



Memorandum to IMPALA Members ISP cooperation on online piracy around the world

EUROPE

Belgium

In November 2008, a Belgian court ruled that Scarlet, a Belgian ISP, must filter out copyright-infringing activity carried out by users of its network. The ISP was fined €750,000 for not complying with the order. The fine was suspended with a Brussels court ruling that the ISP deserved more than the six months it had been given to implement filtering technology. The ISP has also made a full appeal against the verdict.

An appeal hearing is expected to be held in October 2009. If, by then, the ISP fails to comply with the court order to prevent P2P infringements by its users, it may still have to pay penalties and interest.

Denmark

After TDC, Denmark's largest ISP, decided to block access to The Pirate Bay as a preventive measure in 2008, a Danish court ruled in April 2009 that all ISPs will have to do the same or face a hefty fine. Most ISPs commented that they would prefer not to intervene in their customers' communication, but have reluctantly put the block in place. Tele2's owner Telenor in turn appealed the high court verdict to the Supreme Court of Denmark, which accepted the case. The case is still ongoing.

Finland

In August 2008, a Finnish court required TeliaSonera, a leading ISP, to suspend the Internet connection of a customer whose connection was used to upload a considerable number of copyright infringing music files.

France

The much-disputed French "Creation and Internet" law was adopted in May 2009, only to be rejected a few weeks later by the Constitutional Council. The French government is now working on a new project, nicknamed "Hadopi 2". The new bill introduces a fast-track court procedure, allowing judges to decide whether a person accused of illegal downloading should have their internet account suspended for up to a year, face a fine, or a two-year jail sentence. With the new law, individuals can also be found guilty of "negligence" if someone else uses their account for illegal downloads, and could be fined up to €1,500 and have their internet connection suspended for a month. The National Assembly will be examining the text in September. Should it adopt "Hadopi 2", it is expected that opponents to the law will again challenge it through the Constitutional Council.

Ireland

In February 2009, EMI, Sony, Universal, and Warner, accused the Irish ISP Eircom of knowingly facilitating copyright infringement. The majors claim that Eircom promoted the practice by advertising its services on The Pirate Bay and offering broadband packages allowing for 5,000 songs to be downloaded per month.

Eircom had argued it was under no obligation to monitor the content of traffic over its network and that such a monitoring would breach its customer's privacy. Instead, the ISP settled for the increasingly familiar three-strikes "graduated response" program. The first time a subscriber's IP is detected infringing copyright, a warning is sent out. The second time, the subscriber is cautioned that they will be disconnected. Number three is the disconnection itself.

In June, the four major record labels sued the country's second-largest company, BT Ireland, and cable operator UPC, to get them to follow suit. So far, no customers have been disconnected, as Irma and Eircom are having ongoing discussions about exactly how the scheme will be implemented on a technical level.

While BT told the Times it could not comment because it had not yet seen the lawsuit, UPC said it would not agree to a voluntary implementation of a three-strikes policy.

Italy

Under the revised copyright law currently in force, unauthorised uploading and downloading - contrary to the inaccurate press reports - are illegal. Unauthorised downloading is subject to a fine, while unauthorised uploading is a criminal offence in Italy.

After high-level discussions on the piracy situation in 2008, the Italian government announced the signing of an agreement in January 2009, which will see it collaborate with the French government on the issue. Minister of Culture, Sandro Bondi, said Italy would follow the "French model" in providing strict protection and controls for copyright works.

Netherlands

In the wake of France's controversial three-strikes legislation, the Dutch parliament has called on the government to also deal harshly with offenders. Currently in the Netherlands, only the uploading of such content to the internet is a punishable offence, but not downloading.

MPs want the government to bring in new legislation to change the situation and calls on justice minister Ernst Hirsch Ballin and economy minister Maria van der Hoeven to crack down on internet piracy.

Norway

The Norwegian Minister of Education believes that the music industry should embrace the Internet instead of fighting it. However, Norway's Post and Telecommunications Regulator decided in April 2009 that if a court considers it necessary, it can force ISPs to hand over the names and addresses of illicit file-sharers to copyright holders.

