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Literature Review Paper—HBO and Game of Thrones File Sharing

Ever since the world of Westeros first came to life on the silver screen, HBO's "Game of Thrones" has continued to gain popularity with seemingly unstoppable momentum. Fans of the show, which is based on George R. R. Martin's intricately crafted book series of the same name, can't get enough of it; in fact, "Thrones" fans are so obsessed that the HBO series has quickly become the most pirated show of all time, breaking several of its own illegal downloading records. The season 5 finale, for example, broke the record for most illegal downloads of an episode in 8 hours with an astonishing 1.5 million downloads (Yeung). HBO's attempts to combat this record-shattering piracy continue to increase as the problem itself increases, yet it is unclear what the company's next move should be, since its current methods are clearly not cutting down on illegal downloading. Ultimately, HBO has to decide whether or not furthering the use of the company's time and resources to address the problem of illegal downloading is worthwhile, especially since torrenting, while initially causing subscription revenue loss, does end up positively effecting the show's popularity. Various experts and entertainment/tech journalists have weighed in on the debate over whether combatting Game of Thrones piracy is worth it or not, including lawyers, entertainment CEO's, and even Game of Thrones producers. In this paper, I will lay out the two sides of the Game of Thrones piracy debate according to several sources and also look at those sources' opinions on the change in HBO's tone regarding piracy over time.

To analyze this question, it is important to understand why Game of Thrones has earned the position of most pirated show. One of the reasons Game of Thrones is so widely pirated is because of how costly and difficult it can be to access the show legally through HBO. Up until recently, HBO was only available through subscription along with a cable TV subscription, which is especially problematic as cable TV becomes obsolete; according to Nielsen's fourth-quarter 2014 audience report, for example, over 40% Americans, now rely on streaming services such as Netflix and Hulu to watch shows and movies (Kang). In an attempt to combat this cable-drawback and compete with live streaming services, HBO introduced HBO Now, an app that allows users to watch unlimited HBO content for $15 per month. So far, though, HBO Now hasn't been successful in combatting Game of Thrones piracy even though it allows fans to subscribe to HBO on a device without cable TV. Why? Because many Game of Thrones fans don't watch any other HBO shows or movies, so $15 a month to watch Game of Thrones alone is more than many are willing to pay. In short, as Paul Tassi, a frequent Forbes technology news contributor and reporter states, "piracy is still free" (Tassi 2015).

Of course, piracy may be free for consumers of shared files, but it is not "free" for HBO, at least on the surface—the company lost an estimated $44 million in U.S. revenue from pirating of just the season 5 premier episode alone (NEED SOURCE). That being said, illegal file sharing of Game of Thrones does help HBO in a number of indirect ways—for example, according to Jeff Bewkes, CEO of Time Warner Inc (which owns HBO), even though piracy can be directly correlated to loss of subscription revenue, it also "leads to more penetration, more paying subs, more health for HBO" and "less reliance on having to do paid advertising" (Forbes).

Ultimately, he argues, the fact that Game of Thrones is the most pirated show in the world is "better than an Emmy" (Tassi 2014).

During the first few seasons of the show, when Game of Thrones piracy began to soar, it certainly seemed like HBO's actions (or lack thereof) in response to illegal downloading echoed Bewkes' sentiments. Starting in 2012, TorrentFreak, a blog that reports the latest file-sharing trends, reported that Game of Thrones was the most pirated show of the year, and soon after, the most pirated show of all time (NPR Staff). Then, in early 2013, National Public Radio (NPR) writer Jacki Lyden interviewed Wired.com writer Graeme McMillan on the implications of HBO's piracy problem and how illegal downloading is changing the way people watch TV. During the interview, McMillan states that HBO's programming chief, Michael Lombardo, said that "his bigger concern wasn't the people who were downloading, but that by downloading they'd get an inferior product" (NPR Staff). McMillan, when asked if he thought piracy actually hurt HBO, said, "I'm not sure it does…I think it really raises the profile of the show and the profile of HBO in general," and then continues by quoting Game of Thrones producer David Pertrarca, who said, "No, [piracy] is great. It really helps the show's cultural buzz, and it does not impact the bottom line because HBO has more than enough money to keep making the show" (NPR Staff). Ultimately, he argues, since the future of television is online and piracy is currently the center of online-viewing buzz, that's probably where "somewhere [HBO] really wants to be" (NPR Staff).

