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Podcasting and Vodcasting: Legal Issues and Ethical Dilemmas

Heidi L. Schnackenberg, Associate Professor, Teacher Education, SUNY Plattsburgh
heidi.schnackenberg@plattsburgh.edu
Edwin S. Vega, Adjunct Professor, Teacher Education, SUNY Plattsburgh
eddie.vega@plattsburgh.edu
Dustin H. Relation, High School Social Studies Teacher, Clinton County, New York
D.relation@yahoo.com

Abstract

Portable media devices like iPods, iRivers, and others are becoming quite common in today's society. Concurrent with the advent of portable hardware is the development of downloadable media. Two of these forms of downloadable programming are podcasting and vodcasting. While these media are rapidly becoming a part of everyday life, written laws that govern technology and its uses are not remaining current with the quickly changing nuances of ownership and usage rights in the digital world. This paper addresses the various types of pod/vodcasting and the legal and ethical implications of creating and using these media.

Introduction

For several years now, portable media devices like iPods, iRivers, and others, can be seen attached to everyone from teens on their way to school to business people on their lunch hour. Portable media have become so common in fact that the sight of a thin white cord snaking from a commuter's ear into the pocket of his/her coat is almost de rigueur. So what are people listening to or watching on these tiny devices? Most often, it's downloaded music, movies, or television programs. Interestingly, with the advent of portable media devices, other forms of downloadable media have also emerged. Two of these forms are podcasting and vodcasting.

Podcasts and vodcasts are forms of media found on peer-to-peer file sharing, where users exchange files over the Internet by either uploading or downloading files from individual terminals. Specifically, podcasting is a distribution of audio files and vodcasting is a distribution of video files over the Internet (using RSS or Atom Syndication Format) for listening or viewing on mobile devices and personal computers. Podcasts and vodcasts are web feeds of audio or video files (respectively) placed on the Internet for subscription and downloading. Unlike a simple download or real-time streaming, the subscription feature of automatically delivered new content is what distinguishes pod/vodcasts from other media (Schnackenberg, Vega & Warner, 2008).

Currently, some pod/vodcasts are free to download and enjoy, while others are available for a fee. Musical podcasts have an intriguing mix of for-profit and free options. One would think that free downloads are generally created by unknown artists. While at one time that may have been true, now that is no longer the case. As formerly unknown artists are being discovered due to the vast number of hits and downloads for their free podcasts, famous artists are also following the trend and having *some* of their selections available for free, in hopes that the public will enjoy those selections enough to purchase more. Both independent producers and unsigned artists, as well as successful icons in the media industry are using pod/vodcast technology to reach the masses.

Similarly, podcasts can also be talk shows, sports commentary, news, or other non-musical programs. Like musical podcasts, some of these are free and others cost the user per download. The advantage of downloading these types of programs, whether they are free or otherwise, is that the user can listen to whatever interests him/her when s/he has time for it, rather than when the media pushes the information to them. While it would seem that that free podcasts would be more enticing than ones that are for sale, for the convenience of having information available when a user is able to listen to it, a fee may not be all that unattractive.

Presently, some of the audio that is available as a podcast, is also available as a vodcast with corresponding video files. In the not-too-distant past, podcasts were much more commonly downloaded because

affordable portable media devices couldn't handle video files. Now, portable media with the ability to play video is significantly more affordable to the public, and therefore infinitely more common. Vodcasts follow much the same genres as podcasts in terms of types and fee/free options, with the additional option of movies and television programs being more popular than music for downloading. (Of course, music videos are available for download as well.) As with podcasts, famous directors, producers, and actors are now not only offering some clips, shows, or films for free, but they are creating special programming that is available *only* as a vodcast. This then creates an entirely unique product, audience, and market, driven entirely by the development of the portable media player and its associated pod/vodcast needs.

Of course, the entertainment, news, sports, and business worlds are not the only industries making use of pod/vodcast technology. The field of education is following this trend to target students, instructors, parents and the communities they serve. Schnackenberg et al. (2008) note that "there are now downloadable podcasts to help students learn how to properly pronounce words in a different language or learn English as a second language. Several historical websites also offer vodcasts where veterans are being interviewed and offering personal accounts of the wars and armed forces in which they served." and "An instructor can opt to have his/her lectures available for downloading to a digital media player to be listened to or watched for review or to make up a missed class session. Science experiments and field trips can inspire discussions that could make great podcasts. These static, singularly transmitted files can then generate further discussions outside of the classroom." Not only are these technologies available for use in the classroom, but software and hardware used in pod/vodcast creation are becoming accessible to students. Pupils in schools and universities are now able to create their own pod/vodcasts as a way to enhance the teaching and learning process.

