

RESPECT OUR SCREEN RIGHTS

Access to content: market and legislative responses

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Why and when does piracy flourish?

- Timing
- Cost
- Quality of service & user experience

Game of Thrones - the Australian experience

2012:

- More illegal downloads than any other country
- 10.1% of all downloads with a population of 23 million
- Compares to US: 9.7% with a population of 313 million

Game of Thrones - the Australian experience

2013:

- Faster availability through pay TV and iTunes but still several days behind US
- Dropped to third on the list of countries with most illegal downloads (but still highest per capita)
- Pay TV responds by locking out iTunes access for next season
- What will happen in 2014?

Why this example?

- Market failure
- Mismatch of supply and demand, in relation to:
 - Price
 - Availability
 - Quality
- Easy availability of another option

Legislative responses

- Fair Use
- Graduated enforcement
 - Rights holders monitor peer-to-peer networks
 - They provide ISPs with proof of copyright infringement
 - ISPs provide educational notices ('three strikes')
 - Action is taken against the consumer - reduced speed, disconnection and/or prosecution

Where?

- Legislative schemes:
 - France, New Zealand, Korea, Taiwan
 - Legislated but not yet in effect in United Kingdom
- Voluntary schemes:
 - Ireland, US.

How has it worked?

- France
 - First 3 years: Millions of allegations; 4 prosecutions; 3 convictions.
- New Zealand:
 - 13 cases head by the tribunal by August 2013
 - All involve music.
 - None involved 3 different infringements

Issues raised by graduated enforcement

- Right to privacy
- Rule of law (fair process)
- Right to freedom of expression
 - UN Rapporteur (May 2011): Cutting off internet, regardless of justification, is disproportionate (Article 19, paragraph 3, UCCPR)

Other issues

- Costs
 - New Zealand: \$534,416 to issue 1,238 notices (first ~12 months)
 - Average of \$438
 - Rights holders required to pay \$25 for a notice to be issued
 - Taxpayers or consumers to pay?

Other issues

- Effectiveness
 - Limited data - mostly from industry sources and not peer reviewed
 - No evidence of a causal link between graduated response and reduction in infringement

The alternative: a better market response

- Norway
 - 2008: almost 1.2 billion songs copied without permission
 - 2012: 210 million (82.5% reduction)
- What happened?
 - Survey data: 47% of people were using a music streaming service
 - Free (or cheap), technologically superior

Lessons?

- Consumers will pay, where the market meets their needs and expectations
- The cost of content has to come down
- Where the market is failing to meet the needs and expectations of consumers, beware the arguments of powerful rights holders
- Let the market do its work

More information

Rebecca Giblin, 'Evaluating graduated response', Columbia
Journal of Law and the Arts (2014)

See <http://works.bepress.com/giblin/>