

2011

Will You Go to Jail for Copyright Infringement?

James Gibson

University of Richmond - School of Law, jgibson@richmond.edu

Follow this and additional works at: <https://scholarship.richmond.edu/law-faculty-publications>



Part of the [Intellectual Property Law Commons](#)

Recommended Citation

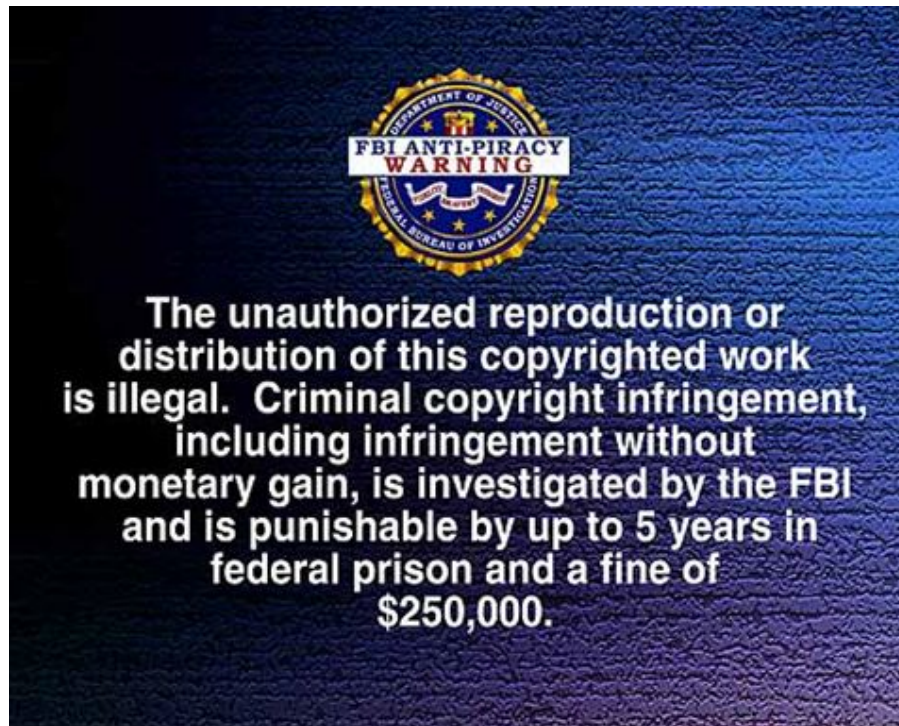
James Gibson, *Will You Go to Jail for Copyright Infringement?*, *The Media Institute* (May 25, 2011), available at <http://www.mediainstitute.org/IPI/2011/052511.php>.

This Editorial is brought to you for free and open access by the School of Law at UR Scholarship Repository. It has been accepted for inclusion in Law Faculty Publications by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

Will You Go to Jail for Copyright Infringement?

Prof. James Gibson, University of Richmond School of Law

May 25, 2011



We've all seen it. Stick a movie in the DVD player, and up pops a scary message from law enforcement: if you infringe copyright, the feds will come after you. Indeed, this threat is so ubiquitous that it has worked its way into popular perception; as any copyright expert knows from cocktail party conversations, laypeople seem to view copyright infringement as mostly a criminal matter.

It's certainly possible to go to jail for violating copyright law, as long as the violation is willful and involves specific kinds or amounts of infringement. And the good news for copyright owners is that more and more people are in fact facing criminal penalties for their infringement; the number of criminal convictions for intellectual property violations has increased 61% over the last decade.

But will an infringer actually go to jail for copyright infringement? Highly unlikely. While the percentage increase in convictions is significant, the absolute numbers are small. As the attached graph shows, there were fewer than two hundred criminal intellectual property convictions in 2010 (and some of those were trademark cases).¹ In comparison, 1,984 civil copyright infringement lawsuits were filed in the same time period.² A copyright infringer's chances of being sued for damages or an injunction are therefore much greater than his or her chances of being charged criminally.



Moreover, both criminal convictions and civil suits have been decreasing in number. Convictions peaked at 224 in 2007, and civil cases reached their high of 5,488 in 2006.³ Maybe this decrease would make sense if copyright infringement were also in decline, but that is certainly not the case.

Indeed, the main takeaway from these figures is that the chances that a copyright infringer will suffer *any* legal consequence – criminal or civil – are vanishingly small. Millions of United States citizens commit copyright infringement on a routine basis. Illegal downloads of movies and music number in the tens of billions annually. In the face of such statistics, the few thousand defendants each year who suffer civil or criminal penalties represent a small drop in a nearly bottomless bucket.

Perhaps the answer lies in legal reform or education. Or perhaps someday people will realize that not getting caught is not the same as doing right. In any event, that scary FBI warning is not really that scary after all.

© 2011 James Gibson

¹. The figures in the graph include any offense for which the primary federal sentencing guideline was § 2B5.3, which covers both copyright and trademark convictions. So it is possible that trademark cases, not copyright cases, are responsible for the post-2001 increase. On the other hand, the last time that more detailed data were available, copyright cases were referred for prosecution twice as often as trademark cases and had a higher conviction rate (93% versus 85%). Bureau of Justice Statistics, U.S. Dept. of Justice, Intellectual Property Theft, 2002 1, 5 (2004).

². Office of Judges Programs, Administrative Office of the U.S. Courts, Federal Judicial Caseload Statistics: March 31, 2010 app. Table C-2 (2010).

³. Office of Judges Programs, Administrative Office of the U.S. Courts, Federal Judicial Caseload Statistics: March 31, 2007 app. Table C-2 (2007).