Perhaps the most recent, notable, union of pod/vodcasting and education is the creation of iTunes U in 2007. iTunes U is a service which manages audio and video content for institutions of higher education that subscribe to it. The subject matter can include anything from course lectures and foreign language lessons to campus tours and the latest happenings at a college. Material such as virtual museum tours, PBS programming, and historical footage is also available. Files can either be downloaded, or users can subscribe to a particular content stream and iTunes U will automatically download the current pod/vodcast to the user's harddrive. To a certain extent, the service functions like a course management system, where each college or university handles user authentication and verifies that s/he is indeed a registered student at the institution through a login and password. Currently, iTunes U is difficult to customize without advanced knowledge of some programming languages. To rectify this, Apple created an application call the Woolamaloo Automator to help institutions individualize their iTunes U sites.

Given the pervasive use of pod/vodcast technology for entertainment, education, news, and a variety of other applications, it's presence in the research literature is fairly new, but quite interesting. While no longitudinal studies are available, the results of investigations and reports found the uses and applications for pod/vodcasting to be varied and to have great potential.

Podcasts/Vodcasts, Law, Ethics, and the Literature

Podcasts and Vodcasts

Not surprisingly, a vast amount of academic research produced around pod/vodcasting exists in P-12 schools and higher education. The first and probably single most important factor in the use of podcasting and vodcasting in the classroom is that today's students have grown up as "Digital Natives." The term, coined by Marc Prensky (2001), refers to individuals who have been surrounded by the computer and other technologies since birth, and as such generally expect to have these technologies at their fingertips within and outside the school setting. Educators are now dealing with an entirely different audience, one that has spent roughly 5,000 hours reading, but nearly 10,000 playing videogames and about 20,000 hours watching television (Prensky, 2001). There is currently (as there usually is) a generational gap between today's educators, known as Digital Immigrants, and today's students. Today's youth are what many would term "wired" at all times, and they expect that every environment in which they find themselves should be wired as well.

Duke University is one institution that has subscribed to the belief that innovative technology will be the key to successfully engaging university students in meaningful learning environments. Duke made headlines when it introduced a new program that gave portable media devices, in the form of 20 GB Apple® iPods, to the freshman class, numbering just over 1,600. At a cost of nearly $500,000, the initiative was undertaken as a means to increase the University's use of technology in new and innovative ways in order to benefit the students it serves. The advantages of the program were numerous, and include increased engagement on

the parts of both students and faculty (Belanger, 2005). As discussed by Belanger (2005), faculty and staff began to have meaningful discussions on the unique benefits that this technology had on novice and advanced levels of learning. The program was so successful that it was continued into the next academic year with moderate changes to address some of the concerns that were generated from the first year experience.

A central aspect of podcasting and vodcasting is clearly the widely discussed benefit of portability. These media serve as "any time, any place" learning tools (Morales, 2006). This is particularly important since current society's youth have grown up in an age of instant communication gratification. As a result, learners are also demanding more control over their own learning, especially when and how they need it (Beldarrain, 2006). With the ability to download podcasts and vodcasts, students are no longer required to sit in front of a computer screen, or even in class (not that this is agreed upon) in order to obtain pertinent information. Instead, students can take their learning on the move, whether they are at the gym, in their car, or cross country skiing. The barrier of learning while stationary is now gone, as students can multitask and still obtain important course materials (Lum, 2006). Copley (2007) found in his study that over 80 percent of his students downloaded his podcasts, while 61 percent downloaded the vodcasts that he had produced, rating the usefulness at 4.4 and 4.7 on a scale of 1 to 5 respectively (5 being the highest score).

Another benefit to the use of podcasts and vodcasts in the classroom is that students work with materials that are up-to-date and generally more engaging than textbooks and lectures. No longer are educators reliant on recorded television shows, expensive educational DVDs or streaming services in order to engage students in the process of learning. Instead, a new world of current information can flow easily into the classroom, offering a variety of opinions and views from around the globe, and be downloaded to the students very own digital media device (Lum, 2006). One need simply visit the iTunes® Store to view the varying news and politics, science, health, business, education, etc., podcasts that are available for download, generally at no cost to the user. In this way students of all ages are connecting to a learning community without boundaries and experiencing greater potential learning gains (Beldarrain, 2006). This is also a monumental benefit to at-risk students who generally have limited access to in-depth, up-to-the-minute global information due to economic or accessibility constraints.

