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## The Future of United States Digital Copyright Law

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THE FUTURE OF UNITED STATES  
DIGITAL COPYRIGHT LAW

by

Andrew N. Nadeau

A Thesis Submitted in Partial Fulfillment  
of the Requirements for a Degree with Honors  
(Political Science)

The Honors College

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## ABSTRACT

United States copyright law has a history as long as the nation and has gone through many forms. The internet, having only existed for a few decades, demanded legal action to define its relationship with copyright. This would result in legislation known as the Digital Millennium Copyright Act (DMCA) the current ruling law on this subject and a major player in this thesis. Since the DMCA, there have been a few proposals to change internet copyright, all of which however, have failed. Two of the failed laws I have examined for their content and to gain a better understanding of the massive reaction they caused. Finally, I have examined published data from major internet related corporations. These values include information concerning upload rates and number of active users. This information offers a glimpse of how new copyright legislation might impact these companies and their users.

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## CHAPTER 1

### AN INTRODUCTION TO INTERNET COPYRIGHT

Copyright is the internationally recognized principle that grants the creator of a product exclusive rights to its distribution and sale. This copyright owner is protected by laws both domestic and foreign to ensure that their rights are respected. The specific variety of copyright that I deal with in the following thesis is the copyright owner whose product exists online. Online copyright is the most modern iteration of the legal principle whose own history extends back to the 1700s. Online copyright is an immense topic that could easily expand to fill volumes of texts, so for the purpose of this thesis I will focus exclusively on the US and its own laws regarding this subject.

United States copyright law has a history as long as the nation and has gone through many forms. The internet, having only existed for a few decades, demanded legal action to define its relationship with copyright. This would result in legislation known as the Digital Millennium Copyright Act (DMCA) the current ruling law on this subject and a major player in this thesis. Since the DMCA, there have been a few proposals to change internet copyright, all of which however, have failed. Two of the failed laws I have examined for their content and to gain a better understanding of the massive reaction they caused. Finally, I have examined published data from major internet related corporations. These values include information concerning upload rates and number of active users. This information offers a glimpse of how new copyright legislation might impact these companies and their users. This is particularly true for companies that exist wholly

online. Their stake in the ongoing debates surrounding internet copyright is significant, and because of this their perspective must be considered.

The future of US copyright law is important to the every day lives of people. It is little appreciated how many interactions occur on a daily basis with copyrighted digital material. People depend on these interactions and more importantly enjoy these interactions. Buying, selling, viewing, and sharing online has become the norm in general society and all of these activities are subject to copyright. The impact of changes to copyright law will rapidly impact the variety of ways and ease with which people exist online. Because of this any changes desired by copyright owners must run a gauntlet of industry opposition, government inaction, and public outcry. Each of these limiting factors has come into play and will almost certainly continue to impact any future legislative movement on this topic.

The major parties involved in internet copyright have been poorly defined and their interactions little understood. In my research I regularly found descriptions of interactions between lawmakers and copyright owners or the common people and industry. I never found a detailed examination of the relationships between what I came to recognize as the four parties who together control and influence internet copyright law. I discuss and better define the four parties at a later point. For the moment however, the four groups I have defined are the people, the government, the copyright holders, and industry for which I have created the umbrella term gatekeeper. By my definition the gatekeeper companies are those who control major access points and sites on the internet. They are, generally speaking, the group that is responsible for flagging and removing copyrighted content that has been posted without permission. Defining the relationships

between these four groups is the most important portion of this thesis. Because of this, much of my analysis is focused on interactions between these four groups. I used my understanding of the interactions to answer the core question at the heart of my thesis.

Fundamentally what I am seeking to answer in this thesis is; what happens to internet copyright in the near future? In order to accomplish this, I spent months researching not only the modern legal proceedings relevant to copyright; I also looked back into history to understand how we arrived in our current situation. The majority of my research, however, went into the past two decades spanning the late 1990s to the present day. This is the critical period for my research as the internet spread rapidly and developed its modern form during this period. Essentially, what I did was take the established legal principle, compared it to proposed changes, and finally examined the objective circumstances present in this topic. From this amalgamation of legal documentation and statistics I have presented options on the future path of US internet copyright law. While it is impossible to know the true course events will take, my examination of relevant data leads me to believe that the scenarios I will present are possible if not downright likely.

## CHAPTER 2

### A HISTORY OF US COPYRIGHT

The history of US copyright goes all the way back to the nation's founding era, with its deepest roots extending back to the English legal system of law. It was from these roots that the early leaders of the United States drew inspiration when drafting copyright laws for the new nation. It is because of this fact for many years US law on this topic looked very similar to English law. As time has passed several major changes to copyright law have been made. Before exploring the exact progression of the law some basic work on the definition of copyright is needed to better understand this vast and complex topic.

When you examine copyright at its most pure legal form it exists to protect creators (authors, inventors, etc...) from having their idea stolen or reproduced without due compensation. Initially, the legal protection primarily extended to books but later expanded into nearly all areas of creative output including artwork, music, and film, all of which are contentious points that are dealt with today. Fundamentally, copyright is intended to protect the intellectual property of any creator. Without it, there would be no way for a creator to draw a living from their product and continue producing new works. This is the intent behind the law and for the most part, it has been successful. This is an effective working definition of copyright, however, due to the history surrounding the topic a more detailed look into the past will improve anyone's understanding of this topic.

To begin to understand the history of copyright in the United States a brief look at the English legal precedent is required. The Statute of Anne was the first legal protection for intellectual property to come into existence anywhere in the world. It established for any work published what by comparison with later laws was a modest protection of 14 years.<sup>1</sup> This law, however, had no impact on the colonies that would become the United States as it did not apply. This was due in part to the somewhat indeterminate nature of the colonies' legal status. However, it is important to note that the colonies that would become the United States produced little in the way of original works so there was little need for this law. The Statute of Anne is considered by many legal scholars to be the beginning of copyright law and much of the world still traces its legal precedence to this act. Following the revolution, the young United States in need of a guiding legal principle on copyright would look to this act to begin the establishment of its own legal code.

Under the Articles of Confederation, there was no formalized national protection for copyright although several states did possess their own statutes. The point of copyright protection, however, is to prevent the reproduction of ideas without compensation and given the lack of unified legal protection these individual statutes would likely have had little real impact on any would be lawbreaker. This changed however, under the new government of the Constitution and it was during George Washington's presidency that the Copyright Act of 1790 was passed. The law was very similar to the Statute of Anne as it also guaranteed protection for 14 years from the "time

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<sup>1</sup> "The Statute of Anne; April 10, 1710." The Avalon Project - Laws of War : Laws and Customs of War on Land (Hague IV); October 18, 1907. Accessed March 10, 2019. [http://avalon.law.yale.edu/18th\\_century/anne\\_1710.asp](http://avalon.law.yale.edu/18th_century/anne_1710.asp).

of recording the title thereof in the clerk's office as aforesaid."<sup>2</sup> However, unlike its English cousin, this law allowed for the extending of the protected period an additional 14 years. This allowed for a maximum of 28 years for a product to be considered copyright. Additionally, this law made clear reference to charts and maps as copyrighted material. This is an explicit expansion of what is allowed to be considered copyright and these expansions will continue through the various updates to US copyright law that have occurred since 1790.

