAQ symbol “NBCI”) in December 1999, and is now the 7th largest Internet site in the world, according to recent statistics published by Media Metrix in April 2000. NBCi, through its affiliate, membership, and sub-licensing networks, continues to distribute the pirated software originally stolen from Imageline today, in July 2000.

In a Secondary Stock Offering by Xoom.com in April 1999, just prior to the NBC merger announcement, Mssrs. Kitze, Massa, and Ellis sold approximately \$74 million of their own personal stock holdings in Xoom.com to an unsuspecting public, totally unaware of the magnitude of the illegal software piracy and copyright infringement network that had been initiated by Xoom.com, and that was still actively growing at the time. On February 9, 2000, Mr. Kitze sold \$24 million more of his NBCi stock (approximately 10% of his holdings) for \$81 per share, shortly before Mr. Kitze was replaced as NBCi’s CEO and the NBCi stock crashed to below \$19 per share in mid April. Needless to say, there’s a lot of money to be made from content distribution in ‘The Pirates Web’. No wonder these digital content pirates fight so hard to control this space.

When and how was this “Xoom Infringement Network” first discovered? In comes Macmillan.

In December 1997, Imageline discovered that a software product called Holy Cow!, published by Macmillan Publishing, a division of Simon & Schuster/Viacom at the time, infringed Imageline’s copyrights in a substantial quantity of electronic clip art images. Macmillan officials informed Imageline that they had licensed the Imageline clip art illustrations in Holy Cow! from Xoom.com of San Francisco, California, that Xoom.com executives had assured Macmillan that Xoom was the original developer and owner of the clip art images, and that the copyrights to all of the images had been “cleared” by Xoom.

In January 1998, Xoom received official notice of copyright infringement from both Macmillan Publishing and Imageline. Xoom claims it immediately sent a copy of its “Sprint CD” to Macmillan so that Macmillan could remove all of the infringing illustrations from all Macmillan software products (and books), not just Holy Cow!, but, for some unknown reason, Xoom refused to send a copy of the “Sprint

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CD” to Imageline, even after receiving documented evidence of Imageline’s copyright registration certificates, clip art product manuals, original sketch materials, and other information verifying Imageline’s exclusive ownership in the clip art illustrations. Why was Xoom hiding this critical evidence from Imageline? Did a “Sprint CD” even really exist at the time? Or was it simply the Softkey CD?

Macmillan continued to manufacture, publish, and distribute new infringing software products for at least twenty-eight (28) more months, through April 2000, claims to be indemnified against all infringement liabilities by Xoom.com, and also now contends that it never received the “Sprint CD” from Xoom.com. From September 1997 to September 1999, Macmillan published at least sixteen (16) different software products, and an untold number CDs bundled with their books, which included the unauthorized clip art illustrations owned exclusively by Imageline. Macmillan went from nowhere to become the fourth largest U.S. publisher of business and productivity software during this same period of time.

Why hasn’t Macmillan stopped their infringements? After all, weren’t they an “innocent” victim?

This is one of the first questions almost everyone who hears this story wants to know. After all, eleven (11) of the sixteen (16) Macmillan software products Imageline has discovered as infringing a significant number of its copyrights were developed and published by Macmillan after Macmillan received official notice of copyright infringement from Imageline in January 1998. Was it total incompetence in Indiana? Did the executives at Simon & Schuster in New York, who knew about the infringements as early as February 1998, fail to exercise their authority properly over the Macmillan Division? Was everyone too busy trying to complete the billion dollar sale to Pearson PLC to concentrate on these infringement issues in 1998 and early 1999? Did Macmillan somehow feel that its indemnification claims against Xoom.com would simply cushion it from any infringement liability, even its willful conduct? Did Macmillan executives feel Imageline was simply too small, and too weak, to protect its copyrights in court? Or was Pearson convinced it could hide behind some supposed flaws in Imageline’s 1996 copyright registration filings to escape all liability for its continued willful infringements? Who knows?

Different executives and attorneys from Macmillan, Simon & Schuster, Viacom, and now Pearson Education, have made different contradictory claims over the years. Except for those at Pearson, all of these executives and in-house attorneys have gone on to greener pastures today, and yet the widespread Macmillan copyright infringements continue. Macmillan claims copyright ownership to well over a thousand different book titles in its current inventory. How can a company such as Macmillan, that depends on the adequate enforcement of our copyright laws for its own survival, possibly take the position it has taken on these copyright infringement issues with Imageline? It is truly remarkable. There is no good answer to this question. Believe me, Imageline has asked it repeatedly.

What happened after January 1998 with both Xoom.com and Macmillan Publishing reads like a “Software Piracy for Dummies” handbook. It also helps to illustrate many of the inadequacies of our current copyright laws, serious problems that prohibit the vast majority of legitimate copyright owners from being able to prevent “digital” piracy of their proprietary works through civil litigation procedures in our federal courts. Some of these inadequacies are truly shameful.

Far worse than Xoom.com’s executives’ original software piracy activities has been their continued efforts to deny, conceal, and cover up their vast worldwide copyright infringement network (in spite of overwhelming evidence against them) from Imageline, Xoom’s early private investors, the SEC, Xoom’s clip art licensees and other business partners, Bear Stearns, Xoom’s auditors, the NBC due diligence team,

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NBCi and Xoom.com shareholders, the Xoom membership community, the media, and the U.S. Federal Court System. The illegal cover up has been masterfully implemented by all of those involved.

