

Online piracy : New Challenges, New Policies from the Singapore perspective

What is the role of policy makers ?

The overarching task :

- Developing legislation/programmes that reflect the values of society
- Encouraging/setting boundaries for, acceptable behaviour

The task in the IP context :

- Striking a reasonable balance between private commercial rights and public access
- Ultimately deciding on what kinds of conduct we wish to penalize/criminalize and how
- Balancing enforcement action with effective education/awareness

On-line piracy : Issues and challenges

Primary challenge : Impact of Internet technology on IPR

- Basic copyright concepts : developed under traditional media
- New Internet-based media :
 - Allows quick and unauthorised replication of copyrighted material and trade marks
 - Facilitates unauthorised mass sale/distribution of counterfeit goods (e.g. software and drugs) and copyrighted material across borders
- Internet : open space in virtual dimension; difficult to police behaviour; element of anonymity

On-line piracy : Issues and challenges

Related challenge - Perception of users of Internet technology
Findings of Singapore's Perception Survey 2006/7 :

- 82% agreed that people deserved to have their ideas and creations protected by IPR
- 28% said "People who buy counterfeit/pirated goods feel guilty about it"
- 22% said "IP infringement bothers me"
- 56% thought contents of Internet should be free for all to use since it is in the public domain

Conclusion : A disconnect between belief and behavior !

Problems posed by on-line piracy

- Pirated goods made available through the Internet at little/no cost to consumer/user
- Works of entertainment, information and research have been devalued in the eyes of customer/user
- Breeds culture of searching for free alternatives to these works
- Results in more piracy because consumer/user unwilling to pay for works

- Traditional Solution : Secondary liability doctrine (offence to aid/abet infringement)
- New solutions to deal with the Internet age :
 - New avenues of legal protection for rights owners
 - Updating of limitations/exceptions to copyright protection

Amendments to Copyright regime (2004/5) :

- Copyright now includes right to “communication”
- Expanded civil & criminal liability for copyright infringement – criminal liability hinges on wilful infringement that is either to a “significant extent” and/or done for purpose of “obtaining a commercial advantage”
- Border enforcement measures similar to trade marks provisions

Amendments to Copyright regime (2004/5) (cont'd):

- Provisions against circumvention of technological protection measures
- Civil & criminal liability for removal or alteration of rights management information
- Provisions governing limitation of liability for network service providers (safe harbour provisions)
- Expansion of fair dealing provision - whether reproduction of a particular work is “fair” now considered against set of broad factors; no longer restricted to specific situations

Have these measures been fair and adequate in addressing online piracy ?

- Safe Harbour Provisions
 - Responsibility of Copyright Owners vs Internet Service Providers
 - Is the responsibility to monitor infringement adequately balanced ?
 - Reference point : developments in US
- Fair Dealing Provisions
 - General fair dealing provisions: flexibility given to Courts
 - Standard of proof, esp for ISPs – what are the boundaries ?
 - Reference point : developments in US
 - No local case law as yet

Have these measures been fair and adequate in addressing online piracy ?

End User Criminalization

- Direct economic benefit not required to prove significant infringement
- Guidelines allow sufficient flexibility to do justice in a variety of situations :
 - Volume of infringing articles
 - Value of infringing articles
 - Substantial prejudicial impact on copyright owner ?
 - All other relevant matters

Overall analysis

- Legislation has attempted to keep pace with technological developments
- Current regime adopts best/latest approach available today
- Constant monitoring of legal/technological developments elsewhere in order to facilitate necessary law reform
- Consumer behaviour cannot be changed overnight; legislation must be supported by both balanced enforcement and education efforts

Considerations for policy makers in the Internet age

- Law and policy makers must understand the current values reflected in societal trends
- Stakeholders – how to engage youth/young adults ?
 - Public consultations
 - Rationale of legislation/enforcement efforts must be explained
 - Incentives to encourage correct behaviour
- Enforcement – what will yield meaningful returns ?
 - Resource considerations
 - Priority should be to target major perpetrators (e.g. syndicates)

Concluding Thoughts

Imperative to understand current consumer thinking and develop balanced 3-pronged approach to addressing piracy :

- Have a legislative framework which will remain relevant/flexible enough to accommodate technological changes
- Collaborate with relevant industries to motivate/incentivise the public to adopt a piracy-free lifestyle and respect IPR
- Implement an effective enforcement regime



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THANK YOU

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It is intended as a guide only and does not amount to legal advice.
Professional advice must be sought prior to acting on any matter contained within this presentation.