The first change to US copyright law occurred in 1831 with the aptly named Copyright Act of 1831. This act made some significant changes to the breadth of copyrighted material as it explicitly included artwork in its original drafting. The act was also repeatedly amended through the 19th century to include photographs and publicly performed events.<sup>3</sup> Additionally, this act greatly expanded the maximum length of time a product could be considered copyrighted. This resulted in a product being initially copyrighted for 28 years and allowing for an extension of 14 years presuming the creator was still alive. This allowed for a maximum for 42 years of copyright protection. Perhaps more importantly, this act and its subsequent amendments changed the manner in which copyrights are registered and the formalities that are required regarding informing others if a product is copyrighted. Despite its many amendments the Copyright Act of 1831 was the basis of copyright law in the US for nearly 80 years and was sorely in the need of an update by the time the 20th century rolled around.

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<sup>2</sup> "History and Education Copyright Act of 1790." Copyright. Accessed March 10, 2019. <https://www.copyright.gov/history/>.

<sup>3</sup> William F. Patry. "Statutory Revision." Patry: Statutory Revision. Accessed March 10, 2019. <http://www.digital-law-online.info/patry/patry6.html>.

The Copyright law of 1909 was a major update to US copyright law for several reasons. Most apparent is the major gap between this act and its previous incarnation. The context of 1909 is important as this was the heart of the Progressive Era and represented a period of great technological growth in the country. Both of these factors led to an expansion of what was included under US copyright protection. Perhaps most important, this law paved the way for motion pictures being considered copyrighted materials under the 1912 Townsend Amendment.<sup>4</sup> Additionally, this law as had all previous ones, increased the maximum amount of time a product could be copyright protected. Under the 1909 law copyright was extended initially for 28 years with an allowed 28-year extension following the first term for a total of 56 years.<sup>5</sup> As the reader may notice the length of copyright protection was extended with each subsequent rendition of the laws regarding the subject. This statute would remain law until 1976 when the issues surrounding copyright once again got new legislation.

As anyone with a basic understanding of history will agree a great deal occurred between 1909 and 1976 and that was the impetus for the reconsidering of US copyright law. The Copyright law of 1976 was a further development of what had come before it and it both expanded the breadth of copyright and reworked many of the aspects of how copyright was managed. To begin copyright was explicitly stated to include literary works, musical works, dramatic works, pantomimes, and choreographic works, pictorial/graphic/sculptural works, motion pictures, and sound recordings.<sup>6</sup> Additionally,

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<sup>4</sup> Office, U.S. Copyright. "Copyright Lore." Copyright Act of 1790 | U.S. Copyright Office. Accessed March 10, 2019. <https://copyright.gov/history/lore/>.

<sup>5</sup> "History and Education Copyright Act of 1909." Copyright. Accessed March 10, 2019. <https://www.copyright.gov/history/>.

<sup>6</sup> "History and Education Copyright Act of 1976." Copyright. Accessed March 10, 2019. <https://www.copyright.gov/history/>.

as had become common, the length of copyright was extended. However, this time Congress did something different; instead of beginning the period of copyright from the occasionally vague moment of the product's creation and registration, the period of copyright would now exist for the entirety of the author's life plus 50 years following his or her death. Additionally, it was at this time that the fair use doctrine was created which allowed for the use of copyrighted products without permission from the owner under specific circumstances. Those circumstances are "for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright."<sup>7</sup> Fair use has by turns proved very useful for some and a point of discord as a particular use of fair use includes criticism. Fair use will be an important point later on however, for now, we shall set it aside. The Copyright law of 1976 was an important update to US law and structurally remains in use to this day although there have been some amendments since it remains the definitive legal standard in this nation.

There was a major amendment to the Copyright law of 1976 known as the Copyright Term Extension Act of 1998. What this act effectively did was freeze the introduction of new material into the public domain by retroactively extending copyright protection to everything not already in the public domain created during or after 1923.<sup>8</sup> It was at this point that major public interests began to exert their influence over the political process surrounding copyright law. For example, it is telling that this law is derisively termed the Mickey Mouse act due to the Disney corporation's intense lobbying

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<sup>7</sup> Office, U.S. Copyright. "Chapter 11: Subject Matter and Scope of Copyright." Copyright. Accessed March 10, 2019. <https://www.copyright.gov/title17/92chap1.html#107>.

<sup>8</sup> Carlisle, Stephen. "Mickey's Headed to the Public Domain! But Will He Go Quietly?" Office of Copyright. October 17, 2014. Accessed March 10, 2019. <http://copyright.nova.edu/mickey-public-domain/>.

efforts to pass this Act. Mickey Mouse had originally been introduced in 1929 and would have soon entered the public domain. There are numerous technicalities surrounding this particular point, but the overall effect of this bill was to put a pause on anything entering the public domain. Between 1998 December 31st, 2018 nothing entered the public domain. This year (2019) marked the first time anything entered the public domain since the 1990s. As of writing this, there has been no effort made to get another extension to copyright so in 2024 if nothing changes Mickey Mouse will enter the public domain. Domestically this is more or less the end of copyright's tale. There is, however, an international dimension that should be briefly addressed.

International copyright is an immensely complicated issue that grows ever larger as our world grows ever more connected. However, international copyright is largely governed by a single international agreement. The Berne Convention is the international standard for copyright, and it is deceptively simple. Essentially what it requires from its signatory members is that they respect the origin nation's copyright laws and recognize that they will govern the status of the product.<sup>9</sup> Essentially, a US widget is governed by US copyright laws regardless of the nation it may be present in. Of course, this requires that all nations follow these rules which is something that some nation states struggle with and is an issue that will be discussed in greater detail later. The United States joined the convention relatively late as it was created in 1886 and the US did not join until 1988. Since then, however, the body has provided a suitable basis for the regulation of this important issue.

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<sup>9</sup> "Berne Convention for the Protection of Literary and Artistic Works." Broadcasting & Media Rights in Sport. Accessed March 10, 2019. [https://www.wipo.int/treaties/en/text.jsp?file\\_id=283698#P98\\_14701](https://www.wipo.int/treaties/en/text.jsp?file_id=283698#P98_14701).

This brings us more or less to the beginning of our exploration of the colliding worlds of the Internet and copyright law. We have seen how the domestic US copyright law has grown and developed as new forms of expression have come into fashion. Each of these, in turn, has gained the protection of US law in due course. However, as the recent past has shown us the internet has proven to be a juggernaut of immense force. The relationship between US law and the internet is bound to be fractious. As we will explore further the Internet and Copyright have yet to reconcile themselves and it will take a great deal of legal action to force the two into accord.

## CHAPTER 3

### DEFINING THE PARTIES

Copyright is the legal principle that governs the ownership of ideas and products. With a definition like that it would seem that this principle would involve little drama. However, due to the often-immense financial implications of certain properties, this is untrue. The principle behind copyright extends back centuries with most scholars on the topic agreeing that the first nation to establish a cogent legal definition was England in the Statute of Anne in 1710. In the 309 years since the legal particulars around this subject have changed to adapt to the times but the principle behind copyright law has remained the same. In the United States, copyright law has existed since the founding of the nation and has faced periodic updates as technology and material subject to copyright has changed and grown. The periodic updates of US copyright law are examined in greater detail in chapter 1 and serve as a historical basis for the jumping off point of this research. The impact of the internet on copyright cannot be understated. Unlike any other period in history ideas and products can be created, shared and/or copied far easier than ever before. This is both a positive and negative development as on the one hand it has never been so easy to develop new products or ideas but conversely, it has never been so easy to reproduce said ideas without permission. The US and international legal bodies alike have struggled, understandably, to keep pace with the rapid development and ever-changing nature of the internet. This obviously creates an issue as it is growing increasingly easy to find copyrighted material online that in no way gives any benefit to

the creator. This issue is made all the more complex by the reality that there is no central authority to which a copyright violation can be reported. Violations are generally handled by individual companies and dealing directly with the copyright owners. This informal relationship is essentially the current model that US copyright law operates under.