The vast “Xoom Infringement Network”, as it is now called, was based, primarily, on Internet distribution models conceived by Xoom.com executives Chris Kitze and Laurent Massa, with little or no regard for international intellectual property laws, or the associated risks of civil penalties being assessed against them. In fact, the copyright infringements initiated by Xoom are so widespread, and involve so many other companies around the world that became affiliated with Xoom.com since June 1997, that they will take literally years to unravel. The research into these infringements has been made far more difficult (and in many cases impossible) since many critically important license agreements were apparently destroyed by Xoom.com (or, for some other reason, are mysteriously “missing in action”), and those that do exist don’t even list the individual clip art images licensed by Xoom.com to its clip art sub-licensees on their Exhibits (an extremely rare oddity in a legitimate software licensing business, yet one that has seemed to work thus far to Xoom’s benefit).

Thus far, Xoom’s software piracy scheme has resulted in hundreds of millions of dollars of value to Xoom’s former executives and primary shareholders, while they have faced little or no recourse for their crimes. They simply continued their infringements and appeared unfazed by the reality of facing substantial damage awards in both Xoom’s pending civil litigation with Imageline, and soon in potentially dozens of additional lawsuits from Xoom.com’s clip art sub-licensees who were granted indemnification rights by Xoom.com. In fact, in February 2000, one such Xoom.com sub-licensee, ArtToday.com of Tucson, Arizona, was charged with over [\\$2.2 million in damages](#) for continuing to display and distribute unauthorized Imageline clip art illustrations provided to them illegally by Xoom.com from their web site. ArtToday’s parent company, IMSI, of Novato, California, has already filed its multi-million dollar indemnification claims against NBCi/Xoom.com. Astonishingly, Xoom.com’s new partner, NBC, has knowingly allowed these willful infringements to continue for seven (7) months now since they merged with Xoom.com in November 1999. They, too, are liable for infringement under U.S. copyright laws.

With no help whatsoever from Xoom.com, NBC, or any of Xoom’s many sub-publishers, sub-licensees, and co-brand partners, Imageline has tracked down an international software piracy and willful copyright infringement network that almost defies description. Xoom’s share of ‘The Pirates Web’ includes one hundred and twenty-three (123) different software products or web sites that were granted illegal publishing and distribution rights to Imageline software by Xoom.com that have been identified thus far. Many of these products and web sites are continuing their infringements today, long after receiving notice to discontinue their illegal activities. Since almost all of these published products and web sites were first discovered by Imageline, and their identity intentionally concealed by Xoom.com, it is likely that they represent only a very small percentage of the total number of infringing products and services originated by Xoom.com and its partners around the world over the past three years.

Even more remarkable has been NBC’s refusal to help stop the infringements. Specific examples of many of these ongoing illegal activities were delivered to NBC senior executives on both December 6, 1999 and February 23, 2000, in an attempt to get NBC to force NBCi/Xoom.com to put a halt to these ongoing infringements. No one from NBC ever responded to a single ongoing infringement claim spelled out in detail by Imageline in each of these notification packages sent to NBC. Perhaps they were simply too overwhelmed by NBCi losing over 80% of its market value during that same period of time. NBC officials maintain today that they are unaware of “any” willful infringements initiated by Xoom.com.

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Astonishingly, Xoom concealed all other clip art sub-licensees, including Sybex, through July 1998.

When Xoom.com was first contacted by Imageline in January 1998, Laurent Massa claimed that Macmillan Publishing was the only company to whom Xoom had ever licensed the infringing clip art on the "Sprint CD". In February 1998, Tobey Marsouk sent a letter to Imageline which made the exact same claim. Xoom.com continued to make these fraudulent claims throughout March, April, and May 1998 in numerous conversations and documents. All the while Xoom was trying hard to cover its trail. It was already in discussions with NationsBank, and later Bear Stearns, to underwrite Xoom's plans for an Initial Public Offering (IPO) of its stock in the fall of 1998. It could not possibly allow a willful copyright infringement network to be disclosed and ruin its plans.

In a letter sent to Imageline on June 23, 1998 by Tobey Marsouk, Xoom.com, once again, claimed that Macmillan was the only company in the world that had licensed the infringing clip art illustrations from Xoom. In the letter, Xoom offered Imageline \$35,000 to "settle" all disputes. However, Imageline was already aware of dozens of other companies who were claiming they received Imageline clip art illustrations directly from Xoom.com, and obviously refused Xoom's offer. Mr. Marsouk also failed to mention in his letter that Xoom.com, and at least six (6) of its clip art co-brand partners (including ZDNet, InfoSpace, Go2Net, SimpleNet, and Jumbo!), had just introduced a brand new version of Xoom's "FREE" online clip art service, and one that included 642 of the pirated Imageline clip art illustrations, now converted to new Internet formats by Xoom.com.

