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Music Piracy and Its Criminalization: Understanding the Napster Era (1999) to Present Through Donald Black's Theory of Moral Time

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Through Donald Black's Theory of Moral Time

By

Craig Jankowski

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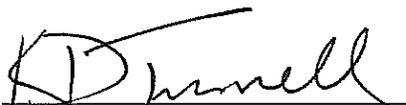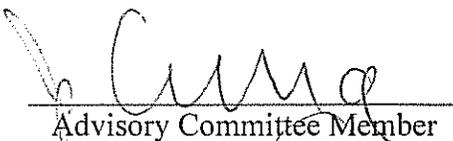
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Music Piracy and Its Criminalization: Understanding the Napster Era (1999) to Present
Through Donald Black's Theory of Moral Time

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Bachelor of Arts
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Huntington, WV
2011

Submitted to the Faculty of the Graduate School of
Eastern Kentucky University
in partial fulfillment of the requirements
for the degree of
MASTER OF SCIENCE
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DEDICATION

This thesis is dedicated to my mother Beth,
grandmother Alice,
and my good friend Jonathan
for their unyielding support and motivation.

ACKNOWLEDGMENTS

ABSTRACT

In the year 1999 Napster, a provider of music downloading software, broke news headlines around the world when copyright infringement lawsuits were filed against the company. Ever since then internet music piracy has been a very controversial topic and a target for criminalization efforts. In the field of criminology there have been few attempts to apply theory to the topic of internet music piracy. Theorization of internet music piracy has mainly focused on the illegal behavior of music piracy, explaining the motivations and knowledge behind it. Something that has been neglected in theoretical work of online music piracy is its criminalization. This thesis topic is significant in that it is a theoretical application test of Donald Black's newest theory, Moral Time. Black, a sociologist from the University of Virginia, who is well known for his works *The Behavior of Law* and *Sociological Justice* introduced this new theory in 2011. The Moral Time theory is a theory of why conflicts occur and why some conflicts are worse than others. Using this theory, four key stages of criminalization efforts taken by the music industry are examined and elaborated upon as a means to identify why the music industry chose to take the actions it did against online music piracy.

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CHAPTER 1

INTRODUCTION

In the year 1999, Napster, a provider of music downloading software, was the focus of news headlines around the world when copyright infringement lawsuits were filed against it. Since then internet music piracy has been a controversial topic and a target for criminalization efforts. Many fields of study have explored the issue, including communications, international studies, psychology, history, sociology, economics, and legal studies (e.g. Angwin, McBride, & Smith, 2006; Breen, 2008; Chang, Kang, & Ki, 2006; Condry, 2004; Cooper & Harrison 2001; Cummings, 2010; Katz & Owen, 2004; Korpas, Weisz, & Wingrove, 2011; Wall, 2004). However, within the field of criminology online music piracy has been a neglected topic. Nowhere is this neglect more apparent than with regards to the application of theory to internet piracy. Yet theory is a valuable tool for understanding both criminal behavior and criminalization. This neglect is unfortunate as theory allows us to understand situations without having to experience them directly and predict how to deal effectively with situations before they can develop into greater issues.

Historical Background

The exact origins of music piracy are hard to trace. Cummings (2010) says it began in the 1890s when music firms would copy each other's music recordings. Others (Beken, Janssens, & Vandaele, 2009; Levy, 1994) point towards the creation of the blank cassette tape and personal recorders in the 1960s as being the cause. Nonetheless, it was quite a process to pirate the music an individual wanted. Compact disks came along in 1982, and these made it much easier for individuals to pirate music in a more effective

way. Still it wasn't until 2000 that music piracy was taken to a whole new level. Since the emergence of the peer-to-peer (p2p) file-sharing site Napster in 1999, music sales in the U.S. have dropped over 50 percent (Beken, Janssens, & Vandaele 2009).

Subsequently various other p2p servers, now commonly referred to as Torrents or Bit Torrents, have come about. These sites work like any other organized criminal activity; they spring up for a few months in response to demand for an illegal community and then get shut down or move on, adopting a new name. It has been estimated that Bit torrents are taking upwards of one-third of the internet's traffic flow (Bergeron & Price 2008) and have developed into a significant issue, one in need of criminological investigation. Obviously, then, music piracy has come a long way since the advent of the cassette tape recorder.

During the 1960s, the music industry initiated stronger opposition to piracy. This was done more to maintain a position in the economy as a viable business and to protect investments rather than to protect the rights of music artists. Until this time music piracy wasn't seen as much of a threat to the revenue of the music industry. This campaign led to an increase in the orientation of copyright laws to protect capital interests rather than selectively focusing on artists' rights. It wasn't until the 1970s that copyright laws became broadened in scope, surpassing the previous focus predominantly on artist intellectual property. This broadening of the law was met with opposition because it required such an alteration in federal law. It wasn't until 1971 that the recording industry received federal protection for its products (Cummings, 2010).

Theoretical Background

The majority of theoretical work on internet music piracy in criminology uses general strain theory, self-control theory, social learning theory, or a combination thereof to explain illegal conduct (Hinduja, 2008; Hinduja & Ingram, 2008, 2009). While these theories are appropriate for explaining individuals' actions and motivations, they do not account for why corporations and lawmakers respond in the way they do to piracy. This thesis addresses that void in understanding by applying a new theory introduced by Donald Black (2011) to explain music piracy criminalization efforts.

Black is a sociologist from the University of Virginia who is well known for his works *The Behavior of Law* (1976) and *Sociological Justice* (1989). In *The Behavior of Law,* Black introduces the idea of how social life has several variable aspects, including stratification, morphology, culture, organization, and social control. Black aims at mapping out social space and showing the location and direction of law within this space. In *Sociological Justice,* Black proposes that law is primarily a matter of rules. He states that law is a social process in which bias is innate. Black goes well beyond the documented instances of racial discrimination to show how social status (regardless of race), the degree of intimacy (e.g., family members, friends, or complete strangers), speech, organization, and numerous other factors all greatly influence whether a complaint will be filed in court, who will win, and what the punishment (or some other remedy) will be. Moreover, he extends his analysis to include not only the litigants, but also the lawyers, the jurors, and the judge, describing how their social characteristics can also influence a case.

Black's newest work, *Moral Time* (2011), expands his previous theorization to explain what causes conflict and why some conflicts are considered to be worse than others. Black offers the analogy that conflict is, in its broadest sense, crime and punishment. He conceptualizes conflict as a movement in social time (i.e., as a function of social change). Black goes on to state that conflict, in turn, creates further movements of social time and, hence, more conflict the second chapter of this thesis will discuss past and present literature on music piracy. The theory of moral time will be further described and interpreted in the third chapter and then applied in the fourth chapter to explain the major developments in the criminalization efforts aimed at online music piracy. Chapter five will present a discussion of critiques of Black's theory, limitations of this thesis, and suggestions for policy implications and further research.

Significance of Topic and Statement of Purpose

Theorization of internet music piracy has mainly focused on the illegal behavior of music pirates (Gealt, Gunter, & Higgins, 2010; Higgins, Marcum, & Wolfe, 2008; Ingram, Hinduja, 2009; Korpas, Weisz, & Wingrove, 2011). This work emphasizes how individuals acquire the motivation and knowledge to pirate music online. Something that has been neglected in theoretical work on online music piracy is its criminalization. This thesis topic is significant in that Black's (2011) conceptualization of conflict can be utilized in order to explain and describe the evolution of criminalization efforts directed against online music piracy..

Online music piracy is a significant phenomenon because it is a worldwide epidemic and a notable threat to profit interests (Andersen & Frenz, 2007; Beken, Janssens, & Vandaele, 2009; Cummings, 2010). Different cultures have different ways

of defining crime and punishing criminals, which makes piracy criminalization complicated and difficult to sort out. However, Black (2011) contends that understanding the genesis of conflict can better position people to anticipate and ultimately manage (but not prevent) conflict. As such, it is hoped that theorization of criminalization, when combined with theorization of criminal actions, can be used in a productive manner to inform and guide efforts to control online music piracy in a just way.

There have been many noteworthy events that have taken place in the fight to contain and control online music piracy. In this thesis four specific stages will be discussed. The first stage involves the initial attack on computer software that enabled people to pirate music. The second stage illustrates the consequences of the first stage and how those consequences influenced the music industry to hold individual users responsible rather than concentrating on piracy software providers. Stage three focuses on how for many years the music industry attempted to get internet service providers involved in the fight against online music piracy. The fourth and final stage presents a new way of punishing those who are caught pirating music illegally. This new response to online music piracy is called a graduated response; this involves giving the user warnings before taking legal actions.