The focus of this research is the future of US copyright law and its relationship with the internet. Given the overwhelming difficulty of policing copyrighted material on the internet, changes must be made at some level. Some groups will resist change while others will press for it. Because of the often-competing viewpoints, this topic has the potential to expand to encompass a massive amount of material that is quite literally growing on a daily basis. These viewpoints can be divided into four distinct groups.

The four parties that I will address over the course of this thesis are as follows the government, the party who holds the authority over the legal aspects of this issue and therefore must play a decisive role in any changes that are to be made. The copyright holder/owner who is the victim of theft or reproduction of their product without compensation. The third party is somewhat more ambiguous and I have chosen to term them the Gatekeepers. These are the major corporations who control access and content on the internet; think companies like Amazon, Apple, Google, and many others. The final group is the people, the aggregate masses who in one way or another desire access to products online. The relationships between these four groups create the world of internet copyright as each has some semblance of control over the other. Each of these groups has its own goals and will strive to gain or retain a position of superiority over the others.

The government has the role of creating laws and regulations to prevent the theft of copyrighted materials. This may seem to be self-evident however there are many

issues that feed into the equation when it comes to the government creating or altering legal standards regarding this issue. This responsibility has been difficult to carry out for a number of reasons but the single greatest in my view is the inexperience with the topic. Copyright law is a vast field of information with a narrow group of individuals who understand it. When the topic is centered more on the internet the field of qualified, knowledgeable individuals drops further. Simply put most members of Congress understand the internet poorly. For a reference, I can point to nothing better than Mark Zuckerberg's testimony before Congress in April 2018.<sup>10</sup> In the days that followed the live testimony op-ed pieces from across the political spectrum commented upon the lack of knowledge many congressmen had on issues specifically related to Facebook and the internet in general. While the topic is not the same the point is clear. A further issue that will be discussed at length is the vulnerability of the government to targeted protests. This issue will be covered further in greater detail but suffice it to say that the public and gatekeeper companies can apply major influence on the government. In short, the government has a great deal of power over this issue but possesses several major blocks that prevent its usage.

The copyright owners have the most to lose when it comes to the issue of internet copyright violation. If their products are available for free online this will drastically decrease the purchase of legal versions of their products. As it stands currently owners of products have little ability to control the fate of their product once it reaches the internet. There is no way for a product's creator to withdraw anything entirely from the internet.

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<sup>10</sup> Government, Transcript Courtesy of Bloomberg. "Transcript of Mark Zuckerberg's Senate Hearing." The Washington Post. April 10, 2018. Accessed April 6, 2019. [https://www.washingtonpost.com/news/the-switch/wp/2018/04/10/transcript-of-mark-zuckerbergs-senate-hearing/?utm\\_term=.20419ac7af41](https://www.washingtonpost.com/news/the-switch/wp/2018/04/10/transcript-of-mark-zuckerbergs-senate-hearing/?utm_term=.20419ac7af41).

There are mechanisms in place for individuals and companies to remove items that they own from specific sites under The Digital Millennium Copyright Act (DMCA) but doing so is like trying to kill a mythical hydra. If one instance is taken down likely 5,10 or 1,000's more have cropped up in the meantime. Furthermore, the scale of the problem presents itself; an individual cannot monitor the entire internet for their product. Major corporations have a hard-enough time doing this and they can afford teams of people to scour the web. Finally, many of these DMCA takedowns are reliant on the cooperation of the gateway companies. While there is an absolute legal recourse for an owner to fall back upon that requires time and money it is far simpler if gateway companies cooperate, and to their credit they generally do. The fact remains, however, that cooperation can be withdrawn.

Gateway companies are my own creative definition for the many companies that control access to content on the internet. While many will be individually mentioned and explored later for the time being think Google, YouTube, Wikipedia, and Mozilla. While each of these companies have distinct policies and roles, they each share the similar role of self-policing the content of their respective corner of the internet. Each, for example, will in their own way limit or eliminate access to websites that violate US law. The threshold for this action varies with some requiring legal action to be filed. When the DMCA was written the "Safe Harbor" provision protected companies such as those listed above from legal action for hosting copyrighted material.<sup>11</sup> This single provision has arguably done more to shape the internet than any other legislation since and will be

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<sup>11</sup> "DMCA Safe Harbor Explained: Why Your Website Needs a DMCA/Copyright Policy." Buchwald & Associates. August 02, 2017. Accessed April 5, 2019. <https://buchwalddlaw.com/2017/08/dmca-copyright-safe-harbor-explained-website-needs-dmccopyright-policy/>.

explored in detail. While these companies have a huge role in controlling the content on their sites much of it is voluntary and many of the rules are set by themselves. This control over content has another side to it as companies have the ability to sway the opinions of the public through filtering search results and making public addresses that will instantly be seen by millions. In summary gateway companies have an enormous soapbox which they have not hesitated to use when it benefits them. Of the four groups, the gateway companies are most elusive to explore. Their immense power over the general public's perception must be addressed, and it must be acknowledged that they have shown willingness to shape viewpoints related to digital copyright law.

The final group is the public at large, by far the largest in terms of numbers but the power and responsibilities of this group can vary. If there is one underlying truth when it comes to the public and the availability of products on the internet and it is that people want things to be convenient, easy, and cheap. If there is a book online that is subject to copyright but can be downloaded as a pdf quickly and easily, it will be done. As if to contradict this, however, people will cry out when a spotlight is put on an individual instance where a copyright owner was hurt because their product was stolen. As a final example, people will rally behind gatekeeper companies when they say that their independence is being threatened by a bill in Congress. In short, the public is incredibly changeable when it comes to this issue; one day they may support the government's legislation, the next gatekeeper companies. This inconsistency in position has made this group's potential power up for grabs and gatekeeper companies and the government have both made and enacted plans to bring the public more firmly into their

control as will be explored. In conclusion despite the changeable nature of the public and the often lack of a united position their importance should not be understated.

Before launching into the research portion of this thesis I will take a moment to formally outline the Digital Millennium Copyright Act as it is among the most prevalent legal material that will be dealt with. As discussed in the history section, the most recent legislative action concerning copyright in the United States is the Copyright law of 1976 which has been successively amended a number of times since. The most relevant of these amendments is the 1998 Digital Millennium Copyright Act which laid the foundation of the relationship between US copyright law and the Internet. Signed into law when the internet was only seven years old and many of the companies discussed under the gatekeeper section had yet to come into existence this law is a fundamental guiding force when it comes to viewing how the internet developed. The safe harbor provision as previously mentioned is the most impactful portion of this law as it states “A service provider shall not be liable for monetary relief... for infringement of copyright”.<sup>12</sup> This line I would argue is the source of the entire issue here discussed. Without this clause, internet copyright would still exist, but its form and scale would almost certainly be unrecognizable. It is the hole in this clause that subsequent legal proposals were designed to deal with and will be discussed at length under the government portion of my analysis.