Once Imageline discovered yet another infringing Xoom.com clip art licensee (software publisher Aztech New Media) in late June 1998, and Xoom.com was notified of this discovery, Tobey Marsouk sent Imageline yet another "settlement" letter on July 14, 1998. This time, Mr. Marsouk claimed he and Chris Kitz had met, scoured through all the books and records at Xoom.com, and found six (6) additional Xoom clip art licensees, all in Europe, who had licensed the infringing software from Xoom. Sybex Verlag in Germany was among these six. In this letter, Xoom.com offered Imageline \$250,000 to "settle" all claims. In spite of having seen evidence to the contrary, Mr. Marsouk and Mr. Kitz continued to deny that Xoom.com had posted any Imageline clip art illustrations on their new online clip art service.

Imageline President George Riddick flew to San Francisco to meet with Xoom.com Chairman Chris Kitz on July 16, 1998. The meeting at Xoom headquarters lasted over 2 1/2 hours. Mr. Riddick disclosed the identity of over a dozen other software publishers and web site operators who were distributing Imageline clip art illustrations they had licensed from Xoom. Mr. Kitz denied any knowledge of these Xoom clip art licensing partners, and yet offered to pay Mr. Riddick and Imageline a "substantial settlement" amount, mainly out of his own pockets since "Xoom is virtually worthless and simply doesn't have any money". Imageline, of course, had to agree not to contact any of Xoom.com's investment bankers, co-brand partners, auditors, or other financing sources about the infringements. Xoom.com's settlement offer this time was for \$500,000 in cash, and approximately \$250,000 more in advertising credits and co-marketing benefits. Imageline, once again, conditioned any further settlement discussions on full disclosure by Xoom.com of all of its illegal clip art sub-licensing agreements. Mr. Kitz promised Mr. Riddick that Imageline would receive "the complete list" within a week. The list, obviously, was never sent. Mr. Kitz had another game plan in mind.

Once again, this time Xoom.com was only two weeks from filing its IPO papers with the SEC. As a matter of fact, Bear Stearns was there performing some of their final due diligence reviews, on the very same afternoon as Mr. Riddick, July 16, 1998. What could Xoom do? If they sent Imageline the complete

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list and Imageline refused to settle, Xoom's entire financing plans could be ruined. After all, they had already prepared some of their preliminary documents, covered up most of their infringements, and discussed the extent of their liabilities with Bear Stearns, their auditors, Ernst & Young, and their new securities lawyers. All of these records claimed a minimum number of Xoom clip art licensees, just as Xoom.com had represented to Imageline all along. Little did this Xoom.com IPO support team know that Xoom had in fact licensed over sixty (60+) separate software publishing companies and web site operators to distribute the infringing Imageline software. Most long after receiving notice. What a predicament. What could Xoom do? They were just a few short weeks from realizing their dream. A dream that would lead to enormous wealth for both Kitzel, Massa, and the other original "investors" in Xoom.com.

What Xoom decided to do was file a preemptive lawsuit against Imageline, Mr. Riddick personally, and two Imageline consultants. Xoom.com also filed suit against Sprint Software in Australia to try and give credence to its first official attempt to position itself as the "victim". Xoom.com further claimed that Imageline somehow did not own many of its clip art illustrations, had not registered them properly in 1996, would not disclose all of the Xoom clip art licensees it had discovered, and was harassing Xoom's customers in an attempt to stop Xoom's willful infringements. In a travesty of justice never before seen in the software or Internet digital content industries, Xoom.com, and now NBCi, has successfully ridden this "red herring" legal strategy to cover up its ongoing criminal infringement activities for over two years.

So what about Sybex Verlag in Germany? What have they been doing all this time?

Well, this story is almost too hard to believe as well. But, if you knew how hard it is to stop international digital piracy rings (if you can find them), you'd probably understand. Sybex Verlag signed four (4) separate clip art licensing agreements with Xoom.com during this period of time. The first contract was signed on October 10, 1997. Subsequent licensing agreements were signed on February 16, 1998, June 29, 1998, and August 4, 1998, all after Xoom.com had received official notice from Imageline.

Sybex Verlag established its own piracy network in Europe. Why shouldn't the EU share the rewards of 'The Pirates Web'? You see, Sybex apparently licensed clip art illustrations from other companies as well as Xoom.com. But in the case of Xoom, they were also granted rights to further "sub-license" the infringing clip art illustrations to other software publishers and web site operators all throughout Germany, and apparently in some other European countries as well. Imageline has documented over a dozen software products published by the Sybex organizations in Europe, as well as a number of Germany's largest web site clip art distributors, as continuing to publish, display, and/or distribute hundreds of infringing Imageline clip art illustrations provided to them by Sybex Verlag in Germany.

Xoom.com claims in documents submitted to the federal courts in Virginia that Sybex Verlag of Germany was notified of these copyright infringements against Imageline in April 1998. Sybex officials as recently as June 2000 have steadfastly denied these claims. Who do you believe? There appears to be enough money to be made in 'The Pirates Web' for everybody. Sybex, too, just as Xoom.com did before them, has refused to identify the software publishers or web site operators to whom they sub-licensed the infringing clip art in spite of numerous requests by Imageline. Every infringing software product, book, and web site discovered by Imageline thus far has been uncovered on its own, or through independent investigators.

So tell me again why NBCi and its business partners still refuse to stop these infringements?

