

## **Symposium: Collective Management of Copyright: Solution or Sacrifice?**

### **Alternatives to Collective Management: DRMs and Other Business/Technology Options**

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One of the things that film studios are hearing with increasing frequency is the suggestion that compulsory licenses are a solution to piracy. Those of us at film studios have a lot of concerns about that. The argument we are hearing is basically: “You can’t beat it, so you join it—legalize piracy and then tax it.”

One of the problems with this theory is that no compulsory licensing system can generate a stream of revenue sufficient to produce and distribute films. Even the lowest budget studio film costs a minimum of ten million dollars, and then, for the potential audience to know you have made the film, you need to spend at least another ten million dollars on marketing and distribution costs. That is a bare minimum to market the film and to get the word out.

Aside from the quantity concern about the revenue, the timing of revenue flow is a problem with compulsory licenses. The revenue, meager as it would be, would only begin to trickle in far downstream from the release of the film—too little, too late to provide a basis for funding production.

Then there is the question of who is going to pay for the compulsory license. The traditional system with compulsory licenses is that the person who is making money from the use pays. For example, the broadcaster, the bar, the performance venue that is using the music to get people to stay longer and buy more beers, or getting people to come in the first place to hear the music, pays for the license. (I am, of course, conveniently overlooking the fact that ASCAP and BMI blanket licenses which cover those performances are not compulsory licenses. But the revenue model is the same.)

When it comes to film, who would pay for the compulsory license? The online

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pirates are not going to pay. The pirates are not paying now. The Internet service providers are not going to want to pay. As a result, the only group left to pay is consumers. And it is difficult to conceive of any government deciding to tax consumers in order to support the business model of offshore commercial pirates.

I have been focusing on the business limitations of compulsory licenses. There is, of course, a long list of legal problems with a government usurping exclusive ownership rights and replacing those rights with compulsory licensing. Not the least of which is international obligations imposed by the Berne Convention.<sup>1</sup>

This also highlights something that people have been touching on all day: when discussing collective licensing or compulsive licensing, it is extremely important to distinguish between music, books, photography and film because those are all very different worlds and no one solution fits all of them.

I want to talk for a moment about technological solutions. I am going to focus on one example of a new initiative that relies on DRM encryption. It is a solution that offers the potential to address the evolving nature of consumer desire: the desire for anywhere, anytime portability.

At Paramount, we have distribution deals with more than 200 digital services, and one image you will notice is missing from this slide is Paramount. The studios are producers; we are licensors, we are distributors; we are not retailers. We will license our content to almost any platform that wants to take a license and is able to meet the necessary copy protection standards. Our online distribution deals cover more than 750 films, fifty countries, twenty-five languages. And we are adding more and more content, more and more platforms, more and more choices every day.

The question is: are these digital offerings simple, are they consumer friendly? And the answer is: no, not really.

I want to talk for a moment about where I see that disconnect and why I think that disconnect is one of the reasons that the digital offerings have not taken the place of the DVD as much as we have hoped they would, or at least as quickly as we hoped they would.

I see this as coming from the problem of silos. In the digital world, when a consumer downloads a digital copy, generally they acquire it from a retailer that is tied to a limited group of playback devices. If you download a movie off of iTunes, it is not going to work on Windows Media Player. If you have several different devices, as everybody does—including a desktop computer, an iPad, a TV in the living room—when you purchase a digital copy it is not going to work on all of those. On the other hand, a DVD will work in every DVD player you own—in the living room, in your computer, in your minivan.

That limitation in the digital world arises largely because of proprietary formats—both the format of the digital copy itself and the copy protection format. Apple has their own, called FairPlay, and it is very different from the one Microsoft uses. These constraints are lowering consumers' perceived value of a digital copy

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1. Berne Convention for the Protection of Literary and Artistic Works, July 24, 1971, 25 U.S.T. 1341, 828 U.N.T.S. 221.

because the digital copy only works for a certain number of devices and it cannot be moved between devices. Imagine for a moment if hard goods worked that way. This is why I think the DVD took off the way it did and digital has not yet. If you buy a DVD copy of a movie, say *Forest Gump*, from Amazon, if you rent the disc from Netflix, Blockbuster, Redbox—it will work on any device. It will work on your Sony TV, your Panasonic DVD player, your Microsoft computer, your LG flat screen TV. You do not have to go to Best Buy and buy a DVD for your Sony, then go on Amazon to buy a different format DVD for your laptop, then go to Target to buy another copy that will work in the DVD player in the back of the car. If DVDs were like digital goods, consumers would have to buy separate versions for each device.

