

World Wide Anti-Piracy Laws

This paper will examine existing anti-piracy laws, copyright infringement penalties and anti-piracy initiatives currently in place or in progress in the United States, United Kingdom, Australia, China and Canada. In the spirit of full disclosure, it should be noted that this white paper has been commissioned and paid for by eSecureData Inc., a Canadian provider of [dedicated servers](#) and data center infrastructure hosting.

Terminology

The term “piracy” refers to unauthorized copying, distribution and selling of works in copyright. Traditionally, piracy refers to acts of copyright infringement committed for the purpose of financial gain; however, more recently online copyright infringement, particularly in relation to peer-to-peer file sharing networks, has been referred to as piracy. [1] Software piracy is the copying or distribution of software for personal and business use without authorization from the copyright holder, and is considered an act of copyright infringement. [2]

Copyright infringement is frequently referred to as theft. Infringement is not theft of physical objects, but rather an instance where someone exercises one of the exclusive rights of the copyright holder without authorization. A distinction has been made between copyright infringement and theft in court, such as in [Dowling v. United States](#)[3] when the United States Supreme Court held that bootleg phonorecords did not constitute actual stolen property. Interference with copyright does not easily equate to theft or fraud, as the copyright infringer does not assume physical control over the copyright or wholly deprive its owner of its use. [4]

United States

In the United States, [US Copyright law](#)[5] states that copyright infringements can be punishable by up to five years in prison and \$250,000 in fines. Imprisonment can be increased to 10 years for repeat offenders, and violators can also be held civilly liable for damages or lost profits up to \$150,000 per work. [6]

A new federal regulation regarding the FBI’s Anti-Piracy Warning (APW) Seal took effect on August 13, 2012, which authorizes use of the APW Seal by all U.S. copyright holders, subject to specific conditions of use. In this case, copyrighted works can

include, but are not limited to, films, audio recordings, electronic media, software, books and photographs. The FBI, along with other federal agencies and the National Intellectual Property Rights Coordination Center (IPR Center), is working to increase public awareness of issues related to copyright piracy and other intellectual property theft.

In February 2013, the United States initiated the Copyright Alert System (CAS), a “six-strikes” campaign to combat internet piracy.[8] In particular, the initiative will focus on peer-to-peer copyright infringement monitored from public BitTorrent trackers.[9] Five of the country’s leading internet service providers (ISPs) are taking part in this initiative, reportedly designed to educate rather than punish users.[10]

Participating ISPs AT&T, Cablevision, Time Warner Cable, Verizon and Comcast will send up to six electronic warnings to subscribers, notifying them of alleged copyright infringement as reported by a monitoring service working on behalf of participating copyright owners. If copyright infringement persists after the final warning, the ISPs have agreed to implement “mitigation measures”, which include penalties such as temporary reductions of Internet speeds, or redirection to a landing page until the subscriber contacts the ISP to discuss the matter or responds to educational information about copyright. ISPs will not reveal customer information to the Center for Copyright Information (CCI), the monitoring service, or copyright owners. [11]

According to CCI Executive Director Jill Lesser, the CAS’s first year was seeing success in thwarting piracy, as a large number of alerts were delivered to users. Lesser stressed that the goal of the system is to educate subscribers when copyright infringement is occurring. Changes to the program may include expanding the program to additional ISPs or other kinds of copyrighted content, such as software. [12]

Some participating ISPs launched initiatives that, while not CCI-backed, were viewed as a potential supplement to CAS. In August 2013, Variety revealed that Comcast and NBC Universal were developing technology intended to recognize illegal downloading of copyrighted material by its users and launch a pop-up window with links to legal access of the content. Comcast has begun approaching other content owners and ISPs to further explore the concept. Additionally, in September 2013, AT&T applied for a patent for technology that would allow the company to track content its users are sharing on peer-to-peer networks and thus charge users for excessive bandwidth use.[13]

United Kingdom

In the UK under the [Copyright, Designs and Patent Act 1988](#), individuals guilty of copyright infringement or distribution of copyrighted material can be sentenced from 3 to 6 months in prison and/or a fine ranging from £5,000 to £50,000.[14]

The Office of Communications (Ofcom) reported that one in four downloads in the UK in 2013 were pirated. Under the [Digital Economy Act 2010](#),[15] the first major legislative attempt to combat widespread illegal downloading, penalties were proposed for repeat offenders, including slowing down internet connections, site blocking and suspending or disconnecting accounts. These penalties have now been shelved in favour of a more educational approach in which ISPs will send letters to the address of internet connections identified as the site of illegal file-sharing activity starting in early 2015.

Under the Voluntary Copyright Alert Programme (Vcap), a maximum of four letters will be sent, with severity of the language increasing with each alert. Information that could identify the infringers will not be passed on to copyright holders by the ISPs. [16] BT, TalkTalk, Virgin and Sky, the UK's biggest ISPs, have signed up for Vcap. In addition to the Vcap initiative, the UK government has also pledged to contribute £3.5 million to an educational campaign promoting legal ways to listen to music and watch movies. These initiatives are being launched with the intent to support the UK's creative industries.[17]

Australia

Under [Australian copyright law](#),[18] music copyright infringement penalties range from injunctions, damages and costs to fines of up to \$60,500 for individuals and up to \$302,500 for corporations per infringement and/or up to 5 years imprisonment. Police can also issue fines of \$1320 and seize the infringing music and devices, which includes computers and servers used. [19] For conscious software copyright, such as infringement for the intention of commercial advantage or profit, individuals face fines of up to \$93,500 and/or up to five years imprisonment, while companies face fines of up to \$467,500 and/or up to five years imprisonment.