A further fundamental component of podcasting and vodcasting is that educators can personalize content for specific students who may have a learning style that differs from that of their peers (Kantharia, 2007). In a "normal" classroom setting, it is generally impossible to meet the needs of each and every student, due to lack of time and the possibility that a student may not want to ask additional questions publicly. With pod/vodcasting, educators can tailor specific content areas that may be unclear to student needs, thus allowing everyone to acquire the most out of the information. As a result, students will hopefully have a more positive view of education and the educator who is taking time to speak to them through the podcasts or vodcasts (Kantharia, 2007).

Podcasting and vodcasting also have implications for the constructivist approach to education and student engagement. The constructivist theory is grounded in the idea that students learn best when they are actively engaged in the process, not merely bystanders who digest information while sitting passively in a classroom (Beldarrain, 2006). Many have argued that podcasting and vodcasting can free class time by disseminating relevant information before class begins, thus allowing for meaningful and active discussions when students arrive for the in-class portion of a given course (Hatak, 2008; Lum, 2006). Furthering this notion is the idea that educators should view podcasts and vodcasts as additional interactions with students, and not simply a replacement of class time. In his study, Hollandsworth (2007) actually found that his "podcast class" showed an increase in preparation and participation by 8.6 percent over his traditional in-class group.

A final concern, and benefit, in terms of engagement relates to *student* created podcasts and vodcasts. Students who create these forms of media are showcasing their creativity in ways that many educators never dreamed possible (Morales & Moses, 2006). Long (2000) allows her students to create podcasts in a variety of different ways in order to express their understanding of information in a manner that is most meaningful for them. This openness in assignment parameters also gives educators multiple means of assessment based on student interest. Additionally, the creation of podcasts, much like blogs, allows students to present their work to an audience beyond that of the teacher, increasing their stake and pride in creating the best final product that they can (Borja, 2005). Students who are creating podcasts and vodcasts are not only using new technologies that will inevitably be central parts of their lives, but they are also learning valuable life skills such as communication, time management, collaboration, and problem solving. All of this is above and beyond the course content that is inherently written into a given project (Borja, 2005; Beldarrain, 2006).

While many educational benefits are associated with the use of pod/vodcasts in schools and other arenas, one drawback that is frequently noted is the questionable ability to transform what has widely been yet another "tech toy" into a useful learning tool. A study on preservice teachers captured the sentiment of many frustrated educators who felt that technological distractions tended to keep students "in their own little world when they should be working with the rest of the class" (Thieman, 2008). The concern is how educators are going to be able to prove that digital media can be used for learning purposes just as effectively as it can be for entertainment. It cannot be assumed that students will come to class and knowingly understand how to use their portable media devices for academic benefit. Educational institutions would be wise to create guidelines for using podcasts and vodcasts in order to enhance teaching and learning (Read, 2005).

A second drawback to pod/vodcasts is, not surprisingly, the cost. While varying studies suggest that over 80 percent of college students have some form of media player at their disposal, those that do not face challenges associated with purchasing such a device (Lum, 2006). Not all universities, and very few public schools have the funds to purchase iPods® or other comparable devices. The question then arises as to how to create an educational experience that uses podcasting and vodcasting without excluding learners who cannot afford the equipment? Not only would such a practice be unfair and unethical, it may also be illegal. Additionally, the simple purchase of portable media devices does not mean that educators will automatically be prepared to implement them into a learning or a training setting. Technology professionals and possibly a dedicated technology expert in the field of digital and portable media will need to be on hand to ensure that both teachers and learners are getting the most out of the podcasting and vodcasting programs. All of this leads to costs that simply cannot be covered by a majority of institutions, especially in the current economic climate.

A final challenge to the successful implementation of podcast and vodcast technology into education and training is that for those who have no experience with the technology, the learning curve may be too steep to overcome. There are a number of steps required to create podcasts and vodcasts that are both time consuming and frustrating for first time users. This means that many educators may decide against such technology infusion into their curricula simply due to time constraints (Morales, 2006). In order to effectively create and use podcasts and vodcasts in conjunction with course content, many educators will need to set aside time to learn about podcasting and vodcasting as well as experiment with the creation of these media (Borja, 2005). Additionally, learners will need training in the production of podcasts and vodcasts if they are to create them as part of general coursework. This is something that, while seemingly easy, is next to impossible when you take into account the other responsibilities of the professional educator (Chinnery, 2006). For teachers with increased accountability, it seems that more are feeling pressure to pass the next benchmark rather than creating innovative new teaching practices and options. And while podcasts are relatively easy to create with software that comes pre-loaded on many computers, vodcasts are a job unto themselves. With varying video formats, resolutions, and portable video players, it is almost impossible to ensure that all users will be able to download and view the created content (Ketterl et al., 2006).