A law firm had previously sent a letter to ISPs ordering them to disconnect alleged file-sharers but the ISPs refused. This new decision might force them to comply with such requests in the future.

Another case is ongoing in Norway: A film was leaked online and the copyright industry demanded that police take action. After being informed that the police didn't want to pursue the case, the industry turned to the Norwegian courts. Critical documents surrounding the case have been withheld from the public to supposedly prevent spoliation of evidence.

Spain

The Coalition Of Creators & Content Industries representing various creative industries, including record labels body Promusicae, has said it accepts that the Spanish government is unlikely to follow the French lead in forcing ISPs to disconnect persistent copyright infringers. It will however, continue to lobby for 'technical measures' to be instigated against unrepentant file-sharers, including cutting net speed, a recent measure proposed as a possible deterrent against illegal file-sharing in the UK government's 'Digital Britain' report.

The president of the Coalition, Aldo Olcese, says he wants to concentrate his efforts on tackling BitTorrent tracker services like the Pirate Bay. It is not yet clear whether this will be done through civil action against the people behind such services, or whether the Coalition hope for legislative clarity on the liabilities of the providers of search services that hone in on unlicensed music content.

Sweden

Sweden's Intellectual Property Rights Enforcement Directive (IPRED) law which came into affect on Wednesday 1st April 2009, forces ISPs to reveal the names of people attached to IP addresses suspected of sharing copyrighted music, movies, and other files without permission. The entire identification process is expected to take about two weeks under the new system, giving copyright holders a much more direct way of bringing legal action against heavy uploaders. Swedish file sharers scaled their sharing back dramatically on the first day the law was in effect.

Later in the month, the four operators behind The Pirate Bay, a Swedish website that indexes and tracks BitTorrent files considered to be one of the world's largest facilitators of illegal downloading, were convicted by Stockholm district court and sentenced to one year in jail each and a total of nearly 3 m€ in fines and damages. The court found that the defendants were all guilty of being accessories to crime against copyright law, strengthened by the commercial and organised nature of the activity. The convicted defendants are expected to lodge an appeal soon.

United Kingdom

In July 2008, a Memorandum of Understanding was signed between key stakeholders from the ISP industry, the content industries, the independent regulator and competition authority for the UK communications industries (OFCOM) and the British Government to lay the foundations for a self-regulatory regime to address the issue of unlawful P2P file-sharing. All parties agreed that the objective of this Memorandum is to achieve within 2 to 3 years a significant reduction in copyright infringement as a result of P2P file-sharing and a change in popular attitude towards infringement.

The “Digital Britain” report, aiming to map the future of the British digital economy, was released in June 2009. It encourages ISPs to collect data on people who illegally download copyrighted material, which can subsequently be used to prosecute repeat offenders. ISPs saw a clear benefit in tackling illegal file-sharers, as they were creating soaring costs through their high bandwidth usage. The UK’s largest providers therefore first willingly agreed to a Government incentive to send out warning letters to individual customers committing this crime. But with today’s increase in legal downloading and video-on-demand services, ISPs’ illegal file-sharers’ bandwidth-use no longer seems as critical.

In the same month Lord Carter admitted that his proposals for a Digital Rights Agency will not go ahead, the British government has reiterated that it wants a 70-80% reduction in unlawful file-sharing by 2011. The various solutions proposed include forcing ISPs to send warning letters to those who illegally file-share, making it easier for content owners to sue the file-sharers who ignore the letters, and making it easier to access the identity of a file-sharer off their net provider.

UK Music boss Feargal Sharkey is in the meantime suggesting a five stage “graduated” response system that, he says, ISPs should introduce sooner rather than later.

In July 2009, Hull-based Kingston Communications have reportedly suspended the internet access of some of their users suspected to use their broadband services to access unlicensed content. Suspended users are requested to sign a specific agreement confirming they will not be illegally downloading anymore in order to be reconnected. More details to follow soon.

REST OF THE WORLD

Canada

In May 2009, the U.S. government put Canada on its "priority watch list" of IP abusers. The move is probably an attempt to move copyright reform up the agenda of the current Canadian government who have vowed to act on the issue but have so far done little. There are indeed various claims that the Canadian copyright laws are insufficient and persistently fail to protect intellectual property rights.

