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To Slow Piracy, Internet Providers Ready Penalties

By BEN SISARIO Published: July 7, 2011

Americans who illegally download songs and movies may soon be in for a surprise: They will be warned to stop, and if they don't, they could find their Internet access slowing to a crawl.



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Cary H. Sherman, left, president of the Recording Industry Association of America, and Mitch Bainwol, its chairman and chief executive. The association was one of the media organizations involved in the agreement with Internet providers.

After years of negotiations with Hollywood and the music industry, the nation's top Internet providers have agreed to a systematic approach to identifying customers suspected of digital copyright infringement and then alerting them via e-mail or other means.

Under the new process, which was announced Thursday, several warnings would be issued, with progressively harsher consequences if the initial cautions were ignored.

The companies took pains to say that the agreement did not oblige Internet providers to shut down a repeat offender's account, and that the system of alerts was meant to be "educational." But they noted that carriers would retain their right to cut off any user who violated their terms of service.

In bringing together the media companies and Internet carriers, the deal demonstrates how the once-clear line separating those two businesses has been blurred. Eight years ago, the Recording Industry Association of America had to sue Verizon to try to uncover the identity of a customer who was sharing music online. This year, Comcast completed its merger with NBC, bringing an owner of digital content and a conduit for it under the same roof.

Now the Internet providers are hoping to profit as they pipe music and video of the nonpirated variety to their customers.

"The I.S.P.'s want to cooperate with Hollywood because the carriers recognize that their own growth depends in part on bundled content strategies," said Eric Garland of BigChampagne, which tracks online media traffic. "They don't want to be just utilities providing Internet access, but premium content distributors as well."

The system announced on Thursday involves a series of six warnings that an Internet provider can send to a customer whom the media companies have identified as a

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provider can send to a customer whom the media companies have identified as a possible copyright infringer.

The warnings escalate from simple e-mail notifications to, at levels 5 and 6, a set of “mitigation measures,” like reduced connection speeds or a block on Web browsing. As the alerts progress, a customer must acknowledge that he understands the notice. Customers will also have the opportunity to contest the complaint.

The effect on consumers, the companies hope, will be more of a deterrent-by-annoyance — rather than the random lightning bolt of litigation that was once the preferred method of enforcement by the recording industry association, one of the parties to the agreement.

The media companies were also represented by the Motion Picture Association of America and groups acting on behalf of independent record companies and filmmakers. The Internet carriers involved in the deal include AT&T, Cablevision, Comcast, Verizon and Time Warner Cable.

The music and movie companies, which estimate that digital piracy costs the United States economy \$16 billion in lost revenue each year, have been eager for an efficient way to deal with the problem.

As illegal downloading has become ingrained as a cultural habit, especially among young people, expensive litigation has become less effective, and the lawsuits against individuals were something of a public relations disaster for the music companies. The new deal, the companies say, offers plenty of chances for even the most recalcitrant pirates to reform.

“This is a sensible approach to the problem of online content theft and, importantly, one that respects the privacy and rights of our subscribers,” Randal S. Milch, executive vice president and general counsel for Verizon, said in a statement.

The agreement has an unlikely origin: it came about as a result of an effort to crack down on child pornography that was led by Andrew M. Cuomo while he was the New York attorney general.

In 2008, Mr. Cuomo, who is now the governor, brokered a deal in which several major Internet providers agreed to block access to online sources of child pornography. Seeing this, the recording industry association approached Mr. Cuomo for help with music piracy, said Cary H. Sherman, the association’s president.

“We pointed out to him that there are overlaps between the child porn problem and piracy,” Mr. Sherman said, because all kinds of files, legal and otherwise, are traded on peer-to-peer networks.

Mr. Cuomo led the early talks between the Internet carriers and entertainment companies, and on Thursday he issued a statement praising the deal.

The agreement, he said, “provides a rational and thoughtful solution — a solution that respects the rights of copyright holders as well as I.S.P.’s and their customers — to a problem that has plagued the Internet.”

Under the agreement, the content owners will deliver evidence of illegal file-sharing to the Internet providers, which are then responsible for sending alerts and meting out penalties. The Internet providers will not disclose the identity of the offending customer to the media companies.

Many media and arts groups applauded the deal, saying that it would more effectively reduce piracy and therefore benefit the creators of music and movies, whose fortunes have eroded over the last decade.

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Others, including Public Knowledge, an Internet rights group, and the Center for Democracy and Technology expressed concerns that consumers might be punished “based on allegations that have not been tested in court.”

Many Internet music experts expressed doubt that the alert system would succeed in stamping out piracy. The new system largely aims for peer-to-peer file-sharing tools like BitTorrent. But plenty of other technologies exist for enterprising pirates, many of which might allow them to evade easy detection.

“The challenge is that consumers will continue to do whatever they wish on the Internet, and find clever ways to *not* attract the attention of the content companies or I.S.P.’s,” said Mr. Garland of BigChampagne, whose company has long traced the proliferation of file-sharing. “It will never end.”

*Steve Lohr contributed reporting.*

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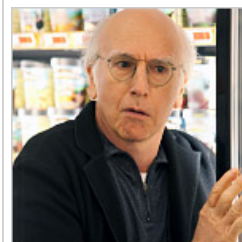
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