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Once again, Imageline executives and investigators are asked this question just about every day. We have no answers. The only possible explanation is that NBCi/Xoom.com's executives and attorneys must believe they will not be punished under the current copyright laws of the United States for their criminal activities. Or, that even if they are punished, they will only have to pay back a small percentage of the money they have been able to make illegally from their piracy network. How could these "willful" infringements, which began in June 1997, possibly still be going on today, in July 2000? Didn't Imageline file a counterclaim in federal court against Xoom.com for "willful" copyright infringement, software piracy, and false advertising way back in September 1998? That's almost two years ago. Why weren't injunctions ordered immediately against Xoom.com and these other Xoom-related infringers? Why has the case dragged on this long? Why hasn't the FBI or Justice Department yet taken any action? How could there be any doubt, whatsoever, as to the willfulness of these crimes?

Here's where this story becomes even more unbelievable, and frustrating, and should be studied closely by any individual, or company, that believes they have adequate protection (or in some cases any protection at all) for the copyrighted content they have created and/or published here in the United States. In fact, as unfair as it seems, our U.S. copyright laws give substantially greater protection to copyrighted "works" first published by non-U.S. citizens outside of the United States. It all has to do with statutory damage claims being tied directly to an antiquated registration process practically no one uses properly, and most people don't even realize that registration is even needed for the legal protection of their copyrighted works. It is estimated that less than two percent (<2%) of all qualified copyrighted works created here in the United States are registered properly with the U.S. Copyright Office and the Library of Congress, so this "registration loophole" serves as an open invitation to willful copyright infringers all over the world. And the sophisticated digital pirates know these factual realities. It's one of the cornerstones in the bylaws of 'The Pirates Web'. If you learn nothing else here, at least learn to register your digital content.

It seems our current U.S. copyright laws seem to favor the infringers, even when willful. Why?

It's sad, but true. Civil litigation for copyright infringement here in the United States favors the "infringer" in practically all counts. Savvy copyright defense attorneys know this and rarely, if ever, actually lose a major civil case. Those cases that do go to a final judgment by a jury, or by a judge, rarely, if ever, pay the original copyright holder enough money to cover the total cost of litigation, let alone the damages sustained, or the substantial outside research and legal expenses associated with this type of litigation. In fact, if an infringement occurs before a legitimate copyright is registered (even though this registration procedure, as noted earlier, is optional, and is not implemented by over 98% of the copyright holders in the U.S.) no award for attorneys fees, or statutory damages, can be awarded to the copyright holder, even when willful infringements are proven in court. This rule is ludicrous, and actually encourages infringement rather than discourages it. It make absolutely no sense, whatsoever, and benefits no one other than "willful" copyright infringers (criminals), their copyright defense attorneys, and their business associates.

Why is this? It seems totally unfair and can't be what the founding fathers meant when they included protection for "the original rights of authors and artists" in the Constitution over two hundred years ago. The problem is most members of Congress are totally unaware that these types of copyright "loopholes" still exist. And thus far, the U.S. Copyright Office and the copyright industries have been unsuccessful in getting Congress to pass the amendments needed to correct these obvious discrepancies. Perhaps with all the attention these days to Napster, MP3.com, iCraveTV, and other high profile copyright infringement

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cases regularly in the news, our representatives in Washington will take a fresh look at these horrendous “loopholes” in the current law.

If you think our U.S. copyright laws are hard to enforce, try stopping a piracy network in Germany.

As any good copyright attorney will tell you, the statutory damage provisions in our U.S. copyright laws were put in place for precisely the type of infringements we see over the Internet. Why? Because of the very nature of infringements over the Internet, where literally perfect copies of any digital “work” can be produced in minutes, and distributed to tens of thousands of people almost instantly, the exact number of infringing copies is virtually impossible to calculate. In fact, it may be difficult for an original copyright holder to find even a small fraction of those Internet users infringing their property. Actual damages, at least as our current copyright laws define them, are often virtually impossible to prove. The criminal provisions of our copyright law (particularly those pertaining to calculating the value of the stolen goods distributed), have improved dramatically in recent years, but still have a long way to go.

So, what’s this all mean? Well, statutory damages are what most copyright holders will try to use to prove their damages in civil cases, and yet, as indicated earlier, well over 98% of all legitimate copyright holders do not qualify for these damages. If a small digital content copyright holder is not eligible for statutory damages and attorneys fees, they often find it nearly impossible to find a good copyright attorney to take on their case. Worse yet, many countries outside of the United States don’t even have provisions for statutory damages in their laws. Our neighbors up in Canada just added them within the last year after much debate. Here again, what’s the rationale for this? It seems to make absolutely no sense at all. Now you probably can see why those members of ‘The Pirates Web’ who really know their business almost always run substantial parts of their infringement networks in countries where no statutory damages are possible. If these copyright laws, that were not originally conceived for the Internet, do not change soon, the digital pirates will gain control, and practically all content will be distributed through ‘The Pirates Web’.

Germany is one of those countries that has not yet modernized their civil copyright infringement laws to properly address Internet infringements. Surprise, surprise, surprise. Did I mention that six (6) of Xoom.com’s clip art sub-licensees, as well as Sybex Verlag, were located in Germany? Imageline is just now beginning its investigations into the software publishing, book publishing, and Internet industries in Germany. German government agencies are also being asked to pledge their support.

Here’s how many of these digital piracy networks work. Use this to stop the pirates, not join them.