Australia, which topped the world for illegal Game of Thrones downloads, is the "worst offender" of pirated content, according to Australian Attorney-General George Brandis.[20] In July 2014, a leaked draft [Online Copyright Infringement Discussion](#)

[Paper](#) revealed government proposals to crack down on online copyright infringement which, if implemented, would leave Australia with some of the toughest anti-piracy measures in the Western world. The paper proposes to block overseas websites that host pirated content and would require ISPs to stop users from illegally downloading movies and music. Ultimately, the paper proposes to make it easier for copyright owners to take ISPs to court if they don't implement action against illegal downloading. Furthermore, the proposals would overrule a 2012 High Court decision that found ISPs cannot be found liable for authorizing an act by a subscriber infringing copyright. [21]

Matthew Rimmer, an expert in intellectual property at the Australian National University, says the proposed anti-piracy law is "radical" and would see Australia surpass anti-piracy laws found in the United States, the United Kingdom and New Zealand.] The discussion paper was formally released on July 30, 2014 and open to public consultation, with submissions sought from interested organizations and individuals. Submissions closed on September 1, 2014, and as of early November 2014, the Australian Government was still considering all submissions received.

China

On April 22, 2012, the Chinese Supreme Court released a [proposed interpretation of China's Internet infringement laws](#), which would take a stricter stance on how websites could be held liable for promoting unlicensed copyrighted works, such as movies and music. Under this interpretation, companies could be held liable if unlicensed works were seen as being recommended to users in certain ways, such as featuring the unlicensed work on a company site that ranks content based on popularity. Additionally, liability can be determined if companies knowingly allow users to upload unlicensed content. Under the judicial interpretation, once formally notified of copyright infringement, companies have one business day to remove unlicensed videos, and five business days to remove other unlicensed works. [22] In January 2013, China's Ministry of Industry and Information Technology (MIIT) announced plans to establish a centre to deal with disputes over intellectual property and online copyright issues. Slated to launch later in 2013, the centre would be part of the MIIT, with the hope that technology companies will use third-party mediation and dispute resolution as a more cost-efficient and time-efficient alternative to litigation. [23]

The U.S. government pushed China to do more to prevent online piracy in December 2013. U.S. Trade Representatives wrote that "critical changes" needed to be made to

China's intellectual property legal framework when writing its [annual report](#)[24] to Congress about China's fulfillment of trade obligations. The report states that "counterfeiting and piracy remain at unacceptably high levels and continue to cause serious harm to U.S. businesses across many sectors of the economy," and that the country faces "rampant piracy online, which is increasingly becoming the predominant mechanism for copyright piracy." Furthermore, the report states that illegal music downloads "account for an estimated 99 percent of all music downloads in China," and that websites allowing users to stream pirated content "have become the preferred method in China to watch illegal content." [25]

In April 2014, China announced that they would launch a new round of crackdowns on intellectual property infringement and the production and sale of counterfeit goods, with a focus on Internet-based crimes. The nationwide campaign will focus on deceptive online advertising, and websites with illegal video and audio materials as well as illegal distribution of counterfeit products will be banned.[26]

Canada

In general, unauthorized copying or distribution of copyrighted material for profit is illegal under the [Copyright Act of Canada](#):[27] however, the act also states under the "Copying for Private Use" section that copying an audio recording for private use of the copier does not constitute copyright infringement. Although the unauthorized copying or uploading of complete copyrighted works such as books, movies and software is illegal under the Act, music files is more complex, due to this Private Copying exemption. [28]

According to the copyright act, specific penalties for copyright infringement will be decided by the court. An infringer is liable for the financial gain made through the infringement, as well as damages to the copyright owner suffered due to infringement. [29] Instead of damages, a copyright holder can elect to recover an award of statutory damages between \$100 and \$5000 for all non-commercial infringement, and between \$500 and \$20,000 for each commercial infringement.[30]

Canada's Federal Court, in February 2014, ordered ISP TekSavvy Solutions to provide Voltage Pictures LLC with the names and addresses of more than 2000 internet users suspected of pirating movies. This ruling would give copyright holders the ability to identify copyright infringers and subsequently use that information to enforce their copyright. [31]

In April 2014, Bill S-4, the Digital Privacy Act was tabled in the Senate. Privacy experts are concerned that the bill will allow companies to share Canadians' personal information with media companies trying to crack down on copyright infringement.

Under the Personal Information Protection and Electronic Documents Act (PIPEDA) companies can currently only share their users' private data with government, or with the police, in limited circumstances, as they investigate a crime. Once S-4 becomes law, PIPEDA would allow companies to share Canadians' information with other companies if there has been a breach of agreement or fraud. [32]

Conclusions

Various countries across the world have increased their efforts to combat online copyright infringement and piracy, with some of these initiatives being similar in nature.

Footnotes

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