

“Legislative options to address illicit peer-to-peer (P2P) file-sharing”



Summary

This consultation document presents a proposed co-regulatory solution to deal with those individuals who infringe copyright through illicit P2P file-sharing.

We are supportive of the objective – to protect intellectual property. This is of fundamental importance to supporting growth and success in a knowledge economy. We believe that any solution must address the wider issues highlighted below to avoid being a short-term fix to a complex problem that will evolve over time.

Position

The debate about illicit file sharing provokes markedly different responses from different commercial players. This presents challenges for a broad based organisation such as the Broadband Stakeholder Group (BSG) which brings together both rights holders and network operators. While the BSG does not seek to put a flag in the ground on either side of the issue, it does nevertheless have concerns about the current proposals.

The BSG’s primary focus is on the development of next generation broadband in the UK and it is through this prism that we have considered these issues. While rights holders tend to view the current proposals as a positive step towards stemming the tide of illicit file sharing, communications providers tend to take the opposite view, regarding the proposals as a sticking plaster that fails to address the fundamental shifts taking place in consumer behaviour and undermines the legal and regulatory framework that has underpinned innovation in online services for more than a decade.

There are strong arguments on both sides and the BSG does not currently have a clear view of what the right approach to protecting copyright in a digital age might be. However, none of the proposals put forward in the current consultation look fit for purpose to solve the current dilemmas being faced by both communications providers and rights holders. Looking forward, perhaps in three years time when next generation broadband services start to become widely available, these proposals look even less adequate.

Any solution must be based on some basic principles which will underpin the further development of broadband as a conducive environment for social and economic gains. These are:

- Rights holders must be able to generate a commercial return
- Network providers must be able to generate a commercial return
- Any solution must support the development of new business models
- Consumers should have access to a wide range of products and services

Problems with the current proposals

There are two issues of concern raised by the proposed solutions:

- The most obvious concern is that there is clearly no consensus between the involved parties about the way forward. The success of any approach to these issues will be dependent upon the commitment of all stakeholders. Such commitment and the innovation that will be required to align commercial incentives are unlikely to be forced through a co-regulatory process.
- The proposed solutions raise fundamental questions about accepted legal definitions and key principles that have underpinned the development of e-commerce and online services over the last decade. As such the proposed approach is very likely to be held hostage to legal challenge and could lead to unintended legal precedents being set.

More fundamental concerns

As mentioned above, the BSG tends to view this issue from the perspective of a future next generation broadband world. Next generation broadband will inevitably open the door to more file sharing and indeed many legitimate commercial services will be built on file sharing platforms opening up new opportunities for revenue generation for rights holders. However, in some markets where NGA has already been deployed, the volume of illicit file sharing has increased. The priority should therefore be to build a framework for the future rather than simply address the challenges of today.

Recommendation

In this context, and for the reasons set out above, we believe that the current proposals should be scrutinised against the wider issues. We believe that the approach should be reconsidered to find a more holistic, robust and realistic solution to the dilemma of protecting intellectual property in a digital age. In doing so it will be necessary to return to first principles, and to review these principles to determine whether they are still appropriate for the digital age and to explore how they can be strengthened to cope with the next wave of disruptive change that will inevitably result from the move to next generation broadband.

The priority must be to balance the concerns of protecting copyright, delivering products and services to consumers, and giving commercial players sufficient flexibility and incentive to experiment with innovative and new business models to support the future of the digital economy.

We believe this should be a core work stream of the recently announced Digital Britain report.