The purpose of this thesis is to examine the evolution of criminalization efforts taken by the music industry towards **i**nternet piracy and to better understand those efforts by applying Black's theory of moral time. Using data on the criminalization of online music piracy, this thesis examines how well Black's theory explains such criminalization efforts. Until the advent of online pirating software (e.g., Napster, Grokster, LimeWire, etc.), online music piracy was not a very prominent issue. The music industry did not

begin to see substantial losses from online piracy software until the year 2000 (Beken, Janssens, & Vandaele, 2009). This was about the same time online pirating software began to make its debut. Thus, I began my research on the evolution of criminalization starting with the year 1999 and continued on through the year 2012 in order to cover the full spectrum. Additionally, Black's conceptualization provides a solid tool for making better sense of such criminalization efforts.

CHAPTER 2

LITERATURE REVIEW

Previous Scholarly Research

   A) Theoretical Research

      Very few attempts have been made to apply criminological theory to online music

piracy. An exception is found in the work of Dr. Hinduja, a very prominent criminology

scholar in the field of internet piracy. In *Music Piracy and Crime Theory*, Hinduja

(2006) describes how general strain, social learning theory, and self-control theories are

well suited to explain online music piracy and those who participate in it. Hinduja and

Ingram (2008) studied 2,032 undergraduate students at a large university in the Midwest

region of the United States. These students were asked to fill out a survey with questions

pertaining to past and present downloading behavior, along with multiple measures

targeting social learning, self-control, and moral beliefs. Almost half of the sample

(48.7%) reported downloading over 500 songs over the course of their life time. It was

revealed that all of the theoretical variables were significantly associated with music

piracy. Self-control had the greatest impact under conditions of low differential

association, and similar results were found with differential association and ethical

beliefs. The effect of differential reinforcement on levels of music piracy was found to

vary as a function of one's self control. Beliefs regarding piracy laws and the effect of

imitation or modeling on levels of music piracy varied as a function of beliefs regarding

piracy laws.

      Holsapple et al. (2008) have also done research on criminological theory as it

relates to internet piracy. They show the significance of using routine activities theory,

rational choice theory, and the concept of guardianship to explain internet piracy. This was done in order to explore and identify fundamental parameters that can affect the incidence of software piracy. They applied these frameworks in conducting a systematic examination of 75 articles dealing with software piracy. These researchers discovered that definitions of deviant behavior have received little or no attention from software-piracy research. Even though Holsapple et al.'s research focuses on online software piracy instead of online music piracy, it nonetheless addresses the online aspects of piracy and technological tools required for individuals to pirate via the internet.

In the field of sociology, Cooper and Harrison (2001) conducted the first sociological analysis of the audio piracy subculture. This experiment was conducted in order to exemplify how pertinent sociological research is regarding online communities. Previous to this research, "sociological observations concerning the internet existed through vague generalizations and unqualified assertions about what these new virtual forms of communication portend (Kellner, 1995) for 'society', which offers little in the way of concrete social research" (as cited in Cooper and Harrison, 2001, P. 71).

Cooper and Harrison examined three main concerns: the activities of audio pirates, the underlying motivations for this piracy movement, and how these individuals navigate through cyberspace. The main activity of pirates was to exchange music files between one another. However, they also socialized: "Friendships are made and destroyed, and conflicts created and resolved day in and day out" (P. 77). Within this subculture, Cooper and Harrison explain that there are three roles a person can take when navigating throughout cyber space: leach, trader, and citizen. The leach simply is there to take what he or she wants without compensating those who supplied it. Traders enter the

virtual environment with the intention of trading music they already have for music they wish to obtain. Citizens (the most respected role) offer music without expecting anything in return; they dispense music to traders and leaches alike.

Just as in real life there is a type of hierarchy within this virtual society (Cooper & Harrison, 2001). It is in the form of the three roles described above. The lowest level is the leach, the middle class is the traders, and citizens are the highest, holding the most power. Traders have a certain amount of power because they own a lot of current music. However, the citizens have a much wider selection of music and a lot of other means of obtaining music through interpersonal connections they have made with other citizens. Traders do not have these types of connections. The motivation mentioned for engaging in these activities is to become socially revered, and this is done by having the biggest collection of music available to others for assentation.

Cooper and Harrison's (2001) study is the first sociological study of the "audio piracy" subculture. It is relevant to this thesis because it can be thought of as a precursor to the first stage of criminalization efforts taken by the music industry. The piracy software that enabled individual users to engage in music piracy on their own grew from this subculture. Beforehand individuals had to be rather technologically savvy and know whom to ask and where to look in order to obtain music.

B) Effects of Piracy

Most research of online music piracy is focused on its consequence and how to deter people from engaging in it. Beken, Janssens, and Vandaele (2009) looked at the effects of piracy on the music industry. Their research revealed that music piracy is responsible for a substantial loss in revenue, over 50 percent. As well, online music

piracy comprises almost one-third of the internet's traffic flow. According to the music industry, there was a causal relation between the growth of P2P networks and the decline in CD sales. The data collected by Beken et al. illustrated that the year 1999 was a pivotal turning point: "… the decline starts in the year 2000, global sales started to drop in the year 1999. It is the same year that Shawn Fenning started Napster…" (P. 83).

Research by Higgins, Marcum, and Wolfe (2008) examined possible methods of deterring online music piracy. These researchers looked at how neutralization methods played a role in music piracy with college students. Their short-term longitudinal study recorded digital piracy and intentions of 300 students weekly for four weeks. It was found that over the four week period, both music piracy and neutralization decreased. Where results showed the drop in music piracy was linear, the decrease in neutralization differed. Individuals showed a significant difference in initial levels and changes in neutralization methods used over the four week period. It was found that those who reported high levels of neutralization in week one tended to report lower levels in week four.

Gealt, Gunter, and Higgins (2010) followed up on the Higgins et al. (2008) study by examining the prominence of those who engage in these illegal activities. They conducted a survey study with 6,249 8th grade students from public-charter schools and 5,470 11th grade students from Delaware public schools. It was found that 52.2% of the 8th grade students reported pirating music; 44.0% pirated music in the past year; 35.1% pirated music in the past month; and 16.1% pirated daily. The results from the 11th grade students showed a significant increase with reports of 72.3% pirating in their lifetime, 63.8% pirating in the past year, 52.8% in the past month, and 25.0% daily.

Music Industry Research

A) RIAA

The Recording Industry Association of America (RIAA) has a section on their website specifically devoted to the issue of online piracy. Within this section there are five subheadings: "What is online piracy?", "Who music theft hurts?", "Scope of the problem.", "Why we do what we do?", and "The law." In the "What is online piracy?" portion, the RIAA defines online piracy as "any form of sharing or receiving of copyrighted music by means of the internet without purchasing it through legal venues" (riaa.com, 2013). The "Who music theft hurts?" portion explains who is effected when music is downloaded illegally including "…songwriters, recording artists, audio engineers, computer technicians, talent scouts and marketing specialists, producers, publishers and countless others" (riaa.com, 2013). Under the "Scope of the problem" section it is explained that while the music industry may be a large, by business standards it is relatively small. As explained previously, many people are affected. So theft on this scale has noticeable and devastating impacts.

Anyone who visits the [Piracy] section of the RIAA website can find out everything he or she needs to know about the laws and regulations of owning, obtaining, and distributing unauthorized music content in, "The law" portion of this section. The final portion of the [Piracy] section titled, "Why we do what we do", describes what the RIAA is attempting to do and why it is doing it. The RIAA aims to educate the public on the issue of music piracy, expand its market to reach as many users as possible so they won't be tempted to obtain music illegally, and continue to prosecute those who choose to engage in copyright infringement violations. "The single most effective anti-piracy

strategy is to help build a thriving legal marketplace. That's always been the industry's number one priority. Our goal with every anti-piracy effort is to protect the ability of the music business to invest in new bands and new music and, in the digital arena, to give legal online services space to continue to prosper" (riaa.com, 2013).

B) IFPI

From 2004 until present, the International Federation of the Phonographic Industry (IFPI) has released music market statistics. These statistics include yearly research and findings on digital piracy, government involvement, and internet service providers (ISPs). Also included are international contributions and actions taken from other organizations, such as the Recording Industry Association of America (RIAA). During the first years of this report, the focus was on music sales statistics and advances in the music world, but now the report has come to focus on the issue of online music piracy and copyright infringement.

The following paragraphs describe the four stage criminalization efforts taken by the music industry in order to stop online music piracy. Online music piracy first made a noticeable presence in 1999. It wasn't until 2004 that the music industry was able to bring legal action against those involved. The four stages described below are relevant in that they depict key components in the music industry's fight against piracy. Each stage illustrates what issues the music industry faced, the resolutions presented, and the reactions to these resolutions on behalf of the pirates and the music industry alike.