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<sup>12</sup> "Limitations on Liability Relating to Material Online." Govinfo. Accessed April 16, 2019. <https://www.govinfo.gov/app/details/USCODE-2010-title17/USCODE-2010-title17-chap5-sec512>.

## CHAPTER 4

### ANALYSIS OF THE PARTIES

#### Part I: The People

The people are ultimately sovereign in the United States and when it comes to understanding the issues surrounding copyright law the people and their needs and wants must be understood. The relationship between the common everyday person and copyright can take many forms and it is important to note that an individual is almost guaranteed to be playing multiple sides of a specific issue. For example, when walking up to a person and asking them if they think stealing a movie is bad, most if not all will respond in the affirmative. However, that same individual will admit to streaming a movie from any one of hundreds of internet sites that allow for this service. A study conducted in 2013 by Joe Karaganis and Lennart Renkema of Columbia University estimates that 46% of people in the United States copied shared or downloaded content from the internet. That selection of data comprised all adults. When the selection of data is narrowed to young adults the number jumps to approximately 70%.<sup>13</sup> These figures are important because it shows that despite good intentions from most people they will, if the circumstance presents itself, break with the common values of society for convenience's sake. This study is now six years old and a great deal has changed in the intervening years as internet familiarity and usage has continued to grow.

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<sup>13</sup> Joe Karaganis, and Lennart Renkema. "Copy Culture in the US and Germany." Americanassembly.org. 2013. Accessed April 19, 2019. <https://americanassembly.org/publications/copy-culture-us-and-germany-march-2013>.

The scale of internet piracy has grown with every year of the internet's existence. For example, in 2017 the popular show Game of Thrones (produced by HBO) had an episode viewed by 16.5 million people through HBO's own monetized sources. That same episode was estimated to have been streamed or downloaded illegally over 140 million times in the days that followed its premiere.<sup>14</sup> The sheer difference in numbers shows the scale of the problem. These people are not hardened criminals; many presumably only desire the enjoyment of this tv program. Indeed, because downloading or streaming content over the internet has become such a common part of society we have reached a point where many, particularly in younger age groups, are unaware that they are committing a crime.<sup>15</sup> This is due for many reasons ranging from simple copycat actions to the rationalization that if it is out there then it must be legal.

This brings up the major issue, why do individuals steal copyrighted material off the internet? As already discussed, some simply do not realize that what they are doing is illegal. This group is difficult to determine in size as the majority of people understand that theft is illegal. What is harder is determining those who are aware of the laws around internet theft. The best evidence of this issue is simply by googling some variation "is downloading movies, music, etc. from the internet illegal and millions of results will be found. If that question is being asked so frequently then there is manifestly a problem.

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<sup>14</sup> Andrews, Travis M. "'Game of Thrones' Was Pirated More than a Billion times - Far More than It Was Watched Legally." The Washington Post. September 08, 2017. Accessed April 20, 2019. [https://www.washingtonpost.com/news/morning-mix/wp/2017/09/08/game-of-thrones-was-pirated-more-than-a-billion-times-far-more-than-it-was-watched-legally/?utm\\_term=.a7dfe7773a99](https://www.washingtonpost.com/news/morning-mix/wp/2017/09/08/game-of-thrones-was-pirated-more-than-a-billion-times-far-more-than-it-was-watched-legally/?utm_term=.a7dfe7773a99).

<sup>15</sup> McIntyre, Hugh. "With Most Music Being Offered For Free, Why Is Piracy Still Growing?" Forbes. August 14, 2017. Accessed April 20, 2019. <https://www.forbes.com/sites/hughmcintyre/2017/08/14/with-most-music-being-offered-for-free-why-is-piracy-still-growing/#bbb17fe6b24d>.

Perhaps the most obvious justification people have is their desire to simply not pay for the content. This group can be divided into subgroups; those who cannot afford the purchase of the content and those who object to paying for the content. Those who cannot afford to pay are in an interesting moral position; they are stealing however, it is not necessarily out of malicious intent. They are certainly committing a crime and from a strictly legal perspective and are guilty as they are willfully breaking the law. When it comes to those who object to paying there are several justifications. One is because they believe that the creator does not deserve the money from their purchase. This opinion could stem from a dislike of the creator or any other number of emotions. Another is the fact that people have simply come to expect the availability of content online and no longer wish to purchase the content legally. One author noted in an article that many readers would “rather die than pay for a book”<sup>16</sup> instead opting to download an illegal PDF of the book. While dramatic, the simple fact is that a certain percentage of people now object to principal paying for books. This illustrates the level of acceptance that has developed around breaking this particular law; despite being explicitly illegal people see this law as acceptable to break.

A further group that must be considered are those who perhaps own the product in a physical form and download a digital copy. The argument made by this group is seen by many as logical as they have in one form or another paid for the product. Most people who ascribe to this viewpoint cite the fair use doctrine as their legal protection. However,

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<sup>16</sup>Flood, Alison. "'We're Told to Be Grateful We Even Have Readers': Pirated Ebooks Threaten the Future of Book Series." *The Guardian*. November 06, 2017. Accessed April 19, 2019. <https://www.theguardian.com/books/2017/nov/06/pirated-ebooks-threaten-future-of-serial-novels-warn-authors-maggie-stiefvater>.

under the Digital Millennium Copyright Act (DMCA) this action is illegal.<sup>17</sup> Despite having purchased a physical edition of the product the digital license is not included unless specifically mentioned. Digital licenses are often sold separately and are entirely different from a physical edition of a product. Digital licenses can commonly be seen in college bookstores where they are sold individually or as a supplement to common textbooks. While some find this objectionable the law is very clear.

The final group worth discussing are those who simply download or view a product illegally for convenience's sake. For this group, the act of accessing content is done simply because it is there. The mindset of this group has been mentioned previously. They do not see what they are doing as a crime simply because if it were, the content would have been taken down. This inherent trust in the government or perhaps one of the gatekeeper companies is what vindicates this group's viewpoint. In a perfect world where all illegal copyrighted material was removed from the internet the moment it was posted this group would be correct in their assumption. Despite their argument ignorance of the reality of the world and its laws does not constitute a legal defense. This group is breaking the law in a manner equal to those who have full knowledge of the law and choose to upload or download copyrighted content to or from the internet.

In short, there are many justifications the public uses to legitimize their illegal use of internet content. These examples are in no way exhaustive but rather seek to emphasize the most common justifications for breaking the law. As it stands there are mechanisms under US law to punish those who upload or download copyrighted content

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<sup>17</sup> Staff. "Digital Millenium Copyright Act." Digital Millenium Copyright Act: Frequently Asked Questions. Accessed April 21, 2019. <https://dmca.ucr.edu/faqs.html>.

to or from the internet. The issue is the scale of the problem; there are simply too many people participating in this practice to effectively police all of the content. It is estimated by MUSO, a digital content protection company, that in the United States alone there were over 2.9 billion visits to piracy websites in 2018.<sup>18</sup> These numbers are staggering and if anything, are conservative. The simple fact is people are now accustomed to getting content over the internet and they will justify it in any number of ways. The fact is this is unlikely to change given current laws but only time will tell.

