Monetizing Piracy? Thoughts and Caveats

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Monetizing Piracy?

- Monetizing on P2P – historical view
- Copyright Office Section 512 Study – ISP safe harbors
- Streaming and social media
- Value Gap
- Data Driven Decisions

Monetizing on P2P?

- Anti-piracy strategies are not one size fits all
  - Determine what is appropriate for titles and territories
- Targeting P2P end users for settlements – Germany
  - Culture
  - Laws
  - Specific Courts
- Targeting P2P end users for settlements – US
  - Strong ISP resistance
  - Consumer organization backlash
  - Judges
- Vendor business models do not appear to be prospering

Copyright Office Section 512 Study – why does it matter?

- All about notice and takedown
- Liability of internet services for online infringements
- Congress intended Section 512 to balance the interests of copyright owners and internet (technology) companies, to ensure new businesses and content would thrive without undue threat of litigation
- Basic question is whether that balance has been maintained as the internet has evolved in the last 18 years
  - E.g., peer to peer networks did not exist when DMCA was enacted
- Very hot topic – unprecedented **92,000** comments received in first round
- Second round comments due by Feb. 6, 2017.

Section 512: Safe Harbor Limitations on Liability

- Copyright Law Section 512 provides limitations on liability for online service providers (OSPs).
- Defines 4 categories under which an OSP may not be liable for monetary relief due to copyright infringement *
  - **512(a) – Transitory Digital Network Communications.** ***(= ISPs with P2P users)***
  - 512(b) – System Caching.
  - **512(c) – Information Residing on Systems or Networks at Direction of Users**
  - 512(d) – Information Location Tools
- All OSPs must reasonably implement a policy **to terminate repeat infringers** and must accommodate “standard technical measures”.

* 512(e) also provides for limitations on liability for nonprofit educational institutions in certain circumstances

Section 512(c) safe harbor requirements

- Does not have actual knowledge that content is infringement
  - Does not have "red flag" knowledge of facts or circumstances from which infringing activity is apparent
  - Acts expeditiously to remove or disable content upon obtaining knowledge or awareness
- Does not receive financial benefit directly attributable to the infringing activity
- **Responds expeditiously to remove content upon notification of claimed infringement**
- Establishes a designated agent for receiving notices of claimed infringement with the Copyright Office, and on its website
- Details of notice requirements included in 512(c)(3), including "Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, *a representative list* of such works at that site."