Each year the Internet, and other new technologies, present golden opportunities for would-be pirates to operate almost anonymously, and prosper substantially. In just days, if not hours, literally millions of exact copies of original copyrighted images, or songs, or other software, can be distributed around the world, generating millions of dollars of value to the infringers. Unlike other forms of piracy, such as CD replications, counterfeiters, luxury trademark infringers, and even those infamous buccaneers we’ve read about in history, Internet pirates don’t have to handle “tangible” goods, don’t need expensive production plants and equipment, don’t need much capital to get started, and don’t even need dangerous sailing vessels to facilitate their crime. Thus, their risks of being caught, and their costs of operations, even when compared to other profitable criminal activities, are very negligible. This is precisely how Xoom.com, with no venture capital backing at all, was able to offer thousands of pirated Imageline clip art illustrations

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to over 50 million Internet users around the world (most often for FREE), in just six months, from October 1997 to March 1998, according to press releases issued by Xoom.com at the time.

Yes, almost anyone can be a successful pirate in the new “digital age”. A very small fraction of Internet pirates are actually caught, and, if caught, an even smaller percentage are ever actually punished. An infringing web site can be closed down in one area, and be back up and running, probably under a new name, within hours in another city, state, or even country. Broadband, DSL, and other new Internet access technologies, will give these piracy networks even more digital products to “procure” and distribute in this new millennium, as the piracy of full scale motion pictures, books, and television programming becomes a digital reality. Just look at the recent activities of iCraveTV as an example of what’s to come. This Canadian company was caught “broadcasting” television programming over the Internet without authorization from any of the legitimate copyright holders. And many countries are far more lenient on copyright infringers than our neighbors up in Canada. What happens when these “re-broadcasts” start to originate from Pakistan ... or Afghanistan ... or even Russia? How do we stop them then? The Internet makes all of this a reality.

Speaking of broadband, it really makes you wonder how NBC could become a member of the new Copyright Assembly to encourage Congress to pass new laws to help protect NBC’s own copyrights, while at the same time turning its back on the ongoing worldwide infringement activities against Imageline. Maybe you should ask that question of Bob Wright (CEO of NBC) or Jack Welch (CEO of General Electric). Imageline already has, several times in the last seven months, and has gotten no response at all.

If there’s no real punishment, why should anyone stop infringing? Maybe that’s the sad reality.

This could very well be the jest of this entire problem. If we are relying on moral fortitude, alone, to establish the guidelines for digital content distribution over the Internet, we’re all in for some very rough times ahead. However, the United States has been historically weak on enforcement against copyright infringement, and most digital pirates, even when caught, are still rarely punished. A slap on the wrist only encourages more infringements, usually more damaging the second time around. And, when you really think about it, why should other countries take a hard stand against digital piracy if the U.S., where the vast majority of these copyrighted works originate, won’t even punish its own criminal infringers?

A lot of the tough “talk” we hear from congressmen, senators, and copyright advocates these days is purely political rhetoric. We need more action, not more talk. We need the current laws to be amended, and we need new laws specifically aimed at addressing these problems enacted. And most of all, we need to see some of the founding godfathers of ‘The Pirates Web’ arrested. If we think this piracy epidemic is going to somehow cure itself, or that other countries are going to take the lead on developing this cure, we are crazy. It’s simply not going to happen ... period. The way we’re going now, this digital piracy problem is going to worsen and worsen until it’s too late to do anything about it.

It’s high time for the U.S. to stop talking about how tough we could be, and actually do something about these crimes that are spreading like wildfire around the digital world. If we don’t, it’s not going to take too many more years for many of our copyright producers to fold, and for this problem to cascade totally out of control. Once again, here’s the central theme of this report ... **if the U.S., who has more to lose through its copyright industries than all of the other countries around the world combined, is not willing to take the tough stance that is needed to stop these digital criminals, than who will?**

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The stories of Macmillan Publishing, Sybex Verlag, and NBCi/Xoom.com, were used to guide you through this Special Report on ‘The Pirates Web’ for one primary reason: If we can’t even stop high profile, intentional “pirates”, like the original founders of Xoom.com, the corporate executives at Macmillan Publishing, or the industry “pioneers” at Sybex International, then how can we possibly catch, and stop, the thousands of new digital pirates signing onto the Internet to make their fortune every day? And your digital content provides them with all the “free” inventory that they’ll ever need.

‘The Pirates Web’ has no membership fees. New members’ role models are the Internet multi-millionaires, like Xoom.com’s Kitze and Massa, who started with nothing just three short years ago. New pirates see the patterns of these established pros. They know the secret to a pirate’s fame and fortune is simply this: If you are going to join ‘The Pirates Web’, you must do so in a very big way. The more you infringe, the more value you can achieve from your illegal activities. The more value you can create, the more you can afford “experienced” copyright defense attorneys, and the more you can spread your infringements rapidly among others. The more experienced your attorneys, and the more widespread your network, the more likely you can find legal “loopholes” to shelter your infringements, or, at a very minimum, drag out the legal proceedings for years, such that only a very small handful of legitimate copyright holders could possibly afford to “stay with you in court”. And if you pick your pirated material carefully, and steal only those U.S. copyrighted works that are not registered, the copyright holder most likely can’t take any legal action against you at all. At least not where statutory damages are concerned. The whole situation is a shameful mess, yet, unfortunately, very true.

