The intangible investor

Written by
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He's no Robin Hood

File sharing promotes a culture of piracy that makes it more acceptable to steal branded goods and inventions, as well as content. Big daddy Kim Dotcom is sticking it to all IP holders

In the court of public opinion, copyrights and brands have fared poorly. Thefts of digital content and counterfeits are easily achieved and difficult to stop. Patents have not done much better. A cultural disdain for IP rights has emerged, facilitated in part by range of businesses that stand to profit from free content, lookalike goods and the inventions of others, and end users who don't give a damn.

Exhibit A for the legitimisation of IP theft is Kim Dotcom Schmitz. Dotcom Schmitz has slyly built himself into a modern folk hero, complete with mellow gangsta style and outsider reputation (he is a champion gamer and car racer). This larger-than-life, medallion-wearing bad boy looks like he deserves a modest scolding and a heath club membership, not 20 years behind bars. That is what he and his supporters would like you to believe. In fact, his illegal businesses have generated more than 66 million illegal subscribers and have helped to make file sharing acceptable and cripple the recording industry.

Dotcom Schmitz's image is no accident. While it may appear that he is merely taking on the Man on behalf of the public good, he is really part of a larger IP crime mechanism that ignores ownership when convenient and belittles enforcement. Dotcom Schmitz, who has previously been convicted of embezzlement and insider trading and whose net worth is estimated at US$200 million, is no Robin Hood.

Respect for IP rights has reached new lows. While the public may not yet be interested in using patents illegally, many manufacturers of the products that they buy are. Some try to paint patent enforcers in a negative light, calling them names such as troll or predator; others rely on flawed academic research to demean them. Their arguments are no less specious than Dotcom Schmitz's. Some companies infringe inventions unwittingly, but others

do so systematically because, like file sharers, they know that the chances of getting caught are slim, the punishment is relatively light and, perhaps most importantly of late, the public frequently does not care.

The piracy economy exists in no small part because a wide range of people believe it is acceptable - even fashionable - to use other people's creative output. Many otherwise honest violators believe they are not stealing, but are merely doing what most PC or smartphone users are meant to do — download, copy and share. Most companies that violate patents are not as naïve as they make themselves out to be. A significant number have concluded that many inventions are merely incremental improvements on prior ones, and are questionable to begin with.

"Megaupload and the twilight of copyright" is an extraordinary article which appeared recently in *Fortune* magazine. It is written by respected legal journalist Roger Parloff, and is essential reading for anyone affected by IP rights. In it, Parloff details how Dotcom Schmitz created a piracy empire that generated hundreds of millions of dollars, and how he may yet escape prosecution. He also puts into context the complex evolution of file sharing and its potential impact.

"At one time," writes Parloff, "Megaupload (Dotcom Schmitz's international file sharing operation) alone accounted for 4% of the globe's entire Internet traffic and was the 13th-most-visited site on the web, according to the government, with more daily visitors than Netflix, AOL, or the *New York Times*." Dotcom Schmitz founded Megaupload in 2005 and set it up in Hong Kong, although he himself is a dual citizen of Germany and Finland, and a permanent resident of New Zealand. When arrested on 19th January 2012, he was living in a leased US$24 million estate. The vanity plates on three of his fleet of more than 25 luxury cars read GUILTY, EVIL and GOD.

To date, says Parloff, the only sense of public outrage has been against the prosecutors: "The Electronic Frontier Foundation has filed papers criticizing the government for having, through its

shutdown of the site, deprived innocent third parties of access to their files. It also suggests that the seizure violated the First Amendment."

In the 1970s and 1980s many people who went into the field of copyright saw themselves as fighting to help authors, musicians and artists - and therefore as being on the side of the angels. By the 1990s, however, many who entered the field came from tech backgrounds and saw copyright as a constraint to progress.

The *Sony Betamax* decision of 1992 may allow Dotcom Schmitz to escape punishment. This is more than just an outdated law that exempts recording device manufacturers from prosecution. It is part of a larger change in attitude that has allowed an emerging class of businesses and end users to rationalise profiting from IP theft.

Most do not realise that the piracy culture is hardest on little-known artists, authors and innovators. Popular musicians who thrive on live performances can afford to provide free or reduced-cost access to their recorded work. It's an alternative form of advertising and they will recoup recording royalties on concert sales and brand equity. Left out in the cold are the artists who need every dime from every book, song or photograph sale they can generate. Similarly ignored are inventors without sufficient capital to commercialise their work, license the rights or sell them competitively.

IP theft feeds on new ideas, thrives on distribution and prospers on cooperation. The effort to legitimise stealing of creative expression - from songs to handbags to smartphone improvements - is working because a culture of complicity supports it. I am afraid that it will take more than putting Dotcom Schmitz behind bars to set things right.

Bruce Berman is principal in Brody Berman Associates, a strategic communications firm that supports IP assets, holders and investors. A link to the *Fortune* article above can found at IP CloseUp.