Laws, Licenses and Guidelines

While the benefits and drawbacks to podcasting and vodcasting are at least somewhat defined, the legal and ethical implications are notoriously difficult to identify and characterize. Although podcasts and vodcasts can be created legally, the parameters for doing so are not always clear. Generally speaking, if a developer creates *all* of the content used in a podcast or vodcast, then s/he can be fairly confident that the media is completely legal. Concern arises when developers use information from other sources, thus invoking the specific copyrights of the materials being borrowed, sampled, etc.. In the United States, copyright is automatically granted when something is "fixed," i.e., written down or recorded (Vogele, Garlick, & the Berkman Center Clinical Program in Cyberlaw, 2006). Therefore, almost all podcasts and vodcasts have some form of copyright protection and cannot be copied, edited, or otherwise altered without permission. However, there are five specific instances when permission to use another's work is not necessary. These include: using a fact, an idea, a theory, slogan, title or short phrase; using works that are in the public domain; using a US government work; making a "Fair Use" product; or using Creative Commons-Licensed, or "podsafe" content (Vogele, Garlick, & the Berkman Center Clinical Program in Cyberlaw, 2006).

"Fair Use" consists of a four factor test that judges use to decide if a work is infringing on the copyright of one individual who is suing another. The first of the four factors is commonly known as the transformative factor. Basically, judges will look to see if a developer "transformed" or altered the original work enough to consider it something new. Essentially, has the developer added new insights and information to the

materials that have increased the value of the original work? The second factor relates to the type of work from which a developer is borrowing. If it is a factual work, a developer will have a more solid legal grounding. The third factor relates to the "amount and substantiality" of what was used. As a general rule of thumb, the less a developer takes, the better. The fourth and final factor is the effect on the "potential market." Basically, if the copying of a work will damage the original authors ability to make a profit, then a new developer is most likely infringing on his or her copyright (Stanford University, 2007). Given the factors in operation in Fair Use laws, it might be possible to use a limited amount of another's work for educational purposes, however caution should always be exercised when taking information from another source if a podcast or vodcast developer is looking to earn a profit.

Although there appear to be many barriers, it is possible to produce safe podcasts and vodcasts by using "podsafe" content. This type of information or media can be found by using such search engines as Google® and/or Yahoo® and altering the search parameters to Creative Commons works only. While this is may seem like the most reliable and easiest option, there are still some legal issues that must be noted when using Creative Commons works. The largest of these concerns is the fact that all Creative Commons licenses (version 2.0 and up) contain a disclaimer of warranties. What this means is that while the creator of the original work has a license through Creative Commons, the original work may include material that is copy written, which in turn may make a second user liable in a criminal case (Vogele, Garlick, & the Berkman Center Clinical Program in Cyberlaw, 2006). With respect to podcasts and vodcasts, it is evident that there are no guarantees when it comes to the use of content that is not original to the developer. (For the most current, complete guide on the legalities of podcasting and vodcasting, refer to the Creative Commons Podcasting Legal Guide [Creative Commons, 2006]).

Another piece of law that is crucial in the discussion of pod/vodcast creation is the Digital Millennium Copyright Act (DCMA). The DMCA was signed into law by former President Bill Clinton on October 28, 1998 in an effort to sort through the growing issues of copyright infringement occurring on the internet. Title II of the Act, entitled "Online Copyright Infringement Liability Limitation Act" deals primarily with streaming video sources such as YouTube® and Google® Video ((The Digital Millennium Copyright Act of 1998 Summary, 1998). (While it's possible that some of the provisions in the Act could be extended to podcasting and vodcasting, there is no legal precedence in that regard.) The DCMA also offers legal protection for "service providers" who allow users to upload content at their own discretion without the direct involvement of the provider. A service provider is defined in the Act as "a provider of online services or network access, or the operator of facilities therefore" (The Digital Millennium Copyright Act of 1998 Summary, 1998). Within this definition are two distinct additional requirements, both necessary to be considered a service provider. These include the ability to block users who repeatedly post copy written materials, and the ability to allow copyright holders to apply "standard technical measures" in order to determine possible infringement. In general, the DMCA does not consider employees and/or students in an educational institution as service providers, therefore protecting the institution from liability of copyright infringement (The Digital Millennium Copyright Act of 1998 Summary, 1998). While this seems like an equitable balance, many in the field of education and training felt that the provisions of the Act were unfair since the institution is protected, but not the individual educator. As a result, the Technology, Education, and Copyright Harmonization Act (TEACH) was signed into law on November 2, 2002 by former President George Bush (Copyright Clearance Center, 2005).

