

Legislative Council Panel on Commerce and Industry

Combat Against Infringing Activities on Peer-to-Peer File Sharing Networks

Introduction

This paper briefs Members on the actions taken by the Government to combat infringing activities on peer-to-peer (P2P) file sharing networks.

Background

2. Unlike the traditional mode of Internet distribution, users of P2P software do not need to upload infringing copies of copyright works onto a website before they can be downloaded by others. Instead, a user of P2P software can simply keep the copies he wants to share in a specified folder in the hard disc of his own computer, and other users having the same P2P software can download the copies directly from his hard disc when he is online.

3. Bit Torrent (BT), a kind of P2P software, has become very popular worldwide for downloading of files of large size. During a BT operation, while each file sharer is receiving portions of the file incorporating the infringing copies of copyright works from the other file sharers, he is at the same time making available the portions that he has just downloaded to the others. Hence, the more people participate in downloading, the quicker the speed of the downloading process will be. There must be an “initiator”, who owns a complete infringing copy of a copyright work (i.e., a source seed) and initiates file sharing activities by creating and posting a “torrent file” in a discussion forum or newsgroup to tell other users visiting the discussion forum or newsgroup that he has a file for downloading. Other users who would like to download the file will need to click the torrent file before the downloading process will commence.

Actions against Infringing Activities on P2P networks

4. We have been adopting a multi-pronged approach to tackling infringing activities on P2P networks. They include law enforcement, industry cooperation and public education.

Law Enforcement

5. Under the Copyright Ordinance (Cap. 528), any person who distributes an infringing copy of copyright work otherwise than for the purpose of, or in the course of any trade or business, to such an extent as to affect prejudicially the owner of the copyright commits an offence. Any person who commits this offence is liable on conviction on indictment to a fine up to level 5 (i.e., \$50,000) in respect of each infringing copy and to a maximum sentence of imprisonment for 4 years. After a detailed study of the possible legal liabilities of the persons involved in sharing infringing copies of copyright works on P2P networks, we consider that any P2P user who attempts to distribute or distributes an infringing copy of a copyright work on the Internet to the extent that prejudicially affects the owner of the copyright involved may commit the above offence.

6. To facilitate enforcement actions, Customs set up a P2P Task Force with the film industry in December 2004 to monitor BT networks in the local environment round-the-clock. On 12 January 2005, Customs arrested a person on suspicion of illegal distribution of copyright movies on the Internet through BT. Initial investigations showed that the arrested person had uploaded the infringing copy of some movies for sharing with other peers. Investigatory work is still ongoing and prosecution action will be considered after the investigation is completed. Customs will continue to closely monitor local BT activities and take follow-up actions on suspected cases. We will also consider whether and how the concerned criminal provision can be applied to other infringing activities involving new P2P software and how enforcement actions can be taken.

Industry cooperation

7. We have been meeting with Internet Service Providers (ISPs) and copyright owners to discuss how the two parties can cooperate to address the P2P problem. One of the measures being explored is for ISPs to assist copyright owners to assert the latter's civil rights by sending warning notices to their clients who have been identified by copyright owners to have engaged in infringing activities on P2P networks. We will continue our efforts to encourage cooperation between the two parties.

8. Apart from criminal enforcement actions by Customs and assistance from ISPs, copyright owners should also actively assert their civil rights against individual infringers. Under the Copyright Ordinance, downloading of a copyright work for personal use or the making available of

copies of a copyright work on the Internet without the licence of the copyright owner will attract civil liability. The Copyright Ordinance also confers civil rights on copyright owners to seek remedies from persons who have infringed their copyright. We think that making full use of these rights by copyrights owners against those persons who engage in copyright infringing activities on P2P networks will have some deterrent effect on such activities. We note that copyright owners in other places such as the US and Australia have pursued civil cases involving piracy activities on P2P networks. We understand that the film industry is exploring the establishment of a fund to pursue civil litigations against copyright infringing activities on the Internet.

Public education

9. The most sustainable solution to address the piracy problem is to increase the community's awareness of intellectual property and respect for others' intellectual property rights. To this end, the Intellectual Property Department organizes school visits and educational programmes for school children as well as publicity campaigns for other focus groups and the general public. In view of the problem of infringing activities on P2P networks, the Department has set aside \$400,000 in this financial year for dedicated P2P public education activities targeted at the general public and students. It will launch a large publicity campaign around the Chinese New Year including the distribution of "Laisee" packets in public enquiry service centres of the Home Affairs Department and advertisement in major local newspapers to disseminate the message that P2P file sharing activities involving infringing copies of copyright work are illegal. The Intellectual Property Department will also distribute a poster addressing the P2P issue to all secondary schools at the start of the second school term in late February.

10. In addition, Customs has started to engage parents and teachers' associations with a view to arranging briefings to parents and teachers on the possible criminal and civil liabilities that their children/students may face if the latter undertake copyright infringing activities on P2P networks. The purpose is to secure the support of parents and teachers to drive the message back to schools and homes so as to appeal to youngsters to respect copyright on the Internet and not to commit piracy-related offences while engaging in P2P file-sharing activities.

Conclusion

11. The Government is committed to protecting intellectual property rights and will continue with our efforts in the above areas. With the rapid advance of new technology, we need the concerted efforts of all parties concerned to tackle infringing activities on the Internet. To turn the challenges posed by Internet development into opportunities, we will continue to encourage copyright owners to consider establishing new business models that will meet consumers' increasing demand for access to copyright works on the Internet. Some overseas copyright owners have set up authorized websites where music can be legitimately downloaded at a fee and these websites have proven to be very popular. We understand that some action is being undertaken in Hong Kong to provide authorized music downloading service. We hope the new digital sale service will provide an effective and legal alternative to meet consumers' demands.

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