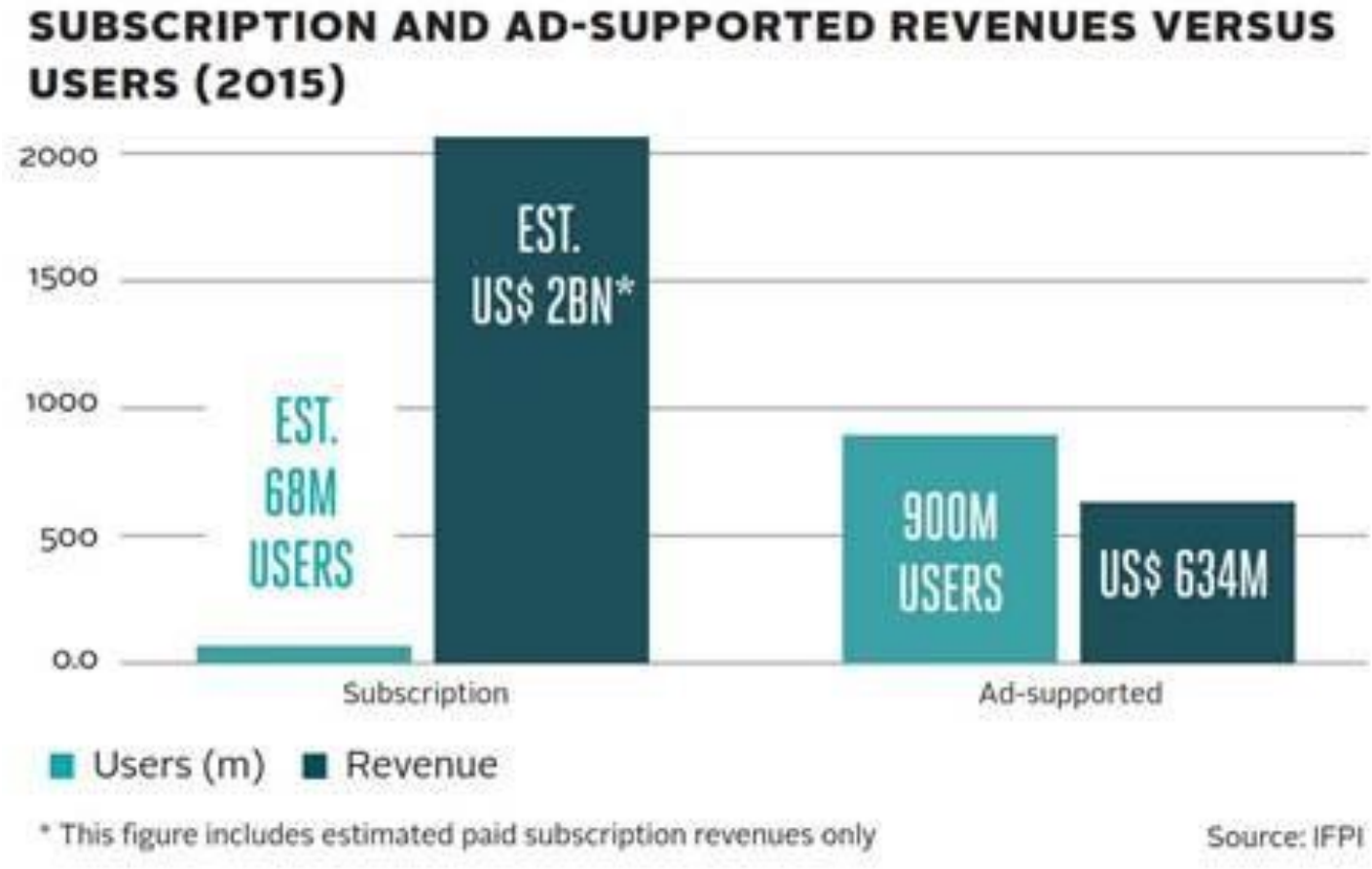
Abuse of DMCA

- ISPs claim that sending DMCA notices to 512(a) mere conduit OSPs, especially notices of claimed infringement ***that include demands of settlement***, abuse the "intentions of the law"
- Recommending financial penalties under the review of the DMCA for various abuses of the DMCA

Streaming and Social Media

- Streaming is predominant piracy format for film/tv/music
- Content Recognition Technology (fingerprints) – business rules
  - Early promise for advanced options – redirect, swap out
  - Not implemented
- Advertising model of monetization on streaming sites
- “Value Gap” documented by music industry
  - User upload sites or services that claim they do not need to negotiate licenses for content, or offer artificially low license rates, claiming protection from safe harbor rules

VALUE GAP – IFPI study



http://www.ifpi.org/news/The-value-gap-the-missing-beat-at-the-heart-of-our-industry