McMillan's account is largely representative of HBO's view on piracy in general—that is, until the infamous early leak of the first four episodes of Game of Thrones season 5 in early 2015. Bewkes' statement and HBO's early responses to "Thrones" piracy both make it seem like

HBO doesn't care much about pirating and that the lost revenue it causes is made up for by increased publicity, but HBO's recent legal actions against online pirates paint a very different picture. Following the BitTorrent leak of the first four episodes of "Thrones" season 5 before the set season premiere date in early 2015, HBO began to crack down on specific pirates and piracy sites. The company's legal team reportedly "issued thousands of warnings to Internet subscribers whose connections were used to share leaked Game of Thrones episodes" (Heisler), but since HBO has no way of knowing the actual identities of specific pirates, it seems as though the warnings were more of a scare tactic than anything. These warnings, though, are just one of HBO's many attempts to discourage piracy, as HBO shows are "constantly flagged" on torrent sites (Tassi 2015) and, for the first time since the show began, HBO decided to air the season 5 premier on the same day for the entire world, as opposed to an earlier date for the U.S. (Bowman). According to numerous reports, HBO is even beginning to track specific IP addresses of online pirates and sending cease-and-desist letters to restaurants and bars that host live-screening events of Game of Thrones episodes (Swartz). While threatening live-screening events might seem extreme, according to Northwestern University Law professor Peter DiCola, since screenings of the show at bars can be considered as unauthorized public performances, it is HBO's right to take legal action and threaten penalties (Swartz).

The reason HBO's tone changed after the season 5 leak is probably because it led to a change in momentum for viewing of the show. Basically, because so much of the hype surrounding Game of Thrones and its revenue comes from the fact that fans count down the days until the next episode airs, the fact that four episodes were leaked at once caused a large decrease in excitement about the first half of season 5, since many fans downloaded and

watched the first month's worth of episodes all at once and then had to wait it out until

episode 5. Since some sources estimate that approximately 800,000 to 1 million fans watched

episodes 1 through 4 as leaked files, this was a huge blow to HBO's momentum going into

season 5. Additionally, HBO had been planning to launch HBO Go, a monthly subscription

streaming service, on the same day as the season 5 premier (Tassi, April 2015). These factors

combined likely caused a sharp change HBO's tone and responsive action to online pirates and

torrenting sites.

Clearly, HBO is fighting on multiple fronts to discourage and decrease Game of Thrones

piracy—the simplest way to categorize these fronts is distinguishing between HBO's battles

with large torrenting sites, individual pirates, live streaming apps, and live streaming events.

Live streaming apps are a particularly dynamic and important threat to HBO's anti-piracy

efforts, with mobile devices playing a larger and larger role in entertainment consumption. One

up-and-coming live streaming app is Periscope, which is owned by Twitter. To live-stream

shows or movies with Periscope, one user sets up a recording/camera device and connects the

device to the app, so anyone with access to the app can see, in real time, exactly what that

initial user is recording. This is especially problematic for HBO because by the time the company

issues take-down notices, the show is usually already over, and since it's live-streaming, there's

no lasting or physical file left to remove. Furthermore, HBO has no way of detecting exactly

who live-streamed the show after the user's channel stops streaming (Wong). Essentially,

Periscope has created "a real-time cat-and-mouse game for copyright holders and anti-piracy

firms" (Wong); and, as many cat-owners and "Tom and Jerry" fans are surely aware, a cat-and-

mouse chase can be incredibly tedious, but the mouse never stops running and the cat never stops chasing.

There are some drawbacks to live-streaming through periscope, aside from the obvious legal gray-area. For example, since Periscope users are essentially viewing through a screen and then a camera and then another screen, picture and sound quality suffer. Additionally, there's no way to pause or rewind when using Periscope. For some, this quality sacrifice is worth the unbeatable price (free) and instant access, but the loss of quality has also hindered Periscope's growth which, theoretically, could be explosive. According to Washington Post reporter Caitlin Dewey, the number of people who viewed the season 5 Game of Thrones premier using periscope was in the range of hundreds to a few thousand (Dewey), which pales in comparison to the millions that viewed the show legally or later through traditional piracy and file-sharing. Still, HBO views live-streaming apps like Periscope as a serious potential future threat, and after the "Thrones" season 5 premier, HBO took legal action against Periscope and its users by sending takedown notices and copyright warnings (Dewey). Many experts in copyright law, including California copyright lawyer Richard Stim, argue that while Periscope may not be an immediate threat to HBO, the point at which live-streaming becomes transformational to the industry is a "slippery standard" (Dewey), which is why HBO has already attempted to thwart Periscope's comparatively small audience of less than a few thousand people. HBO is even going after businesses that host Game of Thrones viewing parties as another form of live streaming, since only one subscription is being used for many people (Swartz). Although this example is one of HBO's more legally questionable anti-piracy efforts, it just goes to show that

HBO takes the threat of live-streaming seriously, sometimes even more seriously than torrenting.

