IP Osgoode Speaker Series: Robert Levine and Dr. Brett Danaher

March 26, 2012 by Kalen Lumsden (IPilogue Editor)
In celebration of Canadian Music Week, the IP Osgoode Speaker Series presented a panel discussion on "Copyright and the Music Industry" on March 22, 2012 featuring Robert Levine and Dr. Brett Danaher. Levine spoke about the current state of copyright and the public discourse surrounding it. He argued the need for more effective enforcement mechanisms for rightsholders. Dr. Danaher explored one such enforcement mechanism as he presented statistics drawn from his research on the effect of France’s Hadopi anti-piracy laws on iTunes sales.

Robert Levine
Robert Levine is a technology and pop culture journalist working out of New York and Berlin. He was an executive editor running the music business trade magazine at Billboard and has been published in Vanity Fair, Fortune, Rolling Stone and The New York Times. He discussed the current state of copyright and his recent book: Free Ride: How the Internet is Destroying the Culture Business and How the Culture Business Can Fight Back.

He began his talk by taking the audience back in time, to 1999, when we still had VCRs, Napster first appeared and the internet was shiny, new and full of promise. He talked about the potential for a new market to emerge online, where revenue from intellectual property would offset the decline in manufacturing. Instead, what happened to the music industry was that, because of piracy, a legitimate market never emerged and even now, as paid music online begins to grow, prices have been permanently lowered.

Levine’s general thesis was that the main players in the copyright debate are not the dumb, old, greedy music studios and publishers against the smart, new, generous technology companies. Instead, it is simply a competition between different commercial actors who have the same business model – making money. Technology companies, such as Google, have a vested interest in making things free because it sells ads. Other companies have an interest in charging consumers for access to new works. Essentially, both sides are greedy.

As an author of copyright works, Levine discussed his own experience with his publisher. He noted that while he only receives a minority of the cost of each book sold, the additional revenue from book sales he has assigned to his publisher is used to aggregate risk from unsuccessful books, as opposed to the oft-noted stereotype that publishers exploit authors. When an audience member asked a question from a user’s perspective related to the inconvenience caused by the intentionally staggered commercial availability of works compared to the relative convenience of piracy, Levine underscored the commercial nature of copyright. He pointed out that unlike patents, copyright is never a matter of life or death, and, while living in Berlin he did not yet have access to HBO’s Game of Thrones, his ability to conveniently access the show is not a right.

Some of Levine’s most interesting analysis was the critical perspective he brought to the copyright debate itself. He contrasted the political right and left and, surprisingly, he observes that it is the left taking the libertarian, anti-regulatory position by arguing for a free and open internet. Yet, it is ironic that in the context of labour rights, the left is appalled by the lack of regulation and low wages of Walmart workers, as an example, but sees authors not being compensated as a problem that does not require government regulation.

Levine thinks that the term of copyright could stand to be shorter than the 70 year term in the US. He would prefer more effective copyright enforcement combined with a shorter copyright term. Specifically, he would like recourse against those distributing protected content, not those downloading protected content. This would, for instance, allow recourse against the the unauthorized distribution of his own book on foreign websites before the book even has a chance to become publicly available.
Dr. Brett Danaher

Dr. Brett Danaher is an Assistant Professor of Economics at Wellesley College. He researches the effects of new technologies and their impact on industries and government policy. He presented his paper, "The Effect of Graduated Response Anti-Piracy Laws on Music Sales: Evidence from an Event Study in France," which was coauthored with Michael D. Smith, Rahul Telang and Siwen Chen.

While many studies demonstrate piracy’s negative effect on music sales, Dr. Danaher and his coauthors aimed to provide a complementary study "evaluating the effectiveness of anti-piracy government intervention in France".

In 2009, France passed the “anti-piracy” law known as Hadopi. It is a graduated response system, colloquially known as "three strikes", whereby rights holders monitor the internet for infringement and report it to the Hadopi agency. Based on the information received, which is verified and then referenced through the relevant ISP, a warning email is triggered. If further infringement is alleged within six months, a letter is sent. If infringement is alleged a third time, Hadopi is entitled to refer the matter to the criminal court. Potential penalties range from a fine of up to 1000 euros, to the infringing household’s internet being suspended for one month to one year. This measure was not without controversy (discussed by IP Osgoode here and here). For Dr. Danaher, the implementation of the Hadopi scheme provided an opportunity to measure change in consumer purchasing behaviour in response to the law.

The methodology of the study was to track the iTunes sales of four major music labels across multiple countries from July 2008 to May 2011. An average of iTunes sales from Italy, Spain, the UK, Germany and Belgium served as the control group to France. All had similar pre-Hadopi sales figures. To measure the effect of the Hadopi discussion they used Google Trends data on Hadopi-related inquiries.

His conclusion was that Hadopi increased French iTunes song sales by 22.5% on average and increased album sales by 25%. As would be expected if the increase in sales was causally related to people switching to legitimate means in response to Hadopi, there was a higher increase in sales in genres that are traditionally highly pirated, Rap and Hip Hop (30%), when compared with less pirated genres, Jazz, Classical and Christian (7%). Rock and Pop sales increased 17% [page 17]. As an aside, the French newspaper *Le Monde* took issue with the study’s determination of causality and argued that it was iOS activations (iPhones and iPods) that drove the increase in iTunes sales. The authors followed up and cross-referenced the sales data with iPhone activations and found no correlation [page 27].
Notably, the increase of sales began when Hadopi became a topic of national debate, before the law went into effect, before the first wave of notices were delivered and well before any punitive notices were sent out. From this, Dr. Danaher concludes that education and public awareness had a strong impact on consumer behaviour and increased sales.

In discussing the challenges of his data, Dr. Danaher highlighted that he was only able to observe the overall effects of the law. His data cannot determine what portion of the increase was due to the national discussion compared to the law’s implementation. Furthermore, while his data is able to show Hadopi increased iTunes sales, the data does not demonstrate what effect the punitive third strike had on this increase, especially as the data was taken before third strike notices were delivered. Inconveniently for those looking to apply these conclusions to the context of other countries, the extent to which the punitive nature of Hadopi drove public discussion cannot be directly measured. It would be interesting to see a similar study done on the efficacy of Canada’s notice and notice infringement warning system on digital music sales.

Kalen Lumsden is a JD candidate at Osgoode Hall Law School.

**One Response to “IP Osgoode Speaker Series: Robert Levine and Dr. Brett Danaher”**

1. **Kalen Lumsden**, on March 29, 2012 at 8:34 am Said:

   I would like to clarify that what made Italy, Spain, the UK, Germany and Belgium an effective control group was not that they had “similar pre-Hadopi sales figures.” Rather, it was that their average sales trend correlated with France’s sales trend prior to Hadopi. This made it reasonable for Dr. Danaher et al. to infer that the correlation would have continued if Hadopi had not been passed.

   As Dr. Danaher et al. write in their report: “We chose the five European countries (other than France) with the highest iTunes sales levels as our control group for France, under the theory that overall market trends would have the most similar impact on countries with closer sales levels” [page 8]. They further clarify that “any results reported in this paper are not sensitive to this selection of control group. Results remain roughly the same (and completely the same in sign and significance) when choosing a variety of other control groups” [footnote 11].