

Response by Klipcorp IP Ltd to Ofcom re:

Online Infringement of Copyright and the Digital Economy Act 2010

Notice of Ofcom's proposal to make by order a code for regulating the initial obligations

June 2012

Introduction

KLipcorp IP is an expert provider of IP protection (anti-piracy) services in the digital space. We are specialists in the rapid removal of video based pirate feeds in the sport sector. We act for clients such as The All England Club, the FA and Augusta National.

Sport plays a key role in the entertainment industry as exclusive live sport drives mass audience and is also capable of delivering subscription and pay per view revenues. IP piracy undermines the exclusivity which is at the heart of its value.

We have developed a video search technology, the SnifferDog, which tracks and removes live and on demand video images as well as the right processes to effectively manage IP piracy issues. We have a database of over 9000 tracked infringements and hence a good overview of the pirate ecosystem.

Our Social Barometer enables our clients to measure the positive impact of our activities on their business models. This is achieved by evaluating the audience scale and impact of channels utilised by the IP pirates for the distribution of copyright and trademark infringing content.

For more information please see www.klipcorp.com

Response

1. General remarks re: piracy based on data harvested by the SnifferDog

All reasonable and proportionate attempts to protect the intellectual property rights of content owners are to be welcomed. Whilst the digital age has brought great benefits, the ease with which content can be copied and re-transmitted without the authors' or licensees permission presents a considerable challenge. Estimates vary on the impact of IP piracy on jobs and growth:

24% of internet bandwidth used by pirate content (according to the Information Technology & Innovation Foundation)

Cost to US economy: \$58 billion annually (Centre for Copyright Information)

Cost to European economy: €10 billion in 2008 (BASCAP) - excludes piracy losses to TV sports broadcasters and sports interests

Cost to UK economy: £1.4 billion in 2008 (BASCAP)

Whatever methodology lays behind these estimates it is clear that piracy is having a considerable impact.

From data we have collected we draw the following conclusions;

1. IP piracy is very widespread and growing
2. Audience patterns follow those in more traditional media with a large volume of content and audience clustered around a group of pirate sites.
3. These pirates are "digital savvy" and promote themselves strongly online

4. The demographics are as follows: Compared with internet averages, the pirate sites tend to appeal more to young users under the age of 35, who have no children, are both uneducated and highly educated and browse from home and school. Considering that we focus on the sports industry, the identified audience is made up mostly of male users.
5. Video quality is constantly improving
6. Many of these pirate sites appear official and are supported by blue chip advertisers. The average consumer could be forgiven for being unable to distinguish between official and pirate sites.
7. We achieve an average of 60% takedown of live sites within 30 minutes
8. A "hard-core" of persistent offenders remain who are frequently re-posted via a network of interlinking websites.
9. Our rights holder clients believe that impact needs to be "rapid" to be worthwhile as the value of the content being protected diminishes very rapidly.
10. Live sport is almost entirely delivered on a streamed basis not a P2P basis and therefore end user IP addresses are visible only to the CDN and origin server(s).
11. The majority of pirate websites we have identified are hosted by established hosting companies many of which will have a fair usage policy in place, an example of which is below

You must not use the service for the transmission of illegal material. The user agrees to refrain from sending or receiving any materials which may be deemed to be offensive, abusive, indecent, hard-core or paedophile pornography, defamatory, obscene, menacing or otherwise as prohibited by current and future statutes in force. The user agrees to refrain from sending or receiving any material which may be in breach of copyright (including Intellectual Property Rights), confidence, privacy or other rights. If you are in any doubt as to the legality of what you are doing, or propose to do, you should either take independent legal advice or cease that usage.

2) Comments on existing proposed framework:

1. Dealing with streamed content on a rapid basis (minutes not hours) should be included in addition to P2P and torrent type distribution.
2. More consideration should be given to dealing with the "hard core" providers and facilitators.
3. In these instances the ISP's should be required to react within minutes to remove material.
4. Hosting providers should be incentivised to assist with the removal of pirate material.
5. The focus on the end user is too great and lack of enforcement capability / costs involved will strangle the proposals at birth. The lack of enforcement capability exists due to lack of security on home wifi routers (BT offer a specific service which allows 3rd party login - BTfon), ability to use virtual private networks, multiple users on a single IP address, IP address masking and tendency of pirates to migrate to ISP's with less than 400,000 users.
6. Due to the points raised in 5 above, it will not prove economic for the content owners to enforce their intellectual property rights.
7. Due to the "guilty until proven innocent" approach taken some content owners will not wish to take the steps envisaged to enforce their legal rights due to the considerable reputational damage that would be caused by deploying an approach that sits outside the normal principles of the rule of law.

We recommend this matter is re-examined to take into account the points raised above.