

**Ted Shapiro
Motion Picture
Association-Europe**



**WIPO/ISOC Conference 22 June 2011
Role and Responsibility of Internet Intermediaries**



Introduction

- © MPA welcomes this discussion on the role of Internet intermediaries.
- © According to a recent study by Envisional, approximately 23.8% of global Internet traffic is infringing copyright.
- © Most effective way to confront © infringement is through legal alternatives, consumer education and outreach.
- © However, we also need to take legal action to ensure a level playing field. In many cases, we need the co-operation of ISPs. Unfortunately, our experience has been that it is generally achieved only through litigation.
- © The focus of our efforts to protect AV content online is on websites that structurally infringe copyright – they are often directly infringing copyright, making substantial profits (eg ad revenues), inducing others to infringe and purposefully providing false contact data to avoid prosecution.

Introduction

- © These sites rarely respect data protection laws, consumer protection standards, or the fundamental rights of others. The vast majority of the content is infringing.
- © These sites are conceived to earn money off the backs of right holders. They don't pay taxes and don't create jobs.
- © They will often profess altruistic and lofty values – such as the fight against censorship but they are profit-driven.
- © We believe it is necessary to clarify that the internet is not a rules-free zone immune from the values and rule of law established by society.
- © Member States should take legislative, administrative and other steps to reduce all forms of IP infringement on the Internet . Measures to prevent or bring to an end infringing activity must be proportionate.
- © We look forward to working with the WIPO, its member states to achieve a balanced approach.

The legal framework

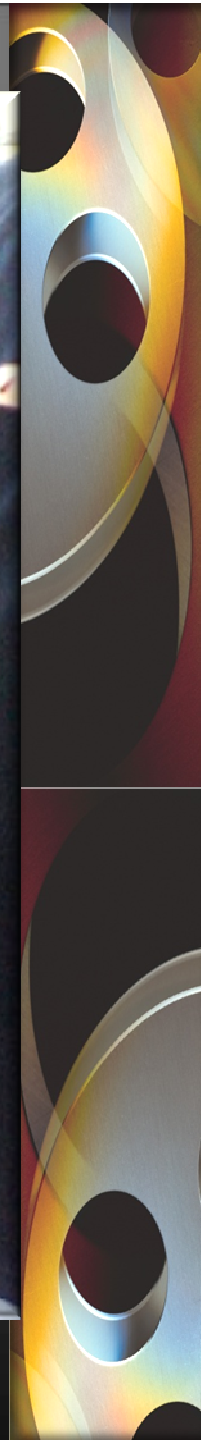


- © International legal instruments
 - © WIPO Treaties (1996)
 - © Berne Convention
- © Treaty on the Functioning the EU and 2ndary legislation
 - © Directive 2000/31/EC – E-Commerce Directive
 - © Directive 2001/29/EC – Copyright Directive
 - © Directive 2004/48/EC – Enforcement Directive
 - © Directive 1995/46/EC – Data Protection Directive
 - © Directive 2002/58/EC (as amended by Directive 2009/136/EC or the Telecoms Package) – ePrivacy Directive...and others
- © National laws implementing these Directives and specific legislation: UK DEA, FR Hadopi, ES LSE
- © Industry coop – EU MoU, UGC principles



Article 8.3 – Directive 2001/29/EC

“Member States shall ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right.”



Mininova : The ultimate BitTorrent source! - Windows Internet Explorer

http://www.mininova.org/

File Edit View Favorites Tools Help

Mininova : The ultimate BitTorrent source!

mininova

Home | Browse categories | Upload

Location: Mininova > Home

Snotr.com: funny videos for everyone!

Download the Mininova toolbar!

Newly popular torrents | [today](#) | [yesterday](#)


Try our new site: [Snotr](#) | [Login](#) | [Register](#)

Search Search Usenet Web search

dark knight
daily show
daemon tools
kung fu panda
the dark knight
batman the dark knight
kung fu panda ita
bangkok dangerous
doomsday ita
meet dave

About | Search cloud

g article: [New statistics and other improvements](#)



BITTORRENT PORTALS

Featured torrents

Category	Name
Other	Thirty Day Challenge
Books	How To Speed Up
Music	Restore The Faith
Music	Dj 2Mello and Dj
Music	Nina Creese - I K
Music	Friday Night Danc
Software	VirtualBox - Vixta
Other	Thirty Day Challenge
Movies	Real Time 1080P
Other	Thirty Day Challenge

Anime

Added	Name
14:58	[Nightspeed] Code C [74A721A7].mkv

Search results for the dark knight (382 torrents)

Search in category: All **Featured** Anime Books Games Movies Music Pictures Software TV Shows Other