## Part II: The Government

The federal government of the United States has the responsibility of creating and enforcing the laws concerning copyright. As has been outlined the US Government has created and updated laws dealing with copyright since the founding of the nation. The previously described Digital Millennium Copyright Act (DMCA) is the most current law concerning copyright and the internet. During the existence of the United States lawmakers have paid adequate attention to copyright laws updating them when needed and adding provisions when technology changes or develops new elements. In recent years however, this devotion to updating the laws has come to a screeching halt. The Internet has since exploded with illegal copyrighted content in many different forms and from a wide variety of sources. This explosion has rapidly outpacing the ability of Congress and the government as a whole from keeping up. Issues have arisen preventing Congress from acting on issues with US digital copyright policy, the most prevalent

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<sup>18</sup> "Publishing under Threat as Demand for Illegal Content Rises over 2018." MUSO – DISCOVER, PROTECT, CONNECT. 2019. Accessed April 21, 2019. <https://www.muso.com/magazine/publishing-under-threat-as-demand-for-illegal-content-rises-over-2018/>.

being the lack of understanding of how the internet functions by lawmakers. Another is the massive lobbying power the internet now possesses and its willingness to use it as demonstrated by the 2012 internet blackout which will be discussed in greater detail shortly. The government as it currently stands is hopelessly overwhelmed by the issue of protecting copyright online and its position is only growing worse as the other major players grow more entrenched in their positions.

According to the Congressional Research Service, the 115th Congress, which left office at the beginning of 2019, was among the oldest on average. The average age in the Senate was 61.8 and in the House of Representatives it was 57.8.<sup>19</sup> While age is by no means a measure of intelligence many members of both houses of Congress show an alarming lack of knowledge over even basic issues regarding the internet. There have been many incidents of members of both the House and Senate unwittingly announcing their unfamiliarity with internet issues. Every time there is a congressional inquiry into issues involving the internet there is guaranteed to be a slew of commentary pieces to follow in the news bemoaning Congress's lack of understanding of the matter. This is important because these are the people who make the policy involving copyright; if they cannot understand how basic legal downloading works how can they be expected to understanding the intricacies of downloading pirated editions of the *Lion King*. This may change as the new Congress, seated in January of 2019 contained a greater proportion of

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<sup>19</sup> Jennifer E. Manning. "Membership of the 115th Congress: A Profile." Senate.gov. December 20, 2018. Accessed April 22, 2019. <https://www.senate.gov/CRSpubs/b8f6293e-c235-40fd-b895-6474d0f8e809.pdf>.

young members decreasing the average age and presumably adding some practical experience with tech issues<sup>20</sup>.

The government of the United States answers to the people; this is one of the greatest strengths of the nation. However, this reality can also be used as a club to prevent Congress from passing needed laws. Because the government is subject to popular opinion a great deal of pressure can be applied by the public. When it comes to passing legislation dealing with the issue of copyright people have not hesitated to influence Congress. Despite this, there have been efforts in the recent past to patch some of the holes in the DMCA, in particular, the so-called safe harbor provision. These efforts took place in both the Senate and House but were eventually shelved due to public outcry.

Efforts began in May 2011 when Democratic Senator Patrick Leahy introduced the PROTECT IP Act (PIPA) to the Judicial Committee. The bill enjoyed the benefit of having many co-sponsors on both sides of the aisle, a rarity at the time. This bill would have limited access to websites that trafficked in illegal and copyrighted products by eliminating them from search engines. This would have required companies who ran search engines such as Google and Mozilla to erase certain websites from their search browsers. This was in addition to measures that would require companies to cease all financial transaction with the companies that were identified as breaking existing US law. When considered as a whole this law would have severely curtailed sites that the US government demonstrated in court to be in violation of US copyright laws<sup>21</sup>. This bill

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<sup>20</sup> Jin, Beatrice. "Congress's Incoming Class Is Younger, Bluer, and More Diverse than Ever." POLITICO. November 23, 2018. Accessed April 22, 2019. [https://www.politico.com/interactives/2018/interactive\\_116th-congress-freshman-younger-bluer-diverse/](https://www.politico.com/interactives/2018/interactive_116th-congress-freshman-younger-bluer-diverse/).

<sup>21</sup> Leahy, Patrick J. "S.968 - 112th Congress (2011-2012): PROTECT IP Act of 2011." Congress.gov. January 23, 2012. Accessed April 22, 2019. <https://www.congress.gov/bill/112th-congress/senate-bill/968>.

would not, however, make it to the Senate floor despite being approved by the Judiciary committee.

A second companion bill concerning internet copyright was introduced later that same year in October 2011 in the House of Representatives. Introduced by Republican Representative Lamar Smith, the bill was named the Stop Online Piracy Act (SOPA) and contained many similar provisions to the PIPA bill introduced in the Senate. Like the PIPA bill, there was broad support on both sides of the aisle for this bill with both Republicans and Democrats cosponsoring the bill. The bill went further than the Senate version however, as instead of the more limited removal of web addresses from search engines entire websites would have potentially been targeted. This bypassed the legal protections afforded to websites under the DMCA's safe harbor provisions and exposed many gatekeeper companies to the legal repercussions of hosting copyrighted content. Finally, the proposed law expanded existing laws to punish those who streamed illegal copyrighted content; with a maximum potential sentence of 5 years in prison.<sup>22</sup> Had this bill entered into law it would have represented a sweeping change to US copyright policy and its relationship with the internet. However, like PIPA, SOPA would never see the light of day due to the massive and largely unprecedented effort to defeat these bills.

When news of these bills entered the public sphere there was little immediate public reaction. However, outside the public sphere legal scholars began to worry that these bills violated the first amendment of the Constitution. Specifically, many were worried about the free speech clauses. Depending on how one interpreted a website being

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<sup>22</sup> Smith, Lamar. "H.R.3261 - 112th Congress (2011-2012): Stop Online Piracy Act." Congress.gov. December 16, 2011. Accessed April 22, 2019. <https://www.congress.gov/bill/112th-congress/house-bill/3261>.

blocked by the government largely determined the opinion of the legality of the bills. The opposition's legal position was that blocking sites was the government suppressing information.<sup>23</sup> Additionally, there were concerns that a large website would be punished for the actions of a very small group. For example, there may exist a single illegally uploaded version of the *Lion King* linked on a website like YouTube; under SOPA and PIPA the entire site would have been blocked until they eliminated the illegal video. This is a simplified example and a more complete examination will occur in the section dealing with the Gatekeepers. Concerns about the economic impact of these bills were raised as it appeared likely that many popular sites could be forced to shut down.<sup>24</sup> These concerns boiled under the surface until the public began to take notice late in 2011.

When the public became aware and began to pay attention to SOPA and PIPA there was a groundswell of public anger over the bills. Immediately protests were organized both in public and online. Of the two the online protest was far more significant. On January 18th, 2012 many websites engaged in a public protest against what they termed censorship. Major gatekeepers and internet service providers such as Wikipedia, Google, Mozilla, and thousands of others blacked out or placed censor bars on their homepages and linked to information about SOPA and PIPA.<sup>25</sup> The intent was to kill the two bills through public outcry. The internet blackout worked as intended and drove millions to either seek out information about the bills or contact their senator or

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<sup>23</sup>Laurence H. Tribe. "Tribe Legis Memo on SOPA 12-6-11 1." Scribd. December 6, 2011. Accessed April 22, 2019. <https://www.scribd.com/document/75153093/Tribe-Legis-Memo-on-SOPA-12-6-11-1>.

