

# Open Rights Group briefing: Illicit P2P file sharing

## 1. What is file sharing and why is it so controversial?

File sharing is the exchange of digital files across the Internet. It is controversial because these files are often copyrighted music, films and software.

Some of this exchange may be reducing artists incomes. Music in particular has seen an overall decrease in revenues, although online revenues are increasing very rapidly. Revenues from computer games continue to rise.

## 2. What is DRM?

DRM: Digital Rights Management. This is technology which seeks to stop users from copying files. Consumers dislike copy restrictions, which lock use of files to particular manufacturers and prevent creation of back-up files. DRM for music has inhibited sales for services using it.

## 3. What are the new Digital Britain proposals? How are they different to the old plans?

The original proposal was for letter writing to alleged infringers, followed by possible 'technical restrictions' to accounts. The new proposal is different in adding temporary disconnection of users from the Internet to the list of approved measures that may be imposed in the future. Additionally, it suggests putting the decision in the hands of the Secretary of State, rather than Ofcom, as regulator. It is claimed this is because of the alleged time it would take.

New measures would be introduced by Statutory Instrument. The details of the procedures and legal safeguards may therefore not be in the present Bill.

## 4. Why will the revised proposals be so problematic?

As Gordon Brown has stated, Internet access is as vital today as gas and water.

Yet these proposals to cut users off the Internet would remove citizen's access to education, health advice, best consumer prices, and political organization and expression.

These are very serious matters. No court is necessarily involved, no guilt is necessarily proven before a disconnection occurs.

We argue that punishments should occur because of court action, not through semi-automated and flawed procedures.

Disconnection will prove publicly contentious because it is disproportionate. As a financial crime, a financial punishment is due.

Disconnection runs contrary to government objectives for universal access to the net. Universal access is rightly considered a key objective because the net offers such great opportunities.

## 5. What about the decision being placed in Mandelson's hands? Is that so bad?

This makes it a very political decision - one that can be lobbied for. The music industry seems intent on getting tight enforcement of their copyright before improving their business models - which means further delays to getting new online music businesses running, pushing people into underground behaviour.

## **6. Who is opposed to the new proposals?**

Consumer Focus, the statutory watchdog, Which?, Open Rights Group, Internet Service Providers including BT, Virgin Media and Carphone Warehouse. The European Parliament also voted against disconnection without trial. We believe the proposals are deeply unpopular with citizens too.

## **7. Who loses under the new proposal?**

New music businesses could be the biggest losers. In ten years, new music businesses have never been given straightforward licensing deals. The result has been that online infringement has grown in the place of new commercial deals. Harsh enforcement gives more reason to delay new deals.

Internet Service Providers would also lose. ISPs estimate the cost to be up to £360m, which is nearly double the cost of the estimated losses due to infringement (£200m).

## **8. Is online infringement reducing or growing?**

Evidence has shown that since key compelling services have been introduced, infringement has reduced significantly while revenues have begun to rise. A survey by The Leading Question and Music Ally in July 2009 estimated that the number of people regularly downloading infringing content has dropped by 25% since December 2008.

Some of these services are under threat from harsh licensing conditions. Spotify is finding it hard to pay the streaming fees despite being the 'poster child' of legal online music.

Despite delays and unfair market practices, digital revenues are growing. According to IFPI, they grew by 45% in 2008 and are forecast to overtake offline sales by 2012 in the global market

## **9. Do we know how much damage is caused?**

While everyone agrees that the best outcome will be a situation where the law provides for everyone's needs and is respected, the case for urgent action partly relies on the notion that there is substantial damage to the income of key industries.

In fact the evidence for this is flimsy. Downloading content cannot be equated with a lost sale. The fact that new services based on instant access are reducing infringement suggests that casual downloading is mostly attributable to the desire to sample and taste, rather than to own.

Furthermore, declining CD music sales can largely be attributed to the new markets in competing leisure products like computer games and DVDs, and the end of the huge bonanza caused by the public buying CDs to replace their old records. With the new MP3 formats, people are not buying replacements, but very reasonably copying their collection onto their computers.

