The Record Industry Perspective: Responsibility for Infringements of Rights on the Internet

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WIPO ASIA-PACIFIC REGIONAL SEMINAR OF THE ISSUES AND RECENT DEVELOPMENTS OF WCT AND WPPT

Kuala Lumpur

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IFPI

AGENDA

• Digital technologies: changes and challenges
• The record industry’s response:
  ➢ Legitimate offerings online
  ➢ Promotion of adequate legislation
  ➢ Enforcement against online piracy
MUSIC PRODUCTS

• PHYSICAL PRODUCT

• DIGITAL
  - Online
  - Mobile
    - US$ 2 billion worth of music sold online or through mobile phones in 2006
    - Digital sales now account for around 10% of the music market
    - Expected to be 25% by 2010

MUSIC ONLINE

Digital technologies:
  - No need for physical carrier
  - New transmission possibilities
  - Unlimited number of copies
  - Perfect copies – no degradation of quality
  - Distribute/transmit/make available to location around the world in a matter of seconds at virtually no cost
Relevant Provisions in WCT & WPPT

WCT Article 14
Provisions on Enforcement of Rights

(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.
(2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

WPPT Article 23
Provisions on Enforcement of Rights

(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.
(2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.
Legislations

- Ensure copyright protection extends fully to the digital world e.g. temporary reproduction, communication rights, making available to the public
- Need to protect rights management information (RMI)
- Need protection for technical measures used by right holders
  - Prohibit the act of circumvention (hacking)
  - Prohibit manufacture and trafficking in circumvention devices
- Expeditious Remedies and deterring remedies
  - ISP Cooperation
    - Taking down infringing content
    - Blocking illegal websites
    - Terminating accounts of serious/repeat infringers
    - Cooperation in information disclosure
    - Filtering infringing activities/content
  - Availability of injunctive relief

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ONLINE PIRACY

- Estimated **25 billion** songs illegally downloaded/swapped worldwide last year
- **Pre-releases** is a growing problem
- Unauthorised hosting sites: websites offering illegal downloads
- Unauthorised deeplinking sites: sites offering the URL for illegal music files hosted on 3rd party sites
- Unauthorised file sharing through P2P networks
- Cyberlocker storing infringing copies
- Forum and blogs making available infringing contents
HOSTING SITES

LINKING/SEARCH ENGINES
MOBILE PIRACY - JAPAN

P2P NETWORKS

- Internet users connect directly
- Uploader: making the file available for others to download
- Downloader: downloads the file to his computer from the uploader
- Provider of network/software
P2P INFRINGEMENTS

- Users: downloaders/uploaders infringing copyright
  - Reproduction
  - Making available to the public/distributing/communicating

- Operators of services
  - Indirect liability
  - Direct liability
  - Case law: US, Australia, Taiwan, Korea
  - Legislation: Taiwan, Korea
P2P LEGISLATION – TAIWAN

- TAIWAN: article 87 of the Copyright Act (passed in the Legislative Yuan on 14 June 2007)

"Any of the following circumstances, except as otherwise provided under this Act, shall be deemed an infringement of copyright or plate rights:

Provision of computer programs or other technologies that enable the public to publicly transmit or reproduce copyrighted works, with the intent to facilitate the public, via the Internet, to publicly transmit or reproduce other's works without approval or authorization of the economic rights holder, thus infringing on the economic rights of others and thereby gaining profits.

Person engages in the activity as described in Subparagraph 7 of the preceding paragraph, shall be deemed with the intent as referred to in that subparagraph shall the said person advertise or take other positive measures to abstain, induce, procure or persuade the public to utilize a computer program or other technology to infringe on the economic rights of others."

P2P LEGISLATION – S. KOREA

- Section 104 of the revised Copyright Act (passed December 2006):

"online service providers that mainly enable people to transmit literary works etc... shall take necessary measures such as blocking illegal transmissions of said literary works etc. when requested by the right holder."

- Article 50 of the Enforcement Decree (adopted 29 June 2007):

(1) "Necessary measures including technical actions that block illegal transmission of the work etc... as provided in Article 104(1) of the Act mean each of the following measures:

1. Technical measures whereby the work, etc. can be recognized through such indications as the title, number, or sign, comparison of features thereof and so forth;
2. Measures to limit search and transmission in order to block illegal transmission of the work (recognized in accordance with the foregoing Subparagraph 1);
3. Sending to the illegal transmitter of the work, etc. a warning demanding cessation of copyright violations, etc. in cases where it is possible to confirm such transmitter;
4. Other technical measures publicly announced by the Minister of Culture and Tourism to block illegal transmission of the work

(2) Such measures (...) shall be immediately executed upon request from the right holder."
PRE-RELEASE PROBLEM

THE PROBLEM:
new albums leak
and are available on
the Internet before
they are officially
released by the
record company

EXAMPLE:
- Artist: A-Mei
- Title: Happiness Forever
- Company: EMI Taiwan
- Official release date: 3 August 2007
- Copies already found online
- Files hosted on the
international Cyberlockers,
P2P services, links in forums
Measures for Combating Internet Piracy

- Sending Cease & Desist Notices to illegal site owners and ISP
- Initiating Civil Litigations
- Filing Administrative Complaints (in China)
- Work with the government departments includes the Customs, the Police and the Copyright department for the escalation of piracy
- Criminal complaints against the infringing activities to give a strong warning message to the Public

Cease & Desist Notices: Asian Region

<table>
<thead>
<tr>
<th>Country</th>
<th>C&amp;D Sent</th>
<th>Number of Cases</th>
<th>Cases Takedown</th>
<th>Take Down Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>3,885</td>
<td>2,805</td>
<td>2,114</td>
<td>75%</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>9,086</td>
<td>9,054</td>
<td>8,720</td>
<td>96%</td>
</tr>
<tr>
<td>Indonesia</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>100%</td>
</tr>
<tr>
<td>Japan</td>
<td>37</td>
<td>29</td>
<td>29</td>
<td>100%</td>
</tr>
<tr>
<td>Malaysia</td>
<td>8</td>
<td>7</td>
<td>3</td>
<td>43%</td>
</tr>
<tr>
<td>Singapore</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>67%</td>
</tr>
<tr>
<td>South Korea</td>
<td>31</td>
<td>31</td>
<td>31</td>
<td>100%</td>
</tr>
<tr>
<td>Taiwan</td>
<td>548</td>
<td>534</td>
<td>470</td>
<td>88%</td>
</tr>
<tr>
<td>Thailand</td>
<td>49</td>
<td>31</td>
<td>28</td>
<td>90%</td>
</tr>
</tbody>
</table>
Thank You

representing the recording industry worldwide

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