

Illegal file sharing – problems and solutions

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Overview

1. The extent of the file sharing problem in Australia.
2. How can copyright owners tackle the issues? – thinking outside the box; and
3. Why a “notice and disconnection” code of conduct proposal?



File sharing...

- A recent independent Australian survey suggests that 1 in 5 Australians or **2.8 million people (18%)** have downloaded music illegally over the last year.
- In the under 17 year olds this jumps to 1 in 3 illegally file sharing.



Select Search Type:

- All Types
- Audio
- Images
- Video
- Documents
- Programs

Audio

Title

Artist

Album

Genre

License Type

More Search Options

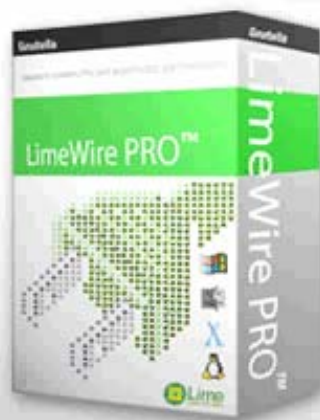
Keyword

What's New

Direct Connect

Quality	#	...	Name	Type	Size	Speed	Bitrate
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The Most Advanced File Sharing Program on the Planet!



LimeWire PRO

- Better search results
- Turbo-Charged download speeds
- Connections to more sources
- Personalized tech support
- Six months of free updates

Go PRO



Download



Browse Host



Stop Search

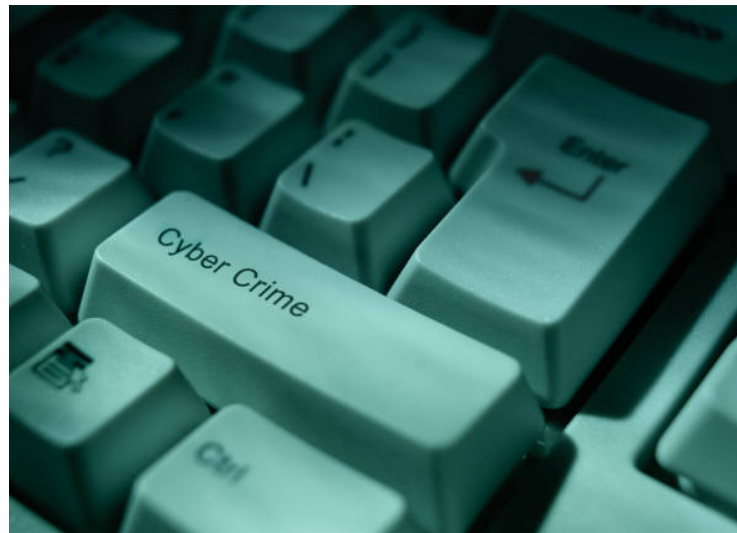


Junk



1 billion illegal songs

- At an average of 30 songs being downloaded a month, **1 BILLION SONGS ARE ILLEGALLY TRADED PER YEAR BY AUSTRALIANS ALONE.**



But of course, file sharing increases CD sales!



- The recent Andersen/ Frenz study commissioned by Industry Canada suggests that illegal downloading has actually resulted in an **INCREASE** in CD sales.



If that's true then...

- How is it that global sales of CDs fell by 23% in value between 2000 and 2005? (Source - International Federation of the Phonographic Industry (*IFPI*)).
- With all this file sharing increasing sales, surely there ought to have been a surge in music sales?



Fails the laugh test...

- As a result, the Canadian study has attracted criticism in academic and industry circles for flawed methodology and unreliable data.
 - “This result is so counterintuitive that I think it fails the laugh test.”
 - Professor Stan Liebowitz, one of the world’s leading experts on the impact of file sharing.
 - “The authors' error is similar to... on a rainy day concluding that the use of umbrellas causes puddles.”
 - Dr George Barker & Dr Richard Tooth, ANU.



No translation in Australia.....

- Independent research in Australia suggests that of those who download illegally, 57% say they 'never' or 'rarely' then purchase the music legitimately.
- It's not rocket science!



Tackling the issues...



