

Why New Zealand needs graduated response now

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New Zealand's government is taking steps to ensure that creative content is protected online. It comes not a moment too soon.

Sales of recorded music in New Zealand dropped in value from NZ\$119 million in 2001 to less than NZ\$70 million in 2009. The country's fledgling digital music market has struggled to grow in the shadow of piracy. Many innovative international services have not opened for business here, believing they cannot achieve sustainable revenue growth in a small economic market where illegal downloading is widespread.

The previous Labour government introduced legislation to tackle the problem, but the implementation of Section 92a became bogged down after an alarmist post-election public campaign, despite the new National prime minister, John Key, stating the internet could not be a "Wild West" where creators' rights were sidelined.

The good news is that National's proposed Copyright (Infringing File Sharing) Amendment Bill does seem set to pass into law. The legislation is not perfect, and the Recording Industry Association of New Zealand (RIANZ) has suggested some changes to it, but it is a great step forward for rights holders, including recording artists, in New Zealand who have been finding it more and more difficult to make a livelihood from their work.

Graduated response is a proportionate and effective way of tackling online piracy. It is being legislated for in other countries from South Korea to the UK. The alarmist campaign that derailed Section 92a is being whipped up again, disseminating myths about the process in the hope of ensuring free, widespread illegal access to music, film and other content can continue.

Let us be clear. Rights holders will approach ISPs with details of IP addresses that are being used to upload copyright infringing material. The evidence packs they will supply are of the same standard as those that have been used in court rooms around the world. Unlike a court case however, there will be no move to seek redress for past illegal behaviour only a request that the user concerned does not break the law in future.

The rights holders will not have the personal details of the account holder the IP address is subscribed to. That is only known by the ISP which will write to the user reminding them that they are breaching the terms and conditions of their contract by breaking the law. Users will be urged to migrate to legal online music services.

As graduated response involves repeated warnings to infringing account holders, it is possible for them to take action to secure their wireless connection and ensure that no-one else in their home is uploading copyright infringing material. If the bill payer is an adult and the uploader a child, this is the perfect opportunity to talk to them about the importance of respecting the law and respecting creativity.

In all of the industry's international experience we have never seen third parties hijack an IP address to upload copyright infringing material to the internet. If a user believes this has happened they will have ample opportunity under the proposed legislation's process to raise this with their ISP and with an independent third party tribunal. This issue would be flagged and can be dealt with long before the suspension of an internet account is considered.

It is hoped that legislation will be on the statute books within a few months and that it will be enforced this year. Only then will we see users migrate to legal services and entrepreneurs feel that it is worth investing in the digital music business and delivering content to consumers through a greater variety of business models. As consumption switches from illegal to legal sources, New Zealand recording artists and record companies should see the decline in their revenues reversed.

New Zealand has a proud track record of producing first class recording artists. It should continue to punch above its weight in the world's music industry in the decades ahead. This legislation should ensure that it can.