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***CAS Seeks to Curb IP Violations***

by: Michael Higgs

What drove the transition of the internet from a vehicle for university scientists to collaborate on research projects and enterprises to communicate using electronic mail, to the ubiquitous presence it is today, was the ability of individuals to share content. Very quickly however, that content being shared went from pictures of children and pets, to copies of music and movies. For the past 20 years we have been locked in a struggle between the proponents of complete internet freedom who believe that no one should govern or regulate any activities on the internet, and the content producers who believe they have a right to be compensated for the works they create.

The courts have intervened, ordering shutdowns of file sharing sites like Napster and Megaupload. Individual users have been sued by Hollywood movie and music producers; The RIAA anti-downloading litigation dragnet was a public relations disaster. Corrupted files have been placed on the internet by content producers to harass illegal downloaders. Yet copyright infringement continues to be a problem today as much as ever, and the content producers are vilified for their perceived heavy-handed tactics.

Legislative efforts to curtail internet copyright infringement have not fared much better. The 2008 PRO-IP Act allows the feds to seize property merely upon the filing of charges (see Megaupload above), not upon conviction by a judge or jury. In 2012 Congress attempted to intervene again with the SOPA/PIPA bills which, among other things, would have allowed the government to take down sites with infringing content without demonstrating any wrongdoing on the part of the host site. Internet freedom activists staged a nationwide day of concerted activism, and the legislation was declared DOA.

In response to the bad publicity stemming from litigation and pushback against government enforcement, a group of major ISPs and intellectual property organizations established a graduated response framework for the US in which a third party monitors file-sharing networks, collects the IP addresses of suspected copyright infringers, and submits that information to ISPs who in turn issue the suspected infringer a copyright alert. The escalated response of the CAS has led to its moniker of the "Six Strikes" rule.

The alerts are tiered into three categories: education, acknowledgement, and mitigation. The education phase involves informing users that they have been caught, and contains links and information about the societal ills of stealing, and helpful suggestions for legally acquiring that content in the future (a commercial for iTunes or Amazon.com perhaps?). In the acknowledgement phase, users are forced to complete some action before their account can be restored. Whether that involves watching a video or taking an online quiz about why stealing is bad, the user experiences some level of disruption at this stage. And the fifth and sixth "strikes" are supposed to entail a throttling down of the user's internet connection speed. This is intended to be a 2 to 3 day penalty where access is limited to 256kbps; better

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than dial-up, but well short of the broadband speeds most consumers have come to expect. Note that the CAS only covers wired connections, not cellular services.

There is an appeal process. Customers found to be in violation can file an appeal once the process has reached the mitigation phase. The customer must pay a \$35 fee and will then be informed of the number of alerts that must be invalidated in order to avoid mitigation. The review will be heard by the American Arbitration Association, and if successful, the application fee will be returned and any previous alerts will be disassociated with the appellant's account.

With the framework now in place, how will implementation work in practice? While the CAS allows ISPs to terminate service for repeat offenders, none of the major ISPs have chosen to go that far. Verizon is the only provider that has stated that it will adhere to the Six Strikes all the way thru the throttling stage. AT&T stated that when customers reach the later stages of the CAS alerts, it will instead require users to take an extra step to review materials on an online portal that will provide additional education. Presumably this will continue to occur after the 6<sup>th</sup> strike. Comcast will institute a persistent in-browser notification that can only be dismissed after a user calls Comcast and has an informative discussion about copyright issues and legal downloading alternatives. Time Warner has expressed similar intentions.

The CAS will do nothing to deter the hard-core file sharers; VPN, private shares, capturing streaming services – there are myriad ways of avoiding detection under this scheme. However, most people are not aware of these alternatives, and proceed to grab the low-hanging fruit of easily available copyrighted material. While the reasons to pirate content are certainly on the decline with the advent of Netflix, Amazon Instant Video, Pandora, and the like, it remains to be seen whether the Copyright Alert System will help to further tip the balance in favor of the copyright holder, or be just another PR fail.