
George Gordon -Submission on the draft copyright Code of Practice for S92A

To whom it may concern,

Although I understand ISPs do not directly have the power to change or repeal laws, I believe that work on this policy should be halted because this does not address the root of the problem. The root of the problem is that the law allows punishment to be doled out to any individual or organisation without requirement of court-approved proof of guilt. This violates the most fundamental concept of our law system: the presumption of innocence. If this principle is overturned in New Zealand law, then we might as well all hand ourselves over to the police now because we could be considered guilty of any and every arbitrary crime.

Other countries in the world, who we should be looking up to and taking inspiration from, have flatly rejected similar laws. Take for example the following comments from Germany's Secretary of Justice Brigitte Zypries:

"I don't think that (Three Strikes) is a fitting model for Germany or even Europe. Preventing someone from accessing the Internet seems like a completely unreasonable punishment to me. It would be highly problematic due to both constitutional and political aspects."

The EU parliament, one of the biggest economic powerhouses on the planet, has flatly rejected the idea as well:

<http://www.techdirt.com/articles/20080925/1522352377.shtml>

The argument that S92a is necessary to fulfill requirements with our trading partners thus falls flat on its face, as some of the world's largest economies have completely rejected similar laws. We should not need to implement laws that go further than those in our partner trading countries.

For any other crime under the sun, no matter how serious or minor, the system is the same: you go to court, and an impartial judge or jury will decide whether you are guilty and what your punishment should be. Why should copyright infringement be any different? There is no reason why holders of copyrights should be exempt from this time-honoured process. It exists so that everyone has a fair trial. There is nothing in this law to stop parties from maliciously abusing this law to silence political opponents or corporate rivals. Consider the case of kookychoo.com, a small NZ company selling gift items. New York fashion giant, Jimmy Choo tried to have this company shut down for alleged infringement of intellectual property:

<http://www.3news.co.nz/Home/Story/tabid/209/articleID/85188/cat/100/Default.aspx>

There was an huge public outcry over this, and there have been many financial donations to kookychoo.com to help them fight their case in the courts and exercise their right to a fair trial. If S92a had been in force, companies like kookychoo.com could be forced to shut down upon a mere accusation of infringement.

S92a is not only bad for consumers, but it is bad for business and will ultimately come back to hurt even those who were in support of it. The TCF should push for a complete repeal of S92a in favour of a court based system. Extending the powers of the Copyright Tribunal Court would be one such possible solution, allowing users to fight accusations against them before receiving punishment. Copyright infringement is a major issue but like other major

societal problems, like the war on drugs, the war on internet pirates should be fought through the established legal system and the courts.

Thank you for you considering this submission and it is my hope that the TCF will push for a repeal of S92a in the interests of everyone in New Zealand.

Kind regards,
George Gordon