The TEACH Act is a legal protection that educators, trainers, and anyone in the fields of teaching and learning has when it comes to the issues of copyrighted material. Under the TEACH Act, educators have more leeway in the creation and distribution of copy written materials than is allowed under the stipulations set forth in the Digital Millennium Copyright Act. There are a certain set of criteria that must be met in order to fall under the auspices of the TEACH Act exemption. These include limiting the use and distribution of copy written work to the amount that could be shown or used in a classroom setting and timeframe, and the ability of the educational institution to limit the materials to only those students enrolled in a specific class (Copyright Clearance Center, 2005). Again, caution should be used when applying this information to podcasting and vodcasting as there is no direct discussion of such technology as part of the TEACH Act in its current incarnation.

In order to clarify the parameters set forth in the TEACH Act, institutions like Stanford University have developed a list of proposed guidelines that faculty can refer to for advice on the creation of what it terms "multimedia works" (2007). While these guidelines do not specifically address podcasting and vodcasting, one can extrapolate that these two forms of media would likely fall into the general guidelines. Accordingly, educators and students would be able to create works for educational purposes and use them for up to two years as part of a particular course without infringing on the copyright held by others. Included in the document is a section on the "portion limits" to which creators must adhere. The limits include 10 percent or

1,000 words from any text, 10 percent or no more than 30 seconds of any musical performance, and up to 10 percent or three minutes of a copy written video work (Stanford University, 2007). (An important aside to these guidelines is that they are simply proposals and have never been formally approved as legally binding.)

Ethics

In any area where laws are somewhat nebulous or ever-evolving, it often falls to the ethical/moral nature of a society to govern behavior. In this case, since laws on podcasting and vodcasting exist but are continually developing, a discussion of the ethical implications of these media on society is essential.

Ethics, as defined by Birsch (2002) is in simplest terms, "the investigation into how we ought to live" (Birsch, 2002, p. 1). Beliefs, values, attitudes, human relationships, religion, and even laws help us to shape our "ethical compass" (Birsch, 2002, pp. 3-4). As is evident from the discussion above, the legalities of podcasting and vodcasting can be somewhat amorphous, offering little guidance for those who want to explore the boundaries of technology for education, pleasure, or profit. As a result of a lack of legal precedents, it is possible that as a society our own moral and ethical "compass" needs to guide us down the road to creating and using podcasts and vodcasts that uphold some form of fairness to our peers and our community. The inherent problem with this is that no society has a completely universal ethical or moral "compass." An individual's set of ethics is something that is deeply personal and shaped by a variety of experiences, making it almost impossible to make broad statements based on a single individual's ideas on any issue. However, there are instances when the idea of "universalizability," first developed by Immanual Kant in 1785 (Kant, 2008 translation), can be applied to a given situation. In essence, the idea of universalizability is that some moral guidelines are universal and can be applied to anyone "in a sufficiently similar situation" (Birsch, 2002, p. 11). The underlying belief in this principle is that everyone is equal in some regard and therefore if placed in a similar situation, they should all behave in the same way based on an agreed upon ethical and moral guideline. If we were to expand this discussion to pod/vodcasting, it might be possible to state that there are aspects of the discussion that constitute universalizability, but we must also assume that there are instances in which the individual has to rely on his/her own moral compass, using the advice of colleagues and any professional organizations to which s/he belongs.

The Association for Educational Communications and Technology (AECT) is one such organization that has kept the issues of ethics at the forefront of its work. The AECT is an organization of professionals who work with and develop technology in ways that will benefit the educational community both within the traditional school setting, as well as in a variety of other areas including the Armed Forces, industry, hospitals, and museums (Association for Educational Communications and Technology, n.d.). The AECT has developed a Code of Professional Ethics that all members must adhere to, thus making it a "standard" in the field of technology and education/training. Three related concerns in Section 1 of the AECT Code of Ethics focus on ideas about access to educational materials. This section, entitled "Commitment to the Individual," states that members should "encourage independent action in an individual's pursuit of learning and shall provide access to varying points of view," "protect the individual rights of access to materials of varying points of view," and "guarantee to each individual the opportunity to participate in any appropriate program" (AECT Code of Professional Ethics, 2008). These ideals seem to help frame the question of how individuals can develop materials and allow access to broad sources of information for all who need it.

