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**ISP Cooperation: Practical and Political Considerations
in Europe**

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A. Practical considerations

Music fans are not convinced yet to pay for music online but are posting and downloading millions of songs every day mainly via P2P networks. This “sharing activity” is using up to 70% of their DSL-provider’s bandwidth and leads to the effect that for 1 music file legally bought there are 20 illegally downloaded (in Germany mainly due to massive cease and desist action only 8).

Consequently, less and less revenues are generated for any creative individual and the creative industry in general – income that could be invested in new talents – Creativity is loosing.

Depending on the respective legal framework in the EU member states rightowners are left with the option of litigation against ISPs for disclosure of their customers’ details in order to start (criminal/civil) actions against such infringers.

The introduction of a graduated response model according to which ISPs or third party bodies would send 2 warnings to infringers would lead to **win-win situation** for all parties involved:

- Music fans would not be subject to litigation anymore (except the heavy infringers)
- Parents would know that their children would be given 2 chances before sanctions apply
- ISPs would not be subject to litigation anymore and their bandwidth would not be blocked by such illegal activities but free for legal services which could generate money for them
- Right owners could rely on a fast and deterrent warning system
- Governments could lessen the administrative burden for courts and authorities involved in litigation

Such a model would not replace but complement legal actions.

B. Political considerations

Experience in France and the UK has shown that such graduated response schemes are only introduced by ISPs if the local government urges them to do so.

Such **governmental support** is starting to take off in European member states and outside the EU as well. Germany – the biggest European economy – does not join those approaches taken by other countries.

Governments are worried about data protection of DSL subscribers and are joined herein by local ISPs. Taking into account the most recent Telefónica and Tele2 decisions rendered by the European Court of Justice governments should carefully **balance the interest in data protection versus the rightowners’ interest in protection of their property**.

Governments are also worried about the scope of **sanctions against repeated infringers**. The German government indicated that suspension of Internet access would not be an option at all. Consumer surveys in various EU member states suggest that warnings sent to infringers without any announcement of a sanction would not have the **deterrent effect** a graduated response model would benefit from. Such an approach would undermine its above listed win-win effect.