

The Pirate Bay Verdict

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The below article is written to try and explain why I find the Pirate Bay Verdict so unfair, all comments appreciated, please either use the comment system below or email them to bdixon@dxnx.co.uk. I'll happily post other peoples versions or other opinions as separate articles if you submit them.

Today the four men responsible for the torrent indexing site The Pirate Bay, were sentenced to 1 year in jail for assisting making available copyrighted content, they were also order to pay around \$3.6 million in compensation to various record and film companies including Warner Bros. Entertainment, MGM Pictures, Columbia Pictures Industries, Twentieth Century Fox Film, Sony BMG, Universal and EMI.

This ruling drew a lot of anger from a lot of people, myself included. Some peoples reasoning is very simple, they like being able to download for free content they would normally have to pay for and dislike anything which interferes with that. For other people including myself, our support for the Pirate Bay and outrage at this verdict is a little more complicated.

From my perspective, I do not think that I have any right to download music, films or anything else, which other people have created, without their permission. I accept completely that if someone puts time and effort into creating something then they have the right to choose that they want others to pay to access that creation, whatever it may be.

The first problem area of this judgement for me is the fundamental question of what the Pirate Bay have actually done wrong. To be clear on how the site works, The Pirate Bay do not store on their servers, any copyrighted content. They store .torrent files which contain a list of individuals who are sharing a particular file, these files can be anything from films to games to operating systems. As with all file distribution systems on the internet, these include a variety of legal and illegal – in that it is being distributed without the copyright holders consent – content.

These torrent files are submitted by users of the site and found using The Pirate Bays search facility and sorted mainly based on the popularity of the files with the sites many users. The Pirate Bay does not submit or create these torrents themselves. In this respect The Pirate Bay seems little different from Google who also maintain a searchable index of content created by others. This is a point that has been raised several times since the verdict; if the rationale behind the case is logically extended, then any service which provides an index of material which has the potential to include copyrighted content, could potentially be sued on the same grounds.

The above is a somewhat technical reason for why I think the verdict is unjust; put simply the people who are breaking the law are the people

uploading the files and continuing to share the files, not the Pirate Bay. If anyone should be prosecuted (and that is a big if) then it should be those people, not the Pirate Bay.

For me however the anger is not primarily due to the above reason, instead it is because of the victory for the Film and Media companies this verdict symbolises in what has become the Film and Music industry vs what were its customers. It's here what I said earlier about believing content creators have a right to charge people to access their content gets a little blurred.

The internet and the free flow of information it entails is here to stay, this is a simple fact of the world in which we live. File sharing and the payment free ways of accessing content which previously had to be purchased is a part of this, that's not to say that it is right for people to access content without paying for it, just that it is, and will remain, a reality. The business models of the Music and Film industries were built around the fact that people had to purchase Music, Films and the like, piracy was not accessible enough to be a serious problem.

These business models no longer work. You don't need to study business or economics or even to have finished secondary school to work this out. Imagine pitching that business model on dragons den now now; "so your idea is that you're going to take all of that content which people are currently downloading for free, whenever they want, and put it on CD's which they have to pay significant sums for and wait for.....?" anyone familiar with Dragons Den will be able to hear the scathingly delivered "I'm Out" possibly delivered with a slightly sarcastic eulogy of an idea that can never hope to make a profit.

The business models are no longer competitive, they have failed to keep up with technological advances and so will be overtaken by those who have.

The film and record companies have been left with two possibilities, to embrace the internet and the way it changes how information flows and accept that radical changes to their business models are required or to bury their heads in the sand and pretend that the changes aren't happening. They've chosen the sand.

Examples of this are numerous, but by far the best is the recent legal action which led to a majority of the music videos hosted on Youtube having to be removed. Nobody can explain to me how any sane business person concluded that this made sense. Youtube was effectively free publicity, it allowed people to find new artists and explore new genres. Some people who found this new music would then go-on to purchase it, either by traditional methods or through Apples itunes - apple being one company who have recognised the opportunities the new models of information distribution present. Nobody uses youtube as an alternative to buying music, under no sensible analysis was this doing anything other than making the record companies money, yet they were still against it.

That in itself is fine with me, companies are free to choose their own business strategies and if they choose wisely they will prosper and if they choose poorly they will fail. That is a basic principle of capitalism and competitive markets. The problem is that the companies

in question seem to have made the decision that their dying gesture will be to twist (and arguably abuse) the legal system to squeeze the last bit of money out of what were once their customers.

This article is not the place to go into an in depth analysis of the methods employed in these lawsuits, for those interested there is a wealth of information available through Google. The methods used are in the view of many illegal as well as grossly inaccurate. They have an impressive record of bringing actions against people without internet connections or even more impressively against people who don't own computers. For an over view of some of the more public examples the following wikipedia article is well worth reading: http://en.wikipedia.org/wiki/Trade_group_efforts_against_file_sharing#Criticism …

To me what causes the most anger is that the legal system is supposed to provide justice, instead Record and Film companies are doing everything they can to distort it and use it as a weapon to aid them in a last stand to protect their failed business models.

The Pirate Bays conduct with regard to the copyrighted content may have been reprehensible, but of the two interested parties, it is without a doubt the Record and Film companies, if anyone, who deserves criminal sanctions against them for their flagrant abuse of legal process.

I actually laughed when I read the following on the BBC website, quoting the chairman of industry body the International Federation of the Phonographic Industry (IFPI) John Kennedy:

"The Pirate Bay did immense harm and the damages awarded doesn't even get close to compensation, but we never claimed it did. There has been a perception that piracy is OK and that the music industry should just have to accept it. This verdict will change that"

The perception isn't that piracy is "OK", it's that the music industry has failed to keep up with technology and with what its customers want and so piracy has become the better option. Perhaps the public response to this verdict will finally wake people like John Kennedy up to the fact that the ball is in their court and time is running out both for them to make amends with the customers they have treated so badly and to reform their business models.

The Record and Film companies behaviour has shown that they have no respect for their customers or the laws of the countries they operate in. Even if you disagree with some aspects of the Pirate Bay, the behaviour of these companies dwarfs any wrong doing on their part.

This for me is why I believe this verdict is so unfair and why I will continue to support the Pirate Bay.

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