Public/Intermediary Enabled Copyright Enforcement

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1.Aims & Context:

This project considers the "three strikes" graduated response model to addressing copyright infringement.

This project involves monitoring and assessing the successes and failures of prominent graduated response or "three strikes" models, such as those promoted in the UK Digital Economy Act, French HADOPI and US SOPA model.

It reflects on the commercial, legal & social context with the aim of identifying issues with these systems. It questions what alternatives exist, and examines their viability.
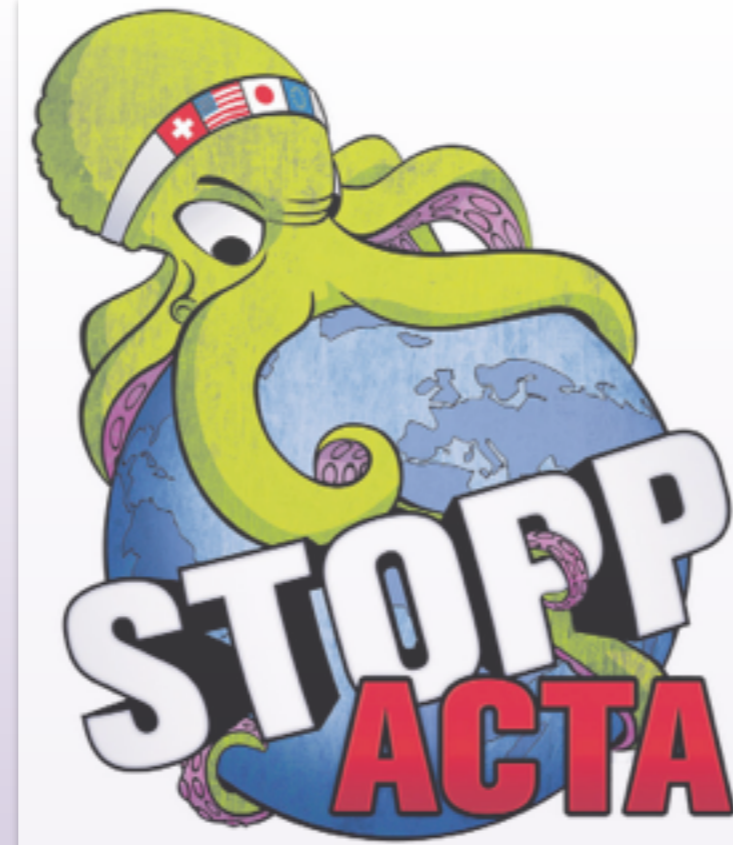
2. Emerging Trends/Findings:

1) Nature of schemes: There has been a shift from state-mandated schemes to voluntary/coerced agreements between rights holders and intermediaries. This creates new risks through lack of transparency/due process scrutiny.

2) Fragmentation: Internationally, support is not consistent. Some states are dropping mandatory 3 strikes schemes (e.g. UK and Germany, instead favouring voluntary agreement and private civil enforcement, respectively). US failed with ACTA to get multinational obligations for ISP cooperation and others like Australia and NZ continue developing their approaches. This inconsistency has market impact.

3) Sanctions: Suspending an end user internet connection challenges notions of internet access as a fundamental right, and is no longer the favoured sanction. Instead alternatives like traffic slowing or web blocking orders too (as in UK s97A CDPA) are becoming popular.

4) "New" intermediaries involved in managing copyright infringement - Search engines are now asked to block or downgrade searches for illicit content; payment intermediaries asked to block payment; and automated takedown mechanisms are used to remove content e.g. Youtube Content ID for libel.
These approaches generate numerous concerns around lack of transparency, due process and chilling effects on free speech.

5) Intermediary enforcement measures are increasingly a deterrent to concentrating on creating new legal offering markets, especially in markets other than key Western countries. Legal content access online is still highly variable.

3. Output:

1) N. Jondet researched the **HADOPI** French approach to graduated response presenting this work in *"The reform of the HADOPI and of the French graduated response after the Lecture Review"* (September 2013) **SLS Conference,** University of Edinburgh; and *"Disconnecting the HADOPI and the French graduated response?"* (April 2013) **BILETA** 2013, University of Liverpool
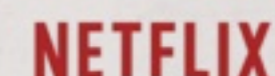
2) L. Edwards has ongoing doctrinal and policy work on graduated response and file sharing enforcement measures, focusing on the UK but also with international comparisons. Building on her 2011 WIPO Report **"The Role and Responsibility of Internet Intermediaries in the Field of Copyright and Related Rights"** she is currently writing a peer review journal and a chapter for "Law, Policy and Internet" (Hart 1st Ed) in this area.
Prof Edwards has given several papers on graduated response, reflecting on legal issues, economic costs, public perception and lack of effectiveness as challenges. This work was presented in *"Online Intermediaries as copyright cops: Is 'Three Strikes" Dying?"* (Nov 2012) **Knut S Selmer Memorial Lecture, Oslo;** and at the **Stanford Centre for Internet and Society, USA** on *"Third Strike for Three Strikes legislation? Internet Intermediaries as Tools of Copyright Enforcement"* (Nov 2013)

3) M. R. Blakely has considered alternative methods of enforcement, focusing on web blocking injunctions and UK s97A CDPA cases thus far for **Internet Policy Review** in *"Injunction Function: internet service providers and fair balance in web blocking"* (June 2014)

4. Challenges:
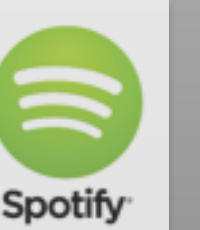
L. Edwards and N Jondet started to investigate connections between 1) availability of legal access to digital creative content (music, e, books, films etc) across the EU (focusing on UK and France initially) 2) the pricing models and 3) impact on unauthorised file sharing.

Initial results were presented in *"Mapping the Legal Offer for digital content: Desperately Seeking a Database Geek"* **CREATe Researchers Conference and Empirical Capacity Building Event**, University of Edinburgh (June 2013).

This has been **temporarily suspended** due to lack of access to data (held in private rights holder databases); issues of assumptions and comparability of different media.