## **9. What is the Open Rights Group?**

We are a grassroots civil liberties and consumer group, funded by about 1,000 individual donors. We have also received funding from the Joseph Rowntree Reform Trust and the Open Society Institute.

## **10. Who funds the BPI and UK Music?**

The BPI and UK music are both funded by recording industry companies and rights holders.

## **11. Why won't Peter Mandelson's proposals work?**

They are the wrong answer to the wrong question. Illicit downloading can be reduced – with legal services, and licenses that mean these new services can be introduced. The real competition to P2P is cheap and easy access to music – all the music, all of the time. Such services are being introduced in many countries, including South Korea, Denmark, China and possibly Canada. In the UK we are still struggling to get agreement for licensing deals.

If licensing deals can't be struck, the government can legislate to create licensing models. This has happened in the USA for cable TV and radio. A similar model exists for UK radio. These are known as 'public licenses' – anyone can buy one on standard terms.

## **12. What's the situation in other countries?**

Some countries are debating similar proposals and are facing stiff resistance. Similar proposals have been beaten in New Zealand. The USA has never considered such proposals.

The European Parliament has repeatedly voted to guarantee Internet access as a human right.

Similar proposals in France, New Zealand, and Australia have met with severe protest and have been substantially modified or defeated. In France, the constitutional courts ruled that citizens have a right to a judicial process before punishments are given. These examples were recognized in the original consultation as part of the reasoning for discounting disconnection.

In the USA, college students are now being allowed to download what they like under a new licensing deal called Chorus – where colleges pay music rights owners a fee for the right to download any music their students like.

Other countries are introducing new licensing deals and new services which are generating new profits for their music industries.

## **13. What happened when copyright infringement was a problem in the past?**

Copyright-infringing services are not new. Home video, pirate radio, cable TV in the States, even vinyl records were once viewed as a form of piracy.

Hyperbole has characterized rights holder reaction throughout, from John Phillip Sousa complaining to the US Congress in 1906 that player pianos:

“are going to ruin the artistic development of music in this country...The vocal chord will be eliminated by a process of evolution, as was the tail of man when he came from the ape.”

...to Jack Valenti, as President of the Motion Picture Association of America, testifying before the US House of Representatives in 1982 that:

“the VCR [video cassette recorder] is to the American film producer and the American public as the Boston strangler is to the woman home alone”

These protectionist reactions had to be overcome by legislators. In each case, a new medium had to be licensed. For vinyl records, cable TV, and radio, a 'compulsory license' or other collective licensing scheme was created to make sure copyright holders granted a non-discriminatory license to businesses using the new medium.

There are no historic examples we can identify of a new business or consumer behaviour being stopped. We have instead a history of changing copyright licenses.

## **14 What can I do now?**

Sign EDM 1997:

That this House notes with concern the Government's proposals on file sharing which would allow rights holders to request Internet service providers to disconnect for a period of time, or throttle, the Internet connection of people who may be accused of copyright infringement via peer to peer networks; believes that disconnecting alleged offenders will be futile given that it is relatively easy for determined file-sharers to mask their identity or their activity to avoid detection; acknowledges that illicit file-sharing only costs rights-holders money when people download infringing content in preference to buying it; further notes that identifying offenders using the Internet Protocol address of a specific machine may punish those who share a web connection; and calls on the Government to ensure that any citizen accused of illicit file-sharing is given the right to legal redress in a court of law before sanctions are imposed.

## **15. Where can I get more information?**

ORG is very happy to brief you or your staff on these issues.

Open Rights Group contact: Jim Killock [jim@openrightsgroup.org](mailto:jim@openrightsgroup.org) Phone: 020 7096 1079

We also have a fully referenced response to the P2P consultation, both online and printed.

Find it online at:

[www.openrightsgroup.org/ourwork](http://www.openrightsgroup.org/ourwork)

Please seek a briefing from Consumer Focus if you wish to talk to a statutory body.

They have similar concerns to ours:

Consumer Focus contact: Jill Johnstone [Jill.Johnstone@consumerfocus.org.uk](mailto:Jill.Johnstone@consumerfocus.org.uk)