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Digital Rights Management

Apple Computers Inc. Vs. O'Grady, Jade, and Bhatia

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**Introduction**

On the World Wide Web today there are many people who have secretive information about new and upcoming products owned by private big business. One way these people sometimes make a living is to turn over this information to media sources under an anonymous name. The recipient of the information, who generally publicizes the “up and coming” products, find the information so vital that they are willing to go to great lengths to secure who leaked the initial information; examples of trade may even include money or illegal handouts. Many supporters of the secondary stakeholders (the media and the general public) see this activity as ethical since it applies to the First Amendment rights of the Constitution of the United States of America. Under this Amendment, every individual has the freedom to speech and press; personal anonymity in times of investigation has been widely acceptable in the court of law for many decades. The Electronic Frontier Foundation (EFF) is an organization which actively supports the full rights of all information to the general public, even if it is anonymous, and promotes the argument for First Amendment rights against many industries, private businesses, and government affiliated agencies in a court of law. The focus of this paper will be Digital Rights Management and why we should secure product information, prosecuting informants (those described above) to the fullest extent of the law. Throughout this paper I am going to discuss a specific scenario involving the EFF and the Apple Corporation after secret information regarding a new product made its way onto three foreign websites many months before the products’ due date in 2005. This will be described in much greater detail within the Situation Analysis.

**Background**

Digital Rights Management made its way into the voice of society in 1990 as a security tools for innovators and businesses linked with innovators of new products. While trying to cut back on secretive information being leaked to the general public, it was Digital Rights Management which became the crime stopper against paid informants. Individuals behind Digital Rights Management claim that taking product information from the original owner and publicizing it against their will infringes against the artistic integrity of the product and artist. Another claim is that Digital Rights Management ensures continued streams of revenue by giving the business/innovator the ability to choose their market niche instead of outsiders choosing it for them in articles written to the general public. Lastly, Digital Right Management is believed by some, including myself, to be a way in preventing unauthorized duplication of the work in question. After all, isn’t it the innovators choice to have their creation copied or publicized in a manner fitting to their satisfaction? I will explain my personal stance further during the Conclusions section.

**Situation Analysis**

In 2005 a few different Apple-related news websites operated by O'Grady, Jade, and Bhatia on the World Wide Web turned their attention to information regarding new products created, built, and owned by Apple Computer Inc.: specifically its “Astroid” product. At no point in time did Apple give their permission for news write-ups or call a press conference for media attention. All information regarding the new products had come from anonymous sources who spoke privately with secondary stakeholders such as the media. The information below is testimony from the Superior Court Case describing the situation in more concise depth:

Apple Computer, Inc. (Apple), a manufacturer of computer hardware and software, brought this action alleging that persons known caused the wrongful publication on the World Wide Web of Apple’s secret plans to release a device that would facilitate the creation of digital live sound recordings on Apple computers. (*O'Grady v. Superior Court*, 139 Cal.App.4th 1423 (Cal.App. 2006)

**Perspectives of the Stakeholders**

Primary Stakeholders

1. Apple made claims that “publishers had involved themselves in the unlawful misappropriation of a trade secret” (*O'Grady v. Superior Court*, 139 Cal.App.4th 1423 (Cal.App. 2006)

(This means that although freedom of speech was acknowledged, it was not respected due to the underhandedness of a few individuals to disclose personal information.)

1. “Infringes against the artistic integrity of the product and artist
2. Directly conflicts with the marketing strategies of the company who owns property rights to the product
3. May hinder future revenue of the product due to type of publicity
4. May allow others to take product idea and manufacture something similar under a different name

Secondary Stakeholder

1. The EFF made claims to support their action with a completely different type of response:

“Because today's online journalists frequently depend on confidential sources to gather material, their ability to promise confidentiality is essential to maintaining the strength of independent media.” (Apple V. Does, p. 1)

1. Freedom of Speech by individuals in the general public

**Results**

The case ended in favor of EFF with Apple withdrawing their lawsuit. Here are the reasons the

court ruled in the favor of the EFF:

“a. The **Reporter's Shield** embodied in the California Constitution

b. The First Amendment's **Qualified Reporter's Privilege** and

c. The federal **Stored Communications Act**, which forbids communication service providers from disclosing the content of communications in response to a civil subpoena.” (Frequently Asked Questions about Apple v. Does, Answer to #7, p. NA)

According to [Patrizio](http://www.internetnews.com/feedback.php/http:/www.internetnews.com/bus-news/article.php/3609556/EFF-Bloggers-Win-Appeal-In-Apple-Case.htm) (2006), “The ruling overturned a lower court [decision](http://www.internetnews.com/bus-news/article.php/3489606) in March that bloggers do not have the same confidentiality rights as print reporters. Apple has not yet publicly commented on the decision.” (p. 1)

**Conclusions and Personal Commentary**

With every case involving Digital Rights Management that makes its way into a court system, new laws, standards, and expectations are made to fill existing loopholes. I believe that with enough time, most of the loopholes in the system will be identified and smoothed out. After all, Cyberspace is a new frontier and as with any other frontier during their times of exploration, it takes time to work themselves out. In this scenario we could see how the freedoms of speech and press could work as a defense for both parties involved in the lawsuit. In fact, this case created new rules with distinction to bloggers vs. print reporters. Apple filed the suit expecting their copyrights to “hold up” against the individuals posting on and responsible for the online news websites. In traditional media, such as print media, Apple would have probably won the lawsuit, and those responsible may have lost their business or received jail time. However, with the EFF defending the online news reporters who publicized the products information, a clear distinction could be made as bloggers should no longer be presented with a confidentiality clause for any information received by outside or inside parties.

This case seemed to have good perspectives from both angles, but I have to agree more with Apple Computers Inc. and their strict outlook on Digital Rights Management. In my opinion, it is not appropriate for someone other than the creative designer or owner of the business who is building and marketing the product to publicize information about the product without specific permission. When an individual or business acquires a legal copyright, protecting their product from outside distribution, I would think this would also include secretive information about the product finding its way to foreign parties. Under these pretenses, I would have to agree with the creative person and the copyright owner. After all, it is their money which secured a copyright, and the product should be copyright protected in all aspects, especially with publications in the media.

References

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