

## Richard O'Dwyer: living with the threat of extradition

Student who set up website posting links to TV and film content fears being used as a guinea pig by Hollywood giants

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Richard O'Dwyer, a 22-year-old Sheffield undergraduate studying multimedia, rose uncharacteristically early for a student on 29 November 2010, in preparation for a lecture later that morning. So the knock on the door of his small hall of residence room before 7am didn't wake him – but he was far from prepared for what would come next.

On the other side of the door waited two officers from the City of London police, accompanied by two leather-jacketed men from the US Immigration and Customs Executive (ICE).

O'Dwyer's next two years were about to take a dramatic turn for the worse. The call would place him at the heart of the titanic running battle between the Hollywood giants – struggling to keep their beleaguered business model intact in the online era – and a new digital generation unwilling to play by the old rules.

What brought the ICE agents to O'Dwyer's door was his role in setting up a small website, TVshack.net, linking to sites where people could watch US TV and movies online. To prosecutors of New York, this made him a worthwhile target in the battle against copyright infringement.

Although several recent extradition [<http://www.guardian.co.uk/law/extradition>] cases to the US have attracted controversy, in none does the gap between the alleged crime and the punishment sought by US prosecutors yawn as wide. Many have been angered by the US's eight-year effort to extradite Asperger's sufferer Gary Mackinnon for allegedly hacking into Pentagon computers; O'Dwyer faces extradition and a potential sentence of up to 10 years simply for letting people in the UK find somewhere to watch Iron Man 2 before its release.

In his first big interview, O'Dwyer tells how he became the unlikely poster boy of the 21st century's culture war. "I was up early, I don't know why," he recalls. "Then policemen turned up with two American men, wearing matching Top Gun jackets.

"I was half waking-up, half-confused. When they started talking I couldn't hear what they were saying, because I was too tired, but it was something about TVShack. So I was like 'okay ... bugger'."

O'Dwyer, a quiet, clean-shaven man who looks younger than his 24 years, had set up the site in 2007, at 19, at the suggestion of a friend. It was a "human-powered search engine" for people looking for places to watch films, TV, and documentaries online.

Users could post links to video content – on YouTube, the now-defunct Google Video, MegaVideo or elsewhere – that contained full TV programmes or films. O'Dwyer's site would check the link worked and add it to its search engine. The site quickly became a specialised search engine for TV and film content, plus a forum for people to discuss and review the films.

"I told a few friends, and maybe they told a few friends, and it sort of spiralled from there, and shot up fairly quickly, popularity-wise."

As the site grew, eventually reaching an audience of around 300,000 people a month, so did O'Dwyer's workload – and website hosting bills. "It's hard to maintain, with so many people [using it], I had to put adverts on to pay for the webhosting to get more servers to cope.

"Lots of advertisers seemed to email the contact address on the website. I just basically picked one out of the hat and put them on the website. And obviously, when traffic went up, so did the revenue. That's the way websites work."

Over the three years it ran, according to court documents, the site's growing audience generated more than £140,000 in advertising revenue. O'Dwyer hasn't denied the figure, but says a lot of it went on running the site. The rest didn't make for a lavish lifestyle: takeaways, pub rounds, electronics and cinema tickets, saw it dwindle away, he claims.

"I frittered it away – I haven't really got anything. I bought a computer, a few other things," he says. "[I] spent it like buying other people their things when we were at an event or something. Say at the cinema, I'd just buy everyone's cinema tickets."

O'Dwyer – perhaps ironically given his circumstances – is a cinema buff. With revenues from his site, he made four visits a week, and still visits twice a week: "it's much better to see a film in the cinema."

However, the US authorities became concerned about a site linking to content often still within copyright. To sell a counterfeit CD or DVD of a copyrighted work is an offence, as is deliberately uploading such a work to the internet [<http://www.guardian.co.uk/technology/internet>].

American customs officials, after campaigning from industry bodies, contended that linking to such items on other sites (as search engines and others automatically do) would also be covered by such laws.

This is a contentious interpretation of the law, even in the US, where linking has in some court cases been regarded as protected speech under the first amendment. Part of the reason for the huge backlash against proposed copyright laws, the Stop Online Piracy Act (Sopa) and the Protect [Intellectual Property] Act (Pipa) was that this provision would come under attack.

O'Dwyer says he hadn't really considered the legality of his site – he didn't know much about copyright, and knew he was only posting users' links to material hosted elsewhere – but did comply with legal notices from publishers asking him to remove links, on the few occasions he received them.

ICE targeted TVShack.net in June 2010 by taking his web address, known as a domain, and replacing it with a large warning against copyright infringement.

"One day my domain just disappeared. You'd just receive a massive warning message from ICE in America. We fixed that shortly afterwards by registering another domain name. Nothing ever was emailed to me, or letters. The priority was getting it back up."

The site was quickly back up and running at a new address, tvshack.cc. All ran smoothly until the knock on the door in November 2010.

After a quick search of his room, resulting in the seizure of his computer equipment and paperwork relating to the site, O'Dwyer was taken by the City of London police to his local police station.

"I had to direct them there because they didn't know, they were from London. They said I was the most polite person they'd arrested – and for that they gifted me no handcuffs."

O'Dwyer was taken for interview. Hoping to get the process over quickly, he refused a lawyer.

"I didn't have a solicitor with me, because they told me it'd take two hours to get one. I wanted to make it to my uni lecture, so I thought I'd just get it over with. Turns out the solicitor is next door to the police station."

O'Dwyer had a 45-minute interview with the officers – missing his lecture – and was bailed for around six months to appear at a London police station. He texted his mother, Julia, to tell her he'd be heading to the family home in Bolsover, Derbyshire that evening. "Weird day," he concludes, laconically.