<sup>24</sup> MacKINNON, Rebecca. "Firewall Law Could Infringe on Free Speech." The New York Times. November 15, 2011. Accessed April 22, 2019. <https://www.nytimes.com/2011/11/16/opinion/firewall-law-could-infringe-on-free-speech.html>.

<sup>25</sup> Wortham, Jenna. "Public Outcry Over Antipiracy Bills Began as Grass-Roots Grumbling." The New York Times. January 19, 2012. Accessed April 22, 2019. <https://www.nytimes.com/2012/01/20/technology/public-outcry-over-antipiracy-bills-began-as-grass-roots-grumbling.html?pagewanted=1&ref=technology>.

representative concerning their position on the bills.<sup>26</sup> In the immediate days that followed many Senators and Representatives publicly withdrew their support for the bills forcing the destiny of the bills into question.<sup>27</sup> While PIPA was eventually withdrawn in the Senate with a universal vote, SOPA still technically remains active in a markup state, however, it is unlikely in this current reality it will ever return to the House floor for debate.

The two bills discussed above were the most serious attempts by Congress to alter the law around internet copyright since the passing of the DMCA in the late '90s. The failure of the bills in such a dramatic manner had a further effect beyond preventing reform of the law. Both of these bills generated ill will toward Congress on issues involving copyright. Many saw the coordinated efforts of the major internet companies as an action to protect the consumers, either ignoring the implicit benefits to the companies or dismissing them as secondary motivations. This relationship has remained entrenched ever since and is showing no signs of changing. As it stands currently there are no new actions in Congress to deal with internet copyright and there does not appear to be any desire to risk taking another round of public disapproval over this issue.

The government has in the past exercised its power to govern copyright. Since the 1990s however, applying laws to the Internet has proved to be unsuccessful due to public pressure and intense lobbying from gatekeeper companies. If any efforts are going to be

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<sup>26</sup> Deborah Netburn. "Wikipedia: SOPA Protest Led 8 Million to Look up Reps in Congress." Los Angeles Times. January 19, 2012. Accessed April 23, 2019. <https://latimesblogs.latimes.com/technology/2012/01/wikipedia-sopa-blackout-congressional-representatives.html>.

<sup>27</sup> Matt Peckham. "Did It Work? 'Day After' Results of the SOPA, PIPA Blackout." Time. January 19, 2012. Accessed April 23, 2019. <http://techland.time.com/2012/01/19/did-it-work-day-after-results-of-the-sopa-pipa-blackout/?xid=gonewsedit>.

made to change the laws surrounding internet copyright issues the support of both the public and the gatekeeper corporations will be needed as the relationship between the three currently does not favor action. Until this trio of relationships shifts, I do not see any changes coming to the law regarding internet copyright.

### Part III: The Gatekeepers

The great tech companies of the United States hold in their hands immense wealth and influence, both of which they use readily to advance their own agendas. Few of these companies have common interests; with each serving a different audience. However, when it comes to copyright policy, they largely stand united out of a collective desire of self-preservation. Now I feel the need to acknowledge the light in which the Gatekeeper companies have been portrayed. Throughout, Gatekeepers have come off as perhaps the most culpable when it comes to causing copyright infringement. However, while they certainly play a role their perspective must be explored as they do have a point when it comes to how they conduct themselves. The companies I have grouped under the term Gatekeepers are not machines; they are made up of people. Part of their goal is to continue existing and from their viewpoint, some of the laws proposed could seriously threaten the health of their business. To best understand the Gatekeeper position I independently examined proposed laws to determine how they would specifically affect companies day to day operations.

The entire intent of this thesis is to determine the future of internet copyright in the US. One area where a potential path has been laid out involves Gatekeeper companies. As I have previously discussed the Stop Online Piracy Act (SOPA) and the

Protect IP Act (PIPA) were failed proposals to regulate online copyright. Specifically, these proposed legal measures would have targeted the Gatekeeper companies. While the legislation is effectively dead it could serve as a potential future model for any legislation on this issue of internet copyright. In this scenario Congress decided to create a new set of laws governing online copyright violations that are themed off of (SOPA) and (PIPA). Taking this information, I examined and played out what could be described as the nightmare scenario for Gatekeeper companies.

In this scenario, a bill known as Stop Online Piracy Act 2 (SOPA2) passes through Congress and is signed into law with a 30 day grace period to allow websites to come into compliance. SOPA2 contains the same language as the original allowing for a realistic examination of the potential effects on major internet companies such as YouTube. To go with a familiar topic, a copy of Disney's *The Lion King* will be used as an example. Walt Disney Pictures, the holder of the copyright to the film, would file legal action under SOPA2 naming YouTube in violation. After this occurs YouTube is immediately responsible and must take measures within five days to eliminate the offending link.<sup>28</sup> If YouTube did not comply with this order for any reason a further court order would go out compelling search engines to cease linking people to the site. This is the situation Gatekeepers seek to avoid and in an ideal world, they would be able to comply with every violation order.

The scenario I outlined above seems to have a simple solution; the only thing a company found in violation is required to do is remove the content. The issue arises from

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<sup>28</sup> Stop Online Piracy Act: Hearing before the Committee on the Judiciary, House of Representatives, One Hundred Twelfth Congress, first session, on H.R. 3261, November 16, 2011, S. H.R. 3261, Sec. 103., 112th Cong., Library of Congress (2011).

the sheer volume sites such as YouTube deal with on a daily basis. YouTube claims on its press page that that “every day people watch over a billion hours of video and generate billions of views”.<sup>29</sup> Numbers such as these are the main problem to potentially becoming compliant with a legal order. YouTube in this scenario may have every intention to comply however due to its scale all instances of a violation may never be removed. This raises the question, what would happen to YouTube in this case? Once access to YouTube was cut those billions of views would cease. Exact data on YouTube’s earnings are unavailable but some details can be teased from their parent company Google, particularly when it comes to ads. Advertising is the primary source of income for YouTube,<sup>30</sup> and it was estimated that YouTube as a part of Google controlled 42% of the US digital ad market.<sup>31</sup> Google’s practice of not breaking YouTube's ad earnings from its own greater value makes it impossible to separate the two. That being said, in Q1 of 2019 the total revenue generated from ads on Google was 30.720 billion dollars.<sup>32</sup> While the exact portion of that number generated by YouTube cannot be determined any interruption in YouTube’s viewership would have significant ripple effects. Google’s transparency report stated that between October and December 2018, 261,645,574 comments were removed for a variety of reasons.<sup>33</sup> If even one percent of those

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<sup>29</sup> "YouTube for Press." Youtube. Accessed April 27, 2019. <https://www.youtube.com/intl/en-GB/yt/about/press/>.

<sup>30</sup> Jhonsa, Eric. "How Much Could Google's YouTube Be Worth? Try More Than \$100 Billion." TheStreet. May 12, 2018. Accessed April 27, 2019. <https://www.thestreet.com/investing/youtube-might-be-worth-over-100-billion-14586599>.