Stage 1: Initial Attack on Piracy Software

Initial efforts against online music piracy involved educating the public on the issue. This involved illustrating what constitutes an illegal assertation of music and legal

alternatives to these methods. As the problem persisted, the music industry began to

bring legal actions against the providers of software that enabled individuals to pirate

music. Beginning in the year 2004 and continuing throughout 2005, a wave of court

rulings gave the recording industry the most significant boost yet in the fight against P2P

piracy.

…judgements against Grokster in the US, Kazaa in Australia, and Soribada in

Korea and Kuro in Taiwan laid down some key ground rules with global implications for

the fight against illegal P2P distribution. (IFPI.org 2006, P. 18).

Today [2006] P2P networks provide the dominant source of online piracy, and the

number of infringing music files on the internet stands at just under one billion. (IFPI.org

2006, P. 16).

One case in particular, *MGM v. Streamcast/Grokster (2005),* was very influential

because the RIAA lost. The courts distinguished software that used new technology

(such as the fast track network) and older software (such as Napster). Newer software did

not require constant administration to run. The courts believed that even if those who

created the software were no longer involved, the software will still be readily available

for those who choose to download music illegally. Importantly, this shifted the focus of

criminalization to those who use the software rather than the software and its creators.

Stage 2: Holding Individuals Responsible

Napster was the first big P2P software to hit the internet. This program was

unique because it focused exclusively on music in the form of MP3 files and had a

friendly user interface that allowed for easy use. After Napster, "fast track networks"

became the new P2P servers. This new technology was an advanced P2P software that

allowed downloading multiple sources, thereby making the tracking of internet music piracy vastly more difficult. In 2002, the RIAA began to request individual internet customers' ISP (internet service providers) numbers from their internet providers. However, it wasn't until 2004 that ISPs began to work in cooperation with the music industry in the attempt to fight online music piracy. (IFPI.org 2004, P. 11)

Operators of unauthorised P2P networks, who encourage the use of their networks for copyright infringement, can be held liable for music piracy. P2P services cannot simply turn a blind eye to ongoing illegal activity and profit from massive infringement while   avoiding putting in place effective filters or other methods to prevent it. (IFPI.org 2006,   P. 18).

IFPI and affiliate recording industry bodies continued the global campaign against illegal file-sharing in 2006, bringing legal actions against more than 10,000 individuals in 18 countries. (IFPI.org 2007, P. 18)

These court rulings were momentous in the music industry's fight against online music piracy. In contrast to previous years, individuals could now be held accountable for their involvement with online music piracy. As good as this might have been, the music industry now faced a new challenge. Now more than ever, the music industry and ISPs had to work in cooperation in order to be able to effectively prosecute individuals involved in pirating music.

Stage 3: Getting ISPs Involved

Beginning in 2002 the fight against online music piracy turned toward internet service providers**.** Getting ISPs involved would give those fighting online music piracy the vital information they need to criminalize those involved in copyright infringement.

This effort started as a means to shut down websites and software that enabled individuals to obtain music. But this all changed in 2005 when the focus of criminalization shifted towards users.

When consumers of internet services enter into a contract with an ISP, they are required to provide very personal information. With this information, government entities can very easily and effectively criminalize people for offenses of copyright infringement.   This movement was met with much resistance from both ISPs and citizens alike.

ISPs should enforce this condition and terminate their service to people using their networks to steal and distribute music without permission. IFPI has asked ISPs to come   to the table and address these issues voluntarily. Many of them initially made promising noises, but the discussions have so far gone nowhere and ISPs have generally refused to take effective action. (IFPI.org 2007, P.19).

 It wasn't until 2007 that crucial events took place that would enable cooperation between ISPs and government entities:

The court ruling in the SABAM v Tiscali case in Belgium in September of 2007 set an   extremely important precedent. It not only confirms that the ISP should take proactive steps to block infringing content; it also confirms expert evidence on a range of feasible blocking and filtering solutions available to ISPs. (IFPI.org 2008, P. 21).

In November 2007, the most significant development yet in this process occurred when Nicolas Sarkozy, the French President, announced a potentially revolutionary new agreement under which ISPs in France commit to disconnect persistent copyright

infringers on their networks. The move followed a number of significant advances in other countries during 2007. (IFPI.org 2008, P. 21).

President Sarkozy's announcement of this agreement influenced many other countries, including the United States, Australia, Singapore, the United Kingdom, and Sweden, to make similar alterations to their laws. This was done in the hopes of influencing internet service providers to take actions against those who violate copyright laws. Resistance was still met.

Many countries are now progressing towards concrete steps by ISPs in this area. However, the recording industry is prepared to use the courts where voluntary collaboration fails. In some countries … IFPI has reluctantly but successfully used litigation to require ISPs to disconnect the accounts of users responsible for infringing services. (IFPI.org 2008, P. 12).

Stage 4: A Graduated Response

Finally in 2009, the graduated response program became a reality. While it was initially limited to France, South Korea, and Taiwan, this was still a historical movement in the fight against music piracy. The annual report distributed by the IFPI for the 2009 fiscal year had this to say in order to explain what the graduated response would entail:

Under this system, the holders of accounts identified by rights holders as being used for infringement are sent notices by their ISP. The notice would advise them to stop infringing and suggest the use of a legitimate service that respects copyright and rewards rights holders. An escalating series of warnings would result, as a last resort, in temporary internet account suspension for those few who refuse to stop. The system would protect the anonymity of individuals and would essentially implement the standard

terms of ISP subscriber agreements, while conditioning continued service upon compliance with the law, particularly copyright. (IFPI.org 2010, P. 24).

What this means is that the user will be issued an initial warning when first found pirating music illegally. This warning would recommend that he or she cease in the actions they are taking and offer legal alternatives of obtaining music. If the illegal actions of the user continue, ISP would escalate in the severity of the warnings. Eventually, this would lead to measures such as bandwidth reduction, protocol blocking and, in a worst-case scenario, temporary account suspension.

When legal actions are taken against infringing services and individuals, the outcome usually ends in one of two ways. The first option requires those involved to either pay a fine(s), serve time in jail/prison, or a combination thereof. The second option, which in the past has been the more preferred option, is to become a legitimate distributer of music (IFPI.org 2010, p. 26). Services would now require their users to pay a subscription fee in order to use them.

As can be seen, having the assistance of ISPs was crucial in the fight against online music piracy. Without the cooperation of the ISPs, legislation for the graduated response would not have been passed. Research conducted throughout the years of 2008 and 2009, as reported in the annual IFPI report, has suggested that if a graduated response were to be taken, many users would become more deterred from engaging in online music piracy.

IPSOS research, conducted in France in May 2008, found that 90 per cent of consumers would stop illegally file-sharing on receipt of a second warning from their ISP as part of a graduated response programme. (IFPI.org 2010, P. 24).

According to a 2009 study by Entertainment Media Research, 45 per cent of consumers who downloaded music illegally would definitely stop if a graduated response model was implemented. A further 35 per cent claimed they would probably stop. (IFPI.org 2010, P. 24).

Research conducted for the New Zealand Federation Against Copyright Theft (NZFACT) in 2008 found that 70 per cent of internet users in the country aged between 15 and 30 would stop file-sharing copyright infringing movies if their ISP could suspend or terminate their internet account for breaking the law. (IFPI.org 2010, P. 24)

In more recent years, other countries have taken a stand against music piracy by incorporating a graduated response. New Zealand enacted the Copyright (Infringing File Sharing) Amendment Act 2011, which amended the Copyright Act of 1994. In the United Kingdom, the Digital Economy Act 2010 came into effect in June of 2010, which regulated digital music. The United States is a little different from these other countries. The United States uses a voluntary graduated response called the copyright alert system. The copyright alert system, which is based on a graduated response framework, is an agreement between participating ISPs and intellectual property organizations.

In this alert system, a third-party will monitor file-sharing networks, collect the IP addresses of suspected copyright infringement, and submit the IP addresses to ISPs who will in turn issue the suspected infringer a copyright alert. Those suspected of copyright infringement may be issued six copyright alerts, one for each subsequent infringement. Consumers who fail to respond to the alerts may have their connection throttled, though their account may not be terminated.

In summation, this chapter has discussed the lack of theoretical literature pertaining to the criminalization of online music piracy. Most theoretical work has examined why piracy occurs. The RIAA and IFPI research gave a better understanding of what online music piracy is, who it affects, and what is being done to deal with it. Within the IFPI literature, four stages of criminalization were discussed. Stage one involved initiating the attack on music piracy software. Next, in stage two, the focus shifted towards that of the individual users of piracy software. Stage three showed that the music industry needed the assistance of ISPs. Finally, in stage four the music industry was able to incorporate a wide spread punishment of online music piracy.

