

Can tort law be helpful to enforce copyright ?

Internalising intellectual property law enforcement through liability

Olivier Bomsel and Marine Lefort

Paris, June 2012

Working paper

To be presented at the SERCI Annual Congress in Washington D.C.



Chaire ParisTech d'Economie des Médias et des Marques

Cerna, MINES ParisTech

Tel.: +33 (1) 40 51 90 36

mlefort@mines-paristech.fr

Abstract

As a property right, copyright has an associated enforcement cost. This varies depending on the technical and legal methods used to implement them. Since 2000, the methods and the individuals involved have varied. Nowadays, judges seem more inclined to turn to technical internet intermediaries (platforms and hosts) hitherto protected by a limited liability system. The arrangements that reflected power relationships in the early days of the internet are no longer granted as systematically. This led to less protective rules which introduce a risk to this status. They also bring in a new role for tort law in enforcing intellectual property law. This situation raises new questions about the internalisation of copyright enforcement as well as the related cost.

Keywords: tort law, negligence liability, hosting function, copyright enforcement, property right

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Introduction

In January 2012, US courts ordered the different sites of the Megaupload online file (music, films etc.) storage and sharing platform to be closed down. This decision marks a turning point in the fight against the infringement of copyright and other intellectual property rights.

The circulation of digital files on telecommunications networks has raised copyright enforcement problems since the very beginning. In itself, this is not surprising given, on the one hand, the appearance of new distribution techniques and, on the other, the immense economic value of all protected works. Specifically, free illegal access by consumers to works raises the value of all goods and services subject to distribution. The passive attitude of intermediaries in response to illegal access then equates to a moral hazard in copyright distribution, which raises the cost of enforcing it (Varian, 2005).

The first digital copyright (DMCA, 1998) or e-commerce laws (EU e-commerce Directive, 2000) first turned DRMs (Digital Rights Management systems) into sanctuaries which were supposed to be the tools for excluding all protected files. However, the mass circulation of unencrypted files among network users soon called into question the relevance of these technical means and rendered such protective measures obsolete (Geffroy, 2009).

The first systems for distributing illegally-accessed files such as Napster (1999) were prosecuted after a few years (2001) for the editorial liability of the server's operators. But the next generation, the Peer-to-Peer (P2P) network generation, succeeded in decentralising distribution and diluting the liability of technical intermediaries by invoking their host status. In the face of this, beneficiaries had no choice but to prosecute the end users. The difficulty of applying penalties initially intended to dissuade some thousands of professional fraudsters to hundreds of millions of residential counterfeiters has pushed up enforcement costs and inspired measures to fit the legal frameworks of each territory. In common law countries, beneficiaries were allowed to negotiate directly with persistent counterfeiters under threat of heavy penalties. In codified law countries, particularly in France, legal graduated response mechanisms have been laboriously defined and seldom enforced (Bomsel and Ranaivoson, 2009).

Ultimately, the lack of intermediary liability is a powerful incentive to illegally access files, as the intermediaries have an advantage to gain from the practice by increasing usefulness for consumers. This means that the costs of enforcing copyright are constantly being driven higher. As for making the end consumer criminally liable and the threat that this represents for the consumer, most often it conflicts with the beneficiary's interests of the beneficiary, whose objective is to create demand for their product.

Therefore, the questioning – via Megaupload and other cases of intellectual property infringement – of the inviolability of the status of host, or of said status being invoked systematically whenever the automatic

processing of the signal is at stake, is something new. The accusation against Megaupload in its indictment act of abusing its host status shows the limitations of this liability situation.

This tort law situation gives some internet intermediaries in the United States and in Europe a safe harbour. They are not held liable for the data they host, store and transfer, as there is no proof that they were aware of the litigious nature of said data. They therefore have no general surveillance obligation.

In the United States, this provision only applies to copyright. Its integration in Europe in the e-commerce directive gives it a wider field of application, extending to trademark law.

Copyright is equivalent to a property right (Demsetz, 1967), and as such, entails an enforcement cost which varies depending on the methods used. In the digital environment, these costs keep increasing to the point where they call the foundation of the institution into question. The question that emerges, and which this article deals with, is whether activation of tort law, i.e. the changes made in the safe harbour, can lead to new behaviours by internet intermediaries.

