

## **Update on the Copyright (Infringing File Sharing) Amendment Act 2011**

04/11/2011 by [Thomas Huthwaite](#)

On 1 September 2011, the provisions of the Copyright (Infringing File Sharing) Amendment Act came in to force.

The proposed amendments to the Copyright Act brought about a rush of publicity and controversy in the months prior to their enactment. Internet users were concerned about infringement, businesses about vicarious liability, and Internet Protocol Address Providers (IPAPs) about additional obligations.

While the first two months of the new regime passed without incident, it was revealed on 1 November 2011 that at least 75 complaints had been sent from the Recording Industry Association of New Zealand (RIANZ) to various IPAPs. As these complaints must meet specific criteria under the Act, it is not yet clear how many will result in infringement notices being sent to alleged offenders.

Is this just the beginning? Nearly 33,000 infringement notices were issued in the first 12 months of the South Korean equivalent legislation, and 650,000 over a similar period in France. It is unlikely that the New Zealand numbers will reach

this level, despite reports in 2010 that New Zealanders were committing over 160,000 file sharing infringements per month.

It is possible that the Act has already played an educational role. In 2009, Sweden introduced similar laws, which resulted in a 30% downturn in internet traffic. Some New Zealand IPAPs reported as much as a 10% downturn in the week following 1 September 2011, although the cause for this is uncertain and a long-term trend has not been reported. It is possible that, given the Act's publicity, more internet users are aware of the illegality of their past behaviour.

Internet users intent on continuing their file sharing behaviour may have taken defensive measures, for example, by obtaining a proxy IP address or otherwise masking their true New Zealand IP address. There is currently no way of telling whether, or to what extent, this has occurred. Needless to say, such users are still in breach of the Copyright Act and are simply more difficult to detect.

The intentions of copyright owners, other than those of RIANZ, are unclear. The New Zealand Federation Against Copyright Theft (NZFACT), who acts on behalf of movie studios, has yet to decide whether to issue complaints under the Act. Other groups have suggested that the fee prescribed by the Regulations (\$25 plus GST per complaint issued) is too high. While the fee does not appear particularly arduous, and barely covers the administrative costs borne by IPAPs, consider the vast number of notices that will need to be issued before one

particular internet user has been issued with his or her third notice and is therefore liable for damages.

Copyright owners are also likely to be spending other costs in relation to the regime – for example, monitoring costs.

Companies like *MarkMonitor* provide services to monitor file sharing, at a cost. It is uncertain whether copyright owners have engaged monitoring services or whether they are monitoring file sharing activity themselves.

Meanwhile, the New Zealand Government has also increased anti-counterfeiting powers, with the Trade Marks (International Treaties and Enforcement) Amendment Act coming into force on 7 October 2011. It remains to be seen what practical effect these amendments will have.