In order to combat illegal file sharing a number of avenues have been pursued in different jurisdictions:

1. Suing file sharing networks;
2. Taking down file sharing sites; and
3. Suing individuals.



1. File sharing networks



- Litigation against Napster, Grokster, Kazaa, Limewire and others;
- For example, in July 2006 Kazaa agreed to:
 - Pay the record companies \$150 million;
 - Introduce filtering technologies; and
 - Go legitimate.



2. File sharing sites

- Closure of prominent file sharing sites including:
 - Qink in the UK - distributed pre-leaked albums, often weeks ahead of their official release date and was the primary source worldwide for illegal pre-release music. The site had an estimated membership of 180,000 and had distributed over 60 leaked albums in 2007;
 - Demonoid.com in Poland.



How did they respond?

- The response within the file sharing community to such actions is illustrative of what copyright owners are up against;
- A memorial blog was set up for Oink, with polls questioning which file sharing site would take its place;
- Blogs registered comments such as:
 - “we will be back, sooner than you think ;)”
 - “rest in peace dear community, but fear not, we will live again in another state :)”



Pirate Bay

- Other file sharing forums like the Swedish website, The Pirate Bay, the most popular bit torrent website, was shut down in May 2006.
- To evade further shut down, it announced plans to buy the 'micronation' Sealand, a 550 square metre former British naval platform in the North Sea.



3. Taking on individuals



- In over 15 jurisdictions, individuals engaging in illegal file sharing have been sued:
 - In October 2007, Jammie Thomas of Minnesota in the US was ordered to pay \$AU248,000 for illegally sharing 24 songs using the Kazaa software;
 - This was after she rejected out-of-court settlement offers of a few thousand dollars from the record companies.



Other avenues?



- The Australian music industry would prefer not to sue individuals engaged in illegal sharing;
- Therefore, we have been thinking outside the box to come up with a commonsense proposal to addressing the issues of illegal file sharing.....
- We looked closely at “notice and takedowns” under safe harbour provisions.



ISPs – the gatekeepers

- An extension of “notice and takedown” - “notice and disconnection” is a system of warning notices for illegal file sharing which, if unheeded, would ultimately result in a user having their account suspended or disconnected.
- The majority of ISPs in Australia have terms and conditions which expressly enable them to disconnect users that engage in illegal conduct.



In ISPs interests

- It is in the interests of ISPs to minimise illegal file sharing - highlighted by the fact that ISPs such as Exetel have acted to de-prioritise P2P traffic due to congestion on their networks.
- Many ISPs can ill-afford free riders on their networks inefficiently consuming bandwidth (“bandwidth hogs”) in the face of flat rate internet plans.
- If ISPs fail to take positive steps to address illegal file sharing over their networks when notified of this activity, arguably they are liable for authorisation of copyright infringement.



Not in isolation

- Proposals of a similar nature are currently being discussed around the world.
 - In France, ISPs are voluntarily disconnecting a number of P2P users per month at the request of the SCPP (the local record industry body). Accepted the need for detection;
 - In the US, 6 major ISPs have agreed to a “graduated response” policy including account termination for repeat infringers;



Other jurisdictions



- In some jurisdictions, ISPs voluntarily disconnect the accounts of users that are operating P2P hubs or servers – US, Italy and Norway; and
- In Denmark, the Netherlands and Belgium, courts have recently granted orders against ISPs requiring them to disconnect infringing users' accounts or to block/ filter copyright infringing material.



Gower Report

- The Gower Report, commissioned by the UK Government, strongly supported the brokering of a Best Common Practice (BCP) document between ISPs and rights holders to put a procedure in place to “remove and disbar users engaged in piracy”;
- The report suggested that if the BCP document “has not proved operationally successful by the end of 2007, Government should consider whether to legislate”.



The future?



We see co-operation with ISPs as the next step....

The music industry has a common aim with the telecoms companies and ISPs. But we cannot realize this aim alone. Service providers and music distributors must help us – and in doing so, they will help themselves. If you want content, then it needs to be respected and cared for, not abused.

(John Kennedy, Chairman and CEO of IFPI)



Looking to the future...



- So, at next year's Copyright Symposium we look forward to presenting you with an ISP Code of Conduct on "notice and disconnection" that reflects the common interests of both ISPs and copyright owners.....