CHAPTER 3

BLACK'S THEORY OF MORAL TIME

Overview

      Black (2011) introduces his theory of moral time by stating that, "Central to the theory is a new concept of social time – a distinctively and purely sociological form of time: Social time is the dynamic dimension of social space" (pp. 3-4). Pure sociology is a unique theoretical paradigm that has been used to explain variations in legal behavior (1995). Black created this paradigm as a substitution to individualistic and social-psychological theories. Pure sociology is very diverse in that it can easily be applied to many subjects, such as law, conflict, and conflict management. It has also been used to examine topics of religion, science, lynching, terrorism, genocide, and art (Black, 2004). This makes pure sociology ideal for this thesis because it covers such an array of issues that very closely relate to online music piracy and the criminalization thereof.

      Black claims the central cause of conflict is the movement of social time. As depicted in Figure 1, the concept of social time can be thought of as a three dimensional space in which social stratification, relational, and cultural factors interplay with each another. Relational space is the degree of intimacy, "… such as the involvement of one person or group in the life of another." Vertical space refers to the degree of stratification or inequality, "… such as the difference in wealth" (Black 2011, p. 4). Cultural space is the degree of diversity, such as a difference in religion or ethnicity.
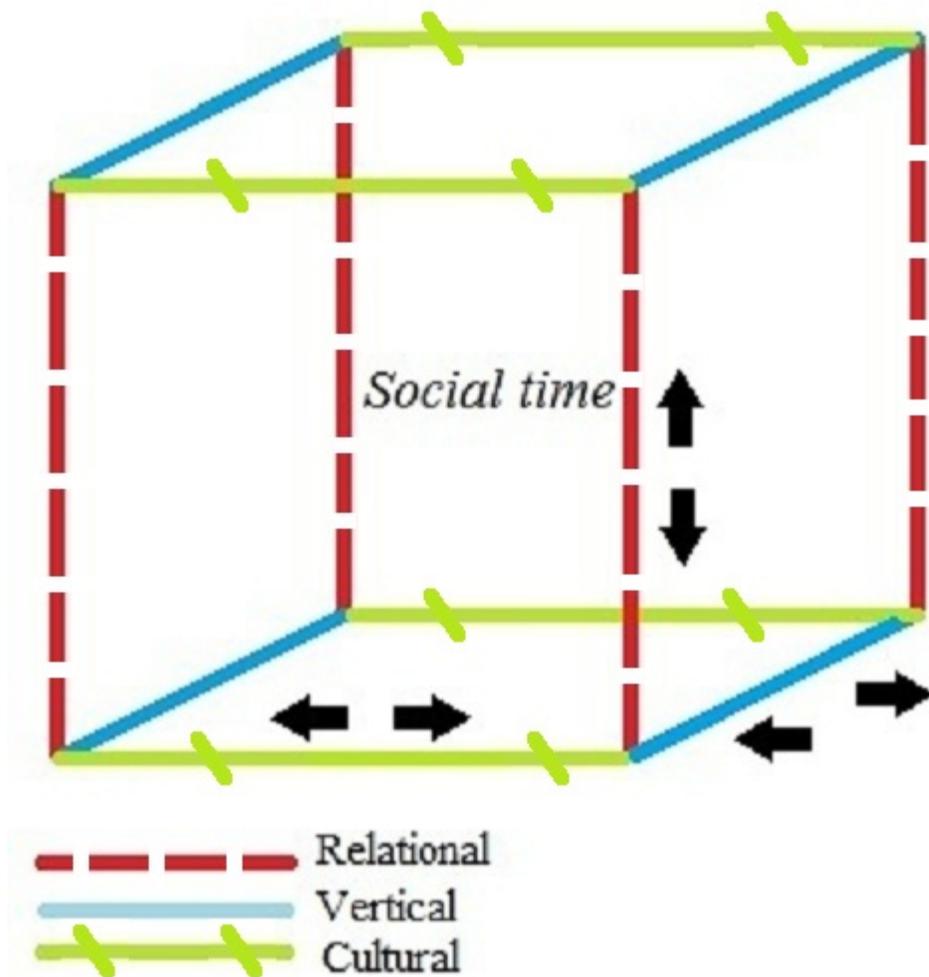
Figure 1
Black's 3D Conception of Social Time

Unlike physical space, which is static, social space is constantly shifting. Since

social time is constantly fluctuating, the movements in relational, vertical, and cultural

spaces clash and cause conflict. "Every conflict is itself a movement of social time, and

conflict therefore causes more conflict, social time is *moral time"* (Black 2011, P. 4).

For example, where there might be an *increase* in relational space, there could

simultaneously be a *decrease* in vertical space. The increase or decrease of one factor

will cause a change in one or more other factors, and the end result of this will be some type of conflict.

Black formats his theory and book around the three concepts of relational, vertical, and cultural space. He expands these three concepts by breaking them down into six main principles. These principles are: overintimacy and underintimacy (pertaining to relational space), overstratification and understratification (pertaining to vertical space), and overdiversity and underdiversity (pertaining to cultural space). Black further divides the six principles into two separate components. Intimacy is broken down into: (a) overinvolvement and underinvolvement and (b) overexposure and underexposure. Stratification is broken down into (a) oversuperiority and undersuperiority and (b) overinferiority and underinferiority. Diversity is broken down into (a) overtraditionalism and undertraditionalism and (b) overinnovation and underinnovation. Figure 2 illustrates how these concepts interact with one another
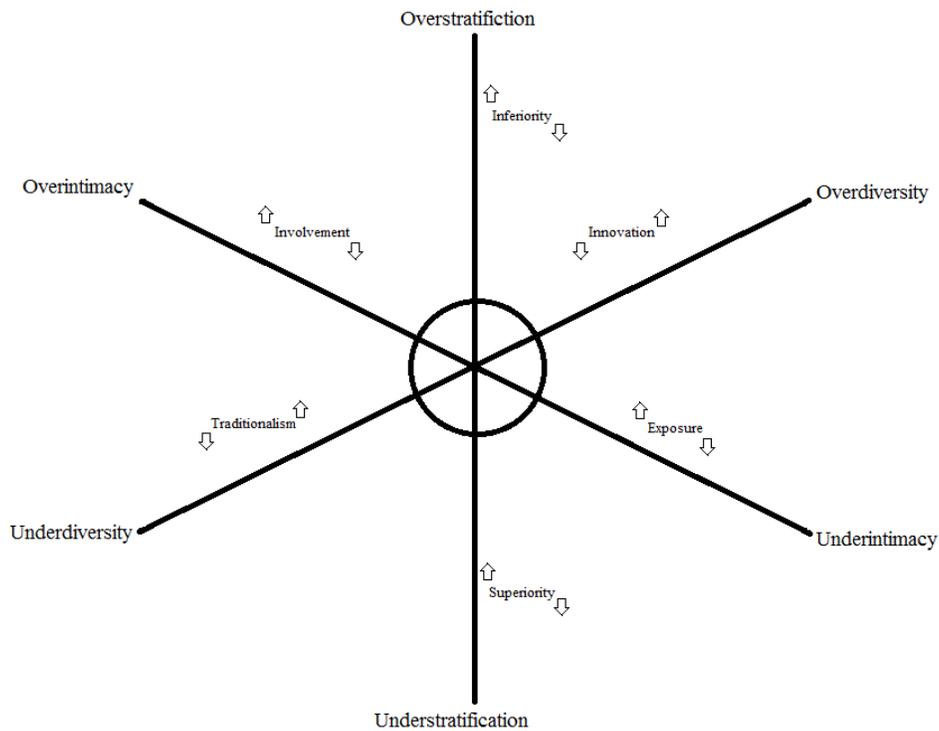
Figure 2
Black's Dimensions of Social Time

Each component interacts with one another and moves in and out from the center of the spoke of the wheel. As each component and principle get closer to the center, the amount of conflict decreases. That being said, the further away the components get from the center, the greater the conflict. All these components are juxtaposed with one another; this means that as one component moves closer or farther away from the center of the spoke, it will influence the movement of one or more of the other components.

Each one of the principles has distinctive characteristics. First is that the faster and greater the increase/decrease of the principle, the greater the conflict. Second, these principles are constantly fluctuating and clashing with one another. Black makes it clear that static conditions, such as poverty, are not what cause conflict. Rather, the source of

conflict is dynamic such as if someone were to lose something he or she once had (i.e. social standing, money, relationships, etc.). This is just one example of a dynamic situation that might lead to conflict. The point is that static conditions do not cause conflict; it is the dynamic movement in social time that causes conflict.

Intimacy, Stratification, and Diversity

In the following paragraphs, Black's concepts and principles will be discussed and defined. In Table 1 there are two panels: Panel A and Panel B. Panel A gives Black's definitions for his six concepts (see Figure 2) while Panel B gives the definitions of Black's twelve principles (also seen in Figure 2).

