A CIBER Executive Summary for the Strategic Advisory Board for Intellectual Property Policy

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COPYCATS?

Digital Consumers in the Online Age

UCL

SABIP STRATEGIC ADVISORY BOARD FOR INTELLECTUAL PROPERTY POLICY

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EXECUTIVE SUMMARY

About this report

The CIBER report *Copycats? Digital Consumers in the Online Age* (of which this is an executive summary for SABIP workshops attendees on May 1, 2009) evaluates digital consumer behaviour and attitudes and their implications for intellectual property policy. Commissioned by SABIP, it aims to provide a robust evidence base to help guide policy makers in this strategic area.

The report has two further objectives:

- To inform a SABIP workshop at which a selected group of attendees with a direct interest in the issue will consider the implications of consumer behaviour on IP and make recommendations for further areas of SABIP research;
- To highlight any further SABIP research that is required to ensure that all agencies of Government have the fullest understanding of the issues.

Copycats? Digital Consumers in the Online Age is thus a preliminary piece of research; it is unique in three respects:

- It represents an independent, systematic and evidence-based approach to the subject;
- It analyses a wide range of research across academic disciplines and content industries, and it includes some new case study material;
- It covers the most recent developments, up to April 2009, a fact that is critical in this fast-changing environment.

The research was conducted by means of:

- A comprehensive and systematic review of the internationally published research literature, which filtered and rated research by its validity and robustness;
- Selected interviews with major stakeholders, regulatory bodies and industry experts;
- An in-depth media analysis, which provided the essential currency and identified future trends conducted during the period January to April 2009;
- An empirical exploration of the phenomenon of online downloading, sharing and the re-using of content: we went online and found out just how easy it is to "file share" on the Internet – in a multitude of ways.

More than four hundred reports and papers were identified and evaluated from the thousands published for the quality of their data, eight people were interviewed, and the media analysis took place over the period January to April 2009.

The background

The backdrop to our research on online consumer behaviour – and the impacts and implications this has on legal practice, the content industries, and governmental policy – is one of vast economic losses brought about by widespread unauthorised downloading and a huge confusion about (or denial of) the definition of what is and what is not legal and copyright protected. Industry reports suggest that at least seven million British citizens have downloaded unauthorised content, many on a regular basis, and many also without ethical consideration. Estimates as to the overall lost revenues if we include all creative industries whose products can be copied digitally, or counterfeited, reach £10 billion (IP Rights, 2004), conservatively, as our figure is from 2004, and a loss of 4,000 jobs. This is in the context of the "Creative Industries" providing around 8% of British GDP. And the situation is not solely a British problem, but a global one. Downloading culture, says Altschuller, (2009) "has forced society into a muddle of uncertainty with how to incorporate it into existing social and legal structures" and that "…music downloading has become part and parcel of the social fabric of our society despite its illegal status."

This is not simply an issue of music and film downloads alone. Software losses were, for example, $48 billion worldwide in 2007 (BSA, 2007); and in the UK the figure was approximately £1.25 billion. Indeed an exploratory CIBER investigation found vast quantities of films, music, software, e-books, games and television content available to download and share without cost. On one peer-to-peer network we found that at midday on a weekday there were 1.3 million users, sharing content. If each "peer" from this network (not the largest) downloaded one file per day the resulting number of downloads (music, film, television, e-books, software and games were all available) would be 4.73 billion items per year. If the figure for each individual is closer to five or more items per day, the lowest estimate of downloaded material (remembering that the entire season of the Fox television series "24", or the "complete" works of the rock group Led Zeppelin can be *one* file) is just under 24 billion files. And if the average value of each file is £5 – that is a rough low average of the price of a DVD or CD, rather than the higher prices of software or e-books – we have the online members of one file sharing network consuming approximately £120 billion in content annually – for free. These figures are staggering.

The new generation of broadband access at 50mbs can deliver 200 mp3 music files in five minutes, the unauthorised DVD of "Star Wars" in three minutes, and the complete digitized works of Charles Dickens in less than ten. That is to say these items can be downloaded to consume, or uploaded for sharing. The problem is big: but neither research nor industry reports as yet have helped us to understand quite how big, as the data above illustrate. One thing is sure: in the future consumer electronics technologies are only going to get faster, have larger storage capacities, and develop more ways to access vast amounts of content from any place with a connection, fixed or wireless, at home, work, or on the move. In each of these evolutions the ability to up and download, share and copy unauthorised materials becomes increasingly easy. With cheap data storage now so prevalent we ask: are we witnessing the "death of the back catalogue"? Will it soon be commonplace to own the "canon" of music, literature and film on a few domestic hard drives, or indeed high-capacity portable devices? Or will nobody bother because the content is always "out there" somewhere to be downloaded for free when required? In either case what does this mean for business, intellectual property, and all types of creative industry?

Much of the academic and industry literature covered, even the most recent, considers the issue of illegal downloading as a behavioural and attitudinal problem of young people,

especially students. We have considered this evidence – often based on sample research groups comprising a few hundred students at a particular university – as helpful but narrow and historical. The downloading of unauthorised music and film files, to name but two types of digital content, has not decreased over the past five years, and indeed it has grown in many places. It is questionable whether all the activity of unauthorised downloading is undertaken by young people and students alone, because we have seen very little evidence about the broader base of digital consumers of all ages in relation to attitudes, behaviour and issues of intellectual property; and almost none about post-University consumers of unauthorised materials. Did all of the students studied in research about illegal software downloading in the 1980s stop their illegal behaviour? More importantly: who are the almost seven million UK citizens (Music Alley, 2008) that download unauthorised content? For the year 2007/08 there were approximately 2.3 million students in higher education, and 175,000 academic staff (HESA, 2009). Who are the others? Are they *all* school children?