Yet another way for viewers to access pirated Game of Thrones episodes is to stream them through third-party websites. This is different than torrenting and BitTorrenting because it doesn't involve actually downloading the file; instead, the third-party host uploads a file of an episode that can be viewed (streamed) at any time by anyone with access to the specific website link. HBO's efforts to shut down these third-party sites are similar to their efforts to remove torrented files, involving individual takedown requests and reports. In the larger scheme of fighting Game of Thrones piracy, since this third-party streaming is much less prevalent than regular torrenting, it hasn't been a huge focus of HBO's anti-piracy efforts and should continue to take a back-seat to fighting torrenting and the future threat of live-streaming apps.

HBO's legal battles against torrenting, live streaming, third-party streaming, and even community viewing parties clearly demonstrate that the company takes Game of Thrones piracy seriously, yet despite HBO's efforts, "Thrones" piracy only continues to increase. Considering the colossal popularity of Game of Thrones, many wonder why HBO even bothers to use time and resources to stop "Thrones" piracy at all, especially since HBO still has millions of legal subscribers, and piracy is essentially free advertising. Of course, HBO can't exactly condone torrenting, because that would open the floodgates to even more legal ambiguity and would ultimately hurt the company; HBO has to make some reasonable efforts to minimize piracy for the sake of control and business tactics, but no one at the company is naïve enough to believe that they could ever stop "Thrones" piracy completely. HBO's best bet to both keep

viewers and also maximize profits is to maintain its current amount of effort fighting traditional

piracy/torrenting while also focusing on the future prospects of piracy (such as live streaming)

before new methods of viewing catch HBO off-guard. Only time will tell if apps like Periscope

are the future of Game of Thrones piracy or if more user-friendly live streaming apps will

emerge, but either way, HBO should try to invest in staying one step ahead instead of

continuing to play the cat-and-mouse game of issuing individual takedown request for

torrented files.

Works Cited

Tassi, Paul. "'Game of Thrones' Sets Piracy World Record, but Does HBO Care?" *Forbes*.

   Forbes Magazine, 15 Apr. 2014. Web. 13 Jan. 2016.

Tassi, Paul. "'Game of Thrones' (Again) Sets Piracy World Record, and HBO Is To Blame."

   Forbes. Forbes Magazine, 12 May 2015. Web. 13 Jan. 2016.

Yeung, Peter. "Game of Thrones Breaks Its Own Internet Piracy Record." *The Telegraph*.

   Telegraph Media Group, 16 June 2015. Web. 13 Jan. 2016.

Kang, Cecelia. "Americans Are Moving Faster than Ever Away from Traditional TV."

   Washington Post. The Washington Post, 11 Mar. 2015. Web. 13 Jan. 2016.

Wong, Queenie. "Periscope, Live-Streaming Apps Trigger Anti-Piracy Battle." *Periscope, Live-

   Streaming Apps Trigger Anti-Piracy Battle*. San Jose Mercury News, 21 Sept. 2015.

   Web. 13 Jan. 2016.

Dewey, Caitlin. "The Future of Online Piracy Is Easy, Free and Already in Your Pocket."

   Washington Post. The Washington Post, 15 Apr. 2015. Web. 13 Jan. 2016.

Heisler, Yoni. "HBO Is Sick of Game of Thrones Torrents and It's Now Going After Individual

   Pirates." *BGR*. BGR Media, 20 Apr. 2015. Web. 13 Jan. 2016.

Bowman, Jeremy. "How HBO and Netflix, Inc. Are Fighting Back Against Piracy -- The Motley

   Fool." <i>The Motley Fool</i>. N.p., 26 Apr. 2015. Web. 13 Jan. 2016.

Swartz, Tracy. "BATTLE FOR THE 'THRONE': HBO wields legal axe against bars organizing

   watch parties." Chicago Tribune, 29 April 2015. ProQuest.com. Web. 13 Jan. 2016.

   http://search.proquest.com/docview/1676305657?pq-

   origsite=summon&accountid=10422

http://www.forbes.com/sites/insertcoin/2015/04/12/nearly-half-of-game-of-thrones-season-five-

      has-leaked-online/#657e4de93b83

http://www.npr.org/2013/04/07/176338400/pirates-steal-game-of-thrones-why-hbo-doesnt-mind