



COPYRIGHT INDUSTRY INITIATIVES AND CHALLENGES IN 2005

INTERNET PIRACY, ELECTRONIC COMMERCE, AND THE WIPO INTERNET TREATIES

Copyright piracy on the Internet has undergone explosive growth and is quickly becoming the number one threat to the global copyright industries. Internet piracy threatens to undermine the foundations of electronic commerce in the new millennium. The adoption of adequate legislation on a global basis and its effective enforcement online, including ratification and full implementation of the WIPO “Internet” treaties, will promote healthy growth of legitimate electronic commerce in copyright materials.

OPTICAL DISC PIRACY AND ITS EFFECTIVE REGULATION

The growth in optical disc production capacity (including CDs, VCDs, DVDs, CD-ROMs, blank media, and “burned” discs) globally has been staggering. Production capacity now greatly exceeds legitimate demand. Increasingly, recordable optical media are also used to “burn” unauthorized copies on a commercial basis. Every country whose optical disc production facilities are producing significant pirate product should adopt a specialized regulatory framework to license production facilities and track the growth of production capacity, including cross-border traffic in production equipment and raw materials.

PIRACY BY ORGANIZED CRIME SYNDICATES

Because it is a high profit-low risk activity, criminal syndicates have increasingly taken over commercial copyright piracy. These syndicates control the production and distribution of pirated and counterfeit optical disc products in domestic markets and for export. The copyright industries look to governments to exhibit leadership through enactment and implementation of strong criminal copyright measures, and the use of other laws geared toward combating organized criminal behavior (e.g., money-laundering, fraud, smuggling, criminal conspiracy).

PIRACY OF BOOKS AND JOURNALS

In addition to digital and online piracy, the publishing industry also faces unauthorized commercial-scale photocopying – causing the industry’s greatest losses – and print piracy. These operations are often highly organized and networked. Publishers also suffer from unauthorized translations of books of all genres.

END-USER PIRACY OF BUSINESS SOFTWARE AND OTHER COPYRIGHT MATERIALS

The unauthorized use and copying of software by businesses and government entities result in the loss billions of dollars to U.S. software companies. Piracy of other copyrighted materials like sound recordings, movies, video games, and printed materials using government or corporate servers, computer networks or facilities also causes increasing losses to copyright industries. Governments should issue orders or directives to government agencies to control the use of their facilities, to audit their practices and use only legal products. Similarly, governments, government-run schools and universities, business entities, and other enterprises should take effective steps to ensure that their computers and networks are not used to facilitate infringement, including through P2P file distribution networks, and that on-campus facilities are not used for illegal photocopying. Governments, including their judicial branches, must take effective enforcement action against enterprises that use unlicensed software or otherwise facilitate infringement of copyrighted materials.

IMPROVING COPYRIGHT PROTECTION AND ENFORCEMENT THROUGH FTAs

Having achieved significant improvements in substantive copyright laws worldwide, the copyright industries’ most pressing global problem today is inadequate enforcement. All countries must bring their enforcement regimes into full compliance with the standards adopted eleven years ago in the WTO TRIPS agreement, a goal that few have met. The U.S. government’s negotiation of regional and bilateral free trade agreements (FTAs) offers an important opportunity to persuade our trading partners to further modernize their copyright laws and enforcement regimes. The FTAs have set new global precedents in copyright protection and enforcement, providing further impetus to e-commerce and to global economic growth and employment. In providing effective enforcement as contemplated by TRIPS, it is increasingly important that governments act on their own initiative (i.e. *ex officio*) to seize and destroy infringing materials offered for distribution or sale in public places. Controlling centralized manufacture and distribution is probably an unattainable goal given the ubiquity of production capacity; consequently, it is essential that governments adopt and implement effective zero tolerance policies against retail piracy of all types of copyrighted goods.