New magazine-sharing site may violate copyrights

By JEREMY HERRON Associated Press Writer

Aug 15th, 2008 | NEW YORK -- The magazine industry, already facing a decline in newsstand sales and falling ad revenue, is being besieged by a new foe: digital piracy.

A fledgling Web site called Mygazines.com encourages people to copy and upload popular magazines that are currently on newsstands. Visitors can read high-quality digital copies of dozens of current titles, including People, Men's Health and The Economist, in their entirety.

The site, with some 16,000 registered users as of Friday, is a "flagrant" violation of copyright laws, according to legal experts — but it is run by an offshore company of specious origin, making it difficult to shut down.

"It's pretty hard to see how it's anything other than a straightforward set of copyright violations," said Jeffrey Cunard, an intellectual property lawyer with Debevoise & Plimpton LLP in Washington. "There are entire magazines with no commentary, no criticism — clearly not a case of classic fair use."

Magazines routinely make some or all of their articles available online for free, but they are in control of how much they release, as well as any advertising they sell. Although visitors to the Mygazines site would presumably see ads run in a magazine's print edition, the publisher is compensated only for authorized, audited circulation.

The Mygazines site said in a July 29 press release announcing its launch that its copies are no different from magazines shared in a doctor's office or salon.

Cunard rejected that argument because the site makes available copies of paid-for content — not the actual product.

"It's pretty hard to see how it's anything other than a straightforward set of copyright violations," said Jeffrey Cunard, an intellectual property lawyer with Debevoise & Plimpton LLP in Washington. "There are entire magazines with no commentary, no criticism — clearly not a case of classic fair use."

Magazines routinely make some or all of their articles available online for free, but they are in control of how much they release, as well as any advertising they sell. Although visitors to the Mygazines site would presumably see ads run in a magazine's print edition, the publisher is compensated only for authorized, audited circulation.

The Mygazines site said in a July 29 press release announcing its launch that its copies are no different from magazines shared in a doctor's office or salon.

Cunard rejected that argument because the site makes available copies of paid-for content — not the actual product.

"The first-sale doctrine says that once I buy a physical copy of something, I can do whatever I want with it — except copy it," he said.

Several magazine publishers said they are aware of the site and are considering legal action.

"We take our intellectual property seriously and are considering appropriate action on this matter," The Economist said in an e-mail statement.

Dawn Bridges, a spokeswoman for Time Warner Inc.'s Time division, said the publisher of People, Sports Illustrated and other titles is investigating its options, including ways to have the site shut down.

The industry trade group Magazine Publishers of America — which has no
legal recourse because it doesn't own the copyrights — said it will support its members' efforts.

The challenge for the magazine publishers is that Mygazines's domain name is registered in the Caribbean island nation of Anguilla, which is a British overseas territory, and thus outside of the jurisdiction of U.S. copyright law.

Publishers could have recourse if the company uses servers physically in the United States. They also could sue the company in U.S. courts because content is available to Americans, but they would not be able to force Mygazines representatives to show up — nor collect any damages for any ruling made in absentia.

Repeated attempts to contact representatives of Mygazines.com went unanswered. Registration records show the domain name is owned by "John Smith" of Salveo Ltd., based in The Valley, Anguilla. The address listed is a post office box, and the phone number rang unanswered. Registration companies require that domain buyers use their actual names and contact information, but the submitted information is rarely checked.

A representative at a London-based company called Salveo Ltd., which sells fitness and beauty products online, said the company did not own or operate the site.

It's not clear how Mygazines would make money. There are no advertisements, and users can register for free.

Nonetheless, that's irrelevant to whether the site would be liable for copyright infringement, Cunard said. Publishers can claim damage because at least a few people will read the content on Mygazines.com instead of going out to buy a copy.

Under federal copyright law, sites like Google Inc.'s YouTube do have some protections from the actions of their users, as long as they take steps to remove content once they become aware of copyright infringement.

But that protection might not cover Mygazines, Cunard said, because the site's operators "are encouraging people to upload copyrighted material."

The U.S. Supreme Court already found Grokster, a file-sharing site, liable for intentionally inducing infringement. Mygazines's home page Friday featured plenty of copyright-protected works, and the company's tag line — "upload. share. archive." — encourages their digital reproduction.