

P2P Development: Do you Need a Lawyer?

Alessandro Liotta
aliotta@axiomlaw.net



Law and Disruptive Technology

- Disruptive technologies impose themselves on the society
- They trigger new economic and social needs
- They raise new challenging legal issues
- The legal system struggles to address those issues
- There is a complete disconnection between IT and law

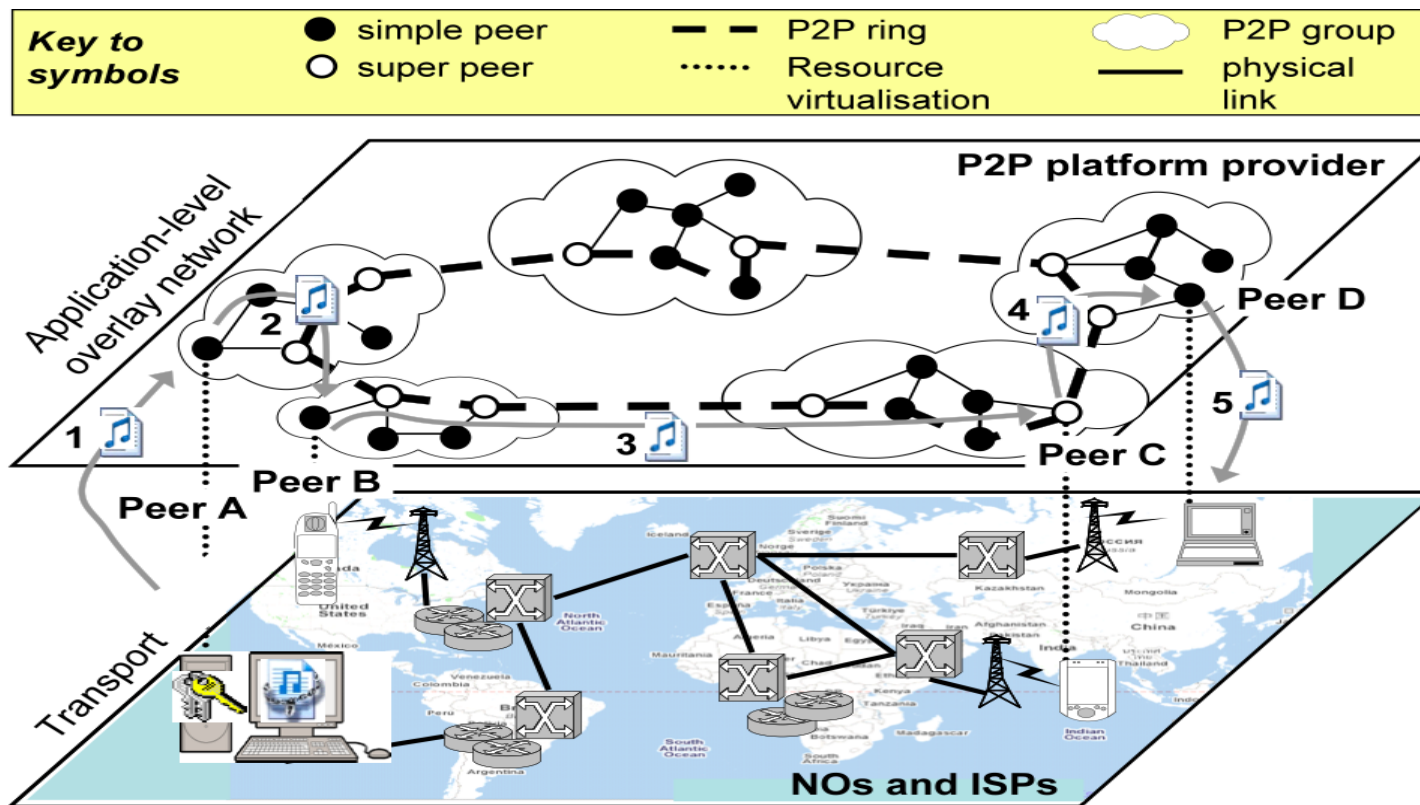
Examples

- Facebook
- Google
- Amazon
- Cloud Computing
- RFID
- Behavioural Advertising
- P2P

P2P and Law: A Broken Relationship

- A clear example of the disconnection between new technologies and legal environment is given by P2P.
- Several courts have tested this relationship but have not found a clear legal path yet.