The literature on tort law in fact considers it as a means of internalising externalities due to irresponsible behaviours (Shavell, 1980). By proposing rules, called liability rules, agents are led to choose a behaviour that minimises the social cost of tort. The variables of interest are the choices of action and care, as well as the level of activity influencing the expectations of financial loss caused by tort (Landes and Posner, 1987). The case of indirect liability for copyright has been studied by Landes and Lichtman (2003) in an essentially legal approach.

The aim of this article is to study the effects of changing the conditions for obtaining host status on how internet intermediaries behave vis-à-vis copyright enforcement. Our approach is not focused on the price of the copy that the intermediary may impose, but on tolerance of copyright infringement knowing that it can appropriate some of the user's willingness to pay.

The first part sets out to describe tort law and copyright literature. The second links the evolution of the methods used in the fight to enforce copyright to the role that intermediaries can play if their status is in jeopardy. The third part will use the tort law framework to apply it to the damages caused to copyright by internet intermediaries.

Review of the literature: economy of civil liability and copyright

The tort law economy developed as an alternative solution to Coase-inspired negotiation on ownership rights. Coase's theorem (1960) states that in the event of a dispute, if the parties can negotiate on these same rights, they will come to a resolution or an optimum allocation of the problem. But this result only

occurs when transaction costs are low or non-existent. Yet conflict resolution results in many costs - the investigation, the identification of the parties, the proceedings, enforcing the judgment etc.

Tort law thus appears as an alternative means for resolving disputes because it exposes the parties to a cost risk in the event of a dispute. Introduced by Calabresi (1961, 1970), his economic analysis has been developed by Shavell (1980) then Landes and Posner (1987), among others.

It has a dual power: it allows potential victims to receive compensation, and encourages economic agents to internalise the costs of externalities that their actions could cause. Economics and law come together in the search for an efficient behaviour that minimises the social cost of a potential tort by internalising this externality. Its modelling assumes an accident and thus a victim and an aggressor, a cause and a fault (liability). Tort law must lead all those involved to measure their behaviour, by the care they exercise or the repetition of their actions (defined as “the activity”).

There are several rules on liability and on the questioning of a potential fault in the economic modelling of the dispute. They can refer to a level of action and care considered by the judge as being optimal (due care): here we talk about negligence or fault when there is tort and when this level has not been reached. These different rules do not all have the same incentive power on agents, on the level of care they are willing to take and in the way in which they seek to internalise the possible costs and benefits of their choices. This will depend on whether they are in the position of the victim or the perpetrator (Shavell, 1987), or whether they anticipate random variations in the determination of the tort by the judge (Dario-Mattiaci, 2005).

The economic concept of “negligence” was initially modelled by Learned Hand judge in 1947, in the United States vs. Carroll Towing Co. (Hand formula) trial. Negligence is a function of the probability of an accident (linked to its repetition) (P), the seriousness of the tort (L) and the cost of the care exercised to avoid an accident (B). According to the formula, an action is said to be negligent if the cost of care is smaller than the seriousness of the tort multiplied by its probability: $B < (PL)$.

The copyright rule can be defined as a means of giving a private nature to an expression or a work, which initially has the features of a public asset. Copyright is thus a means of transferring an ownership right and of internalising all investments related to that asset (Demsetz, 1967). A link is thus made between tort law and copyright - failure to obey the latter (the consumer having an unauthorised copy or downloading an unauthorised file), leads to a tort that can be quantified to a certain degree, and can be punished by the law.

Copyright enforcement is therefore a trade-off between the benefit obtained by its beneficiary and the cost engendered by such an action, notably for its implementation and surveillance (Landes and Posner, 1989). This cost-benefit analysis in a material environment has given rise to many discussions (Gordon and Bone, 2000, Watt, 2000).

Digitisation and the increasing use of the internet have transformed this situation profoundly. The

circulation of digital works has boosted network effects and broadened the media markets. But it has also led to a massive increase in copyright infringements (Varian 2005). The cost of surveillance has therefore risen, requiring higher-performing technical resources (the appearance of DRMs) and more incentivising legal rules.

Unlike the theft of material objects which directly deprives the beneficiary of their asset, the unauthorised use of intellectual property only causes external effects. Copyright violation in a digital environment leads to two types of externalities. The first is a negative externality for beneficiaries (loss of income). This point is the subject of recurring controversy (Liebowitz, 2006). The second is a positive effect for the consumer - access to pirated media increases its usefulness for the internet and the related equipment. This increased utility can act as a subsidy in kind to initiate the network effects of digital innovations (Bomsel and Ranaivoson, 2009).