Added	Category	Name	Size	Seeds	Leechers
29 Aug 08	Movies	Batman The Dark Knight 2008 TS XVID ENG (Good Quality) www.imtorrents.com	1.28 GB	3494	4168
24 Jul 08	Movies	The Dark Knight [2008 Eng] Telesync DivX-LTT	906.22 MB	2895	3296
25 Jul 08	Movies	Batman The Dark Knight Le Chevalier Noir (2008 french)--cgaurav--	698.51 MB	2461	2813
22 Aug 08	Movies	Batman The Dark Knight Telesync XVID ENG - STG - Rich	1.28 GB	1620	1791
23 Jul 08	Movies	The Dark Knight TS XviD Dual-ITL2 0	1015.94 MB	950	2719
21 Jul 08	Movies	The Dark Knight PROPER CAM(www.scenepirates.com)	1.37 GB	414	832
24 Jul 08	Movies	The Dark Knight PROPER TS XVID-mVs	1.41 GB	410	255
21 Aug 08	Movies	The Dark Knight TS MD German XVID-CPG	1.36 GB	408	997
09 Aug 08	Movies	The Dark Knight TELESYNC Custom DVDR-Kingdom	3.45 GB	363	391
22 Jul 08	Movies	The Dark Knight TS XviD-Prevail(www.scenepirates.com)	1.36 GB	340	1009
20 Jul 08	Movies	The Dark Knight 2008 cam XviD-KingBen (Kingdom-Release)	1.23 GB	322	299
10 Aug 08	Movies	The Dark Knight (2008) NL Subs TS Reencoded DivXNL-Team	742.69 MB	303	197
23 Jul 08	Movies	The Dark Knight PROPER TS XVID-mVs(www.scenepirates.com)	1.41 GB	303	859
26 Jul 08	Movies	The Dark Knight PROPER TS XVID--cgaurav--	1.38 GB	291	217
10 Aug 08	Movies	Batman The Dark Knight (2008) TS Occor avi	700.09 MB	280	191



VIDEO LEECHING SITES

SurfTheChannel - Home - Windows Internet Explorer

http://www.surfthechannel.com/

File Edit View Favorites Tools Help

SurfTheChannel - Home

surfthechannel

HOME CHANNELS LOGIN/REG COMMUNITY FAQs SKINS

enter search term here... Television Go!

Site News

Fixes/Changes - 30th August

Buggin Out - 22nd August

Win a Mac Air, Playstation 3, iPod! - 15th August

Site Now Updated - 14th August

Latest Forum Posts

The Werewolf Game - Paul

Signature & Avatar Show-Off - Viper

TV show kill/save - gizmoghost

Fixes/changes - wattzy

OVGuide
Online Video Guide

BEST Online
over 2000 quality

BEST Online
most relevant vi

www.OVGU

Most Popular TV Today

Weeds - S4E11 5810 views

Gossip Girl - S1E1 4432 views

The Secret Life of the American Teenager 3151 views

Gossip Girl

Batman Gilmore girls Hannah montana Pokemon Seinfeld Star...

housewives dexter doctor who entourage family

girl greek greys anatomy heroes house house bun...

SurfTheChannel - Movies All - I Am Legend - Windows Internet Explorer

http://www.surfthechannel.com/info/Movies/38033/1+Am+Legend.html

File Edit View Favorites Tools Help

SurfTheChannel - Movies All - I Am Legend

surfthechannel

MEGAVIDEO I'M WATCHIN' IT

Videos Categories Rewards Premium Upload Search for video

Must see!

Added: August 30, 2008 by ebay00

Good!!! 11

Category: Entertainment

Tags: Entertainment

Rate this video! ☆☆☆

Save to favorites Flag as ir

URL: http://www.megavideo.com

Embed: <object width="432" he

Choose the style of the embedded v

Post your comment Post your video response Rel

Most Recent | Oldest

Showing 10

Me-Yo - So Sick 03:27

User Comments





Datei Download
cali303.part2.rar, 100 MB

Q-LOAD!



PREMIUM DOWNLOAD

GESCHÄTZTE DOWNLOADDAUER BEI 16 MBIT/S

1 Minute

Jetzt Premium Account anmelden und
sofort herunterladen

DOWNLOAD **FREE**

GESCHÄTZTE DOWNLOADDAUER BEIM GRATIS DOWNLOAD

über 20 Minuten

» Fortfahren mit Gratisdownload

Firstload.de - Dein Access ins Usenet - Windows Internet Explorer

http://www.firstload.de/

Benutzer: Kennwort: [Passwort vergessen?](#)

Home Unsere Pakete Wie funktioniert's? Software Newsgroups Support

14 TAGE GRATIS DOWNLOADEN

Erleben Sie den bisher schnellsten Download-Genuss. Mehr als 300 Terabyte an Videos, Games, Software, MP3s und Erotikinhalten warten darauf, heruntergeladen zu werden!