The concept of maximizing the benefit (of anything) for the largest number of individuals can be explored through Jeremy Bentham's Epicurian theory of Utilitarianism (Birsch, 2002, p. 85). Within this belief structure is an overwhelming sense that it is ethical to do whatever it takes to generate the largest net benefit for the greatest amount of people. From this it could be argued that all materials should have copyrights that include unlimited use for educators, trainers, non-profit organizations, etc., as long as the original creator/author is given credit for the piece in the newly generated work. In this way, educators could freely proliferate important materials to unlimited numbers of students. On the other hand, the greatest benefit for the greatest good may be to allow the original creator (copyright holder) to gain monetary compensation for his/her work, which could in turn generate other jobs and occupations. Determining which course of action is going to generate the greatest net benefit is the essential question of Utilitarianism.

Finally, a discussion of ethics cannot be complete without a briefly addressing the issues of cultural relativism, at least as it relates to technology. Essentially, cultural relativism is the idea that societies around the world hold different views and values, and therefore should only be judged by the "rules" that govern that society. Coinciding with this idea is that of ethical relativism, whereby the moral guidelines of that particular society are the only ones that can be used to judge one's actions (Birsch, 2002, pp. 32-33). When considered in conjunction with global technologies, ethical and cultural relativism work to remind us that it is

not solely the mores of the western world that regulate how media is created, used, perceived, and proliferated. We live in an age where "global" is no longer just a word, but an active state of being for much of our economy, politics, and communication. There is simply no way to contain these integral parts of our lives within the value system *we* deem appropriate. To add more complexity to this line of thinking, we can relate the ideas of cultural and ethical relativism back to the idea of Digital Natives. While the population of Digital Natives may differ slightly from country to country and continent to continent, they may share much more in common with their global generation, than they do with other generations within closer geographical distance. It might be possible to argue that the "Natives" are by all accounts a separate culture themselves, one in which copyright issues are basically non-existent due to the profusion of illegal downloads and perhaps a more overall acceptance of free and shareable digital resources. If this is the case, the foreseeable future might be one in which copyright issues in the digital realm no longer exist, or exist in a vastly different manner, and open-source products become the norm. Quite literally, due to their "digital connectedness," our youngest generation could spin the idea of culture, and all its implications, in ways of which we cannot even conceive. This then makes many of our discussions of benefits, drawbacks, laws, and ethics almost moot, and clearly outlines the need for flexibility in all of these concepts.

Overall, it is readily apparent that the literature surrounding the use and legalities of podcasting and vodcasting is both exciting and supportive, as well as negative and confusing. Due the recent introduction of podcasting and vodcasting into the lexicon of our world there is still minimal research on the overarching benefits and drawbacks. Equally, there has been little major litigation, although this is increasing more rapidly than the social science research. With this in mind, it is hoped that technology professionals and educators will continue to take risks and push the boundaries of podcasting and vodcasting in order to advance those technologies. Although it is only through court decisions that the true boundaries of creating and owning digital work can occur, it is still the creators and users who frame the need for laws and specific guidelines to which a digital society must adhere.

Legal Issues and Ethical Dilemmas with Podcasting and Vodcasting

While proper and legal use of podcasts and vodcasts is certainly the norm, misuse also exists. One of the most high profile cases of the misuse of vodcasting in particular is with the Japanese anime industry. Recently, fans were uploading and posting a wide variety of anime to YouTube (www.youtube.com). Given that the anime industry in Japan, like most countries, is a for-profit business worth large sums of money, these illegal uploads (and subsequent illegal downloads) were impacting profit margins. Not only that, but in Japan the animation industry is highly regulated by government guidelines and laws because it is a very important and deeply embedded part of the culture. From the perspective of the Japanese government, the illegal uploading and downloading of anime involves more than just money, it also affects an individual's honor. While this specific situation was ultimately resolved to the satisfaction of the Japanese government after they formally requested that the illegally uploaded anime was found and removed from YouTube (most, but not all of the anime is now gone), the situation poses an intriguing legal and ethical dilemma. While by its very design, the technologies of podcasting and vodcasting were meant to be used freely and legally, they often are not, thereby affecting someone or some entity's opportunity for recognition and money. In addition, and perhaps more interestingly, these illegal uploads and downloads may inadvertently trample the mores or decorum of a location or culture with which we as users think we have no interaction or influence. While clearly this is not the case, it certainly illustrates the need for caution from not only a legal standpoint, but also a cultural one.

