

Submission on ACTA "Enforcement in the Digital Environment"

Introduction

I am Andrew Russell, a Wellington software developer and consultant with a serious interest in the Internet and the transformational possibilities that are latent in the technology. I primarily work on in-house software developments. I make my living on my creative output supported by the copyright model and I consume media under Creative Commons licenses and software under various Free Libre and Open Source software licenses all of which are supported by the copyright model.

I am a member of New Zealand Computer Society, The Association for Computer Machinery, and the Free Software Foundation.

I welcome the opportunity to make my opinions heard and I respectfully warrant that I can speak for the interests of a large number of voiceless 'copyright consumers' who are at the receiving end of the copyright piracy rhetoric of the RIAA and MPAA and their NZ branches.

General ACTA Comments

I have been unhappy to hear of the ACTA treaty's attempt to close down the relatively democratic, open and transparent governance that other IP venues usually use. I fully support the treaty negotiators goals of transparency and openness of the process, in fact this treaty should not be signed by NZ unless the process is in the open (not just the treaty itself).

Liability of Third Parties for Infringement

Our ISP's should not be liable for any traffic that passes over their networks. I understand that that principal is under threat by this treaty and some of our recent/proposed legislation. Should our phone providers tap our phone lines to make sure that we don't transmit copyrighted music from one place to another?

Other complications with this proposal are:

- Even the big copyright owners have a hard time distinguishing licenced copies from unlicensed copies (Viacom vs YouTube <http://www.wired.com/threatlevel/2010/03/viacom-youtube/>)
- The network monitoring required to proactively police copyright infringement is an invasion of privacy and is a first step towards a police state with proactive monitoring of our behaviour (Assuming that the successful implementation is actually possible in the short or long term).
- The legal prerequisites required to back allow even a partial network monitoring success will be burdensome (restricting encryption, anonymous speech and anonymous networking)

Safeguarding our Network futures.

Be aware that the possibilities inherent in networks are likely to be still in their infancy and any broad ranging legal restrictions imposed in law has a major risk of stifling creativity and the value that networks could bring to us in the future.

We have had a succession of communication networks, post, telegraph, telephone and Internet networks, and they have had an increasing effect on our society recently propelled by the exponential rise of computer power.

We do not know how our society will evolve under the extreme pressure of the connectivity and communication diversity some of us starting to enjoy today, but I am certain that the effects will be fundamental to our society. For instance social networking has exploded into popularity since 2000 and has had an extreme effect on our media habits, other more profound effects will also emerge.

Some places where legislation should be especially careful are:

- Any implied or implicit requirement for prior user identification will eliminate many current and emergent use cases for anonymous networking such as mesh networking, open networking, network sharing, anonymous blogging and commenting, anonymous network use for users in repressive regimes as well as local legal whistle-blower communication anonymity. Many public good services will not be possible in such an environment, and will have a chilling effect on our freedoms. Anonymous and free speech is a fundamental yet under appreciated part of our societal checks and balances.
- Blocking of a user from access to any or all networks must be imposed with due care to the effect on that person and society, and must be imposed rarely and with limits by our courts. Consider the increased number and diversity of our network/ Internet connections and the effect on the livelihood of the individual. This penalty will increasingly interfere with citizen engagement with government and all other civic services as they are increasingly moving to the web.
- The dynamics of copyright is important to get right. Of significant interest is the fact that copyright law is routinely abused by a large proportion of the population. So the fines, penalties and restrictions are felt by a large number of citizens causing mistrust of the rule of law. This is an untenable situation for NZ and is by no means unique in the world. There has to be a effort to get the majority of people in conformance to the law. Maybe some solution like the existing performance rights levy would be a good model.

Public Perception

In my circle of friends and colleagues there is major cynicism that the big lobby groups will succeed in pushing their agenda at the cost of the individual. Please do not let this death spiral continue.

Andrew Russell 31/3/2010
Mindware Ltd.

S (2)(G)