

The Policy Challenges of Online Piracy – Australia’s experience

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Outline

- Context for discussion
 - Use of Internet in Australia
 - Australian Government enforcement objectives
 - The impact of the Internet
- Australia's response - Legislative change
- Accession to the WIPO Internet treaties
- Recent civil cases in Australia
- Future challenges – cooperation and education



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Internet use in Australia

- Australia has high levels of Internet usage
- Household subscribers - 5.83 million
Business and government subscribers - 826,000
(ABS, Sep 2006)
- Broadband Internet connections by Australian households almost doubled in the year to June 2006
(ABS, Dec 2006)
- Children aged 5-14 years (65% accessed the Internet)



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Australian Government enforcement objectives

- Up-to-date laws
- Effective law enforcement coordination
- Law enforcement resources
- Effective border enforcement
- Cooperation with industry stakeholders
- Public awareness/education
- International work



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The impact of the Internet

- Benefits - significant business opportunities for copyright holders
- Drawbacks - file sharing and the practical and jurisdictional difficulties of enforcement
- Rewarding creativity versus the free flow of information
- Striking the right balance



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Legislative reforms

- Copyright Amendment (Digital Agenda) Act 2000
 - response to rapid technological developments and use of new technologies in the digital environment
 - electronic rights management
 - anti-circumvention devices
 - protection of encoded broadcasts
 - increased financial penalties for unauthorised 'digitisation'
- Review of Copyright Amendment (Digital Agenda) Act 2000



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Australia-United States Free Trade Agreement

- Technological protection measures
- Carriage service provider liability scheme
- Electronic rights management information
- Definition of 'wilful piracy on a commercial scale' to include significant infringements but where no motivation of financial gain
- Criminalising 'end-user' piracy, in particular to address software piracy



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Carriage Service Providers

- AUSFTA required Australia to introduce a new scheme for ISPs (also CSPs)
- Commenced 1 January 2005
- Scheme provides –
 - Legal incentives for CSPs to cooperate in deterring copyright infringement
 - Limited liability for CSPs
 - Notice and Takedown procedure



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Copyright Amendment Act 2006

- Technological protection measures
- Unauthorised access to and use of encrypted broadcasts
- New presumptions to improve litigation process
- Courts have more flexibility to act against commercial scale online piracy
- Proceeds of crime/infringement notices



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Recent Australian civil cases

- *Universal Music Australia Pty Ltd v Cooper*
 - Copyright authorisation, hyperlinks, respondent took no steps to prevent infringing material being linked to his site
- *Universal Music & Ors v Sharman Networks & Ors*
 - Use of 'Kazaa' peer-to-peer software



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Addressing future challenges – Cooperation and education

- ◆ Law enforcement coordination
 - prioritisation, resources
- ◆ Industry cooperation
 - Intellectual Property Enforcement Consultative Group
- ◆ International cooperation
- ◆ Public education and the importance of market research to strike the balance



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