P2P: How Researchers See It



Source: BT Technology Journal Volume 26, 2008 "P2P in a regulated environment: challenges and opportunities for the operator"

- Simple paradigm:
 - Problem: faster file distribution system
 - Solution: P2P

P2P: How Lawyers See It

- Lawmakers look at every issue from various points of view
- They take into account all the interests (economic and social) at stake
- They then enact laws that protect those interests in accordance with a just/balanced scheme

P2P: Interest Groups

- Copyright owners/representative associations
- ISPs and Telecom operators
- P2P Platform Providers
- Internet Users

P2P: What Happened So Far?

- Copyright infringements
- Internet network overloads
- Users' privacy and freedom of communication/Internet use
- Authors vs. Users/P2P/ISPs
- ISPs vs. P2P providers
- Users vs. ISPs

Copyright – an old law

- Copyright is the right that the law gives to authors to protect their creative works
- It gives the copyright owners exclusive right to copy, distribute and make available their works
- The first legislations providing for a copyright protection date back to the early 18th century, when book publishers started lobbying national governments to protect their interests against the activity undertaken by copyists
- Copyright infringement has always occurred, P2P has only increased exponentially the problem by providing a mass-friendly instrument of infringement

Illegal Music File-Sharing in Figures

- 80% of all ISP capacity is taken up by P2P file-sharing
- US record companies projected losses of \$3.7billion worldwide
- 2.6 billion illegal music files are downloaded in Mexico
- 1.8 billion in Brazil
- 35% of Spanish Internet users practice illegal file sharing
- 28% in the Netherlands

Source: The International Federation of the Phonographic Industry (IFPI Digital Music Report '08)

China

- It has almost as many broadband users as the US
- A legitimate music market of only \$74M (less than 1% of global sales)
- Digital piracy rate of 99%
- In 2007 and 2008 Yahoo China and Baidu (the biggest search engine in China) were convicted for facilitating copyright infringement by allowing 'deep linking' to pirated music files

Source: IFPI Digital Music Report '08

Copyright vs. P2P: Court Cases

- Record companies vs. users
- Record companies vs. P2P platform providers
- Record companies vs. ISPs
- Courts considered that uploading infringes the exclusive right of 'making files available to the public'
- Courts considered that P2P facilitates illegal file-sharing and convicted providers for vicarious and contributory liability
- More recently European courts have considered that ISPs have a role in the illegal file-sharing and must adopt certain measures

ISPs Cases

- Belgium: SCRL vs. Scarlet SA (former Tiscali's Belgian branch)
- Ireland: EMI (Ireland), Sony (Ireland), Universal Music (Ireland) and Warner (Ireland) vs. Eircom
- Italy: Peppermint vs. Wind and Telecom Italia
- The first ECJ case: Promusicae vs. Telefonica

Europe and P2P: A Harmonized Approach?

- France: 'three strikes and you're out law' under review by the French Constitutional Court
- UK: tentative MoU between ISPs and entertainment industry failed
- Spain and Italy are in the process of setting up special government authorities
- Germany passed legislation imposing ISPs to disclose the identity of users accused of copyright infringement perpetrated on a commercial scale

Outside the EU

- Isle of Man - the Government €1 plan for unlimited non-commercial file-sharing
- Japan has unveiled plans to introduce anti-piracy software in each mobile phone
- US trying to pass a bill to forbid P2P in Government for security reasons

ISPs' Network Efficiency

- The traditional configuration of P2P platforms affects ISPs' infrastructure resources
- Throttling is not an option: the Comcast case

ISPs' Data Retention Obligations

- Under EU Directive of 15 March '06 Telecoms operators and ISPs must retain information such as the time of the call, IP addresses involved in the call, the URLs visited, for 12 months
- Are these obligations compatible with P2P technology?
- From a jurisdiction perspective, what is the geographic scope of this directive?
- A new Google case in Italy on data retention raised the issue of extra-territorial effects of the data retention directive

Solutions to get out of this Mess?

- End the fragmented, closed-minded approach to IT regulations
- Legislation must take into account that new technology is without boundaries
- R&D MUST take into account the current legal framework and all the interests at stake
- Commercial push to partnerships
- Improve dialogue between science and law

Opinions, Ideas, Questions?



Alessandro Liotta

Axiom Lawyer

aliotta@axiomlaw.net

www.axiomlaw.com