




Creative Freedom Foundation Newsletter, 11 June 2009

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S92A Returns: the Government Review and Timeline

 When [s92A was scrapped](#) it was always said that it would be reviewed and that it was coming back. At the time Hon Simon Power said *"While the government remains intent on tackling this problem, the legislation itself needs to be re-examined and reworked to address concerns held by stakeholders and the government. The government will begin a review to amend the section immediately to address areas of concern."*


The CFF have now found out that the government has formed a special Working Group of intellectual property and internet law experts and will be working with them to develop a set of proposals/questions around s92A.

The CFF has recently been asked to join a targeted group stakeholders who will provide input on the proposals/questions, and we intend to do so to **ensure that your views are taken into consideration** and the replacement s92 isn't just as bad, or worse than its predecessor.

From our conversations with the government it's fairly clear that they're trying to make s92A work. They want to build upon the TCF code and just fill in the blanks, which will hopefully include due process. The working group are not currently guided to consider s92C, nor whether internet disconnection is appropriate alternative to fines.

We'll keep you updated on progress, but in the meantime you can read and have your say on the government's s92A Review Process and Timeline [here >](#)

Concerns with Internet Disconnection

 Although we are remaining optimistic about the s92A review process, there are some causes for concern – particularly the apparent insistence that the punishment for copyright infringement online remains termination of internet accounts.

From where we sit, internet disconnection remains a disproportionate sanction that is increasingly viewed as unfair. The internet is becoming more pervasive with vital services moving online such as parts of government, health care (records, scheduling) and basic social interaction tools (newspapers,

phone, email). Instead, we recommend fines or royalty payments. This would allow scaled, appropriate and robust sanctions.

Internet disconnection is a 'one-size-fits all' punishment that is increasingly viewed as unfair with the internet becoming more pervasive and services moving online. It may unfairly hinder people's ability to pay bills, operate their business, access banking, education, insurance, communication tools, do their job, etc.

There is significant potential for innocent people to be punished:

- 25% of computers are infected with viruses that download, store, and distribute potentially infringing information without their owner's knowledge¹.
- Many people may be punished for the actions of one and identifying the individual is currently impractical for technical reasons.

These are a few examples of the impracticality of accurate targeting. Providers of shared connections such as a large business, library, school, government department, internet cafe or hotel, may be punished for the actions of their employees, customers or even infected computers.

French 'Guilt Upon Accusation' Law is Dead (for real this time)



In breaking news, The Open Rights Group report that the French HADOPI law is dead, saying that the French Constitutional Council: "decided that presumption of innocence is more important [...] All sanctioning power (ie. disconnecting internet users) has been removed".

Mike Masnich at [Techdirt reports](#) that the Council "has gutted the law, after finding significant constitutional problems with it. The Council specifically barred the heart of the law: the cutting people off the internet part, noting: 'communication and liberty of expression are fundamental rights that only a judge can rule on.'" This statement echoes the findings of [a recent UK government report](#) that found that 73% of UK consumers now believe that "broadband is becoming as essential a utility as electricity or water."

The CFF consider Internet disconnection an inappropriate sanction. Due to New Zealand's geographical isolation the internet is a vital tool for connecting to the rest of the world, and is also becoming more pervasive with vital services moving online such as parts of government, health care (records, scheduling) and social interaction tools (newspapers, phone, email, social networks). Disconnection may hinder people's ability to pay bills, operate their business or do their job, access banking, education, insurance, etc. Due to this the internet is already a necessary service like other utilities such as the phone and postal systems. In future years with increasing internet use disconnection will be seen as a shortsighted and increasingly unfair penalty.

As [we are once again](#) facing the possibility of Internet disconnection as the government's chosen punishment for infringement, the CFF strongly recommend that the inventive penalty of internet disconnection be ruled out.

More news about [the decision also at ArsTechnica](#).

Call for submissions on ACTA



Hon Simon Power has called for submissions on ACTA saying that the negotiations are now focusing on "enforcement issues in the digital environment".

Our [last newsletter](#) contained an update on the Anti-Counterfeiting Trade Agreement (ACTA) that the New Zealand government is currently negotiating with a number of international countries. Leaked reports indicate that ACTA may force Internet Service Providers to reveal your private information if you are *accused* of copyright infringement. This is comparable to forcing Telecom to reveal information on who you talk to based on nothing more than an accusation, without a warrant and without court approval or oversight. This is an unprecedented breach of privacy and due-process and it's being proposed in the name of protecting artists.

New Zealand's [Mark Harris has been following ACTA](#) for some time now, calling for greater

¹ OECD Report "Malicious Software (malware): a Security Threat to the Internet Economy" (2008)

transparency and for the Ministry of Economic Development to clarify their stance considering that [ACTA drafts have been leaked](#) online. One possibility of ACTA is that it may allow private companies to snoop on New Zealander's internet connections based only on accusations of copyright infringement, and for border officers to search laptops and iPods for files.

[Digital Village.com recently did an interview](#) with EFF's Eddan Katz about ACTA: [part 1 \(mp3\)](#), [part 2 \(mp3\)](#). You can read more about ACTA [here](#), read over [the previous New Zealand submissions](#), and have your say. The closing date for submissions is **Monday 29 June 2009**.

ADA Symposium 2009 in Wellington



Taking place in Wellington from June 26-28 2009, the 6th Aotearoa Digital Arts Symposium: *Critical-Digital-Matter* is shaping up to be a great weekend.

This year, the symposium sets out to examine the critical intersections between digital materials and art practice. Issues will be explored through keynote presentations, discussions, artist presentations, workshops, a screening programme, and an exhibition.

The symposium will feature a keynote presentation by internationally renowned sound and intermedia artist **Phil Dadson**, and a remote conversation with London-based media theorist **Matthew Fuller** via De Balie, the centre for Culture and Politics in Amsterdam. CFF will also facilitate a workshop on Copyright and NZ Artists.

The Aotearoa Digital Arts Trust, invites artists, researchers, curators, art enthusiasts and all those interested in critical digital material practice from Wellington and around New Zealand to participate.

Cost: \$50 (waged), \$30 (unwaged) - includes Enjoy opening, screening, and the 'ADA free lunch'.

For registration and more information email symposium@aotearoadigitalarts.org.nz or visit <http://symposium09.aotearoadigitalarts.org.nz/>

Downfall Movie Remixed into Social Commentary



Wired Magazine says that Downfall, "a critically praised but little-seen movie about the last days of Adolf Hitler is getting a new lease on life online as the basis for hundreds of satirical videos".

By simply remixing the video with new subtitles people are commenting on [Copyright Takedowns](#), on [Susan Boyle fans](#), and [Nigerian email scams](#) to name just a few. Just search Youtube for [downfall hitler](#) and you'll find many more. With no New Zealand protection for [parody and satire](#) remixes, however, we sadly would risk copyright infringement claims by participating in this commentary.

See also:

<http://www.boingboing.net/2009/05/28/eff-chairman-makes-a.html>
<http://www.wired.com/underwire/2008/05/adolf-hitler-is/>

Thanks, from the Creative Freedom Foundation team
<http://creativecommons.org.nz>