Liability of intermediaries and copyright enforcement

1. Initial framework

The new copyright piracy methods are linked to digital technology and new internet services which make this process easier and harder to crack down on. These services can be accessed by intermediaries which, according to the definition given by the OCDE¹ (2011), are sites based on the role of an external agent, which facilitate transactions between the parties or obtain services. Their aim is to host, transfer and list data or services. Legal flaws in enforcing copyright encourage technical innovation in piracy methods.

The rules for enforcing copyright in the digital environment have been defined in parallel a lack of liability for internet intermediaries. From the end of the 1990s, these intermediaries have been benefiting (and continue to do so) from a safe harbour system or hosting function: in Europe and in the United States, they are not responsible for the data passing through their platform provided that they are not formally informed of their litigious nature and meet the conditions outlined hereafter.

i. In the United States

The DMCA (1998) brought in a special safe harbour system via the Online Copyright Infringement Liability Limitation Act (OCILLA) (title II of the DMCA). In exchange, the websites concerned had to implement a notice and take-down strategy; as well as a system for removing persistent offenders. Notice and take-

¹ OECD, "The Role of Internet Intermediaries in Advancing Public Policy Objectives", (2011), OECD Publishing

down allows beneficiaries to flag up illegal content to the sites that host it and the sites can then withdraw the content. The intermediary can benefit from exemption if, in exchange, it cooperates in the event of an infringement.

This system applies to four categories of intermediaries - transport, storage and hosting, as well as search engines. The sites eligible for the safe harbour must not be aware of the litigious nature of the data, not profit from their use, and, if they are notified, withdraw the offending files.

ii. In Europe

In Europe, the e-commerce directive ECD (2000/31/EC), brought in an exceptional status for hosts. But the notice and take down procedure is not systematic and has to be transposed by States; it has only been applicable in Spain and Italy since 2012.

The DMCA is more restrictive than the ECD - while the latter applies to a type of agent appointed as the host, (search engines are not included in this *a priori*) and to different domains, the DMCA is a regulation that only takes copyright into account. The ECD particularly covers e-commerce services, which the DMCA does not.

In both cases, the applicable system is civil liability, subject to one limitation: the intermediary or the host is not liable provided that it is not aware of the infringement. Nevertheless, specific situations lie at the meeting point of several regulations: e-commerce, intellectual property law and civil liability of the intermediaries.

These two regulations are counterbalanced by technical means of protection, DRMs (Digital Rights Management systems) being used as a sanctuary. DRMs are supposed to prohibit the copying of protected files and implement the conditions of their licence. Laws relaxing the liability of intermediaries provide for very heavy penalties for hindering the functioning of DRMs. However, difficulties in implementing them in an environment dominated by the competition between hardware manufacturers and the circulation of unencrypted files will lead to them being partially abandoned, especially for music files (Geffroy, 2009).

2. Innovation in piracy follows regulatory failures

i. The piracy race

The end of the 1990s marked the start of a race between copyright law and piracy technologies. Peer-to-peer (P2P) has popularised the exchange of files between consumers exploiting the ambiguity of “fair use” and the limited liability of the intermediaries. The first P2P system, Napster, was sentenced in 2000 for circulating illegal files from a central server. After it was closed down, new systems appeared (KaZaa, Grokster, BitTorrent, Megaupload) built around decentralised networks: only the index management of files works on fixed servers. It wasn't until 2005 (Grokster/MGM) that the United States Supreme Court banned P2P systems that were infamous for encouraging piracy. This decision considered that the liability

of P2P operators was engaged whenever there is an incitement to piracy. The three criteria chosen were the promotion of illegal uses, the lack of technology to prevent these uses and their explicit role in the site's business model. Until then, case law was the tape recorder, the Sony/Universal case from 1984, in which a technical copying system was deemed to be legal as it gave rise to legal uses. The latter has been useful in justifying P2P by focusing on its legal uses. (Bomsel, Geffroy, Le Blanc, 2006).