<sup>31</sup> Shaban, Hamza. "Google Parent Alphabet Reports Soaring Ad Revenue, despite YouTube Backlash." The Washington Post. February 01, 2018. Accessed April 27, 2019. [https://www.washingtonpost.com/news/the-switch/wp/2018/02/01/google-parent-alphabet-reports-soaring-ad-revenue-despite-youtube-backlash/?utm\\_term=.147abe9143fa](https://www.washingtonpost.com/news/the-switch/wp/2018/02/01/google-parent-alphabet-reports-soaring-ad-revenue-despite-youtube-backlash/?utm_term=.147abe9143fa).

<sup>32</sup> Stambor, Zak. "Google's Ad Revenue Grows 15.3% in Q1 Google." Digital Commerce 360. April 10, 2019. Accessed April 27, 2019. <https://www.digitalcommerce360.com/2019/04/29/google-q1-ad-revenue/>.

<sup>33</sup> "Transparency Report." Google Transparency Report. 2019. Accessed April 30, 2019. <https://transparencyreport.google.com/youtube-policy/removals?hl=en>.

comments linked out to a site that violated some form of copyright it could still result in millions of claims going to YouTube.

While this particular case is hypothetical the conclusions that can be drawn from it are realistic. YouTube, if a law such as SOPA2 passed, would almost certainly go through periods of being inaccessible while it caught up on claims. These periods would devastate the company as the common people of the world would quickly relocate their digital media enjoyment to other platforms. My analysis shows that with its audience eliminated YouTube would quickly become insolvent and disappear from this world. While this scenario is extreme it is the best way to highlight the fears of a Gatekeeper company.

YouTube and Google have invested a great deal of money, influence, and time into preventing the passage of a law like my hypothetical SOPA2. Both participated in the Internet blackout in 2012 protesting the original SOPA and PIPA. Google in particular features prominently in its transparency reports the number of URLs it has removed; currently, the number stands at over 4 billion.<sup>34</sup> The intent of this number is clearly to show how devoted Google is to fighting copyright infringement and they are certainly to be commended for their transparency about the issue. However, there are holes in their data. Google does not, for example, let the public know how long an average URL remained active after a takedown request is filed. So, in summary, the information provided by the Gatekeeper companies is incomplete and is clearly geared to show how readily they work to prevent copyright infringement.

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<sup>34</sup> "Requests to Remove Content Due to Copyright." Google Transparency Report. Accessed April 29, 2019. <https://transparencyreport.google.com/copyright/overview?hl=en>.

So, to summarize, Gatekeeper companies such as YouTube potentially have a lot to lose if strict laws are passed that govern copyright online. As was explored in the government portion of this thesis gatekeeper companies will readily enlist the public in their efforts to prevent legislation. My own analysis of YouTube and its parent company Google shows that immense sums of money are potentially at stake due; this is due to the massive volume these sites deal with. I conclude that many Gatekeeper companies and in particular sites like YouTube would struggle to exist in their current form under increased legal strictures like SOPA and PIPA. Because of this reality, I foresee the gatekeeper companies fighting tooth and nail to prevent legislation. Unless something changes, I would expect them to win.

#### Part IV: The Copyright Holders

The final group to consider is the copyright holders and in my research for this thesis, I found that their perspective and voice were often considered the least. I have found no specific reason for this however I do have some theories. As often happens when major legal battles occur the spectacle of the battle overshadows the original issues under consideration. After all, it is the copyright holders who lose the most when their rights are not respected. When it comes to copyright holders they exist on a spectrum. There are copyrights held by a major company all the way down to those held by an individual. The distinction between the two ends of the spectrum is important as companies who own copyrights have a far greater capacity to defend their copyright. While the mechanism for claiming the copyrighted property is the same for all, companies have far more eyes and have far greater financial resources to commit toward

seeking out infringements. As it currently stands the responsibility for protecting copyright falls on the individual copyright owner. When the owner has an entire division of employees dedicated to licensing and copyright the likelihood of a copyright violation flying under the radar is greatly diminished.

Companies who own the copyright to products come in all sizes. There are those like the aforementioned Disney Company who own the copyright to an ever-growing number of characters. There are also smaller companies or individuals whose names the greater public will likely never know. Many of these small companies or individuals are artists who perhaps run a small online gallery or use a larger art sharing website like DeviantArt to display their product. When a company like Disney makes an issue over a violation of its copyright it is far more likely to be heard and action taken due to the familiarity of the brand. Indeed, Disney was one of the driving forces behind the 1976 copyright extension that was discussed in the history section of this thesis.<sup>35</sup> As it stands currently the original animation of Mickey Mouse known as Steamboat Willy enters the public domain in 2023 and it is unlikely that Disney will be able to press for another law change before this date. As we have already seen the legal prospects of copyright law expansion in the near future are slim. Furthermore, copyright owners have a rising issue of negative public perception to deal with.

There are two ways you can view a copyright owner, either they are the one who is receiving their just payment for their creation, or they are the greedy individual/company who is preventing the spread of ideas by claiming copyright

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<sup>35</sup> Steve Schlackman. "How Mickey Mouse Keeps Changing Copyright Law." Art Law Journal. November 16, 2018. Accessed April 29, 2019. <https://alj.artpreneur.com/mickey-mouse-keeps-changing-copyright-law/>.

infringement. Perception is everything and if people view copyright owners as having greed as their underlying intent, they are far less likely to support the owners. For example, Disney's purchase of Lucasfilm in 2012 conveyed to them ownership of Star Wars. Previously Lucasfilm had not challenged every instance of unlicensed use of the Star Wars brand but when Disney came along that changed.<sup>36</sup> As I have shown Disney has historically been very protective of its brand and when they began suing a man by the name of Michael Brown who used Star Wars related logos for his various lightsaber dueling companies it was not the best image. I wish to be clear that Disney went about it in a correct manner sending several cease and desist notices which were ignored but on an issue like this Disney is easily perceived as overbearing. In short, companies are entirely within their rights to demand respect for their copyrighted properties but, in doing so they potentially weaken their public position.

One option for a copyright owner to shed light on the theft of their product is to simply go public. This is a risky option however as it has the potential to be misinterpreted by fans or perhaps even be outright ignored. Perhaps most dangerous for a copyright owner is for their product to become a joke because they defended their copyright in public. Take for example Taylor Swift, who in 2015 attempted in some cases successfully to copyright popular phrases and lyrics from her music. Her reasoning was sound, as there were numerous instances of products quoting her lyrics without compensation or credit given however a problem soon arose.<sup>37</sup> Taylor Swift has long

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<sup>36</sup> "Disney Trademark Infringement | UpCounsel 2019." UpCounsel. Accessed April 30, 2019. <https://www.upcounsel.com/disney-trademark-infringement>.

<sup>37</sup> Grow, Kory, and Kory Grow. "Taylor Swift Trademarks 'This Sick Beat'." Rolling Stone. June 25, 2018. Accessed May 04, 2019. <https://www.rollingstone.com/music/music-news/taylor-swift-trademarks-this-sick-beat-and-other-1989-phrases-41228/>.

been known for guarding her music and people have noticed and begun to make a joke of the matter.<sup>38</sup> While not all of Swift's issues are internet based the fact remains that publicly making an issue of copyright can potentially backfire. Should a more serious issue surrounding copyright of Swift's music arise in the future she may not be able to rely upon public support as they will see it as another joke.