Ja, ich will sofort 14 Tage testen!

Bitte füllen Sie das Formular vollständig aus, Ihre Daten werden selbstverständlich vertraulich behandelt.

Sofort 3 Gigabyte downloaden!

Anrede:

Vorname:

Nachname:

Strasse u. Nr.:

PLZ Ort:

Land:

Geburtsdatum: Tag Mon Jahr

E-Mail:

Telefon:

Ihre Firstload Vorteile

- 1 Maximaler Speed**
Mit bis zu 25 Mbit/s downloaden!
- 2 Maximale Sicherheit**
100% anonymer Zugriff!
- 3 Maximale Auswahl**
Über 300 Terabyte an Daten, täglich kommen 1.500 Gigabyte neu hinzu!

Musik
385.318 MP3s



Filme
554.381 Videos



Erotik
5.753.472 Bilder



Games 128.327 **Software** 201.602 **Texte** 294 Mio

Gulli empfiehlt Firstload

"Insgesamt eine klare Empfehlung, für alle, die schnelle, sichere und anonyme Downloads haben wollen!"

[Der Testbericht](#)

Kundeninfo

Innerhalb der 14-tägigen kostenlosen Testperiode können Sie Ihre Anmeldung spesenfrei schriftlich (Email, Fax, etc.) widerrufen. Nach Ablauf der 14-tägigen Testperiode Vertragsdauer ab 3 Monaten mit Kosten ab Euro 7,90 pro Monat.

Internet 100%

Auf Knopfdruck suchen & finden Sie gewünschte Dateien

Suche

Kategorien

- Neu
- Edit.
- Entf.

Beste Dateigruppe

Größe

Alle

- Video
- Musik
- Software**
- Spiele
- Bücher
- Bilder

Die Datei wird mit maximaler Geschwindigkeit geladen

100 Dateigruppen (1 ausgewählt)

6,29 GB (298 KByte/Sek) Restzeit: 06:08:35

Der Download wird direkt aus der Firstload-Software gestartet

Windows Explorer - Firstload.de

100 Dateigruppen (1 ausgewählt)

6,08 GB (338 KByte/Sek) Restzeit: 06:20:15

941,91 GB verbleibend

Wir sind uns sicher: Sie werden begeistert sein!

[Ein kleiner Überblick, welche Auswahl Ihnen bevor steht.](#)



USENET PROVIDERS & RESELLERS

Sabam v. Scarlet



**Article 8.3 (access provider) before the CJEU
(AG Opinion 14 April 2011)**

- Filtering injunction contrary to EU law due to absence of a sufficient legal basis. It is “not provided for by law”. Article 52(1) EU Charter FRs. Need specific, proportionate law
- Preliminary reference a stacked deck. AG sees an order designed to end Internet piracy at expense of Internet users based on a sole legal provision. BE Art 8.3/11 does not cut it
- Article 52(1) applies to “any limitation” on rights in the Charter. Injunction would impose such limitations.
- For Scarlet (& other ISPs), the measure is not foreseeable. AG implies filtering equals monitoring (Art 15) – short on details.
- Point of view of Scarlet’s subscribers and all Internet users.
- AG-difficult to assess its concrete impact, finds limitations on:
 - personal data, telecoms secret, freedom of expression
 - which are “likely” to affect negatively these rights.
- Was the answer in the *Promusicae* judgment?
- National courts retain the power to grant injunctions against ISPs. AG says they cannot issue broad filtering/blocking injunctions. Narrower injunctions still available. Site blocking.

Legal action to address © infringing sites

- E-Commerce Directive meant to stimulate legal services not to shelter illegal services
- The privileges are only for activities of a mere technical, automatic and passive nature
- Neutrality vis-à-vis content-no knowledge/control
- Services that “get” involved don’t qualify
- Injunctions not affected - scope maybe by Art 15
- National courts: no universal factors but generally illegal services don’t benefit from liability privilege
- Knowledge requirement can still be a hideout
- Illegal sites don’t always stop infringing
- More sites are moving to difficult jurisdictions
- ISP cooperation on info and blocking (Art 8.3 EU CD)

European Network and Information Security Agency (ENISA): Recent Study answered the following---

- How much of the world's e-mails that are sent out actually make it into their destination inboxes?
 - 90%? No
 - 50%? No

ENISA (CONTINUES...)

- Well actually.....
 - **It's an astonishing 4.4%**
 - The remaining 95,6% is filtered out, largely by ISPs
 - This is usually done in cooperation with other operators to deal with this illegal content
 - They use blacklists. They block ports. They cooperate...