Table 1
Definitions of Black's Concepts and Principles

Concepts	Black's Definition
Overintimacy	"A decrease in relational distance. I increase my intimacy with you when I enter more of your life" (Black 2011, p. 21).
Underintimacy	"An increase in relational distance. I decrease my intimacy with you when I reduce contact or conceal more of my life from you" (Black 2011, p.21).
Overstratification	"An increase in inequality. You become my inferior if I rise" (Black 2011, pp. 59-60).
Understratification	"A decrease in equality. You become my superior if I fall" (Black 2011, pp. 59-60).
Overdiversity	"Any increase in cultural distance. Diversity increases when one tradition has contact with another or when something culturally new comes into being" (Black 2011, p. 102).
Underdiversity	"Any decrease in cultural distance. As long as I do not accept your culture I reject it" (Black 2011, p. 120).
Panel B: Principles	Black's Definition
Overinvolvement	"Too much involvement is a trespass, and might include anything from an overly personal question to a taboo sexual relationship, a burglary, a rape, or an invasion" Black 2011, (p. 22).
Underinvolvement	"Failure to converse to a divorce or declaration of independence; failure to honor a contract, return a favor, reciprocate a gift, or merely express gratitude" (Black 2011, p. 44).

Table 1 (continued).

Overxposure	"Anything normally unseen or unknown, including whatever someone would rather not see or know" Black 2011, (p. 36).
Underexpsoure	"Failure to reveal enough about who they are and what they do, who and what they know, or what they think and feel" (Black 2011, p. 51).
Overinferiority	"Falling below others causes conflict as well. Despite the reasons (actions of someone else, one's own mistakes, etc.) all such loses cause trouble" (Black 2011, p. 71).
Underinferiority	"Upward mobility causes conflict when it decreases inequality by reducing or eliminating the superiority of superiors" (Black 2011, p. 89).
Oversuperority	"Success leads to suspicion, resentment, and accusation of wrongdoing among those left behind, especially if they are falling at the same time. Those who acquire wealth or power or other social status often attract dislike" (Black 2011, p. 60).
Undersuperority	"The fall of a superior might mean trouble for someone else, especially an inferior." This could be anything such as modern superiors blaming their employees, officers blaming their subordinates or coaches blaming their players" (Black 2011, p. 82-83).
Overinnovation	"New cultures clash and deviate from old and incompatible cultures and traditions" (Black 2011, p. 109).
Underinnovation	"A rejection of new culture. Resistance to innovation begets resistance in return" (Black 2011, p. 129).
Overtraditionalism	"Some of the most extreme clashes of culture occur when people invade and colonize another part of the world radically unlike their own" (Black 2011, p. 102).
Undertraditionalism	"A rejection of traditional culture. Traditions struggle to survive and followers do not always accept rejection" (Black 2011, pp. 121-122).

Overintimacy refers to the upward movement in intimacy to the point of excess. *"Conflict is a direct function of overintimacy"* (Black 2011, p. 22). Overinvolvement and overexposure are two components of overintimacy and are considered to be a trespass upon someone else. Too much involvement, or exposing too much about oneself, may make someone feel that their relational space has been invaded.

Underintimacy refers to the downward movement in intimacy, reducing the amount of, or concealing, intimacy. *"Conflict is a direct function of underintacy"* (Black 2011, p. 44). Two components of underintimacy are underinvolvement and underexposure. These two components range from anything as small as reducing openness and contact with a person all the way to complete separation from a person.

Overstratification refers to the upward movement in the stratification dimension. It describes the excess of, or providing too much, mobility. *Conflict is a direct function of overstratification"* (Black 2011, p. 60). Stratification relates to the type of inequality a person experiences in life. Social mobility, both upward and downward, is a change in social stratification. Overstratification refers to the inequalities felt by those who have been left behind. "An increase in inequality occurs whenever anyone rises above someone else and whenever anyone falls below someone else" (p. 60). Oversuperiority and overinferiority are the two components of overstratification. Success can cause hostility and conflict with those who are unsuccessful and those who have become successful. However, it is downward social mobility that Black considers to be the most dangerous factor in promoting social conflict. The fall of a superior is often viewed as the fault of an inferior. "Surely the guilty party [referring to those who caused the superior to fall] was an inferior who resented his wealth and power and wanted to ruin his life" (pp. 82-83).

Understratification is the downward movement in stratification, reducing the amount of mobility. *"Conflict is a direct function of understratification"* (Black 2011, p. 82). Just as too much inequality between an inferior and a superior is overstratification, too little inequality between an inferior and superior is seen as understratification.

Undersuperority and underinferiority, two components of understratification, explain that the lack of opportunities to engage in upward social mobility, and inferior classes becoming part of the superior class, are both causes of conflict. The lower-classes are being repressed by the upper-class through lack of opportunities because upward social mobility is seen as a threat to the upper-class.

Overdiversity refers to the upward movement in diversity the excess of, or providing too much, cultural variation. *"Conflict is a direct function of overdiversity"* (Black 2011, p. 102). Diversity is the difference between individual cultures. Black proposes that culture is a zero-sum game: one cannot position himself or herself in a neutral position. One must either choose to accept or reject certain cultures. Whatever culture is accepted, any culture that differs is automatically rejected (p. 101). Overtraditionalism and overinnovation refer to the dominant culture having too much control over other cultures. The dominant culture views other cultures as distant and morally inferior. The dominant culture thus has a moral obligation to "civilize" members of different cultures or subcultures by wiping out their culture in favor of the dominant culture. The more a culture deviates from the past and the faster it does, the more conflict it causes.

Underdiversity is the downward movement reducing the amount of, or concealing, cultural differences. *"Conflict is a direct function of underdiversity"* (Black 2011, p. 120). Since some cultures automatically reject other cultures, those involved are required to either passively or actively participate. The active and passive rejections are the cause of conflict between the cultures. Undertraditionalism and underinnovation are the two components of underdiversity. Undertraditionalism rejects the old culture, while

underinnovation rejects the new culture. This is where the differing cultures do not adapt

to the dominant culture. Black explains that one example of conflict in traditionalism is

caused by the common belief that if an individual does not accept a culture, they

automatically reject it; they cannot simply be neutral (p. 120).

Conflict

Black (2011) concludes his book with a chapter that summarizes how conflict can

be explained through the lens of pure sociology. Pure sociology is a paradigm created by

Black as a means to explain human behavior. His moral time theory is part of the

paradigm. "The theory of moral time explains conflict: the clash of right and wrong. It

explains why deviant behavior is deviant, and why some deviant behavior is worse - why

it attracts more punishment or other social control" (Black 2011, p. 137). Black explains

how moral time has the ability to become legal time; many facets of our lives have

become dictated by law. We have the right to diversity (cultural time), opportunity

(vertical time), and privacy (relational time). As discussed earlier and illustrated in

Figure 1, these rights (concepts) move either up or down. Whether it is engaging in or

being excluded from, these are our rights.

In the final portion of this book,` Black discusses the idea of global morality.

What Black means by this is that in our current day and age, everyone is connected

through globalization. Yet a distinction needs to be made between isolates, who use

electronics and technology to stay connected, and individuals who might be part of a very

closer-knit family, tribe, or other type of group. Black describes the isolates as being;

"…closer to everyone and everything else and display a greater concern for all, human

and nonhuman alike" (p. 151). Individuals who are part of a group are much less so

because the values, morals, and beliefs of whatever entity they are part of influence those same qualities within the individual; "…their closeness isolates them from the rest of the world, and they have little or no involvement in anyone or anything beyond their own group" (p. 150). Ironically then, it is those who isolate themselves who are the most immersed in society, while those who take part in close-knit organizations limit their opportunities to become globally connected.

Black closes his book with the following paragraph. Who am I? I am alone. I have no tribe, no traditions, and no gods. I confess I care only about myself. Yet I am closer to everyone and everything. I know the prisoners in the torture cells and the hostages hidden in the cellars. I see the bones in the mass graves and the bodies bombed by the believers. I feel the suffering of the animals, hear the saws in the trees, and smell the poisons in the streams. Their losses are my losses and their rights are my rights.

Yes I am selfish. But my self is global. My time is global. And my conflict is everywhere. (pp. 151 - 152).

In sum, Black bases his theory upon three main concepts: relational, vertical, and cultural space. Figure 1 illustrates how the movements of these three concepts relate to social time. Recall again that Black describes conflict as a movement in social time (i.e., a function of social change). As demonstrated in Figure 1, social time is in a three dimensional plane that requires the consideration of all the elements of Black's theory to discover where conflict will arise and why. To understand how conflict arises, one must start with the three main concepts (Figure 1). Once this is accomplished, the focus progresses to the six principles (Figure 2). Finally, after all those have been examined, the process ends with the over and under aspects of the six principles (Figure 2).

CHAPTER 4

APPLICATION OF BLACK'S THEORY

Many theories could have been used to explain the music industry's reactions to

online music piracy. Black's (2011) theory was chosen because of its focus on the

origins of conflict and its practical applicability in criminology. Online music piracy is a

global phenomenon that is related to diverse topics that border sociology such as

communication, psychology, and legal studies. Sociology is a field of study that aims to

explain human social behavior. Black has extended the field of sociology into what he

calls pure sociology.