However, the limited liability of intermediaries considerably complicates the enforcement of the 2005 decision. Most index servers are located outside western jurisdictions, and internet intermediaries have not proven cooperative². The surplus utility resulting from piracy promotes the use of digital equipment and all online services; all internet intermediaries benefit indirectly from the external effects of the piracy (Bomsel and Ranaivoson, 2009). Therefore, the immunity vis-à-vis piracy encourages a moral hazard in the vertical network chain: the legal copyright enforcement flaws are exploited to develop other services.

Faced with this immunity, beneficiaries have no choice but to prosecute the end user. Hence the apparition of graduated response mechanisms aimed at making piracy useless for the end consumer. These mechanisms operate either via direct negotiation between beneficiaries and consumers (this happens frequently in the United States), or via a governmental agency (Hadopi in France, for example) wielding the threat on behalf of beneficiaries. This situation is economically paradoxical as it obliges beneficiaries to criminally accuse the consumers of the products that they have helped to create and promote.

In sum, the limited liability of intermediaries has contributed heavily to the growing cost of enforcing copyright. Firstly, by creating strong incentives to innovate in piracy methods; secondly, by encouraging designers of these systems to set up outside western jurisdictions; thirdly, by targeting suppression at end consumers, who are much more widely dispersed and expensive to dissuade; fourthly, and finally, by focusing beneficiaries on the criminal suppression of clients, to the detriment of their image and that of their products.

ii. Abuse of the safe harbor

However, two recent judgments have changed this dynamic. Both question the liability of an intermediary hitherto covered by a safe harbour.

The first is the decision of the European Court of Justice in the eBay vs. l'Oréal case³ of July 2011. The Court considered that eBay could not in this case benefit from the status of host since it had lent its technical assistance to the creation of online stores. This last point resembled an awareness of the crime in the Court's opinion.

The second is the prosecution of the range of Megaupload streaming sites by the US courts in January 2012. According to the FBI, Megaupload had organised its immunity by concealing the hosting of

² KaZaa is domiciled on the Virgin Islands, the Megaupload platform in Hong Kong.

³ L'Oréal accused eBay of having posted online fake products or those reserved for the US market.

copyrighted files using a general hosting activity. Therefore, whenever it received a withdrawal notification, Megaupload could delete the file in question and pretend to be unaware of its immediate re-posting. For the first time, Megaupload's bill of indictment attributed the copyright infringement to the abuse of the status of host, and denounced the resultant criminal activities – rackets, laundering. Although the legal case is not clear-cut as the trial has not yet taken place, the novelty lies in the fact that an accusation of abuse of the status of host will lead its beneficiary to demonstrate the validity of this.

In the maelstrom of these decisions, let us add that Denmark has announced that it intends to introduce the blocking of illegal download sites. Such a measure would implicitly acknowledge the legal liability of intermediaries.

These different cases show that the safe harbour immunity led to abuses which will from now on be brought before the courts. Therefore, claiming host status, formerly awarded automatically, will from now on entail a legal risk.

Could this change in host status invert the copyright enforcement dynamic, in other words, could it encourage intermediaries to uphold the law?

In the previous context, the limited liability of intermediaries only forced them to intervene *ex post*. The fault rule defined by the legislator was based on the definition of the scope of hosting functions: within this scope, only negligence in the withdrawal of a notified file could be prosecuted. This system can be understood as a special case of tort law.

Restricting the scope of the safe harbour, or tighter controls on obtaining host status increases the liability of intermediaries and encourages them to be more vigilant. Therefore, internalising the enforcement of the law by the intermediaries allows savings to be made on surveillance costs and on the costs of prosecuting the end consumer.

Economic impact of the liability

1. Context

The aim of this part is to study the evolution of internet intermediaries supervision as we described it previously in the light of tort law. This is based on the framework of the economic analysis of tort established by Landes and Posner (1987). The approach is not focused on the prices applied by beneficiaries to diminish piracy, nor by the intermediary to sell a copy of a work, but on the effect of a change in the safe harbour conditions on the behaviour of intermediaries.

The special host status leads many intermediaries to think that they are safe from prosecution in the event of copyright infringement, intellectual property infringement or trademark law. The recent legal decisions

on the application of this status now introduce a level of uncertainty.

End consumers benefit from piracy. It depends on their personal preferences. This benefit can be partly captured by intermediaries.

Intermediaries have an option whether to uphold copyright or not: to decide whether to do so they have to take into account the costs and benefits of such an action. If they adopt a laissez-faire attitude, the cost is that of the penalty for any negligence. The benefits are capturing the usefulness of the pirated products: this can result from increased traffic on their site, monetised by advertising income, or from the increase in the price of their equipments or services etc.

