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Online Piracy – New Challenges, New Impact from the Industry Perspective

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Right Holders' Perspectives

- **Right holders welcome developments in digital technology**
- **Digital marketplace create new business opportunities & new revenue streams; some are cannibalizing existing market segments, others are completely new; greater reach & potential for mass & niche marketing; anecdotal feedback indicates that overall size of the market has increased**
 - **US\$70 million in interactive transmission + online karaoke royalties collected by JASRAC in Japan in 2006**
 - **US\$16.6 million in Internet & Online Incomes - South Korea**

Right Holders' Perspectives

- **Approach is to negotiate for a reasonable level of royalties**
 - **To encourage further development of new business opportunities**

Licensing Actions – One Recent Case

Example – Hong Kong

- **Licensing of Naxos Music Download Service**

- www.classicsonline.com, regional base in Hong Kong

- US\$0.99 per track (less than 5 minutes)

- US\$7.99 per album

- **Primary Asia Pacific markets are Japan, South Korea, Hong Kong, Singapore & Australia, NZ, Taiwan**

- **Joint Societies/Publishers Licences Negotiated – Different Tariffs as applicable in the different territories - % of end consumer price**

- **Detailed download reports by territories will be provided by Naxos**

Impact of Online Piracy

- **The major types of online piracy:**
 - **Downloadable Media**
 - **Streaming**
 - **Sale of Hard Goods Over the Internet**

Impact of Online Piracy

- **The unauthorized communication and/or copying in the online environment and other possible digital delivery systems is a major new challenge for creators**
- **For musical works, a composer could average about 40% of his royalties from the sale of reproductions of his works, & another 40% from public communication of his works**
- **Online piracy deprives the composer of that portion of his reproduction income which is lost to free downloads; unlicensed streaming results in no additional returns to composer**

Online Piracy

- **Different groups engaged in online piracy:**
 - **'Cool' factor**
 - Students, young people
 - **Pirates**
 - Commercial gain, directly or indirectly through copyright infringement of works made available online
 - **Ignorance**
- **Different strategies needed for the different groups**

Right Holders' Strategies in Digital Environment

- 1. Consumer-friendly and viable alternative to free-use model**
- 2. Sound technical framework for secure distribution of digital content**
- 3. Adequate domestic and international legal frameworks**
- 4. Effective investigation and enforcement**
- 5. Cooperation among Industry Interest Groups**

Strategies

1. Viable Alternative to Free Use Model

- **Viable alternatives to free-use model**
 - While extremely attractive to consumers, clear that free-use model is not commercially viable
 - New business models with ease of access, usage and payment systems, & ‘sexy’
 - Apple iTunes
 - Soundbuzz
 - IFPI website has a list of legal music download sites
 - Free downloads with ‘compulsory’ advertising
 - Other formats

Strategies

2. Sound Technical Framework

- **Development & use of Digital Rights Management systems (DRMs) key to protecting IP rights in digital distribution chain**
- **With DRMs, right owners would be assured to make available their works digitally, as they can monitor usages of their works and ensure appropriate recompense. This increases legitimate choices for consumers**
 - **Thus, the need for legal protection against anti-circumvention technologies**

Strategies

2. Sound Technical Framework

- **Goal is to have contents protected within devices & along all transmission paths throughout which the content moves among devices**
 - **Example - *Digital Data Exchange (DDEX)* set up to move forward standards for exchanging data to support digital distribution of digital content with initial focus on music & music-related assets**
 - **Membership is open to any business entity with an interest in the digital music value chain**
 - **Organizations that use the standards don't have to be a DDEX member – simply take out a licence; but only members can participate in creating and amending standards**

Strategies

2. Sound Technical Framework

- **Current DDEX members over 50 & include ASCAP, HFA, PRS/MCPS,, SGAE, Apple, RealNetworks, AOLMusicNow, Microsoft, Warner Music, Universal Music, EMI Music, Sony/BMG Music, (Charter members, to be expanded to 15)**
- **System will have unique numbers that identify a creation, the related rights, & the individuals & companies involved in its ownership & exploitation**
- **A permanent set of rights management information is embedded into each digital sound recording that will enable the monitoring, identification and licensing of digital usages**

Strategies

3. National & International Laws

- **Governments, too have a role to play in all of these**
 - National and international copyright laws have to be rapidly and constantly updated to keep pace with developments in digital technology
 - Technical standards and DRMs require adequate legal protection to work; otherwise circumvention would prevail
- **Need for world wide implementation due to borderless nature of the digital environment** (*KaZaa in Vanuatu*)
 - Accession to WCT & WPPT (the Internet Treaties)