In Chapter Two of this thesis, the four stage effort to criminalize online music

piracy was discussed. It will be recalled that the first stage was the initial attack on

piracy software. The second entailed holding individuals responsible. Third, internet

service providers became involved, and the fourth was the graduated response. In this

chapter, each one of these stages of criminalization shall be dissected using Black's

(2011) theory.

Within each criminalization stage, the more principles that are involved, the more

conflict there will be. "Multidimensional movements of social time are especially

dangerous, like one explosive substance added to another" (Black, 2011, p. 8). The more

principles that are added to the equation, the bigger the explosion, or in this case the

conflict.

Precursor Stage

The precursor stage is based on the study conducted by Cooper and Harrison

(2001). Recall from Chapter Two that Cooper and Harrison analyzed the underground

subculture of "audio piracy". During this time, the music industry was either unaware of this subculture or didn't have enough motivation or reason to act against these individuals. Eventually these individuals became the main target for criminalization efforts, as discussed in stages one and two.

The precursor stage is not well conceptualized using Black's theory of moral time because during this stage there was little, if any, conflict between the "audio piracy" subculture and the music industry. The precursor stage is noteworthy because it was the buildup period to the first stage of criminalization.

Stage 1: Initial Attack

Stage one was the beginning of efforts at combating online music piracy. It involved initiating the attack on piracy software that enabled online users to download music. The driving force behind this effort was the fact that piracy software decreased the inequality gap between the music industry and online users, which was an obvious threat to profits. The music industry, which until this time was the leading entity in music distribution, was now having its methods challenged by everyday citizens. No longer did the music industry have complete control over music and how it was obtained and distributed.

A) Intimacy

With the advent of piracy software, individual users no longer needed the assistance of the music industry in order to obtain music. All they needed was an internet connection and the ability to navigate the web. At the same time, these users weren't disclosing the way in which they were obtaining music. Individuals were taking part in overinvolvement and underexposure, while the music industry was taking part in

underinvolvement. Individuals were stealing copyrighted material from the music industry and were reducing the music industry profit margin. Piracy software was being obtained through the means of the internet, and the music industry wasn't able to put a stop to this. The result was an attack on software providers.

B) Stratification

No longer was the music industry reigning supreme in the music distribution market. Individual people had created software that enabled many other individuals to easily bypass the music industry in their attempts to obtain music. Individuals were engaging in oversuperiorty and underinferiority while the music industry was taking part in overinferiority and undersuperority. Individuals didn't acknowledge and respect the music industry as being the main providers of the copyrighted music. The piracy software and individuals using it have become superior to the music industry. The music industry had fallen beneath parties seen as below them; those same individuals had decreased the gap of inequality between themselves and the music industry.

C) Diversity

The creation of piracy software and the subculture of audio piracy led to the music industry becoming excluded from the very business it created. Individuals were engaging in overtraditionalism, undertaditionalism, and overinnovation, while the music industry was taking part in underinnovation. Individuals were rebelling against the music industry's way of conducting business; they created a new way of obtaining music that did not involve the music industry. Individuals had invaded the business of the music industry, taken control of certain portions of it, and ignored the traditional methods of how the music industry previously conducted business.

Some principles of Black's theory are more difficult than others to apply to stage one. The subculture of "audio piracy" and the methods/software used to pirate music are the target in stage one. Technological improvements and how individuals manipulated those improvements to obtain music illegally were the issues. It was not until stage two that the focus of criminalization efforts shifted toward the individual user. Punishment is a key aspect in Black's (2011) theory. The music industry was looking to hold someone responsible for online music piracy. This meant the focus of criminalization efforts needed to be shifted.

Stage 2: Shifting Responsibility

Stage two shifted responsibility for online music piracy away from software providers toward individual users. Consumers were taking over prerogatives once deemed the domain of the music industry. As Beken et al. (2009) stated, "…the music industry always had some sort of monopoly over the distribution of music to customers, they soon met with competition from entrepreneurs …" (p. 78). Technological advances on original piracy software had enabled individual users to obtain music without relying on someone to constantly manage the piracy software. The users simply downloaded this new piracy software, and they had the ability to search for and obtain music all on their own.

A) Intimacy

With the exposure to this newer piracy software, individuals had gained the ability to download music on their own. Individual users were engaging in overinvolvement and overexposure, while the music industry was taking part in underinvolvement and underexposure. With the assistance of music piracy software,

individuals had become the ones to choose how they obtained music. Once again the music industry had been pushed aside in its own business ventures. This new piracy software, which the music industry had very little information about, enabled individuals to download music without any other assistance.

B) Stratification

Stage two is very similar to stage one in that it is a continuation of music industry representatives losing power, status, and control to those seen as lower than them. Individuals were engaging in oversuperiority and underinferiority, while the music industry was experiencing in overinferiority and undersuperority. In stage one, it was the piracy software itself that was taking control over the music industry. However, in stage two the individual users became superior to the music industry. Users had taken over control of the music business; they no longer were dependent on the music industry for their music needs.

C) Diversity

Stage one involved the origin of piracy software and its incorporation into the "audio piracy" subculture. This kind of software required routine maintenance and upkeep in order to sustain operations. In the time between stages one and stage two, new software had been created that enabled the software to be self-maintaining. Individuals were engaging in overinnovation and undertraditionalism, while the music industry was taking part in underinnovation. Individuals had stepped forward in their resistance to the norms set by the music industry. They were rejecting the established practice of purchasing music (undertraditionalism). New methods of obtaining music were being created and used while old means were being discarded and forgotten (overinnovation).

Stage 3: ISP Involvement

In stage three, a new entity became involved to assist the music industry in its fight against online music piracy; internet service providers were that entity. The music industry had a great deal of power over their consumers; however, they were missing a key component, and without that component, the music industry was very limited in being able to exercise what power they had. During this time, ISPs had a superior position of power over the music industry. Once the music industry realized this, conflict began to arise between the ISPs and the music industry. The music industry was insisting that ISPs had power and abilities that the music industry was supposed to have and, as stated in Chapter Two, in the *SABAM v Tiscali case*, ISPs were found to be accountable for taking actions against online piracy.

A) Intimacy

Without necessarily knowing it, internet service providers had a great deal of power over their customers. ISPs obtain an incredible amount of personal information and knowledge about their customers when customers enter into a contract with the ISP. This meant that ISPs were engaging in underinvolvement and overexposure while the music industry was left being underexposed. Underinvolvement is evidenced by music industry claims that ISPs were not involving themselves enough in the fight against online music piracy by not using the power (which in this case was knowledge of their customers) they possessed to fullest potential. So, there were two different conflicts between the ISPs and the music industry. First, the ISPs had too much power. Secondly, they were not using that power correctly. ISPs had power over their consumers but were

not using it (overexposure) and were not sharing the power with the music industry (underexposure).

B) Stratification

The ISPs unknowingly were in a position of superiority over the music industry (oversuperority). The music industry could not make any real attempts to stop online music piracy without the power of the ISPs. While this can be considered oversuperiorority on the part of the ISPs, the music industry was experiencing overinferiority and undersuperority. ISPs had the power, and the music industry wanted it. The problem was that the ISPs were not willing to allow the music industry to take over a part of their business. ISPs were contractually obligated to their customers and were not going to give up information about them or surrender part of their industry without a fight.

C) Diversity

As a result of stages one and two, times had changed and the business of music distribution would never be the same. ISPs were engaging in undertraditionalism, while the music industry was taking part in underinnovation and overtraditionalism. ISPs were not abiding by the same methods that were once used by the music industry (undertraditionalism). At the same time, the music industry was not willing to accept that their previous business model needed to be changed to incorporate new technology. This caused the music industry to react in a way that invaded the ISP's business model and made the ISPs change their way of conducting their business.

Stage 4: Graduated Response

Stage four consisted of the music industry launching its first real attempt at a widespread criminalization effort. With the settlement between the ISPs, the music industry was now able to progress to a state of enacting consistent punishment of individuals who were taking part in online music piracy. This stage is the first time since online piracy started that the music industry had made significant progress at regaining power over online users. Prior criminalization efforts were very sporadic and not very effective at deterring people from engaging in piracy. Once the graduated response was incorporated, the music industry had an accurate way of detecting and punishing online music piracy.

Stage four is different from all the other stages in that during this stage the music industry attempted to reduce all the principles individual users had previously been engaged in. This is a key stage in the application of Black's theory. This is where the music industry finally had substantial footing in the fight against anyone who was opposing them. The industry was now positioned to punish and deter online music piracy.