Inversely, if they want to prevent consumers from engaging in piracy, this measure entails a technical cost and deprives them from the external effects of piracy. A change in the penalty or in its threat has an influence on the marginal cost of the copyright infringement for the intermediary. This change in the marginal cost determines its care investment and has an effect on consumers' willingness to pay (WTP). Because, if the intermediary exercises greater care, there is less "piracy" and therefore, average usefulness for consumers is reduced.

First we will present the options of the different protagonists, then the effect of a change in the limited liability (broadening) on the behaviour of internet intermediaries.

2. Behaviour of involved parties

Here we describe the choices of the parties identified above [sic] in the piracy process, with the central party being obviously the intermediary. The choice of behaviour is unilateral, as beneficiaries are not represented and it is supposed that they do not have the means to act ex-ante.

i. The judge

According to the negligence rule instituted by the law (\bar{x}), the judge determines whether the observable action of intermediary x^4 can give it host status (was it aware of the hosted content?) and give it limited liability which would leave it in the clear. The negligence rule thus imposes a standard of activity (due care) \bar{x} . For the judge, it is a matter of deciding whether x is lesser or greater than \bar{x} . If the intermediary is found guilty, it must pay compensation H , which corresponds to the monetary equivalent of the tort.

ii. The intermediary

The intermediary chooses a level of action, x , which corresponds to a level of care which leads to a copyright infringement with a probability $p(x)$. In the traditional framework of tort enforcement, it is supposed that an increase in the level of an action x reduces the probability of tort $p(x)$

⁴ $x \in [0, \infty[$

($p'(x) < 0$ et $p''(x) > 0$) : a greater level of care prevents the tort from occurring.

This level of action has a unit cost c . According to the negligence rule, the intermediary's private cost function is not continuous and can be divided into two parts: if $x > \tilde{x}$, the agent only bears the cost of their action, cx as it is not considered as being liable. And if $x < \tilde{x}$, the cost includes the tort: $p(x)H + cx$.

The choice of the level of care is the result of a maximisation of the projected profit (cost/benefit analysis): $R - C(x)$, where R is income, linked to consumer demand, thus of their WTP, and $C(x)$ the cost of a copyright infringement which depends on the level of x . It is supposed that consumer demand (and indirectly consumer WTP) is partially converted into income for the intermediary. There is therefore a benefit in not upholding copyright which is the capturing of some of the user's WTP. This obviously depends on their choice of care x .

iii. The consumer

The consumer is willing to pay a price corresponding to the value X that he or she places on different works that can be accessed for free via the intermediaries. This willingness to pay measures the additional usefulness perceived upon consumption of a product or service. The value of $X(i,x)$ is a function of i , individual preference parameter, and of x - the laxer the intermediary is on copyright application, the higher the usefulness to the consumer, as the consumer will be able to access more media on the internet for free.

Inversely, the more the intermediary cooperates with the beneficiaries, the less willing consumers are to pay for their services, so: $\frac{\partial X(i,x)}{\partial x} < 0$. So the choice of x will vary the consumer's WTP and, consequently, also vary consumer demand and the resulting income for the intermediary: $R(x)$.

It is supposed here that the consumer is not penalised for the illegal download, but that the focus is on the intermediary.

3. Intermediary behaviour

Here we are interested in the choice of x : which behaviour should the intermediary adopt in order to maximise its income? Under what condition does the likely penalty exceed the growth in income imputable to the consumer? Does the relaxation or uncertainty of the law on liability bring about a change in the choice of care x ?

Therefore we are looking to compare the care choice x in two situations: a systematic limited liability regime (safe harbour), and a random relaxation of this framework.

i. Limited liability regime

The intermediary chooses the level x which maximises its usefulness. The regime is that of liability by negligence corresponding to the status of the host. The intermediary therefore has a two-part cost function:

$$\begin{cases} p(x)H + cx & \text{si } x < \tilde{x} \\ cx & \text{si } x > \tilde{x} \end{cases}$$

If there is an infringement (negligence in the removal of notified files), their profit is:

$$\pi(x) = R(x) - p(x)H - cx \quad (1)$$

If it does not infringe status rules, there is no usefulness.