So, the question is: how can we move the digital world into the consumer experience of the hard good world? That is the goal of a transparent digital ecosystem. And one of the innovations that we think will move us closer to that world is a system called “UltraViolet.” UltraViolet is something that’s been in the works for years; it had its public coming out party at the Consumer Electronics Show in Las Vegas right after New Year’s.<sup>2</sup> The idea behind UltraViolet is that when you buy, for instance, a Blu-ray disc that is UltraViolet compatible—with the UltraViolet symbol on it—your purchase unlocks copies that will work with any device in any location. So, you can get it from Best Buy; you can get it from Amazon; you can buy a streaming copy or a digital download from Netflix. Then you will have a copy of the film, which will then play on any other UltraViolet device.<sup>3</sup> It will stream on any UltraViolet device, and you can share it with household members. So, effectively, you can share it with up to six family members, up to twelve devices.<sup>4</sup> You can change out the devices, so if you break one or a new one comes along, you can swap to the new device.

So, let’s say you go to Best Buy and you buy a DVD of *Transformers* that has the UltraViolet symbol on it. You can then go online to Netflix or online to Comcast and, by putting in your key, you can stream a copy. Now you have bought a copy that you can watch on your flat screen TV in your living room, but you can also stream a copy into your iPad, your iPhone, to any of twelve devices. And if you break one of your devices, if you lose it, or if it gets outmoded because you have had it for more than six months and you want the new iPad 2, you can change out the list of authorized devices.

We think that this idea of multiple devices seamlessly connected to the cloud that consumers can use in any way they want is going to create a real demand for the digital copy the way there was a demand for the DVD.

And what makes it work is the parties who are involved. It includes, with one exception I will talk about, every major studio, every major content provider, every

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2. *Digital Entertainment Content Ecosystem (DECE) Completes Design of UltraViolet, Paving the Way for Consumers to Enjoy Digital Entertainment Across Multiple Platforms*, ULTRAVIOLET (Jan. 6, 2011), [http://www.uvvu.com/press/CES\\_JAN\\_6\\_2011\\_Press\\_Release\\_1\\_5\\_11\\_FINAL.pdf](http://www.uvvu.com/press/CES_JAN_6_2011_Press_Release_1_5_11_FINAL.pdf).

3. *Digital Entertainment Content Ecosystem Unveils UltraViolet Brand*, ULTRAVIOLET (July 20, 2010), [http://www.uvvu.com/press/UltraViolet\\_Brand\\_Launch\\_Release\\_07\\_20\\_2010\\_FINAL.PDF](http://www.uvvu.com/press/UltraViolet_Brand_Launch_Release_07_20_2010_FINAL.PDF).

4. *At Home*, ULTRAVIOLET (Feb. 23, 2011), <http://www.uvvu.com/for-entire-household.php>.

major hardware manufacturer—such as Sony and Panasonic, and it includes major retailers—including Best Buy and Amazon.<sup>5</sup> There are only two big players missing from here. Apple and Disney. We do not view the lack of Apple’s participation at launch as a big impediment because there are two Apples. There is hardware Apple, and UltraViolet will work with their hardware: it will work with an iPad. It is not, however, part of iTunes, and we think in time they will come around but if they do not come around then there will be plenty of places other than iTunes to get it. I think that if this really takes hold it will be a boost to iTunes competitors and that alone will encourage Apple and iTunes to join the party. With Disney, I have not spoken to them about why they have not joined in. They do have their own similar technology, but without this group of partners I am not sure it will ever take off.<sup>6</sup> But Disney is also unique amongst the studios in that it has created very special brand awareness. When you hear “a Disney film,” you know it is family friendly. So in part their reluctance to join at launch may be waiting to see if this works and is consumer friendly; if it is, I would expect that they will ultimately come on board.

With those two outliers, everyone who is a player in the space is a part of this effort—and I view *that* as collective licensing at its best. Because it is licensing where, from the consumer’s perspective, you do not have to know which studio owns the content, which device it will work on, whether you can buy it from Netflix or Best Buy or Amazon. Wherever you go, whatever device you have, whatever content you are looking for, it is all there. And this is the only kind of collective licensing that I see as being viable in the motion picture world.

To recap on compulsory licenses: I do not see that approach as any solution for feature films, pragmatically, even before you even get to the legal impediments of the Berne Convention and other legal problems created by compulsory licensing. But a voluntary collective approach which uses digitally secure technology and which meets consumer needs is a solution.

Thank you.

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5. *Alliance Members*, ULTRAVIOLET (Feb. 23, 2011), <http://www.uvvu.com/alliance-members.php>.

6. Ethan Smith, *Disney Touts a Way to Ditch the DVD*, WALL ST. J., Oct. 21, 2009, at B9.