You’ve probably gotten the picture by now. David can’t play in this game. Not under these rules!

It’s easy to see why the vast majority of copyright infringement claims are settled, or dropped entirely, by “David” at the first sign of “Goliath’s” intentions to drive up the costs of litigation, and spread the process out indefinitely. David simply can’t afford the risks to try and protect his own property. Unfortunately, the vast majority of all copyright infringements go on indefinitely, and are uncontested, in this country. And the problem is even worse overseas. There’s really not much that the small developers can do.

This brings up the next “golden rule” for would-be new members of ‘The Pirates Web’. Do not pirate music, software, or other content owned by the likes of Microsoft, Adobe, Disney, or Warner Brothers. These copyright holders can match the “deep pockets” of almost all Internet pirates (even those like Xoom.com/NBCi, Macmillan, and Sybex) and can afford to press a civil infringement case to its limits. By the way, you don’t see many of these “Goliath vs. Goliath” cases going to trial either, because these wealthy copyright holders almost always find effective ways to “encourage” the pirates to stop their infringements and settle very quickly. The sad reality is that it is only the small content development company, or individual copyright holder, the “David’s”, who can’t play in this game. The same companies, and creative people, that are responsible for the vast majority of all original creative content innovations in this country, and have always driven the success of the major copyright industries in both the United States and abroad.

How do these Digital Pirates learn how to avoid significant liabilities, even when they’re caught?

Savvy copyright defense attorneys have learned how to prey on the lack of technological sophistication in many of the federal court systems in this country. Forum shopping (or trying to bring your lawsuit forward in a preferred jurisdiction) has become an “art” among many experienced Intellectual Property

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(IP) and copyright attorneys. Some of the new technology issues presented by the new software and Internet technologies today are so complex that only a handful of the most experienced federal judges in the country can understand them. Just look at the Microsoft antitrust trial, or the Napster case, if you want some obvious examples. How many different lawyers and judges have differing opinions on this one? Many copyright laws are also very ambiguous, and have led to inconsistent rulings in different jurisdictions around the country. Ambiguity and doubt almost always seem to work to the benefit of the defendant, or in this case, the copyright infringer, in our complicated legal system.

Even while our copyright laws try to adapt to the new “digital economy” here in the United States, the new ‘Digital Millennium Copyright Act’ (October 1998) tries to further adopt new worldwide standards from the World Intellectual Property Organization (WIPO) treaties. The theories are good, and the new laws are a sincere attempt to move forward for the most part, but the harsh reality is that there is little or no consistency in the copyright rules, regulations, or penalties from one country to another. Even Canada, our closest neighbor, for years failed to adopt adequate statutory damage provisions for copyright infringement. And even in some of the countries where the laws are reasonably adequate on the books, there often is little or no consistent enforcement of the laws that are in effect by those in authority.

More and more often these days, new defenses for copyright infringement, even when willful, are being used by these digital pirates, and their seasoned copyright defense attorneys. Judges are accepting arguments of “copyright abuse”, “copyright misuse”, “improper registration”, “fair use”, “unit of first publication”, “business interference”, and “de minimus infringements” to throw legitimate claims out of court, or to delay hearings almost indefinitely. Current copyright law also lets the infringers claim little or no actual damage value for their infringements, particularly when the pirated goods are given away (often for free) in mass quantities by the pirates to attract customers for other products and services. This is precisely how Xoom.com became the second fastest growing Internet company in the world in less than nine months. New criminal copyright law provisions have attempted to correct this obvious injustice, but their enforcement, too, has been inconsistent and unreliable to date.

Another “creative” technique employed by many of the more sophisticated digital pirates these days uses the relative ease of access to the global marketplace presented by the Internet. Computer “Servers” can be located in countries with slack laws, or enforcement, against copyright infringers. Money earned from illegal Internet activities can be easily laundered into bank accounts in other countries. Or, as in the case of Xoom.com, pirated software can be “licensed”, or pretended to be licensed, from a company in a foreign country, like Taiwan or Australia. It then can be virtually impossible to force the original licensor, if they even truly exist, to appear in a civil legal proceeding in the U.S. And the willful infringers, like Xoom.com, can continue their infringing activities indefinitely, assuring their investors, members, and business partners that they will be “indemnified” for any infringement liabilities by the foreign company that they claim originally “supplied” them with the pirated goods.

How about all of these new laws. You read an awful lot about them. Why haven’t they helped?

Congress realized many of these problems back in 1997. Even though many of the “loopholes” in civil litigation for copyright infringement were not properly addressed by Congress at that time, a new bill, called the ‘No Electronic Theft Act’ (the “NET” Act), sponsored by Rep. Bob Goodlatte of Virginia, was signed into law in December 1997. The NET Act closed many of the “loopholes” Internet pirates were using to escape criminal prosecution for their willful copyright infringements at that time. The new law also established certain new infringement “thresholds” for qualification of criminal felony and

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misdeemeanor charges under U.S. copyright laws. Profits, or direct financial gains to the infringer, were also removed as a requirement for successful prosecution. The new law established the infringement of ten (10) or more copies of a copyrighted work, or works, with an original “retail” value of all of the infringed works combined of \$2500 or more, in any one hundred and eighty (180) day period, as the minimum threshold for a felony conviction. Fines could be as high as \$1,000,000 (depending on the repeat nature of the crime) and jail sentences could be for up to five (5) years, or up to ten (10) years for repeat infringers. At last, the growth of the criminal piracy networks on the Internet would be curtailed, at least that is what copyright supporters thought at the time.