- **ISPs must take more responsibilities**
 - Contractually enabled to terminate service to those who infringe copyright
- **Government also has a vital role in requiring ISPs to engage in the fight against piracy**
 - UK Gowers report that ISPs should either come to a voluntary agreement with the industry for a procedure to remove users who engage in piracy, or face government regulation

4. Enforcement Actions Against Infringers

- **Legal actions are needed in order to**
 - Deter
 - Raise awareness of the law
 - Encourage use of legitimate downloads
 - Change consumer attitudes
- **This has of course to be combined effectively with education**
 - Ongoing educational campaign to heighten public awareness of economic and cultural damage that digital piracy will wreak

Other Actions Against Digital CR Infringements Japan

- **In accordance with Provider Liability Law (Notice & Takedown), JASRAC has requested ISPs to cease transmissions of illegal music files**
 - Between October 2002 – March 2007, total of deleted files exceeded 250,000 (domestic & abroad)
 - On average, it took 10.79 days from day of request to cessation of infringement
 - Information gathered with JASRAC's search engine called 'J-Muse'
- **YouTube**
 - JASRAC identified videos using Japanese repertory and wrote to YouTube for deletion of files under US DMCA; about 30,000 video files deleted

- **‘Big Crook’ Bit Torrent Case**

- In November 2005, in a world first, a HK man, Chan was sentenced to 3 months’ jail for using Bit Torrent (BT) to share 3 Hollywood movies with other Internet users, even though he did not profit from sharing. Court of Final Appeal affirmed judgment, & stated that Chan “plainly succeeded in distributing copies” of the 3 movies
 - Chan had offered the 3 films from his computer & placed a notice on an Internet forum inviting other users to download them
- HK government stated that BT uploads from HK fell by 80% after judgment in the case

Legal Actions Against Digital CR Infringements

Chinese Taipei

- **Kuro**

- **Taiwanese Court convicted Kuro, a subscription P2P service and its principals of criminal copyright infringement:**

- Kuro solicited users knowing that they would infringe and made profits as a result of the infringement
- It could but refused to install filters
- It has 5 million members & collected a monthly fee for use of P2P software for illegal file sharing

- **Principals were sentenced to 2-3 years' imprisonment, and each fined NT\$3 million (US\$90,000)**

- **One Kuro member was given a 3-year suspended jail sentence for her part in violating copyright by downloading music over the P2P network**

Legal Actions Against Digital CR Infringements *Chinese Taipei*

- **Kuro reached a settlement on 14 September 2006 with IFPI whereby it would:**
 - Discontinue its file-sharing function & distribution of P2P software
 - Pay NT300 million (US\$9 million) in damages to record companies

Recent Legal Actions Against Digital CR Infringements *Australia*

- **Universal Music versus Sharman (*KaZaa*)**
 - **Australian Federal Court found KaZaa liable for authorizing infringements that occurred on its service based on KaZaa's:**
 - Knowledge of infringement;
 - Failure to curb infringements when it could; and
 - Encouragement of and direct financial interest in the infringements

Recent Legal Actions Against Digital CR Infringements *Australia*

- **On 27 July 2007, Sharman reached global settlement with content owners in US & Australia**
 - Undertaking to introduce filtering technology to block access to infringing music, film & software files
 - Will convert to a legal business allowing only legal content to be shared on its service
 - Settlement of US\$115 million to music industry + lesser amount to film industry

Legal Actions Against Digital CR Infringements *Observations*

- **Common thread in the Kazaa, Kuro cases:**
 - Possible for content & online communities to come together to meet consumer demands while still respecting copyright
 - They were profiting immensely from providing the pirated content
 - Legal action was necessary in all the cases
- **Paves the way for the future of consumer choice & entertainment**

Strategies

5. *Cooperation Among Different Industry Players*

- **Cooperation among the different players in the industry**
 - IP right owners
 - Industry organizations
 - Internet Service Providers
 - ISPs are profiting from the digital environment & need to bear greater responsibilities for protecting copyrights & related rights
 - Hosting sites

- **Digital environment offers new market opportunities**

- **Examples**

- Mobile Music worth US\$3.8 billion in 2006 and projected to increase to US\$6 billion by 2010
- Mobile Content Market (music, gaming, videos, TV, others) generated US\$14 billion in 2006 and expected to grow to US\$41 billion in 2010

Combating Online Piracy

- **Governments need to provide adequate legal protection for investments in the digital environment to encourage legitimate exploitation of this new market potential**
- **Need for appropriate protection balanced against exploitation and public access; otherwise, no economic incentives for right holders**