Black views punishment as a movement in social time in its own right. "Punishment is also a movement of social time. Every reaction to deviant behavior alters social space: *Social control is a movement of social time*". "Deviant behavior and social control are reciprocal movements of social time. Just as crime is a movement of social time, so the punishment of crime is a movement of social time that corresponds to the movement of social time to which it reacts" (2011, p. 9). Previously there had been back and forth movement between the music industry and those engaging in online music

piracy, a form of "cat-and-mouse".   In stage four, the widespread punishment of online music piracy was finally enacted. Stage four focuses exclusively on the implementations of the punishment efforts.

A) Intimacy

As discussed under stage three, the music industry required ISPs to work alongside them in order to gain the power required to punish those involved in online music piracy. The music industry was engaging in overinvolvement *vis-a-vis* the ISPs and their customers. The music industry made ISPs legally obligated to monitor, control, and moderate their customers. ISPs were required to actively look for and report any activities of online music piracy. ISPs were also required to provide vital information on their customers to the music industry (overexposure), information that could possibly lead to incrimination if a person was found obtaining music illegally online. This is more of a conflict between the ISPs and their customers, but the music industry was the one requiring the ISPs to do this.

B) Stratification

The graduated response enabled the music industry to restore the gap of equality created by the subculture of audio piracy and those who were taking part in it. The music industry was engaging in underinferiority by doing this. Individuals who were pirating music online created a gap, excluding the music industry from their own business. The gap created by the individuals would forever change the way the music industry conducted its business. The graduated response halted this gap from growing any further, and in the same effort, tilted this gap in favor of the music industry. The graduated response put the power back into the hands of the music industry (oversuperority).

C) Diversity

Online users were the first to use the internet as a source of obtaining music, leaving the music industry behind. This was illustrated in stages one and two. The music industry was forced to react as demonstrated in stage three and four. The music industry engaged in overtraditionalism and underinnovation. The incorporation of the graduated response enabled the music industry to force its way into the "audio piracy" subculture and change the way things had been going over the past few years, a type of overinnovation as well as overtraditionalism.

During all four stages, many of Black's concepts, principles, and components remain constant throughout. There has been a constant struggle for superiority, innovation, exposure, and traditionalism. The music industry began as the supreme power structure. Individual users began to take some of that power away. Then individual users created and utilized new technology that enabled everyone to easily engage in online music piracy. The music industry attempted to combat these efforts; however, they found it very difficult. The music industry found the power they needed to combat online music piracy, but the power was being controlled by ISPs. Once again the music industry found itself falling beneath another entity (i.e., ISPs). In order to gain this power, which would enable the music industry to regain its position of supremacy and profit, the music industry had to take legal actions against the ISPs. After many years and multiple court cases, ISPs were found to be liable for online music piracy and agreed to assist the music industry in its fight against piracy. With this newly found power, the music industry was finally able to act in a way that reasserted its original position of supremacy by incorporating a graduated response. The graduated response empowered

the music industry with the ability to fully monitor each and every individual's internet

usages in hopes of deterring anyone from engaging in online music piracy. Throughout

this entire process, conflict was pronounced precisely because it grew out of the

simultaneous movement of multiple dimensions of social time.

Table 2 is an illustration of how well each one of Black's principles applied to the

four stages of criminalization. There are three panels within this table; Panel A rates

Black's intimacy concept and its principles, Panel B rates Black's stratification concept

and its principles, and Panel C rates Black's diversity concept and its principles. In Table

2 a strong application is designated with a 2, moderate with a 1, and a weak/none with 0.

It should be noted that while this table is based on my own intimate knowledge of

Black's moral time theory and online music piracy, the ratings are subjective and not

derived from multiple raters, thus making it impossible to estimate interrater reliability.

Table 2
Degree of Applicability of Black's Principles
Strong - 2, Moderate - 1, Weak/None - 0

Panel A: Intimacy				
	Overinvolvement	Overexposure	Underinvolvement	Underexposure
Stage 1	2	0	1	1
Stage 2	2	2	2	1
Stage 3	2	1	2	1
Stage 4	2	1	0	0
Panel B: Stratification				
	Oversuperority	Overinferiority	Undersuperority	Underinferiority

Table 2 (continued).

Stage 1	1	1	1	1
Stage 2	2	2	2	2
Stage 3	2	2	2	0
Stage 4	1	0	0	2
Panel C: Diversity				
	Overtraditionalism	Overinnovation	Undertraditionalism	Underinnovation
Stage 1	1	2	1	1
Stage 2	2	1	2	2
Stage 3	2	0	1	1
Stage 4	2	2	1	2

CHAPTER 5

DISCUSSION AND CONCLUSION

Review

      In 1999, the music industry began its first attempts at criminalizing online music piracy. The virtual community of online music piracy had existed before this time. However, it wasn't until 1999 that the music industry discovered significant negative effects that the virtual community was having on industry profits and power. Members of this virtual community were taking over certain responsibilities of the music industry. New technologies that were created by some of these individuals gave every user the ability to pirate music with simplicity. It was getting to the point that anyone with an internet connection could use piracy as an alternative to purchasing music; the music industry was slowly becoming a thing of the past. In order to effectively combat these pirates and penalize those involved, the music industry had to take extreme actions to obtain power needed to combat piracy.

      The music industry found that ISPs had the power needed by the music industry, but ISPs were not utilizing this power to the extent desired by the industry. The music industry claimed that ISPs had powers and abilities that did not belong to them and that the power would be better situated in the hands of the music industry. To change this, the music industry filed multiple suits against ISPs from 2002 until 2007. In 2007, upon court orders, the music industry and ISPs began to work together for the first time against online music piracy. Finally, the music industry had regained fractions of its superiority along with a new partner in the fight against online music piracy. With this accomplishment, the music industry could once again direct its focus to regulating online music piracy.

The joining of these two industries was not one sided in anyway. The motivation

was profit. In the 2008 IFPI.org report, chairman and CEO John Kennedy explained

what ISPs had to gain by becoming involved in the fight against online music piracy.

"Of course, one key reason for this apparent change is the commercial self-interest of

ISPs. Unlicensed traffic has always been hogging their bandwidth, but now, as ISPs get

further invested into the business of digital content, it poses an increasing danger to their

future revenues." (p. 3).

A brand new method of controlling online music piracy arose from the union of

the music industry and ISPs. This method was called a graduated response. It

incorporated the ability to identify individual pirates on behalf of the information

provided by ISPs with the legal sanctioning powers of the music industry. The graduated

response was the first criminalization effort of its kind in that it was an attempt to control

online music on a very accurate and expansive scale.

This thesis has provided theoretical analysis of four key stages taken by the music

industry in order to deter and prevent online music piracy. It has also provided a general

knowledge of online music piracy and Black's theory of moral time. In Chapter One, a

brief history of online music piracy was given along with a brief introduction to the

theoretical aspects of online music piracy. Chapter One also explained the significance of

using theory to explain criminalization efforts and introduced the four key stages taken

by the music industry. Chapter Two demonstrated the limited supply of literature that

has used theory in order to explain online music piracy as a behavior. Chapter Two

concluded by examining the music industry's literature on online music piracy and

providing a detailed description of the four stages introduced in Chapter One.

Chapter Three focused on Black's (2011) theory of moral time. This chapter broke down Black's theory into three main concepts and six principles, including over and under components to each principle. Black concludes his book by discussing what he calls global morality. This is the idea that everyone is connected through some type of means; however, it is those who seclude themselves that have the strongest connections to others. Finally, in Chapter Four, Black's theory of moral time was applied to the four stages taken by the music industry described in Chapter Two. This was done in order to explain why the music industry reacted in the way it did in the fight against online music piracy. The results of this application were the first known theoretical analysis of online music piracy criminalization in the discipline of criminology.

General Conclusions

Black's (2011) theory of moral time was created in order to "… tell us why crime is criminal, why one crime is more serious than another, and why crime occurs. It is all a matter of social time" (p. 9). Applying this theory to the issue of criminalizing online music piracy was simple in some respects but difficult in others. This was illustrated in the application chapter of the thesis. Despite its limitations, moral time theory was a very effective tool at explaining the processes culminating in the criminalization of online music piracy.

Since moral time theory is a theory of conflict, it is readily applied when large amounts of principles are involved, thus resulting in large movements in social time and pronounced conflict. Stages one and two had the largest amounts of social movement, containing more than ten principles of Black's theory, as shown in Table 2. This is where the music industry lost the majority of its power to piracy software and individual users.

Users were becoming too involved in the music business and changed the music industry indefinitely. Stage three involved two corporate entities, the music industry and internet service providers. This stage culminated in a legal battle between the two entities. Even though there was a lot of conflict between ISPs and the music industry, Black's theory did less well describing this stage. It was more difficult to apply his theory during this stage because his theory seems more closely related to conflicts between micro-social interactions involving human entities than to conflicts involving companies and complex global organizations.

