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Moses, Media Piracy and the MPAA



By Marty Kaplan

If only people understood why they shouldn't do it, then they wouldn't do it.

That was the message of the inaugural speech last week by former senator Chris Dodd, the new chairman of the Motion Picture Association of America. The subject was piracy, which he instead called “movie theft” and “the single biggest threat we face as an industry.” The solution, he told the nation’s theater owners, was stronger laws, stronger law enforcement — and above all, something else, which he dwelt on. Education.

“It is critical that we aggressively educate... parents and students and everyone else,” he said. Teach them that movie theft isn’t a victimless crime, that it “harms middle class families and small business all across the economy,” and has an impact “on jobs and on local tax revenues, and on our ability to make the kinds of movies and TV shows people wish to see.”

Dodds’ argument (the industry’s argument) makes downloading movies you haven’t paid for — or uploading, ripping, sharing or buying them on the street — a moral issue. If you do it, you’re being bad. It’s a real crime that hurts real people and that breaks real laws, and parents and teachers have a duty to teach kids that it’s wrong. Thou shalt not steal movies.

The problem with this is that there’s no evidence that education works. There have been hundreds of vigorous anti-piracy educational campaigns all over the world — more than 333 in developed countries alone as of 2009 — and they’ve failed. It’s not that consumers don’t get that media piracy is wrong. They know what they’re doing. They’re weighing moral considerations against price and availability, and they’re deciding to go with cheap (or free), and now.

This is not my opinion. It’s one of the conclusions of a three-year effort by 35 researchers who scoured the existing evidence and conducted their own studies as well. Their 423-page report, published by the authoritative Social Science Research Council, came out just a couple of weeks before Chris Dodd’s speech. “Does Education Work?” is the title of one of its sections. Here’s the answer:

We see no evidence that this knowledge [that file sharing of copyrighted material is piracy] will have any impact on practices. We see no real “education” of the consumer to be done... Efforts to stigmatize piracy have failed... Although education is generally presented as a long-term investment in counteracting these attitudes, the lack of evidence for their effectiveness is striking.

Not only is there no evidence that education has been building a stronger “culture of intellectual property.” There’s also little evidence that enforcement works. Splashy raids haven’t reduced piracy. Two weeks ago the judge in a lawsuit by 13 record companies against LimeWire called their demand for \$75 trillion in damages “absurd,” and the infringement judgments that have actually been handed down also haven’t stemmed the tide of illicit file sharing. In the SSRC report’s words, “Strengthening police powers, streamlining judicial procedures, increasing criminal penalties, and extending surveillance and punitive measures to the Internet”: to date, none of them “have had any impact whatsoever on the overall supply of pirated goods.”

If major efforts to educate people that media piracy is a moral issue have not changed what people do, and if ramping up piracy enforcement has not reduced piracy, then what’s the industry’s endgame? Neural implants are out. So is capital punishment. Technical solutions won’t last. If the MPAA sticks with its strategy, at some point they’ll be forced to conclude that it’s not working. Having so thoroughly moralized the argument, what do they do then? Declare an amnesty for file sharing sinners? Legalize possession of less than half-an-ounce of megabytes for personal use?

Sooner or later — and judging by Chairman Dodd’s speech, it’ll be later — the industry will have to move from moralism to pragmatism. Their business model has been digitally disrupted, irrevocably, and they are already vulnerable to the kind of game-changing innovation, and carnage, that Apple’s iTunes visited on the music industry. If the studios are lucky, before a Netflix or a Facebook does that to them they’ll figure out that neither education nor enforcement will rescue them from creative destruction. Pivoting from Moses to merchant will be an awkward adjustment, but they will eventually be forced to conclude that their other options just aren’t working. It won’t matter that they have righteousness on their side. If they have to spend less on producing and distributing content, distraught fans won’t repent of their downloading ways. If jobs are jeopardized, it will be just as wrenching, and just as stoppable, as the transformation that globalization and rising productivity are wreaking on the rest of the economy.

What will the new business model look like? It’s hard to imagine that the sequenced distribution of product over a controllable period of time through an orderly series of “windows” — venues and platforms and formats and pipes and territories, each with their own license deals and consumer prices — will survive unbroken. In that future, a practical agenda for handling piracy is suggested by this 2009 comment from Robert Bauer, then director of special projects for the MPAA, as quoted in the SSRC report: “to isolate the forms of piracy that compete with legitimate sales, treat those as a proxy for unmet consumer demand, and then find a way to meet that demand.”

Business-model talk like that isn't nearly as macho as calls for tougher enforcement (which the public pays for, and which turns out not to work). It's also not nearly as noble as educating the public about intellectual property (which also turns out not to work). But no one ever said that the business of selling stuff has to be sexy, even if it's the stuff that dreams are made of.

This is my column from The Jewish Journal of Greater Los Angeles. You can read more of my columns here, and e-mail me there if you'd like.

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Marty Kaplan 

USC Annenberg professor and Norman Lear Center director