Unknown to O'Dwyer, his mother had been having a similar day: at 7am, a team of five police officers had turned up at her home, which was half-demolished inside owing to renovation work, and searched it for his possessions. She'd then been taken to her local police station and interviewed about her son's activities.

"It was a bit of a shock really. They came in, said they wanted to talk about Richard and his website. I knew he'd got it, I didn't know an awful lot about it. They wanted to look in

Richard's bedroom. There was no stairs, we had a ladder, I said you'll have to go up there," says Ms O'Dwyer.

After taking the family computer, and documents. She did a recorded interview with police but, unlike her son, had a lawyer.

"I've seen the telly, you see. I said to them 'do I need a lawyer?', and they said 'we're not allowed to tell you that' and I said 'well, maybe I'd better have one then'."

Reunited at the end of the day, they made sure TVShack.net was taken down, PayPal accounts closed, and other email accounts shut. The site was finished.

"We just thought maybe he was going to get charged with a copyright offence," says Ms O'Dwyer. "He was a bit upset, and I said 'don't worry, we'll get a lawyer and we'll sort it out'."

It was not so simple. When O'Dwyer reported to the London police station in May 2011, he was told that the UK case against him wouldn't be pursued – but there was a sting in the tail.

"So we had a momentary sigh of relief, says Ms O'Dwyer. "Then – I'm not kidding – the next sentence is 'oh, we've got an extradition warrant for you from America instead, so you must go immediately to the court', and then the handcuffs were on, he was taken away."

O'Dwyer was presented with two US charges: criminal infringement of copyright, and conspiracy to commit criminal infringement of copyright. Each carries a maximum five-year prison sentence. Ms O'Dwyer recalls the wait in the extradition court.

"I had to sit in the courtroom, waiting for Richard's turn, and see all these people being processed by the judge for extradition to Europe. And I just thought 'Crikey! This is going to be Richard soon.' It was the most terrifying day so far."

As O'Dwyer's case wasn't to be heard that day, his hearing was simply for bail, which he says the US prosecutor opposed. Bail was agreed – with him suggesting terms to the non-technical solicitors and judge. But as O'Dwyer didn't have his passport or the £3,000 bail deposit by 5pm, he spent the evening in Wandsworth prison.

"Being in prison for setting up a website was something myself, all the other inmates I talked to, and the policemen, were confused with," says O'Dwyer. "It's not something you'd expect, would you?"

When his bail was cleared the following day, the legal challenge he faced was considerably bigger than he had expected.

His extradition hearings are based solely on proving he has a case to answer in the US, that his actions, if proven, would be a crime in both countries, and other technical points. Challenging the details of the case could only be done in US courts – not in the

UK. O'Dwyer finds himself baffled that it's the US that's prosecuting him: "The evidence is here, I'm here, I've never been to America since I was about 10," he says.

"There's literally no reason I can think of why it has to be heard in America ... at no point was the site ever in America.

"I think they're trying to use my website as a sort of guinea pig to try to scare everyone else making linking websites."

In an attempt to give her son a relatively normal life as his case progresses, and to keep him in the UK, Ms O'Dwyer – a community nurse working with terminally-ill children – has become a campaigner against the extradition of her son and others to the US.

Having previously barely used the internet, and having never heard of Twitter or other social networking, she has raised more than 20,000 signatures on a petition for O'Dwyer, and spends a lot of her day online, starting before work and often going until 1am or later.

"I just went straight home after we got Richard the next day and started looking at the internet to find out about extradition. That was the first thing. I was just on it, full on, looking at copyright law, looking at extradition, trying to find a good barrister," she says.

"I don't think I started any campaigning until June or July. People helped me – I thought 'what do you do with Twitter?' – but people helped me and I got going."

It's an effort not lost on her son, who has continued his course in multimedia studies at Sheffield Hallam university against the background of his extradition hearings. He is working with Sheffield consultancy Rocca Creative as a year in industry.

"I don't let their extradition warrant ruin my life. Otherwise you'd fail, just sit in your room all day moaning. They'd be winning if I let it do that.

"[Julia O'Dwyer] seems to be doing it all day, I think. Non-stop. She does a lot of the actual work on things. And if she didn't ... I think I'd probably be there by now. I'm very grateful for her doing that."

So far, their efforts have proved unsuccessful. Despite gaining the support of senior politicians including Liberal Democrat president Tim Farron and home affairs select committee chief Keith Vaz, O'Dwyer's extradition was approved in court, and by home secretary Theresa May, who must clear all UK/US extraditions. His appeal efforts are currently centred on a high court hearing, due later this year.

As his case continues, O'Dwyer is trying to keep his focus on his studies, and what he'd like to do afterwards. Described as an "enterprising young man" by Dominic Raab, Conservative MP for Esher and Walton, one of the MPs who have spoken in support of his case, O'Dwyer wants to continue developing websites – despite the TVShack experience.

"I like doing web development, and hope to keep making various websites. It'd be good to join a big web company I think, just for the experience, I like Twitter, Facebook. I did apply to Google for a placement once, too," he says. "But eventually I'd like to start my own project. New startup companies keep coming up all the time, don't they?"

But until his battle through the UK courts – and with the home secretary – is over, any career plans O'Dwyer wants to make for the next decade come with a hefty degree of uncertainty.

And if O'Dwyer were to be extradited, the people behind other sites which link to TV shows and films – which include Google, Bing, Reddit and many of the other sites at the heart of the web – may have their own reasons to fear for the future.

- This article was amended on 4 July 2012 to correct a reference to "bail bond" to "bail deposit".