Overall, Black's theory has done an extraordinarily good job at explaining the four criminalization stages of online music piracy. Stages one and two had a great amount of micro-level conflict, making Black's concept of intimacy easily and readily applicable. Stage three involved two organizations and their conflicting views of power; Black's concepts of stratification and diversity were best at explaining this stage of criminalization. As stated in Chapter Four, stage four is very different from all the other stages. Stage four involved implementation of punishment efforts on behalf of the music industry, which Black conceptualizes as a movement in social time in its own right. Black's concepts of stratification and diversity were used to explain this stage.

Black (2011) proclaims that crime and punishment are reciprocal in nature. A crime occurs and those involved are punished. A criminalization effort is enacted as a means to punish and deter the crime from happening again. After the punishment has been given, the criminalization effort is met with a response by those who have been affected by it. Based on that reaction the criminalization effort will need to be altered

and shaped. Both are engaged in a never ending cycle of interaction between one another.

Critiques of and Suggestions for Black's Theory

As a relatively new theory, moral time has not yet had adequate time to be thoroughly researched by academics. So far there has been only one attempt to review and critique Black's most recent work. To my knowledge there has not been any research or articles written other than this thesis and a review by Berry (2013).

In her review, Berry gave a description of Black's theory of moral time and offered her own interpretation and suggestions. One suggestion given for relational time was that "… professional ethics violations may be pertinent here. That is, failure to give credit for another's work, as in the case of plagiarism or other copyright violations, may serve as underinvolvement" (2013, p. 37). Later in the review, Berry argues that the theory does not take into consideration that "… an absence of change that is based on oppressions causes continuing conflicts as experienced by the oppressed class" (p. 37). Berry also suggested that if this were to be an experience on the collective apparatus of society, then categories of social classification would need to be added (2013, p. 37). Despite these criticisms, Berry praises Black's theory, stating that it is "inspirational" and that "scholars of all levels will find this book of interest and utility" (2013, p. 38).

Black's theory of moral time is a pure sociological theory. This theory can easily be applied to the topic of online music piracy even though it focuses on the causes of sociological conflict rather than why the crime occurred in the first place. While Black did write about criminological issues (rape, privacy, theft, public nudity, etc.), it is important to state that he created pure sociology as an alternative to other theories that

attempt to explain human behavior. The theory of moral time provides a tenable account of sociological conflict, but it is limited by the fact that it doesn't take many other fields of study into consideration. Black's moral time theory could benefit from other fields of research, such as psychology or communications. These fields would broaden the scope of Black's theory as well as provide more support for his notion of global morality.

Black provides several illustrations and examples of his concepts and principles. The problem is that often times these examples are specific in nature. They either involve a very personal relationship, a very expansive coverage of individuals, a very secluded population, or broad notions of interactions and concepts. Each principle of Black's theory has a specified focus on one of the concepts mentioned above. Other than in the concluding chapter, the only time throughout his book that Black makes a direct connection to modern day problems is when he discusses the issues of rape and nudity as these relate to the concept intimacy.

As for suggestions to improve Black's theory of moral time, I would like to see more detailed incorporation of complex organizations, corporations, large group entities, and bureaucratic institutions. The theory of moral time focuses very closely on micro-personal relationships and sociological interactions. Moral time illustrates conflict on a very individual and social plane and could benefit from incorporating larger scale entities. If Black's theory were to take macro-scale entities into consideration and policy makers were to consider the implications thereof, micro-level conflicts may not even manifest themselves and wide scale criminalization efforts, such as the graduated response, might not have taken as long to become incorporated.

This theory involves many different concepts, principles, and components. It is very easy to get over burdened with all the information presented. In short, it can be argued that the theory lacks parsimony. In turn, this is a feature that can hinder application.

Limitations

This thesis presents a number of limitations. First, it has taken a sociological approach to account for the criminalization of online music piracy by using a theory of pure sociology. Pure sociology is good in the sense that is a narrow field of study; however, this can be a downfall as well. The disciplinary narrowness allows for it to avoid reductionism. At the same time the narrowness limits the spectrum from which data are collected.

Secondly, this research was a conceptual application of Black's moral time theory. The thesis does not conduct an actual deductive empirical test of this theory. As such, the thesis provides no empirical evidence regarding the theory's validity. Theoretical applications are useful to assist in guiding research and considering policy. However, the theory of moral time cannot be fully evaluated in the absence of empirical testing.

Third, theory-based research on online music piracy is still in its infancy. Past research that has used theory in order to explain online music piracy focuses on the actions and motivations of individual pirates. This limits my thesis and future research pertaining to theory and online music piracy alike because there is little background to build from. Once a solid theoretical foundation has been established to guide research

efforts, the field will be in better position to build understanding on the causes of online piracy and its criminalization.

Fourth, this thesis could have focused on different aspects of criminalization efforts. The four stages chosen were based on specific court cases and the music industry's research into online music piracy. It could be argued that there were other stages and factors at play that were as or more important than the ones chosen for this thesis. For example, it has been said that the shift from CD format to MP3s was a case for the increase in online music piracy (Beken, Janssens, & Vandaele, 2009). Also, during the time frame of this thesis, new criminalization efforts were coming to light and were not included. These new efforts were called the SOPA (Stop Online Piracy Act) and PIPA (Protect IP Act).

SOPA aimed to expand the ability of U.S. law enforcement to combat online trafficking of copyrighted material by limiting business interactions with infringing websites and requiring ISPs to block access to these websites. PIPA was intended to hinder the access to rogue websites that allowed for the sale of infringing or counterfeit material (House Bill, 2011).

Fifth, this thesis concentrated on the conflict involving the music industry, those who stood in their way of criminalizing online music piracy, and the actions/reactions that followed. A stronger approach could have been taken to understanding the entire subculture of "audio piracy'. This could be done by having its focus directed towards the processes the music industry and ISPs had taken and will take in order to catch and prosecute pirates.

Sixth, the rating system depicted in Table 2 was solely based on personal knowledge of Black's moral time theory and online music piracy. This limits Table 2 in that there is no inter rater reliability. If others were to become familiar with the moral time theory and online music piracy, then further application of Black's theory could be made. If this were to be done, ratings from different people could be compared to look for similarities and differences, which would increase the validity and reliability.

Suggestions for Policy and Future Research

The usage of different theories that involve both sociological and legal principles could allow a more concrete connection to be drawn between the pirates' actions and criminalizing reactions taken by the music industry. After research had begun for this thesis, the SOPA and PIPA acts were being considered for implementation. Incorporating those two acts and the response given by the public in order to stop these acts would be an additional stage that could be included in future applications of Black's theory.

Given the pace of automation in society, it will not be long until our world becomes fully encompassed with technology and virtual communities. The topic of virtual communities and online interaction is not currently a strong focus within academia. This needs to be changed; more research is needed on virtual communities, and online interactions need to be conducted in order to illustrate how crucial this field of study is and to increase the knowledge base in this area. There are many similarities and differences in the criminalization process of virtual and real domains. Both domains have crime and go through similar criminalization processes, but virtual domains differ in the sense that these crimes are often unseen and hard to notice. This makes virtual crimes

more difficult to identify and criminalize because there is a lack of physical evidence and materials. It is simple to see someone steal another person's wallet, but when someone steals copyrighted material, there is no hard proof that a crime occurred.

Another suggestion for future research is to focus closely on the culture of "audio piracy" and the history of virtual communities. Studying the buildup to the initial attack on online music piracy could assist in explaining what specifically made the music industry take its first actions; it could also further explain other actions that followed on behalf of the pirates, society, and the music industry. One way to go about doing this research could involve creating an in-depth historical illustration of online music piracy that would provide a very useful knowledge base to draw from for future research. This kind of research would assist in discovering how these communities were created and possibly reveal future preventative methods of online music piracy. With this kind of information, Black's theory could be applied in order to anticipate and prevent conflict.

Theory is a fantastic tool for discovering how problems might arise and how to possibly preempt and address those problems. Too often decisions are made as a knee jerk reaction. These decisions act as more of a bandage, simply doing "something" so that it can be said that a reaction was taken. If theory were to be incorporated, a stronger, more beneficial reaction could be discovered based on the complexity at hand, and the problem might be solved rather than masked.

Moral time theory can be used to anticipate and prevent future actions that would result in conflict. Employing this theory to inform policy would be beneficial in that the practices incorporated would be better suited to deal with or completely avoid conflict. Black's theory holds that conflict is inevitable in social relations, and without the benefit

of theoretical guidance, conflict will continue to thrive. This is exemplified within stages one and two; both were filled with conflict and it took over a decade to implement some form of significant deterrent. If a theory such as moral time had been taken into consideration from the onset, then conflict may have been lessened in a shorter time without as much detrimental effect on society, businesses, and civilians.

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