



Creative Freedom Foundation Newsletter, 4 August 2009

In this issue:

- **s92A Submissions Due This Week**
- **Julian Dashper, 1960-2009**
- **Stephen Fry's Eloquent Defence of the Arts against Extremist Copyright**
- **UK Music Industry's Own Economist Says Revenue Up 4.7%**
- **Chinese Digital Community Open For Remix**
- **Associated Press Buys Snake Oil: DRM for News**

Find us on: [RSS](#) | [Myspace](#) | [Facebook](#) | [Twitter](#)

s92A Submissions Due This Week

 Last month the Ministry of Economic Development released their Section 92A [Review Policy Proposal Document](#) for public comment. **Submissions are due at the end of this week: 5pm, Friday 7 August and should be sent to copyrightact@med.govt.nz**

This is a quick reminder that submissions on the MED's s92A Review Policy Proposal Document are due in a couple of days time. We encourage anyone who is concerned with elements of the proposal to make a submission as well. The main issues, as we see it:

- 1 **Supporting the Copyright Tribunal for Due Process:** While earlier versions of s92A called on untrained ISPs to determine copyright infringement and amounted to little more than guilt upon accusation the new proposal is significantly better and includes the suggestion of a Copyright Tribunal, affording for due process and for independent experts to decide. We believe the Copyright Tribunal should be strongly supported.
- 2 **Internet Termination a Completely Inappropriate Penalty:** Once proven by experts then reasonable fines are an appropriate sanction, however the non-targeted punishment of internet termination is disproportionate and in coming years will be seen as increasingly unfair with more essential services online. [The UK have said it well](#) "We currently have no intention of legislating to terminate the accounts of persistent copyright offenders [...] We don't consider this to be a proportionate response, especially given the importance of internet access in today's society, where many services including banking, health and education are increasingly delivered online. Disconnection is even less fair in situations where a number of people in a household may share one broadband account." Simply put, internet termination isn't very futuristic.
- 3 **Scope of an ISP:** A clarification of some terms is needed, particularly that of "ISP". Last years changes saw the definition of an ISP to be practically anyone with a shared connection or website. ISPs now include businesses, schools, libraries, government departments and they may currently face significant risk and business compliance costs. The consultation process could benefit significantly from a clear understanding of the intended scope.
- 4 **Overlap with section 92C:** As it was with earlier versions of s92A the proposition in s92C is

that an ISP can be an effective judge of copyright infringement, an expedient replacement for due process, and that only guilty people will be accused. We recommend that any s92C disputes are able to be taken to the Copyright Tribunal, and that the s92A and s92C provisions be properly harmonised.

- 5 **Process for Uncontactable Subscribers:** Cases may arise whereby an subscriber is unable to be contacted (eg. internet cafe, organisations that can't target individuals). The consultation process would benefit from guidance around the obligations when a subscriber is uncontactable.
- 6 **Sanctions for Abuse:** Penalties for inappropriate use of the system.

Read more at <http://creativecommons.org.nz/story.html?id=347>

Julian Dashper, 1960-2009

Alongside many others, the Creative Freedom Foundation is today mourning the loss of Julian Dashper, great New Zealand artist. Reflecting on Dashper, it seemed appropriate to revisit an essay I wrote a few years ago about his work. Dashper was extraordinarily talented and clever, and made a number of marvelously critical works that would not sit out of place with our current discussions around art, ownership, appropriation/remixing, originality, reproduction, and advertising. [Read more about Julian here.](#)

Stephen Fry's Eloquent Defence of the Arts against Extremist Copyright

In this mp3 Stephen Fry [discusses the history of creativity and the dark future ahead](#), saying that "It seemed to me very appropriate share with you some questions I have, some deep questions about the way the way the world is going in terms of music but also film and television and the creative arts. Now, I hope I'm not - I hope - going to be too dull, but I'll obviously be very dull for those of you who don't want me to talk about this subject so I'd advise you to fondle the thighs of your neighbour as I speak."

UK Music Industry's Own Economist Says Revenue Up 4.7%

[Zeropaid reports](#) that "Record labels and others in the music industry frequently lament that they can no longer make money, that piracy and illegal file-sharing has all but made their industry extinct, or so they would have you believe. So when Will Page, the Chief Economist for PRS for Music, a UK-based royalty collecting group for music writers, composers, and publishers, publishes a study concluding total music industry revenues are up 4.7% since 2007 it corroborates what many studies have shown, that P2P actually increases music consumption [...] The music industry is growing increasingly diverse as music fans enjoy a wide range of platforms to hear and consume music. Sales of recorded music fell 6% for example, digital was up 50% while physical dropped 10%, but concert ticket sales grew by 13%"

Legal Media Streaming The Future?

