

p2p File-Sharing Legislation

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Jurisdiction

European Union; France; UK

Abstract

The government has proposed tough new laws that could see people who persist in swapping copyrighted films and music having their internet connection cut off. Selena Masson speaks to IT law expert [Keith Arrowsmith](#)

Analysis

The government is proposing a tougher stance that would include cutting off repeat file-sharing offenders from the internet. The proposals also include taking the power to target illegal downloaders away from regulator Ofcom and giving it to ministers to speed up the process.

[Keith Arrowsmith](#) is an IT/IP partner at City law firm Sprecher Grier Halberstam who deals primarily with copyright issues for the technology and creative sectors. He told LexisNexis News: "In June 2009 the government published the Digital Britain Report, its strategy for the UK's role in the global digital economy. The Report suggested that Ofcom should require internet service providers (ISPs) to educate internet users, by informing alleged infringers that their conduct may be in breach of copyright. If, and only if, this route fails to reduce infringement by 70 per cent should additional powers be triggered to shape or cap bandwidth, or to block sites. The Report does not suggest that an internet user's access to the internet should be disconnected."

The Report acknowledges that this approach of education, notification and ultimate threat of legal action may not be seen as sufficient by some parties. "Presumably this is a reference to the music and film industries who believe that they suffer losses at the hands of the file sharers," added Mr Arrowsmith.

A public consultation on this subject was due to conclude in mid-September, but the government has taken the unusual step of issuing a further statement, mid-way through the consultation process. The government is now considering the case for suspension of subscriber's accounts as a last resort, as well as granting the secretary of state wider discretion on the introduction of other technical measures.

Mr Arrowsmith added that in some ways, this debate is similar in tone to prior calls for offenders to lose their driving licence. "Those proposals were dropped on the grounds that they may infringe the offender's human rights. In this digital age, it would be surprising if a similar argument did not apply to the right to connect to the internet, especially if a connection has been terminated without the sanction of the courts."

France has already tried to curtail the activities of illegal file-sharers, by terminating internet connections for up to a year. However, this attempt has failed, with the French courts declaring those measures as unconstitutional. "It would also seem that the Report has not silenced the ongoing call to bring the current copyright laws into the 21st century. The Pirate Party UK has recently been reported to be campaigning to allow digital data to be shared on a non-commercial basis, in much the same way that libraries exist today for the written and spoken word," said Mr Arrowsmith.

"With ISPs already party to the debates relating to online privacy and data protection, this additional burden is likely to be unwelcome in the broadband sector. The proposals assume that the ISPs will have to bear the costs of the technical measures required to give effect to the sanctions. Whether the technology will stop 'pirates' hijacking internet connections, and be sufficiently nuanced to distinguish between public domain material, material copied legally, and material shared without permission, is yet unproven. If the onus on proof falls on the consumer, it is hard to see how an innocent surfer could afford to defend themselves from systemic accusations of wrongdoing."

Mr Arrowsmith concluded: "It is likely that ISPs will be seen to be 'policing' the web on behalf of the rights holders, which may be unpopular amongst their customers. I predict a raft of updates to consumer terms and conditions as broadband contracts are renewed, with privacy policies that will allow the sharing of data on infringers between ISPs, on the basis that forewarned may be forearmed in this digital pirate war. It will be interesting to see if the Office of Fair Trading is willing to give a view on whether such alterations would be seen to be unreasonable or unfair under European regulations."

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