Copyright owners of any size or variety do not have it easy. Simply finding violations of copyright is time-consuming and not guaranteed to produce results. That is only the first step, filing a Digital Millennium Copyright Act (DMCA) takedown is time-consuming and could potentially be challenged in court. Even with the current DMCA system, the legal protections offered to online copyright owners are less than they could have been. While some will certainly argue that the legal measures considered in late 2011 went too far copyright owners at this point need some form of legal help. In short, owning copyright online is difficult and time-consuming to protect and due to the sheer scale of the internet violation can easily fly entirely under the radar.

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<sup>38</sup> Kircher, Madison Malone. "Taylor Swift's Fans Are Starting to Make Fun of Her Insanely Strict Copyright Rules." Business Insider. September 16, 2015. Accessed May 05, 2019. <https://www.businessinsider.com/taylor-swift-copyright-meme-taking-over-tumblr>.

## CHAPTER 5

### CONCLUSION

Copyright Law in the United States is a complicated topic. I stated that at the outset of this thesis and despite hundreds of hours of research I am convinced that I only understand a small corner of this vast topic. The intricacies of internet copyright alone have caused me to consider at length the interconnected roles the groups I identified play with one another. Many times, I would find myself believing one group was at greater fault than another only to read about a particular action that flipped my view on its head. That being said I have strived to maintain a neutral viewpoint through the course of this thesis. As I conclude this work, I will examine the points raised through my thesis and piece them together to form a conclusive picture not only of where internet copyright currently stands but also where it potentially will be going.

As it stands, a careful examination of active bills in both the Senate and House does not reveal any legislation that would even remotely deal with the topic of copyright physical or digital. This is an unfortunate reality that is unlikely to change in the near future. With the political division and lack of a driving public force behind internet copyright, there is little to divert the attention of Congress to copyright issues. Compounding this is the memory of the Stop Online Piracy Act and Protect IP Act which resulted in a massive public outrage in 2012 when the issue was last raised. This was, of course, a result of the relationship between the people and government a relationship that has only grown more strained.

The relationships between the four groups I identified were the most interesting portion of this thesis for me. Nowhere in my research did I find anyone who systematically broke down and defined the parties involved in copyright. In my view, the relationships between these groups are the most important revelation of this thesis as it explains why it has become so difficult for progress to be made on expanding online copyright protection. Until the relationships between the four groups shift and in particular that between the people, gatekeepers and government there will be no legal action. The government needs the support of the people to enact laws to better protect the copyright holders, but the people support the Gatekeepers who provide access to the content they desire. Furthermore, the copyright owners have to an extent ostracized themselves from the people by on occasion reacting in the public's view overzealously when claiming their copyrighted product. Finally, the Gatekeepers will continue to apply their influence over the public to pressure the government into keeping the laws as they are. It is the relationships between these groups that will determine the future of this topic. Any future reexamination of this topic can use these parties as benchmarks to compare relative power shifts and the most pressing issues relative to each group.

As I see it currently there are three paths forward for new internet copyright law, some of which have greater potential than others. Path one is change nothing, allow Gatekeeper companies to continue their self-policing role and relay upon public pressure to press for change. Path two is the SOPA2 route, improved government regulation of Gatekeeper companies forcing them to better monitor and take down copyrighted material under the threat of anything ranging from fines to removal from internet listings. Finally, there is path three, another legal measure however, instead of targeting the

Gatekeepers the punishment is carried out on the public through fines or even stricter punishments. Each of these options has its strengths and weaknesses and factors that might make them entirely impossible to implement.

Path one is the likely future for internet copyright law at least from my viewpoint. Given the intransigent relationship between the groups I find it doubtful that real change can occur in a strict legal sense. As it stands the people don't care to support legal action against the Gatekeeper companies. People feel that the Gatekeeper companies are sufficiently responsive to their needs and wants and the companies know this and will strive to keep things this way. The Google transparency reports I have mentioned are an excellent example of the effort's gatekeeper companies are putting into keeping the public firmly on their side. They want to let people know that they are open to people's opinions and they want to share their internal thoughts. The only way anything significant changes in this scenario is pressure from the public. If there is a rallying instance, perhaps where a person of significance has something publicly stolen from them online than public pressure may force the Gatekeepers to change. Short of this however, the self-governing will continue.

Path two is what I ultimately decided is the correct route. I went back and forth on the responsibility of the Gatekeepers on multiple occasions but as I see it, they need to come to terms with additional legal limits being placed on themselves. I am sufficiently convinced that Gatekeeper companies could with presently available advanced algorithms sort through the majority if not all the content being posted to individual sites. YouTube does this currently when videos are uploaded however, publicly available

techniques easily avoid the Content ID filter.<sup>39</sup> Given the information I have gathered I believe it is within the capabilities of companies like YouTube to close these gaps in their fences. Additionally, if laws are written correctly in terms of timelines websites may have the opportunity to review flagged content and make a decision before their site gets taken down. Many of the proposals within SOPA and PIPA were workable and could potentially be recycled should the desire to pass legislation on this topic spring from the ground within Congress. If Gatekeeper companies worked with the government and copyright owners, workable solutions could be developed. In short while this may be my recommended path, I do not see it happening. Too many of the parties need to move their positions and fundamentally too many are comfortable with the way things are now.

Finally, we as the public could take responsibility for our actions. This is path three and is by turns the most and least hypothetical of the proposed options. In this scenario the government decides the time has come to take action on internet copyright and decides to follow through with existing legal guidelines on copyright theft by punishing those who post and consume illegal copyrighted material online. Watch any movie on DVD and you will see a warning screen from the FBI informing the view of all manner of fines up to 250,000 dollars for the individual who breaks the copyright laws. If the government decided it was going to follow through on those laws and began prosecuting those who posted the copyrighted content the potential fines would be massive, and the people actually caught few. Fundamentally, this path while possible and perhaps even the most just would be all but impossible to implement. Breaching the privacy wall of the internet is the hardest part of online law enforcement no matter the

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<sup>39</sup> "How Content ID Works - YouTube Help." Google. 2019. Accessed May 06, 2019. <https://support.google.com/youtube/answer/2797370?hl=e>

crime. Until this is regularly possible it would be a waste of time trying to track down those responsible for posting or viewing the copyrighted content.

A final way forward for internet copyright law is some kind of agreement between copyright owners and gatekeeper companies. Between them, it is just possible that some sort of legal accord could be agreed upon and brought to the government. There is some evidence of this already as YouTube, in particular, allows copyright owners to claim videos with their content and receive the ad revenue.<sup>40</sup> This solution currently only exists between the two private parties and is not firmly based in US law. At the moment I cannot see the Gatekeeper companies with similar policies desiring a firmer legal basis for this arrangement. Gatekeeper companies like most private enterprises want the freedom to create their own rules and at the moment they hold the cards. In conclusion, unless there is a major shift in public opinion little is likely to change about internet copyright laws. All of the groups are firmly entrenched into their positions and I cannot foresee a major disturbance to disrupt the structural arrangements that have developed between the groups. The future is indeterminate, however, and tomorrow may bring a shift in opinion that will bring this critical long-lived issue to the fore once again.

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<sup>40</sup> "What Is a Content ID Claim? - YouTube Help." Google. 2019. Accessed April 30, 2019. <https://support.google.com/youtube/answer/6013276?hl=en>.

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