

'Three strikes' for the Web

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Faced with a pandemic of online piracy, Hollywood studios and the major record labels have pressed governments around the world to make it easier for them to enforce their copyrights. In particular, they've tried to shift responsibility for infringements from the individuals who commit them -- who are legion and hard to identify -- to targets that are easier to hit. And gradually, they have been succeeding.

The latest example is a hotly disputed British law that sets new rules for digital broadcasting and the Internet. Dubbed the Digital Economy Act, it requires Internet service providers to send warning notices to customers whose broadband connections have allegedly been used for piracy. If the warnings don't reduce infringement to the government's satisfaction, regulators can order ISPs to ramp up sanctions on repeat offenders, potentially culminating in the suspension of their Internet access.

This sort of "three strikes" approach, which France has also adopted, has drawn howls of protest from certain ISPs and technology advocates. Some don't consider online [piracy](#) to be a problem, or believe [copyright](#) holders should simply embrace the fact that millions are downloading their works for free instead of buying them. We have little sympathy for that point of view.

On the other hand, British lawmakers seem to have paid scant attention to the fact that copyright holders can't tell who, exactly, is bootlegging their movies, games and songs online. No one can. ISPs can tell which account was involved and, potentially, which computer was used. But

they can't tell who was sitting at the keyboard. And in the case of a public wireless network at an airport or a restaurant, they may not be able to say for sure which of the dozens of simultaneous users was the pirate. As a result, by exposing those who pay for broadband accounts to sanctions rather than the specific users, the law muddles the issue of who's responsible for misdeeds online. It also could give copyright holders too much power over ISPs and disruptive technologies.

Much depends on how the law is implemented by the government officials who were left to work out key details. One danger is that the duties and liabilities they impose could prompt those who provide Internet access in public spaces -- coffee shops, libraries, universities and the like -- to stop or limit their services to avoid any risk of even innocent infringement. That would be a step backward for Britain's efforts to promote ubiquitous broadband. Another potential pitfall is that the law's appeals process won't prevent broadband account holders from being penalized for a third party's misbehavior. Nor are ISPs in any position to judge when an alleged infringement is actually a fair use of copyrighted works.

That's why Britain should move forward carefully. The first anti-piracy step called for by the new law -- having ISPs alert customers about alleged infringing activity on their accounts -- could be a good one, if the government sets the right threshold. The steps after that, however, raise the risk of ugly unintended consequences.

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