

18 June 2010

Commerce Select Committee
New Zealand Youth Parliament
Wellington



By email: mydinfo@myd.govt.nz

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| POST | P.O. Box 11-881, Wellington, New Zealand |
| PHONE | +64 4 495 2119 |
| FAX | +64 4 495 2115 |
| EMAIL | office@internetnz.net.nz |
| WEB | www.internetnz.net.nz |

To whom it may concern,

Re: Youth Parliament inquiry into digital copyright infringement.

Introduction & general position

This submission is from InternetNZ (Internet New Zealand Inc).

InternetNZ is a membership-based, not-for-profit organisation. We are responsible for administering New Zealand's Internet naming system – the .nz domain name system.

Our mission is to 'protect and promote the Internet for New Zealand'. We advocate for an 'open and uncaptureable' Internet that is available to all New Zealanders.

InternetNZ does not support copyright infringement - the unlawful taking of copyrighted content. InternetNZ also recognises that New Zealand content creators have the right to exercise control over their creative works.

It's worth remembering that there are always two main interests at play in the copyright debate – the interests of the creators (those who create content), and the interests of the users (those who consume that content). Neither could exist without the other.

Copyright sets out legal rights for creators (to partially control the use of their work), and for the public (to make use of copyright works in a range of ways). The permissions that citizens have to use copyright works are very narrow and specific (e.g. you are allowed to copy music now from a CD to an iPod, but you aren't allowed to do the same thing with a DVD movie), and more limited here than in some other places.

Some countries, such as the US, have 'fair-use' systems, where certain use of copyrighted material is allowed without permission from rights holders.

InternetNZ thinks a fair-use system is needed in New Zealand. This would help to create a fairer balance between users' rights and the rights of New Zealand creators.

Scale of problem

The Internet is built on open principles, which has made it very easy for content to be quickly and efficiently distributed. This challenges the old way of doing things where recording companies and movie studios would control distribution of CDs and DVDs.

While the Internet has changed the face of content delivery forever, this represents an opportunity not a threat.

The music and recording industry often say they are experiencing 'massive losses' from online filesharing of music and movies. But, evidence suggests that the Internet is helping to increase sales.

For example, in New Zealand and Australia in 2009 digital sales rose by 41.4% and performance rights returns were up 8.6% - for an overall revenue increase of 3.5%.¹ And in 2008/2009, distributions to New Zealand and Australian music creators increased by 10%.²

The role of Government

Because the Internet has no borders and information can be easily moved enforcing copyright online is a problem. Many governments around the world are struggling with how to deal with this.

In New Zealand, the Government has come up with a proposal to deal with online peer-to-peer filesharing – The Copyright (Infringing File Sharing) Amendment Bill. This will repeal Section 92a of the Copyright Act 1994.

The Copyright (Infringing File Sharing) Amendment Bill is a much fairer system because it has a focus on public education, and it tests allegations of infringement through a Tribunal process.

However, InternetNZ is concerned that it allows for suspension of peoples' Internet accounts.

Termination of Internet accounts is a problem for the following reasons:

- It is disproportionate - the punishment does not fit the crime.
- It is unenforceable and futile - infringers can easily reconnect elsewhere.
- It will not stop serious infringement - determined infringers will use encryption, anonymous identities, pirated wireless links and other technical methods to escape detection.
- It is at odds with the New Zealand government's promotion of Internet uptake and the provision of government services online.

Preferred solution

InternetNZ believes that the government needs to take a fresh look at copyright law in New Zealand, to take account of the affects of new media developments and networked ICT technologies.

If the government has to proceed with a regulatory solution to deal with online copyright infringement then InternetNZ prefers it look at a notice-and-notice system.

¹ <http://paidcontent.co.uk/article/419-09-music-sales-shed-1-billion-u.s.-downloads-stagnant/>

² http://www.apra-amcos.com.au/downloads/file/About/APRA_AYearInReview.pdf

In this system, notices from rights holders are sent to alleged infringers (Internet Service Providers only act as messengers). It is up to the infringing user to act, and most will stop infringing voluntarily.

A notice-and-notice system is used in Canada, and has been very successful in dealing with copyright infringement.

More detail is available in the full submission we prepared to the New Zealand Parliament's Commerce Select Committee, which you can find on our website: www.internetnz.net.nz.

We would be happy to brief the Committee in its investigation of these issues if that was of assistance.

Thank you for the opportunity to make this submission.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Jordan Carter', with a stylized flourish at the end.

Jordan Carter
Policy Director

04 495 2118 | jordan@internetnz.net.nz