A misuse of streamed or static media particular to vodcasting is the issue of posting images or footage of underage users. Underage users themselves are perhaps some of the worst offenders, often without realizing the implication or consequences of posting images of themselves. By the letter of the law, images of children cannot be posted on the Internet without the permission of a parent or guardian. While parents or guardians can legally post images of their charges, they also are often not aware of the dangers that exist by doing so. Many streaming media sites and video hosting services attempt to control and frequently remove unauthorized footage of minors, but it is difficult to fully monitor given the wealth of video that exists on sites like YouTube. Other hosting sites do not even attempt to monitor files that have children in them, therefore posing perhaps one of the biggest dangers with regard to video on the Internet. It is all too easy to post, use, and reuse footage of minors illegally. Conversely, a great deal of permissions, written documentation and awareness goes into utilizing images of children legally. This is not to say that vodcasts of underage users should not be created or shared, but rather that full precautions to protect these young individuals must be taken when incorporating them into shared media. Perhaps the best ways to keep footage or images of children safe on the Internet is to post them only on protected websites or with secure services (i.e., those will agreements with schools) or to simply not include children in any form of shared media at all. While the latter may be an extremely conservative approach, it is certainly the safest.

While some of the misuses of portable media formats are blatant, others are a result of legal vagaries or "nuances of legality." In other words, laws may not exist or may not be explicit about what users can do with downloadable programming once it is on their personal computers. In part, this is because every possible scenario cannot be accounted for or presupposed within the limits of the law. But manipulation of media on personal computers is generally private and the rest of society simply doesn't know what one does in the privacy of his/her own home. Until manipulated media is re-uploaded for public consumption, it is almost impossible to track illegal activity. However, once altered media are put on a networked server, it generally means that it is in the public domain and subject to any laws that may exist.

Some of the more common alterations and creations of pod/vodcasts that occur, but are not legal, include the following:

- The use of sound bytes or copy written samples within a pod/vodcast without permission (i.e. the concept of remixing).

- The assumption that all pod/vodcasting licensing agreements are the same and have the same restrictions, when in fact licenses have different stipulations and can only be used according to the particulars that are outlined therein.

- The belief that obtaining permission to use a pod/vodcast only from its creator, but not from each performer or artist on the broadcast, is comprehensive authorization. Although a creator *may* be able to represent any artists on his or her pod/vodcast, this is not consistent with every performance. Although it's not clear whether this is always necessary, it's better to err on the side of caution and obtain permission for use from all involved parties whenever possible.

- The use of parts of a pod/vodcast in another pod/vodcast (or anything else) without permission. Simply because a broadcast may be free, it cannot be taken apart to re-use it any more than it could be re-used in it's entirety without permission (for profit or otherwise).

- Redistribution of a pod/vodcast without authorization. If a pod/vodcast or set of pod/vodcasts is removed from the web, a user who has downloaded this material cannot re-upload it for public consumption (free or otherwise). The difficulty with this is that supposing a user wanted to ask permission to re-upload, if the material and/or the web host has disappeared (as does happen), who would s/he go to in order to ask permission? Although frustrating, redistribution of these media without consent is illegal by the letter of the law.

- Creation and distribution of a derogatory or negative pod/vodcast. Since pod/vodcasting is not regulated by the government in the way that traditional radio and television are regulated by the Federal Communications Commission (FCC), anyone can generate and air a podcast or a vodcast. As a result, there is no topic that is restricted and no language that is too colorful. Although much of these media are free, they are still subject to the legalities of liable and defamation of character. Simply because these programs are not earning a profit, it does not mean that they are not accountable under the same laws as for-profit programming.

Perhaps the most interesting aspect of portable media and peer-to-peer (P2P) file sharing is not the legality, as P2P is legal by the letter of the law, but the moral and ethical implications surrounding it. As we know from recent and consistent media coverage of this practice, most peer-to-peer file sharers exchange popular, copy written music because it is an inexpensive way to obtain these media. People seem to insist on sharing illegal material despite industry and government guidelines, as well as some harsh consequences. Why does this sort of behavior continue when it has been well-publicized that it is not acceptable within the limits of our laws? Is it purely an issue of money? Fortunately, many news, television, and radio programs, as well as independent artists, have become savvy to the popularity of free, downloadable, portable information and entertainment. Recently, media outlets have been creating and uploading regular audio or audio/video programs that are often free and always legal to download from the host websites. While having mainstream media create programming that is available without a fee is a move toward lessening illegal usage, it still does not address the persistence of society to acquire for-profit resources dishonestly.

