

*ISP Participation in Enforcement Efforts
-The experience from Singapore and Asia*

OUTLINE

Intermediaries in Copyright have been presented with their own specific and unique challenges. Internet Service Providers (ISPs) have been either cajoled or coerced into the copyright enforcement effort. They have been held to varying levels of co-operation and compliance. 10 years on from the time when ISP liability was enhanced and limited (NII White Paper, WIPO Treaties, DMCA, FTAs) it is timely and opportune to evaluate the extent to which 'safe harbours' have really given ISPs impetus to co-operate with the enforcement effort. Did we go too far with conferring ISPs relief from infringement, under certain prescribed conditions? In this day and age, do safe harbours lead to a satisfactory and sustainable increase in the number of 'take down' notices?

ISPs continue to face challenges with copyright enforcement and their reliance on liability shields erected in legislation. Stakeholders who function and operate in the world of internet dissemination and communication, inevitably come into contact with ISPs. These intermediaries provide connections for communication. Some provide access to the web through local 'servers', and run websites for others to post information, not to mention those who provide internet access via Internet cafes. The policing of rights for copyright-infringing material that passes through these connections obviously gives rise to primary or secondary liability for these intermediaries. The initial fashionable dialogue on this subject was to suggest that the difficulties with rights-holders policing their own rights in the virtual world were so great that some of these services providers should incur liability where infringing material was found on sites that they controlled. The extended argument was that these intermediaries were in a best position to supervise and inspect their 'cyber-premises', and like the owner of a place of entertainment, should be liable for infringements which occurred in their 'premises'.

This paper provides an update of the copyright treatment of ISPs, from the viewpoint of expediting or lending assistance to the enforcement effort in Singapore and several other countries. Recent legal developments have seen a move back to traditional pre-action remedies, and discovery efforts that are used to obtain subscriber information. Is there a plurality of approaches apropos ISPs between Singapore and other countries in Asia, eg. Malaysia, Thailand, China, Hong Kong, Vietnam and Indonesia.

Are we ultimately satisfied that the DMCA formula, which has found its way into many jurisdictions through the bilateral edicts of Free Trade Agreements or multilateral harmonization, has perhaps contributed to an ethos for easy enforcement and information gathering through ISPs?

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April 2009