So what has happened since December 1997? In his May 1999 speech to the Congressional sub-committee considering a bill to further strengthen copyright damage awards for both civil and criminal cases of willful copyright infringement, Batur Oktay, Corporate Counsel of Adobe Systems, noted that in the sixteen (16) months following the passage of the NET Act there had been no indictments by the Justice Department for criminal software piracy and infringement. No indictments. According to Congressional testimony, there apparently were no active Commissioners on the Sentencing Commission for many, many months after the NET Act was signed into law. This Commission was required to establish certain guidelines before sentencing under the NET Act could be effectively implemented. All the while, piracy over the Internet continued to run rampant, and cascading networks of infringers penetrated all “copyright industries” and all corners of the world.

Late in 1999, and early in 2000, several arrests were made for criminal copyright infringement in the U.S. The Software & Information Industry Association (SIIA) and the Business Software Alliance (BSA) heavily publicized these events. Yet, the “pirates”, for the most part, have received only a “slap on the wrist”, and thus far, actual jail sentences have been practically non-existent. This type of soft “enforcement” will not work to curtail these highly profitable digital piracy networks. Here again, lenient enforcement will only serve to encourage willful infringements. ‘The Pirates Web’ continues to grow.

The ‘Digital Theft Deterrence and Copyright Damages Improvement Act of 1999’ was approved in December 1999, and increased the potential statutory damages awards for copyright infringement in civil litigation by 50%, to \$150,000 per infringed work. While this is helpful, and scares off some would-be digital pirates, in the rare cases where statutory damages are actually presented to a judge or jury (cases typically involving only our largest and wealthiest copyright holders and publishers), this new law applies to civil litigation damage awards only, and is likely to be ignored by most digital pirates who have seen, first hand, the ineffectiveness of civil litigation procedures in the U.S. at curtailing their piracy activities over the Internet. The new law, unfortunately, did not address, at all, many of the most damaging “loopholes” that still remain in U.S. copyright law, “loopholes” that are now being used by virtually all sophisticated digital piracy networks to escape liabilities, even after their “willful” infringement and piracy activities are discovered and well documented.

So now what should be done? We can’t just fold up the tent. How do we fix these problems?

First of all, we must insist that Congress close the “loopholes” in current copyright law. Either make copyright registration mandatory, or eliminate it entirely as a prerequisite for statutory damage claims. Disassociate attorneys fees from registration issues. They have no logical connection at all. And use the same logical analysis now applied to criminal statutes to calculate actual damages based on the retail value of the infringed works that are distributed. Increase the Statute of Limitations for civil claims from three

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to five years to match their criminal counterparts. And finally, clarify the definition of independent “works”, and how they can be efficiently registered yet retain full protection under the law.

Next, we must educate the federal judges so that the laws are properly enforced and adequate penalties are assessed in civil litigation procedures. We must also insist that the Assistant Attorneys General offices, and their FBI investigators, around the country consistently apply the new criminal provisions of the copyright laws, regardless of the notoriety, wealth, or position of the willful infringers. Criminal prosecutions cannot be applied to independent rogue outlaws and college students alone. Sophisticated “white collar” digital pirates and their network associates (even senior business executives) must also be fined and sentenced appropriately.

And finally, tough sanctions should be applied towards any country unwilling to help us protect the hard earned property of U.S. citizens. Now with the Internet, our traditional means of dealing with pirated goods leaving or coming into this country through the services of the U.S. Customs Service, has to be totally overhauled. We are dependent on the cooperation of foreign governments to enforce these laws. As more and more countries adopt the provisions of the WIPO treaties into their laws, and insist that the laws are properly, and consistently enforced, we could begin to see some improvements in these trends.

The U.S. Government must show the Internet and software pirates both here at home and around the world that the United States is serious about protecting the assets of all its creative developers and publishers (not just the big ones), and that this type of criminal behavior will not be tolerated. The new initiative announced late last year, and led by a special dedicated unit of the Federal Bureau of Investigation (FBI) and the U.S. Customs Service, is a good start in this direction, but the focus must now shift to the organized criminal networks, like the international piracy network formed by Xoom.com, in order for these new “crackdown” efforts to be truly successful. As stated earlier, enforcement efforts cannot simply be focused on individuals, known thugs, and college students, if we intend to make significant progress in curtailing this growing problem. By and large, this is a modern day “white collar” crime epidemic.

First and foremost, our copyright industries must run a clean shop. No double standards allowed.

Businesses in both the software publishing, book publishing, and Internet industries should establish formal procedures for correctly clearing the copyrights for all of the digital content in their software products, bundled in their books, or displayed on their web pages. Secondly, all copyrighted content should include proper attribution, or credits, to the original owners. Violators should be dealt with swiftly and harshly. Repeat offenders should be terminated from employment, and perhaps even turned over to federal authorities. And, most important of them all, willful infringers, particularly those who have profited substantially from their criminal activities, should receive the maximum penalties allowed under law, and promptly be turned over to the FBI and Justice Department if their criminal activities qualify.