It chooses its level of care x which equals its deprived marginal cost and its marginal deprived profit prevention.

$$\text{The choice of } x \text{ is such that: } R'(x^*) - p'(x^*)H - c = 0 \quad (2)$$

And $x^* = \tilde{x}$. There is, in both cost function situations, an advantage in exercising the optimum level of care as, if $x > \tilde{x}$ there is a benefit in choosing \tilde{x} to minimise their cost and it will not choose $x < \tilde{x}$ as it wants to maximise its usefulness. In other words, it applies the removal after notification. And nothing more.

ii. Uncertainty of the status

An uncertainty q , ($q \in [0,1]$), is introduced to the due care for the intermediary (eligible for host status), which corresponds to the evolution of the safe harbour. In other words, the host is no longer certain of benefiting automatically from this status. In this case, x becomes less than the optimum level of action with a probability $(1-q)$, while it is still sufficient with a probability q :

$$\begin{cases} x < \tilde{x} & \text{avec une probabilité } (1 - q) \\ x > \tilde{x} & \text{avec une probabilité } q \end{cases}$$

The agent then seeks to minimise the amounts incurred in the event of penalty, $p(x)H + cx$, with a probability $(1-q)$, and cx with a probability of q .

The cost caused by x then becomes:

$$qcx + (1 - q)[p(x)H + cx] = (1 - q)[p(x)H] + cx \quad (3)$$

Therefore, the intermediary's profit is now $\pi(x) = R(x) - (1 - q)[p(x)H] - cx$ (4)

It chooses x_i which represents the level of care in this case, such that:

$$R'(x_i) - (1 - q)Hp'(x_i) - c = 0 \quad (5)$$

To compare the care levels chosen in these two situations, x_i and x^* , we assess the previous condition with the result of the standard negligence case (2) i.e. in x^* . We find that:

$$qHp'(x^*) < 0$$

Because $p'(x) < 0$.

Given the convexity of $p(x)$ ($p''(x) > 0$), we can deduce that x_i is greater than x^* , and the level of care is greater. There is therefore less free-riding on the copyright.

This formulation is very banal, but it must allow the intermediary's efforts to uphold copyright to be modelled at a later stage (depending on the uncertainty).

In other words, when the intermediary's level of liability grows, the piracy rate falls. This mechanism is even stronger, the lower the marginal profit of the piracy for the intermediary. This is true for most intermediaries when network deployment is saturated. In other words, changing the level of intermediary liability adapts the rules of copyright application to the perception of external effects of its piracy. In the deployment phase where it is considered that the external effects of piracy benefit the network effects of digitisation, regulators can opt for a limited liability regime. This mechanism accelerates deployment. Then, in the phase in which the network is fully deployed, piracy only produces external negative effects. Increasing the liability of intermediaries internalises the re-establishment of copyright enforcement.

Conclusion

This analysis highlights the role of liability law in applying intellectual property rules to digital networks. It shows that tort law exemptions granted to internet intermediaries have contributed to raising the costs of copyright enforcement. And that the re-establishment of less protective rules can reverse this trend.

Restricting the systematic granting of safe harbours must lead to a drop in the cost of surveillance and in enforcing intellectual property rights. Internalising copyright enforcement by intermediaries avoids

involving the administrative control authorities and favours the implementation of automated procedures. Moreover, it diminishes the threat of criminal proceedings being brought against the consumer.

The current law, which brings in a safe harbour for a certain category of technical intermediaries is far from perfect - it has been drawn up based on a special context of the internet. This particular context has evolved significantly since then, producing piracy techniques that were not covered by the initial regulations.

Despite this, the risk of a new law is to create a framework that is too narrow, quickly overtaken by technical innovation, or, on the contrary, a framework that is too wide, subject to controversy and interpretations. This has been shown by the many debates on current draft legislation: the European Commission's intention to review the e-commerce directive, transfer to the United States of the PIPA (Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act) and SOPA (Stop Online Piracy Act) bills before the chamber of representatives, European controversy over the ACTA (Anti-Counterfeiting Trade Agreement).

Our analysis suggests, on the contrary, that judges should be left to introduce risk into the application of host status until the level perceived by the intermediaries forces them to better internalise the intellectual tort caused to third parties. If the number of disputes increases, the legal risk will increase too. It is highly likely that the shareholders of the large internet intermediaries will soon prove sensitive to a rational management of the legal risk.

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