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SUBMISSION FROM THE NEW ZEALAND TELEVISION BROADCASTERS' COUNCIL ON THE
COPYRIGHT (INFRINGING FILE SHARING) AMENDMENT BILL

Background

1. The New Zealand Television Broadcasters' Council (TBC) represents the licensees of television programming that has been downloaded without authorization in New Zealand over 900,000 times in the past year. The members of the Council are TVNZ, MediaWorks TV and Maori Television.
2. The TBC supports this consultative approach to dealing with the issue of infringing file sharing, and commends the Minister and the Select Committee

Broadcaster Concerns over online copyright infringement

3. Downloading and viewing devalues the programming which Broadcasters license for the New Zealand market, and has a negative impact on advertising revenue.
4. Free to Air Broadcasters' revenue is largely from advertising sales within programming.
5. One of the primary audience and revenue drivers for broadcasters is first run, high rating programming screening in prime time (7:30 – 10:30 pm)
6. The rate that is charged for advertising on a particular programme is directly related to the number of viewers that programme attracts.
7. Infringing file sharing results in a significant number of viewers watching selected programming prior to the New Zealand Free to Air screening.
8. Therefore, the infringing file sharing causes a loss of revenue to the Free to Air broadcaster, who has paid a significant license fee for the programming with the expectation that the first screening in this country will be on the broadcaster's television channel.



MĀORI
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mā rātou mā mātou mā koutou mā tātou

Broadcasters Actions to minimize online copyright infringement

9. Broadcasters recognize that there have been many technological advances that affect consumers' expectations with respect to viewing Television programming. These include time shifted viewing, on line access to programming in many other markets, and mobile delivery of television programming.
10. As a result, consumers expect to be able to watch programming at their convenience, not necessarily tied to the broadcasters' schedules.
11. Broadcasters have taken a proactive approach to these issues, and the Television broadcasters of today operate in a very different manner than those of even five years ago.
12. Major broadcasters operate their own on demand services available through the broadcasters' websites. The typical window for viewing Free to Air programming on those sites is a one to two week window beginning immediately following the Free to Air telecast. There is no charge to consumers for this service, and it is advertiser supported. A wide range of local and international programming is available on demand.
13. Major broadcasters have supported the introduction of time shifting technology. Through most electronic retailers, viewers can purchase a Digital Television Recorder (DTR) which is approved by Freeview and record and play back as much programming as they wish with no ongoing fees. These DTR's are fully high definition (HD) capable, so viewers can delay and view HD programming in HD.
14. Major broadcasters have reached agreement with the operators of 3G networks in New Zealand to provide a range of programming on mobile handsets. This is typically local and international programming that has recently screened on the Broadcasters' channels.
15. In summary, there are many legal and low cost or no cost ways for consumers to watch Television Programming at their convenience.

Comments on the Bill

16. The bill proposes a graduated response programme. The TBC supports that approach generally, as we agree with the view that most of the individuals who are involved in infringing file sharing will respond appropriately to a warning.
17. We do not support the lengthy time frame between notices. The Bill's explanatory note states "The Bill also provides time frames in which subsequent notices cannot be sent, to give account holders reasonable time to curb infringing activity." We would ask "how long does it take to curb infringing activity". It's a single key stroke on the computer. The inference taken is that if an account holder is downloading a television series, they should be given the time to finish downloading the whole series. We do not consider that appropriate and will provide recommendations for timing related issues later in this document.

18. Broadcasters support the concept of account suspension for those who do not respond to warnings. There is concern that the maximum suspension is too short. A serious infringer will find it rather easy to have multiple accounts with a variety of ISPs and never suffer an actual loss of service.
19. The bill provides for subscriber privacy. ISPs would not be required to report on their subscribers' activity nor provide any information that might identify the subscriber to copyright owners. We support that concept.
20. Notice fees are not quantified in the bill. As the number of infringing file sharers is large, there will likely need to be a significant number of warnings sent to subscribers in order to get the message through that their file sharing is being noticed. If fees charged by ISPs to copyright owners are not kept to a minimum, the number of infringement notices that can be generated will be limited, and the law will be less effective.
21. A major part of the problem is that of many small offences, with the cumulative value of those offences being significant to the copyright holders. If enforcement for each offence bears a significant cost, copyright holders will be discouraged from using the law to achieve a satisfactory outcome.
22. The bill provides for an annual report on compliance from each ISP. We support the concept of reporting compliance but have concerns over the vagueness of the requirement in the bill.

Recommendations

23. We recommend that the time between detection notices, warning notices and enforcement notices be shortened to 9 days each from the proposed 3 weeks. As the account holder is provided with one week to challenge an infringement notice, and if further infringing is still detected, the next stage in the process should be initiated by the copyright holder once the challenge period has expired.
24. If a challenge is received from the account holder within the prescribed time line, and if that challenge is accepted by the copyright holder, then the infringement notice and any further infringement notices that have been issued on that account should be cancelled and treated as if they had not been issued.
25. To reach the stage where an account can be suspended, the ISP and copyright holder must go through a significant and time consuming process. We would recommend that for the worst offenders an account suspension of up to one year is warranted. As this is a maximum it is unlikely to be applied to a first offence, but this option will give files sharers more cause to think seriously about their actions.
26. Notice fees are not prescribed in the bill, and are rightly left to regulation, so they will be more easily changed to respond to current costs.
27. We recommend that regulations are provided and that rates are prescribed. Those rates should be minimal. The ISPs are making a profit from the infringing file sharing as they are providing more bandwidth to their account holders to enable the file sharing to occur. Therefore, it is fair that they bear some of the cost of enforcement. We recommend a maximum rate of \$1 per infringement notice. Considering that we

would expect several thousand infringement notices initially, based on the level of offending we are seeing, that will be a reasonable cost to the copyright owners.

28. The bill provides for an annual compliance report from the ISPs. We suggest this may not be adequate. An ISP is motivated to not comply with the legislation resulting from this bill, as it will likely negatively affect the ISP's income, will cause the ISP additional work and will also cause some bitterness with offending account holders.
29. For that reason, the bill should make specific requirements around reporting so that the copyright holders can gauge the compliance of the ISP in a more timely and thorough manner. We recommend quarterly reporting providing the following information:
 - a. Total number of notices received and sent and to which copyright holders they relate to
 - b. Total number of challenges and results of those challenges
30. The retention of information by the ISP is not long enough. We ask that the information required in section 122Q (2) be retained for 5 years.

Conclusion

31. The Copyright (Infringing File Sharing) Amendment Bill has had a long life in various forms with an abundance of discussion and input from a wide variety of stakeholders.
32. We fully support the creation of the legislation proposed by this bill and ask that the changes we recommend in 23 – 30 above be included in the final legislation.
33. Thank you for this opportunity to address the issue of Infringing File Sharing. Should any further information or clarification be required, we would be pleased to engage with government at any time.

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