VALUE GAP – IFPI study

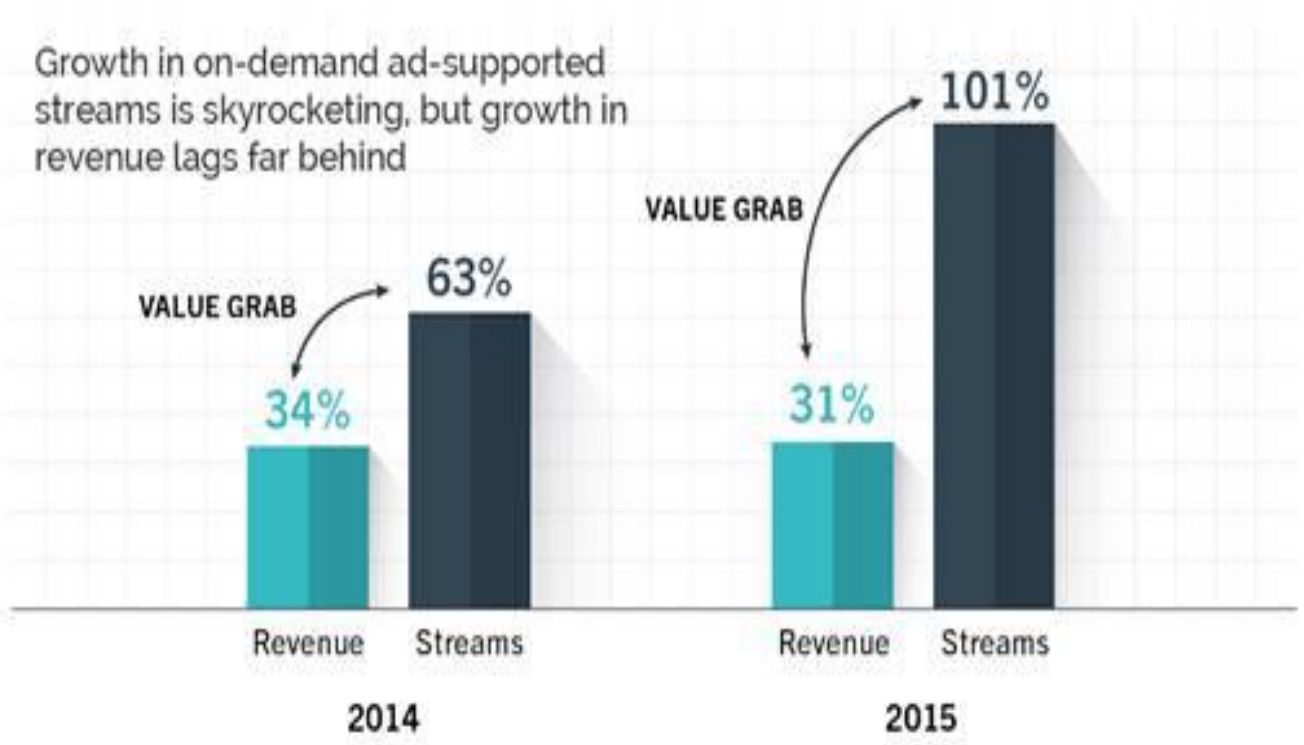


Chart 4.1, p. 12, Music Industry comment filed in first round of Section 512 Study

“The notice-and-takedown system—intended as a reasonable enforcement mechanism—has instead been subverted into a discount licensing system where copyright owners and artists are paid far less than their creativity is worth.”

- Cary Sherman (RIAA), *Valuing Music In a Digital World*, FORBES (Sept. 23, 2015)

Warner Music Group- Value Gap experience

- Unhappy with license fee paid by YouTube, WMG pulled licensed content at end of license in 2008.
- Spent over $2M in anti-piracy efforts to supplement Content ID to try and block piracy on YouTube during next 9 months
- Could not keep up with volume of new pirate music uploaded and the user disputes
- Ultimately signed a new deal with YouTube:
  - “the terms of the arrangement reached by WMG with YouTube in September 2009 were only slightly better than the terms that WMG declined in December 2008.” (p. 7, Warner Music Group comment in Section 512 review)

Details documented in comment filed for Section 512 safe harbor review. See https://www.copyright.gov/policy/section512/ - “First Round Comments” for details

"Facebook will be mostly video in 5 years."
Mark Zuckerberg, November 2014.

Facebook Live launches September 2015.

Facebook video limit expands to 2 hours,
January 2016.

Data Driven Decisions and Opportunities

- Collect and evaluate piracy data
- Seek out new sources of data – social media marketing companies?
- Work closely with business units
- Target outreach for users who both pirate and legitimately consume
  - Multiple studies from different areas of the world confirm this profile
- Work creatively with legitimate partners to address piracy

QUESTIONS?