



JOINT INDUSTRY AND UNION POSITION ON OPTIONS TO TACKLE ILLEGAL P2P FILE-SHARING

9 September 2009

This position statement is issued by the Creative Coalition Campaign – a unique alliance of business and union groups in a critical sector of the UK economy. It comprises the member organisations' shared view on measures required to tackle on-line copyright infringement, including illegal file-sharing, and is being issued in response to the Government's consultation on that subject, ahead of the passage of the Digital Economy Bill in the next Parliamentary session.

Overview

- Rights owning companies and trades unions share the Government's view on the creation of a thriving market for digital content: that it is to be desired and that policy choices should be made with a view to facilitating its creation. The vision of an internet ecology comprising different business models and different content being made available in ways that are clear, legal and safe is indisputably in the consumer interest. For this reason, it is our vision too.
- A report published last year found that up to 800,000 people work in the sector, and with piracy depriving their businesses of up to 20% of their revenues every year, many will be at serious risk.¹ Similarly, piracy threatens investment and growth in economic output in the creative industries. In this context, we welcome Government's assertion that ISPs can play a major role in working with rights holders to tackle the illegal distribution of content over their networks. Government's commitment to legislate to require ISPs to notify infringers that their behaviour is against the law is also to be welcomed. Likewise, requiring ISPs to collect and process anonymised data on repeat infringers, is a step forward and we look forward to working with Government to see these proposals implemented.
- These steps are a declaration that Government and civil society are on the side of the law abiding majority, rather than the minority who consider illegal file-sharing to be victimless. It is no such thing, as several recent economic reports have underlined: the victims include a range of people employed in everyday jobs, such as sound engineers, camera crews, costume and make-up artists, book binders, script writers, retail shop assistants, freelance photographers and others employed on creative projects rendered unviable by the problem Government has now committed to tackle.

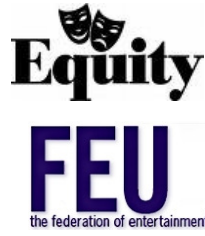
¹ *The film, TV and music and software sectors' importance to employment and output* Europe Economics - 2008



Film Distributors' Association



THE PUBLISHERS ASSOCIATION



- We believe the Government's proposals have a good chance of making a difference, and in particular we welcome the revised proposals made with the aim of speeding up implementation. Given the many thousands of jobs at stake now and the need for new licensed digital services to be supported by action

to change the behaviour of internet users, the role identified for the Secretary of State in triggering the availability of technical measures is an essential element of the revised proposals and one that the Creative Coalition Campaign's members welcome and applaud. Over several years, consumers have demonstrated a clear appetite for digital content, but some still access unlicensed content rather than the many legal alternatives, a fact which the revised proposals goes some way to addressing.

Digital Britain

- Government recognises the fundamental role the digital economy plays and will continue to play in UK economic growth. In view of that, it is not acceptable for 50%+ of our digital infrastructure to be dedicated to the distribution of illegal content.
- Government policy must ensure that the future for broadband in the UK, a development that will cost many billions of pounds, will be the safe and secure delivery of legal content – not the wholesale distribution of illegal content.
- ISPs and their customers face substantial costs related to the development of the next generation broadband network. Reducing the extraordinary consumption of bandwidth by illegal file-sharing should significantly reduce unrecovered costs; those that will need to be defrayed either by ISP customers or by public subsidy.

The Creative Coalition makes the following specific points:

1. Notice sending and data collection

We support Government's requirement that ISPs send warning notices to infringers and that they collect and process anonymised data relating to repeat infringers.

2. Technical measures

Government has committed to reduce illegal file-sharing by 70-80% by July 2011. A *minimum commitment* towards achieving this requires a combination of the notification process contained within Digital Britain, and (taking into account the need for due process) the introduction of technical measures by ISPs, who themselves have an interest in removing unmonetised traffic from their networks, for repeat infringers at the earliest feasible stage, as envisaged by Government in its statement of August 25th. These measures may





include protocol blocking, bandwidth narrowing and, as a last resort, temporary suspension of internet access (although this list is by no means exhaustive).

3. Litigation

We note Government's earlier suggestion that rights holders should pursue legal action against repeat infringers, but believe this should be considered only after other options, including technical measures, are

exhausted. Ultimately, we feel that should there be such a requirement, action should only be undertaken in respect of a limited number of serious repeat infringers, in a way that will be viewed by the public as appropriate and proportionate.

4. Timing

Widespread wholesale illegal activity is going on *right now* and we therefore welcome the tightened timeline implied by the updated proposals made by the Government.

There are two additional areas where the process could be speeded up:

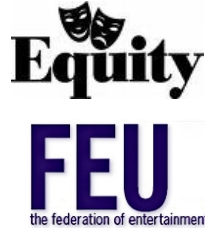
- The work on the Codes of Practice should begin *now* so that they are ready to be used as soon as the legislation receives Royal Assent. Either Ofcom or BIS should convene stakeholders and oversee the process (as they did during the Memorandum of Understanding negotiations last year). Rights owners stand ready to play our part in those negotiations, in good faith and in a cooperative spirit.
- Notifications should begin as soon as legislation receives Royal Assent, as should the availability of technical measures for use by ISPs.

5. Other Online Copyright Infringement

Government has sensibly noted in Digital Britain that illegal downloading of copyright content is not limited to illegal P2P, and that the nature of the threat is likely to change over time in response to technological developments. Clearly Government does not wish the measures it enacts simply to drive illegal downloaders into other forms of infringement.

For that reason, we believe that in addition to its specific duties to tackle illegal file-sharing, Ofcom should be given the power to tackle other forms of online infringement, and that pursuant to that power it should be required to facilitate the creation of a rightsholder / ISP forum. This forum could consider immediately what steps should be taken to deal with current forms of online infringement other than P2P, and to consider action in relation to new forms of infringement on an ongoing basis.





Using its powers, Ofcom could require rightsholders and ISPs to design voluntary processes to deal with non-P2P infringement, perhaps modelled along the lines of the Internet Watch Foundation. If the voluntary forum failed to have a sufficient impact according to agreed timescales and benchmarks, consideration should be given to making it a duty on Ofcom to create such a body.

Conclusion

As Government makes decisions that will impact rights owning businesses and workers in the creative industries for years to come, it should recognise three important principles:

- First – and above all – that the policy environment for the creative industries should be accorded top priority, especially given the current economic situation and the Government’s settled view that the creative sector can draw the UK out of recession through a sustained programme of investment and job creation.
- Second, that proceeding as swiftly as practicable to the normalisation of technical measures as a method of managing internet capacity and individuals’ exploitation of it, should be everyone’s stated goal.
- And third, that measures deployed against each individual illegal file-sharer should be only as robust as is required to change their infringing behaviour – there is no merit in forcing rights owners to sue people for damages in the civil courts when sanctions well short of litigation have not been tried.