One explanation of this phenomenon may lie in the shifting approach held by our youth culture toward user-generated content and collaborative knowledge creation. With the advent of Web 2.0, the concepts of communication, expertise, community, and information-sharing have changed dramatically. Web 2.0 is in

some ways a misleading moniker as it does not refer to any technical updates to the World Wide Web, but rather to the ways in which it is used. Whereas before users mostly viewed static pages created by "experts" without many ways to communicate with each other, there are now almost endless options for social-networking, video-sharing, and collaborative information creation and dissemination (i.e. wikis). Users, primarily youth, have found ways of expressing themselves almost real-time to a global audience through blogs, micro-blogs (Twitter, etc.), uploaded or streamed pod/vodcasts, and a variety of social networking sites which may or may not include virtual worlds where individuals manipulate and function through an avatar. Through near constant use and connectivity to an electronic world which generally does not embrace boundaries, information, ideas, personal information, secrets, and ones most intimate thoughts are put on the Internet for all to see and manipulate at will. Navigating through an Internet where laws exist but generally don't apply may well explain why a stratum of society (i.e. the younger generations – Digital Natives) may continue to acquire and share for profit-resources despite clear knowledge of the consequences. The opportunity to connect and collaborate with a global community may be just too strong of a need to let legalities stand in the way.

One solution to this dilemma may exist with the approaches and ideas of Scott Sigler, podcast and print author. In an interview with Elisabeth Lewin (2008), Sigler states that print publishers at least, should embrace free, downloadable media rather than trying to compete with it. Instead of attempting to force their audience to purchase what the public clearly knows they can acquire for free, publishers/creators should think of novel ways to garner a market. In a radical move, Sigler proposes that in the case of books, publishers should consider giving away the main work, via an audio or print download, in order to let the public get to know and like the author. Then, publishers could have extensions, follow-ups, character details, etc. available for purchase once they've captivated the audience. While this approach may run entirely counter to everything that publishers and marketing companies have practiced until now, it could be the way to both honor the idea and practice of free, downloadable entertainment, and still provide some sort of profit base for the industry. It may also encourage more legal attainment and use of portable media.

Unfortunately, not only will most users remain ignorant of some of the laws surrounding pod/vodcasting simply because it is impossible to remain current with the ever-changing media laws, but lawmakers themselves will have difficulty creating and upholding regulations. In reality, fair and honest use of portable media may be an issue of principles and morals, rather than strict legal structures. Technology itself rarely *creates* societal problems. Rather, it's the users of technologies who knowingly or unknowingly manufacture problems by inappropriate uses and unethical choices. If society can be thoroughly educated to enjoy and justly share intellectual and artistic digital work, then individual members of society will perhaps be more inclined to monitor their own personal usage and the need for up-to-the minute, constantly changing laws may be lessened. At the time of this writing, many colleges and universities offer courses and even programs of study on ethics and ethical issues. In these programs, cyber-ethics and techno-ethics are becoming increasingly important elements. While these areas are relatively new disciplines of study, their focus is to address issues exactly like the ones being discussed here.

Conclusion

While many of the constraints, laws and cautions outlined here may dissuade individuals, particularly students, from attempting to author podcasts and vodcasts, there is certainly still a wide variety of acceptable multimedia creation in which to engage. The best rule-of-thumb for creating fully legal, copyright-free pod/vodcasts is to develop all aspects of the work from scratch. The audio, video, images, music, effects, etc., should all be constructed by the designer. Although that may feel like a vast amount of work, designing all aspects of a pod/vodcast from scratch truly enhances the creativity and originality of the work (as well as allowing the developer to become familiar with many facets of multimedia). Full creation of a work also allows the learner to accept more ownership and feel more pride in what s/he has designed and developed. It's similar to baking a cake – while using a boxed mix and packaged frosting may be quick and easy, it's not really a chef's homemade dessert Making a cake from scratch definitely gives the baker more pride in the treat and compels them want to share it with others. Far from restricting creativity, home-grown innovations generally mean more to the creators, are more original, and are more readily shared with an audience.

Given that it is difficult to predict the laws needed to address digital aspects of a society, laws regarding technology can only be, for the most part, reactive to situations that develop with or from emerging technologies (rather than proactive in order to prevent problems). Therefore, it may well be an issue of personal accountability and honesty with regard to appropriate use of portable media like podcasting and vodcasting, rather than an issue of regulations and consequences. It is an argument that is reminiscent of the tale of the chicken and the egg – which comes first, the laws that guide human behavior, or the behavior

that necessitates the creation and implementation of laws? Whichever way it works, the legal and ethical issues surrounding portable media and portable media devices are constantly changing and will continue to change at a whirlwind pace. We may never institute a legal system that will consistently help society to remain fair and honest when it comes to digital media, but we can take strides in developing an ethical and just population with which this type of media finds its audience.

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