

**Press statement re implementation of 92a of the Copyright Act**  
**New Zealand Creative Industries welcome changes**  
**16 January 2009**

Section 92a brings an opportunity for ISPs and rights holders to work together to address the large-scale online piracy problem that is affecting creative industries in New Zealand and worldwide.

This is an urgent issue and it cannot be solved without help from ISPs.

This is not about ISPs policing the internet, it's about ISPs responding to a high standard of evidence of infringement and illegal activity on their networks supplied by rights holders.

More than anything it is about educating users. ISPs must play a role in this.

It is estimated that 19 out of every 20 music downloads is an illegal download. Between 60 - 80 per cent of all internet traffic is peer-to-peer sharing of copyright infringing files. This deprives the songwriters, record artists, actors and all those who work in the creative industries the opportunity for payment for their creativity and effort to produce the songs, movies and software you enjoy.

Section 92a is intended to help address these issues.

The Recording Industry Association of New Zealand (RIANZ), Australasian Performing Rights Association (APRA) and New Zealand Federation Against Copyright Theft (NZFACT) are in discussions with the Telecommunications Carriers' Forum and ISPs to agree a code of practice for ISPs which helps them and internet users fulfil their obligations under the Copyright Act.

This industry-wide participation is needed in order to secure a level playing field for responsible ISPs. At the same time, the creative industries are changing their business models to meet the challenges and opportunities the internet provides. However there needs to be a fair chance for the creative industries to compete against the 'free market' of illegal downloading and file-sharing.

Significantly, all parties agree that there is a need for education of the internet user as to what is legal and what is infringing activity on the internet. Sharing copyright protected music and movies through peer-to-peer applications such as Limewire and BitTorrent is illegal as is downloading copyrighted material from Rapidshare and other online storage sites.

Evidence of those engaged in such activity will be put before the ISP and a graduated response to this illegal activity will start with the issuing of an education letter. Ultimately, if

the illegal activity continues despite these warnings, the ISPs will then terminate the user's internet account.

This graduated response safeguards user privacy as the ISP interacts directly with subscribers without the need to disclose to the rights holders their identities. Importantly, there should be no termination of the accounts of responsible businesses and organisations such as hospitals and schools as they will have responded to the first warning and prevented further infringement taking place.

Research and practice overseas and here at home, indicates that this process will be an effective deterrent and the vast majority of users will stop or prevent illegal filesharing happening over their internet connection after one or two warnings.

Campbell Smith, CEO of RIANZ, says: "We recognise that there is a need to educate users not to infringe or allow their internet connections to be used in this illegal way. A graduated response where users are warned several times will help achieve this but in the end, if they don't stop the infringements, the sanction of termination of internet account is the likely consequence."

Anthony Healey, Director of NZ Operations, APRA, says: "To say that creators shouldn't get paid simply because digital technology makes sharing music (and other creative works) possible is ridiculous. ISPs must act responsibly and accept that there is some cost to the mass of data travelling their lines. Users need to be educated and understand the consequences of their actions."

Tony Eaton, Executive Director of NZFA©T, says: "Those working in the creative industries need the protection from theft of their work and livelihood that this legislation does afford. In working closely with the internet industries we hope to achieve a reasonable and proportionate response to the problem and thereby save the future of music, movies and other creative industry."

### **Notes to the editor:**

#### **Graduated response facts**

Seven out of ten (72%) UK music consumers would stop illegally downloading if told to do so by their ISP. (Entertainment Media Research, 2008)

Seven out of ten (74%) French consumers agree internet account disconnection is a better approach than fines and criminal sanctions. (IPSOS, France, May 2008)

Eight out of ten (82%) American teenagers familiar with the law think sanctions for illegal downloading are appropriate; 57 per cent of those unfamiliar with the law agree. (KRC US, January 2008)

90 per cent of consumers would stop illegally file-sharing after two warnings from their ISP. (IPSOS, France, May 2008)

70% of New Zealand respondents aged 15 - 30 to would stop downloading movies from file-sharing programs or other illegal online sources if their internet connection could be suspended or terminated by their Internet Service Provider. (NZFACT, 2008)

### **Effect of piracy in UK and NZ facts**

Estimates on the economic and employment damage caused by piracy vary. In the UK, Jupiter Research valued the loss at £180 million in 2008, with a cumulative loss to the industry of £1.1 billion by 2012 if nothing is done to address the problem. (IFPI 2009 Digital Music Report)

Internet piracy via P2P file-sharing networks is a significant concern and accounts for the majority of New Zealand movie industry losses – an estimated NZ\$33.1 million in lost consumer spending in 2005. (NZFACT)

“Independent estimates suggest up to 80 per cent of internet traffic is generated by P2P file distribution, the vast bulk of which is unauthorised use of copyrighted music and movies.”  
(IFPI Digital Music Report 2008)

### **Contacts:**

Note: for more comments today contact Anthony Healey. From Sat 17 Jan, contact Campbell Smith.

Anthony Healey, Director of NZ Operations, APRA, 64-27-2922 100

Campbell Smith, Chief Executive Officer, RIANZ, 64-9-360 5085

Tony Eaton, Executive Director, NZFACT, 64-9-360 8036

Quentin Reade, Pead PR, 64-21-847 908

Kristen Peoples, Pead PR, 64-9-918 5548