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# Barlow Keener

## Keener Law Group

bkeener@barlowkeener.com

Tel: 617-671-1202

Blog: [www.whydom.com](http://www.whydom.com)

Web site: [www.barlowkeener.com](http://www.barlowkeener.com)

FaceBook: Barlow Keener

**Keener Law Group**



- Helping innovators in the areas of internet, wireless, telecommunications and entertainment law
- Intellectual property, regulation, and partnerships
- CEO and Legal Counsel for a regional facilities-based CLEC in New England
- General Counsel, CSA, Inc. direct-to-the-consumer video advertisements on cable and network television.
- General Attorney, BellSouth Telecommunications
- JD from Emory University and BA from the University of the South

# Video Content Legal Issues

- Digital Rights Management - DRM
  - DRM – originally used by software companies like Microsoft to protect IP
  - “War” between content producers like Sumner Redstone’s Viacom and distributors like Youtube
    - \$1.5 billion claim in lawsuit
    - Lawsuits by industry associations - RIAA Capital v Thomas -against users downloading/uploading
    - Record industry is loudly communicating to teens to download
    - Individuals believe that once downloaded, they “own” the video
  - Claims that the record industry is grievously harmed by bypassing DRM
    - Other side says: It is not the record industry but
      - CD industry where growth has slowed
      - Downloads of singles are increasing as are concerts, clothing, branding
      - DVD’s People without time – the working public – pays for DVD’s or Netflix
      - Easy and low cost
- DRM – Problem with DRM is practical: Too many methods:
  - Watermark – simple but decreases quality
  - Different client downloads for DRM
    - iTunes client, Joost client, VT3 client



# Video Content Legal Issues

- Copyright Law
  - Digital Millennium Copyright Act (1998)
  - The Family Entertainment and Copyright Act (2005)
    - Peer to Peer – P2P – penalties
    - Fines and 3 Years for maintaining even 1 copy in sharing program
    - Criminalizes using a video camera to record a movie at a theater
  - The No Electronic Theft Act
    - Criminalizes file swapping
- No coincidence: Hollywood is more active than ever with politics
- Amazon and Apple are pushing for “free” DRM
  - Amazon announced that it will sell content and allow users to copy and transfer
- Fair Use Exception
  - Single copies for your own use
  - Giving copies to the world



# IPTV and IPTV Content

- Traditional Cable television
- IPTV
  - Mobile Video, MobiTV, MediaFlo, V-Cast, Aloha Networks
  - Slingbox, Orb
  - Tivo, DVR, Virtual DVR
- Content producers – networks and shows – imposing strict standards on distributors
  - Geography
  - Method of distribution
    - Internet, cable, IPTV, mobile, DVR
  - Technologies
    - Encryption – headend to enduser
    - Water marks
- Limits on distributors of TV content
  - Moratorium by rural association on new members



# Mobile Video

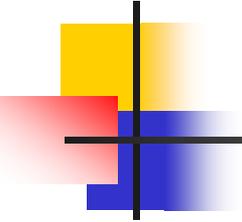


- Prediction: CITA Mobile Video
  - 8 million users in U.S. downloaded in August 2007
- Internet only Video
  - MobiTV raised \$70m
    - Content agreements
  - Slingbox brought by EchoStar for \$300m
  - Orb Mobile Video
    - Like Slingbox but without device requirement
  - Are distributors of Slingbox and Orb violating copyrights or DRM?
- 700MHz Spectrum – UHF channels
  - MediaFlo – Qualcomm 700MHz Channel 55
  - AT&T paid \$2.5 billion for Aloha Partners 700MHz – 72 markets
  - 700MHz auction coming up January 28, 2007

# Service Provider Issues

- Deep Packet Inspection – Network QoS
  - Carriers working to control QoS for all customers cutting off video
  - Video requires high bandwidth
  - Cutting off P2P
  - Video downloading has overtaking P2P in terms of Internet volume of use
- Deep Packet Inspection – Competitive Threats
  - Cable or IPTV company using DPI to slowdown video content
- Virtual DRV
  - Cable distribution agreement prohibited virtual DVR
- Internet Service Provider
  - Obligations to block unlawful downloading of copyrighted material
- Network Neutrality battle
  - Foot in the door in 700MHz auction with open access for devices
- Mobile Video: blocking to preserve the network





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