The IFPI has also pressured Canada to engage in a copyright reform, stating that Canada has one of the world’s highest levels of Internet piracy and one of the weakest IP enforcement systems.

The Canadian government is expected to start a consultation process on changes to the country’s Copyright Act in mid-June 2009, in hopes of introducing a new bill by the end of the year. Canada has twice tried to update the law but in both instances elections were called before the bills could become law.

Japan

In March 2008, four major Japanese ISP organisations agreed to work with copyright holders to track down copyright infringing file-sharers and disconnect them from the internet. The agreement, which is still under discussion, would see copyright holders tracking down file-sharers on the Internet using special detection software and then notifying ISPs of alleged infringers. ISPs would first send out emailed warnings, then block the Internet connection if action to cease the activity is not taken. For persistent breaches, the ISP would ultimately terminate the accounts of its subscribers.

In June 2009, the Japanese Parliament passed an amendment to the existing Copyright Law making it illegal for private users to download copyrighted material that has been uploaded without the rights holders' permission. This new law, which will come into effect on 1 January 2010, does not specify any fine or jail term, raising the question of how it will be enforced.

The Record Industry Association of Japan (RIAJ) had been lobbying for a law that addresses online copyright infringement by individual users.

New Zealand

The Copyright Amendment Act, implementing a 3-strikes law for copyright infringement, gained royal assent in late 2008 and was supposed to go into effect at the end of February 2009. It would have banned users accused of copyright breaches, even if allegations were unproven. The government however decided to withdraw it as it did not specifically determine who should decide about an eventual suspension of internet access.

A government working party has now drawn up a more formal process for how three-strikes might work. Under this system stage one would see the content owner lodge a complaint with an infringer's ISP, who would in turn be obliged to notify their customer of the complaint. If illegal file-sharing continues the content owner would issue a cease-and-desist order. Further infringement would see the content owner lodge a complaint with the country's Copyright Tribunal. The ISP would then need to provide the infringer's details and a formal infringement notice would be issued. The user can then either reach an out of court settlement with the content owner, or face a tribunal hearing. The hope is that the legal basis for the law will be in place soon so the new system can be implemented in the close future.

South Korea

Google has banned subscribers to its Korean blogging platform (Textcube), from uploading songs onto their blogs, citing the country's new anti-file sharing provisions aimed at preventing online piracy. This is the first time that the U.S. company has disabled its bloggers from posting music files on their personal Web pages.

As of Monday (25th May), Textcube users were blocked from uploading MP3, WMA, WAV and other types of music files on their blogs, while existing songs were blinded and are now accessible only to the logged-in owners of the blogs.

From July, the country will enforce a new anti-file sharing provision that allows regulators to shut down Web sites after a third warning over copyright infringement, regardless of whether or not the copyright holders have complained.

Taiwan

In April 2009, Taiwan's parliament passed a new anti-file-sharing amendment, which states that anyone who utilises P2P technology, that facilitates the exchange of copyrighted material online, has committed a crime. It also proposes a three-strike provision, suspending part or all Internet services to users who download copyrighted material more than twice. The pirates will still face lawsuits from the copyright owners.

The new rules will ensure that ISPs will not be held responsible for offences caused by pirating parties but will be obliged to inform the pirating parties about the infringement of the copyrights.

United States

Two US ISPs will help the music industry combat online piracy, but have denied they made any commitments to anyone about introducing a three-strike disconnection system.

The RIAA said that it would follow the lead of their counterparts in the UK and try to persuade ISPs to take a more proactive role in combating piracy. Most ISPs in the U.S. will only release information about subscribers when presented with a court order. Reducing P2P traffic by the threat of legal action would also help unclog the ISPs' networks and free up some of their bandwidth.

In a separate issue, in May 2009, Congresswoman Mary Bono Mack called for action that would keep people from unknowingly sharing their personal information online. She did this at the Congressional hearing on the "Informed P2P User Act", legislation she is sponsoring. Together with industry professionals, Ms Bono Mack intends to pass legislation that protects consumers and preserves the legitimate use of P2P applications.