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Sent: Wednesday, 17 March 2010 5:42 p.m.
To: trademarks
Subject: ACTA submission

ACTA submission

The lack of full and unambiguous information on the ACTA process makes it difficult to offer a properly informed submission. At the same time, this issue is too important to ignore.

While I do not dispute the need for international agreements and conventions as well as enforcement measures to enable artists to live from their creativity and corporate entities to profit from their investments, I have grave reservations about the manner in which this goal is currently being pursued. In spite of that I have attempted to respond to the questions raised within the framework provided.

Liability of Third Parties for Infringement

No-one would seriously suggest that a telephone company or postal service should be held accountable if a criminal uses the phone or mail to conduct fraudulent activities. Yet this is the standard that some want ISPs to be held to. In order to prevent misuse of its services, the ISP would necessarily have to monitor customer activity. Most ISPs are commercial businesses. I am very uncomfortable with the idea of a revenue-driven company being given this kind of power. This is not the job of ISPs and they should not be asked to do it. Above all, they should not be asked to do it to serve the narrow commercial interests of other companies.

I am therefore strongly in favour of ISPs being granted unlimited safe harbour provisions and having their status as zero liability communications facilitators enshrined in law. Like every other member of society, an ISP has a responsibility to inform the proper authorities of any criminal activity it becomes aware of. It does not have a duty to seek out such activity. Under no circumstances should an ISP be made liable for the actions of its users. Law enforcement should always be the exclusive business of government, accountable to voters. It should never be delegated to commercial enterprises which have other priorities.

Identifying Infringing Users

A major concern, which has also become evident in the debates over file sharing and internet filtering, is that technically naïve lawmakers may allow themselves to be led by vested interests into enacting poorly thought-out measures that disproportionately serve those interests. I find it alarming that submitters are asked to comment on "what circumstances should right(s) holders be able to expeditiously obtain information (from) an ISP about the identity of the relevant user who is engaging in the infringing activity?" without any mention being made of the limitations of the technology for doing this or the potential for abuse. It is well-known that "infringing" ISP addresses can be faked, as in the famous case of the university printer that received a DMA take-down notice. Equally, the more repressive the legislation against copyright infringement becomes, the more infringers will resort to techniques like encrypted VPNs to mask their ISPs. A more pertinent question at this point is not under what conditions rights holders should be allowed to demand

information, but how to ensure that information provided to them is correct and will be acted upon in a responsible manner.

It is my firm belief that ISPs should only be required to provide information about their users when it has already first been clearly established in law how rights holders are permitted to use that information. So far this all seems to be only about the demands "rights holders" (however they are defined) should be allowed to make, while no mention is made of sanctions or protective measures for abuses, unsubstantiated accusations, erroneous assumptions, or sheer bloody-mindedness. There seems to be an unspoken assumption that the demands of rights holders will always be fair and equitable, while history has manifestly shown this to be untrue.

If an ISP user has been found guilty of infringing activity after due process, the identity of that user will already be known to the relevant legal authority. Or are rights holders to be made officers of the court as well?

Promoting cooperation between ISPs and right holders

How cosy. My question here would be whose interests are being served. The business of ISPs is to make money by providing a connection to the Internet. The business of rights holders is to make money by enforcing their ownership of "intellectual property". I assume a "mutually supportive relationship" in this regard would consist of the ISP providing ongoing details of customer activity to the rights holder. I fail to see what the rights holder might offer the ISP in return. In any case, such a relationship has nothing to do with the ISP business model. This sounds much more like facilitating the infiltration of a parasite into a perfectly healthy organism.

I am strongly against promoting such a relationship. It has nothing to do with the business of an ISP.

Technological Protection Measurers (sic)

Widely available and completely legal devices sold by electronics retailers throughout the world, including Dick Smith and Harvey Norman, have made it possible for years to circumvent copy-protected videotapes and DVDs. These work by converting VGA computer output to TV input, which eliminates copy protection signals in the process. The quality isn't high but it's certainly perfectly watchable and can be recorded without problem. Is this a TPM circumvention device?

Perhaps cracking software is meant. Yet many poorly-protected programs such as New Zealand's Tumonz maps can be cracked merely by altering a registry value and deleting a file. No special software tools are needed at all.

Laws like this are unenforceable and ultimately silly so it is difficult to suggest sanctions for breaking them. Attempts at legal definitions will always be outpaced by technological developments. By all means go after large-scale copying and distribution using existing copyright laws, but trying to stamp out individual TPM circumvention is like trying to stamp out marijuana. It wastes resources and distracts from more important matters.

Copyright Management Information

This should be treated in the same way as copyright violation. Why make a special law for it?

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