For years, we have all seen the reports of the billions of dollars of lost sales, lost tax revenues, and lost jobs attributed to digital piracy each year. The new enhancements to the copyright laws for criminal infringement are a good first step towards potentially reversing this trend, but they have little or no relevance or meaning in the long run if the additional required steps to establish effective deterrents are not taken, and the laws are not properly enforced. Very simply put, we need to see some of these high profile software executives and Internet digital pirates, particularly those that have gained a foothold and established a sizable presence in ‘The Pirates Web’, sent to jail.

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How many U.S. publishing companies do you think would continue to steal digital content from the smaller members of their own fraternity after they witnessed an NBC Special Dateline Report that showed some of their high profile counterparts being hauled off to jail. Think about it for a minute. Do we want to stop 'The Pirates Web' from controlling the illegal distribution of our digital content through all types of media, including the Internet, or do we not? If we do, you and I both know what has to happen. I just hope we haven't waited too late.

This Special Report was prepared in an effort to bring this epidemic problem to your attention by highlighting the cases of three well known publishing companies, Macmillan Publishing, NBCi/Xoom.com, and Sybex International. The real live examples hopefully make the stories more interesting. And yes, the author does have a vested interest in each of these cases. Without these real life examples, however, you would have extreme difficulty believing much of what you've read. I should know. I still find most of it truly unbelievable and I live with it everyday. Hopefully, by applying some of the lessons we've learned at Imageline, you can avoid falling into some of these same pitfalls, and learn to protect yourself from a growing criminal society emerging on 'The Pirates Web'.

The damages caused by these criminals can be astronomical. The infringing copies of Imageline software identified by Imageline as distributed illegally by these three companies, alone, over the last two and a half years since receiving notice of infringement, represent a retail value (based on Imageline's selling price for collections with similar quantities of images in them) of over \$78,125,000 (almost 35,000 times the minimum retail value established for felony criminal prosecution under the NET Act). And, as unbelievable as it sounds, these numbers represent only a very small percentage (probably less than 10%) of the actual number of infringements initiated by these three well-known publishers. Astonishingly, in spite of their direct involvement, or certainly their awareness, of the ongoing civil litigation for copyright infringement that has been underway since August 1998, all of these companies have continued their infringements into July 2000, and there appears to be no end in sight.

The war against Internet piracy can be won. But it won't be easy. We all must work together.

In order to stop digital piracy over the Internet and within the software publishing industry, pirates must see that there is, indeed, a serious consequence to their illegal actions. They must not be allowed to hide behind their "deep-pocketed" war chests, or the ambiguous interpretation and enforcement of the civil provisions of U.S. copyright laws. A slap on the wrist simply makes them eager to go back for more. The digital publishing space is no different than any other space. Those that operate in it must obey the laws, must establish their own rules of proper conduct, discipline, and fair play. Otherwise, chaos will rule, and the true promise of the Internet and other new digital technologies will never be realized.

All of this takes time. In the meantime, properly register your content. It's your only choice.

All of us in the digital content business need to take the time to register our valuable property on a timely basis. It is a relatively simple and inexpensive process. Check out the Copyright Office web site. Or consult your lawyer. It can even be done online these days. As evidenced by this Report, registration can be extremely important as our copyright laws currently exist. And, once registered, just as in the "tangible" world, we must all demonstrate our resolve to identify, capture, convict, and punish the Internet and software criminals who steal our works for their "willful" acts. Otherwise, we'll all continue to talk a big game as we watch our valuable copyright industries start to lose their positions of leadership,

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profitability, and pride, both here in the United States and around the world. We must not be afraid to prosecute willful pirates, even if they do come from well-respected publishing and broadcasting giants, like NBC, Sybex, and Pearson/Macmillan. It won't take long for these "Goliath's" to get the message loud and clear. To solve this problem effectively, we must all work together and remember:

"The fear of financial penalties, alone, has never stopped organized "white collar" criminal activity in the United States, or abroad. Today's corps of sophisticated criminals are way too smart for that. They make far more money from their crimes than they could ever possibly be forced to pay back in civil litigation penalties, even in the unlikely event they are caught. Experienced defense lawyers, offshore operations and bank accounts, the anonymity of the Internet, and "loopholes" in our legal system, provide them the perfect alibis and companions. These modern day pirates have infiltrated every possible realm of digital content distribution imaginable. The only truly effective deterrent for this type of criminal activity, as with other types of organized crime, is the reality of spending a substantial amount of time behind bars in jail. Tough laws are on the books. Do we have the guts to enforce them?"

The Internet should be a place for the honest exchange of goods, services, information, and ideas. Let's all send the same signal to these digital thieves ... 'The Pirates Web' is no longer welcome.

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This Report was prepared in July 2000 for presentation to SIIA (formerly the Software Publishers Association) digital content developers and publishers, selected members of Congress, the U.S. Justice Department, the United States Copyright Office, and business executives from various U.S.-based copyright industries, including music, software, motion pictures, video, print publications, and television. The Report was authored by George P. Riddick, III, Chairman of U.S. Copyrights.com, LLC, and President/CEO of graphics software developer Imageline, Inc, of Ashland, Virginia. Mr. Riddick can be reached by e-mail at griddick@imagelineselects.com, by telephone at (804) 264-0731, or by private facsimile at (804) 264-0732.

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