

Adam Brazier
Communications and Content Industries
BIS
UG28-30
1 Victoria Street
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28/9/2009

Dear Adam Brazier,

Consultation on legislation to address illicit peer-to-peer file-sharing

Here is a brief response¹ from the Association for Learning Technology (ALT) in response to the consultation. BIS makes clear in the original 16/6/2009 “*Consultation on legislation to address illicit peer-to-peer file-sharing*” that the targets for the consultation are primarily ISPs and rights holders, with consumers, and consumer organisations also having an interest.

The rationale for ALT making a brief response is that:

- i) we understand the changing nature of the digital information environment;
- ii) we have individual, organisational, and sponsoring members who are rights holders, and who are (or who interact extensively with) consumers of digital content;
- iii) we represent a number of key innovators in the education industry who are developing applications and approaches use of which might be adversely affected by the implementation of the controls you propose.

We start with three background observations.

Firstly, a revolution is taking place in content delivery, creation, consumption, and manipulation; a large swathe of profitable, productive, new economic activity has been enabled by this revolution. For example, Apple’s hugely successful iPod would not have happened without extensive illicit P2P file-sharing enabled by companies such as Napster. By breaking the established business models of the music industry, Napster and its siblings created the basis for an extremely profitable, rewarding new way of consuming music and other digital content. This and similar developments are having a big and beneficial impact on education. Alongside this, revolution, the law on copyright remains largely unchanged, with the positive recommendations of the Gowers Report being acted on rather slowly².

Secondly, technical and legal measures to prevent illicit activity in the digital environment have a habit of being difficult or impossible to enforce, on account of the:

- talent and motivation of people in the “hacker” community;
- ubiquity and cultural normality of the breaches that are targeted;
- intrinsic difficulty of differentiating between illicit and lawful activity, and of allocating responsibility to individual users for either.

¹ This response was written by Seb Schmoller, with input from Steve Ryan, John Slater, and Haydn Blackey.

² Consolidated list of the Gowers report’s recommendations and an implementation timeline, <http://tinyurl.com/yxsjxco> (last accessed 27/9/2009).

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ALT Ambassadors*: Dame Wendy Hall DBE FREng FRS, Professor of Computer Science at the University of Southampton; Terry Mayes, Emeritus Professor at Glasgow Caledonian University; John Taylor, leader of the FE Self Regulation Implementation Team.

* Ambassadors provide informal advice to ALT on matters within their area of interest, and act as advocates for ALT.

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Thirdly, Internet access is increasingly a neutral and essential utility (on a par with water and electricity) that many citizens and their families need to lead fulfilled lives, and that businesses and other organisations need for them to function effectively.

Government needs to think in a joined up way when regulating, whilst avoiding falling into three discrete traps:

- i) criminalising ubiquitous behaviour that is seen as normal;
- ii) denying citizens the means to participate properly in society;
- iii) supporting current business models at the expense of as yet un-created future ones.

The 16/6/2009 proposals, were rooted in a conventional (and we think outdated) perspective on copyright in the digital age, rather than encouraging the exploitation of what Andrew Gowers called *“the swirl of creative and commercial opportunities unleashed by the world of social networks and web 2”*³. But they did not signal an appetite for a fierce crackdown in P2P file-sharing by individual citizens.

Unfortunately, the subsequently announced proposal to include suspension of accounts into the list of technical measures that could be imposed on the household of a repeat infringer seems to indicate a step-change of approach which in effect falls into traps i) and ii). (The consultation document’s comment that *“It would be important to ensure as far as possible that innocent people who may be affected by such technical measures would retain access to the Internet services they need, including online public services”* does not go far enough in recognising the essential role that the internet plays in the lives of “innocent people” for education, employment, training and citizenship.)

Just as Napster broke established business models for the better, so other “game-changing” innovations – at the boundary between the lawful and the illicit – and upon which the success of a Digital Britain will in part depend, will undoubtedly occur in the future.

The regulatory framework should run with the grain of this fact, rather than against it; and if changes are needed they should take place after the recommendations of the Gowers Report on changes in the overall copyright environment, including those relating to educational use and reuse of digital content⁴ have been acted on. For these reasons, and because we believe that the new proposal also falls into traps i) and ii) above, we urge the Government to think again. As Andrew Gowers argued in relation to last year’s proposals on copyright extension *“You are debating how government can support business in these challenging times, and that is fine. But you would do well to pick the targets for assistance and the instruments you use with care.”*⁵



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³ Andrew Gowers, Financial Times, 14/12/2008, <http://tinyurl.com/ybzd3vj> (last accessed 25/9/2009).

⁴ ALT’s April 2008 response to the UKIPO consultation on changes to the copyright exceptions, <http://tinyurl.com/ydboeyx> (last accessed 27/9/2009).

⁵ See Andrew Gowers, footnote 3.