And a [BBC news report](#) says that "statistically reliable surveys show a continuing desire for music among young people, despite the obvious interests and attractions of gaming and other activities. They also show that teenagers are aware of and able to take advantage of legal services when they are available. [...] behind the shift to licensed music services there is another change that should give the music industry pause: young people seem happy to stream their music, relying on access to the network to ensure they can get the songs they want, when they want it. While my generation was stuck on owning music on vinyl or CD, today's young listeners seem not even to feel the pressure to have a local copy of the file."

"This should not surprise us, since the only reason that we all started to use file sharing and other unlicensed ways of getting music was because the services that the record companies provided were unwieldy, expensive, limited and intrusive. They were riddled with absurd and inconvenient copy protection measures like the software that Sony-BMG put on music CDs in 2005, which secretly installed itself on users' computers"

The reporter is perhaps being too forgiving to [Sony after they hacked home computers and left them vulnerable to viruses](#) but it's a good summary of where music is heading and how people aren't trying to break the law - it's just about getting music when and where they want it.

Chinese Digital Community Open For Remix

[Chinese Digital Community](#) launched today with historical and contemporary information, articles, images, audio, video, documents all remixable under the Creative Commons. [Paul Reynolds says that](#) "from the outset the project wanted to create rich new stores of family and community memory, and then build pathways which would connect these to repositories of public knowledge and heritage sources that linked to, or expanded the reach of the community or family memory."

In related news is Brett Gaylor's recent documentary [RiP: A remix manifesto](#) which screened in this year's [New Zealand International Film Festival](#). From the NZFF website: "Brett Gaylor has made an admiring portrait of his favourite recording artist *Girl Talk* (Greg Gillis), but also raises some fascinating questions about sampling culture and copyright laws. Audio bricoleur Gillis is a fearless musical magpie, with a whizz-bang knack for snatching the best snippets of the daggiest songs (think *Gloria Estefan*, *Journey* and *Whitesnake*) and recontextualising them into sparkling new tracks to create a bastard pop known as mashup. While these spunky sound collages are thrillingly inventive, copyright laws determine that tracks made from pilfered works (Gillis crams uncleared samples from 21 songs into a three-minute track) are utterly illegal. As the *NY Times Magazine* stated, Gillis is 'a lawsuit waiting to happen'. Joyously celebrating remix culture, Gaylor and Gillis articulately argue that the line between inspiration and infringement for a media-literate generation is being increasingly blurred, and that reshaping existing creative works for 'fair use' should be free from copyright restriction."

You can watch the film in chapters [online](#), buy and download the film (legally!) from [iTunes](#).

Associated Press Buys Snake Oil: DRM for News

Associated Press made waves last year with it's plan to charge \$12.50 for 5-25 word quotes from news articles. Now more details about AP's plans for the web have emerged and it looks like they're foolishly heading down the route of [Digital Restrictions Management](#). DRM imposes arbitrary restrictions and bypassing DRM is a criminal offense in New Zealand. Not only does [DRM fail at its task for fundamental reasons](#) but - like all snake oil - those selling it mislead naive people about its effectiveness. Associated Press have a clear misunderstanding about the technology they've chosen (it can't do what the diagram says) and Arstechnica comments that "You'll be forgiven if you find it difficult to square the reality of [the technology] with the AP's pronouncements about it." and "AP posted a diagram of the system, which only adds to the confusion—your satisfaction with the diagram will be inversely proportional to your knowledge of the technology".

Earlier this year Scoop had [a press release from the World Association of Newspapers about ACAP](#), the Automated Content Access Protocol which is a DRM-scheme for newspapers. [ACAP](#) builds upon [an existing technique](#) while also defining the amount of text that can be quoted, whether to quote or display the entire site in a scrollable box, and even what colour and font to display quotes in (?!). DRM removes legitimate access to copyrighted material that would be allowable under New Zealand's [Fair Dealing](#) provisions, and Arstechnica comments that if AP believe that "hNews" or any technology can do half of the things they believe they're sadly mistaken. Arstechnica comment,

hNews looks like a nice way to mark up news, to make it visible to search engines, and to provide useful metadata for those who want to do interesting things with the content. But what it has to do with "wrappers," "enforcement," and "protection" is unclear. Reading the AP announcement and the graphic that accompanied it, one is struck by the thought that perhaps the AP has been snookered into believing that it's getting "DRM for news," when in reality it's simply using an open-source news

words	Fees
5-25	\$ 12.50
26-50	\$ 17.50
51-100	\$ 25.00
101-250	\$ 50.00
251 and up	\$ 100.00



FAMOUS EXCUSES

"No one told me copying and distributing clips is illegal."

There's no excuse for using copyrighted news clips without permission. It can cost your firm \$300,000.

metadata markup language with Creative Commons rights expression.

Down the road, of course, the AP might go to Congress and ask that whatever tracking and rights system it settles on be given the force of law. It's not as crazy as it sounds; European publishers already hope to get a law enforcing the Automated Content Access Protocol.

It's likely that this debate will soon come to New Zealand. Read more at <http://tinyurl.com/n4zsue>

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

Find us on: [RSS](#) | [Myspace](#) | [Facebook](#) | [Twitter](#)