After "Digital Britain", a second major consideration was the frame of the research. Our initial remit did not cover it, but we quickly became aware of the importance of the behaviour and attitudes (and implications for IP) of digital consumers in non-Internet environments, most significantly when using mobile communications, digital television, portable consumption devices, and (sharing offline) data storage products with vast capacity – such as a terabyte hard drive that can hold 200,000 MP3 files, or approximately 20,000 DVD films. From the research to date we believe strongly that these myriad processes of "digital convergence" will also shape future behaviour and attitude towards IP.

Key CIBER findings

The world of digital consumer is an environment, indeed a series of 'eco-systems' subject to rapid change; change that means many predictions about the future of the Internet and "digital convergence" (and how these are 'consumed') made even two, and certainly five and ten years ago seem quaintly dated – a fact that should be held in mind as predictions are made for the future of not just "Digital Britain", but also the "Digital World".

Within ten years we have seen the widespread domestic use of high-speed broadband and multi-channel (and often High Definition) digital television with the facility to time-shift, copy and view programmes on other devices, and to upload these files to websites such as YouTube; the arrival of wi-fi in the high-street, the library, the office, university and the home; the rapid expansion of "open source" and "Creative Commons" publishing; at least four iterations of "file sharing" technologies; the birth of mainstream blogging as a broad social phenomenon; the arrival of "social media" as a significant medium of authorship, sharing, and communication; the shift by the younger digital consumer towards the mobile phone as not just an aural communication tool, but also a medium for text messaging, music and video consumption, and as a gateway to post messages, photographs and other types of content to social media websites. Most recently the large expansion in use of "micro-blogging" – to websites such as the text based Twitter and the image based Tumblr – has once again surprised many who suspected these services were a "fad". Finally, the recent successful launch of the BBC's authorised programme-streaming service, iPlayer (41 million downloads in December 2008; eight million in Christmas week (Guardian, 2009), and the music streaming service, Spotify (one million users signed-up within one month (Media Week, 2009) – which makes available around 15 million songs, either without payment but with aural advertising or without advertising for £9.99 a month – has demonstrated that new forms of business model may be possible in the world of "free things". Unsurprisingly, the literature review we undertook does not grasp the enormity and the speed of these changes.

Each impacts centrally on intellectual property.

The challenge for IP policy makers is to judge and, where possible, measure the changing social behaviours and attitudes brought about by the myriad and rapidly evolving technologies and networks of the digital revolution, and map this against their economic, political and social objectives. We believe this cannot yet be achieved, as the conditions being established by the Internet, "digital convergence" and the imminent "Digital Britain" are not fully understood.

To consider, for example, the economic arguments, as Picard & Toivonen state in *Issues in Assessment of the Economic Impact of Copyright* (2004).

> *"From the economic standpoint, the objective of policy makers is to achieve the optimal point at which the maximum amount of wealth is created by copyright. The challenge is that optimal conditions are contingent on and a function of a number of changing social conditions, therefore no stable point of optimal copyright policies can be identified and maintained."*

We believe that this initial report will raise many questions about how new forms of research can be established to seek the "optimal conditions" for copyright, business, government, and the digital consumer – copycat or not – as the world becomes increasingly digital. The fundamental question is not how or why the downloading, copying and dissemination of unauthorised content takes place (our report seeks to answer those questions) but *who* does it, (and therefore, who *doesn't)*, and can this behaviour be changed? And if it cannot be 'changed' what *does* need to change: the law, the business models, or the relationship between the creative industries and the public domain?

When we began our research many of these issues were important. In the subsequent three months many of them have become mainstream media and governmental concerns and priorities. Our research has attempted to synthesize relevant academic materials (though many of these describe a digital world that for many is fast receding) and pertinent media analysis. Ultimately, the best insights into this area came from empirical evidence: looking at what content is out there, discovering how easy it is to download and copy, and wondering just how widespread is the practice of unauthorised downloading and sharing.

Throughout this report we offer CIBER confidence ratings in our findings according to the weight of the evidence that we have assessed. Our ratings range from 1 (little evidence or unfounded speculation) to 5 (a very strong, almost incontrovertible, evidence base).

The scale of the `problem' is huge and growing
CIBER confidence rating: ★★★★
Strong, but not conclusive evidence: there are many unknowns about the figures

In April 2009 – now - we can state that between 44 and 79 per cent of global Internet traffic is taken up with file sharing, the lower figure is for America, the higher for the region, "Eastern Europe" – though we have found no way of measuring how much of this traffic is the up or downloading of unauthorised, unlicensed or illegal material. Sixteen percent of UK online consumers are said to regularly "file share", and whilst the figure is said to have remained "flat" in the recent past, various studies concede that the figures could be much higher. Academic research (Zentner, 2006) suggests that those who "file share" are at least 30% less likely to purchase music in addition. The IFPI (2009) estimates that there were 890 million unauthorized

music downloads in the UK in 2007 through file-sharing, in contrast to 140 million paid-for downloads: this is ratio of 6:1, and does not take into account any subsequent off-line sharing using disk burning or hard-drive transfers (or "file shifting").

There are strong signs that some of this Internet-based but non-Web traffic may be migrating to the World Wide Web, where online "data warehouses" hold huge amounts of copyrighted material that can be accessed for free via a URL link from a website, and indeed, as we discovered, also from new search engines which explore only the contents of a data warehouse, e.g. www.RapidSearch.com. One data warehouse, Rapidshare, is the 15th most accessed website in the world; another, Megaupload is 87th. Although published figures put the state of the UK's unauthorised downloading community at 6.7 million (2008) and upwards, none that we have seen break out these figures in terms of web-based and P2P-based file sharing.

The UK film industry told us in interview that there were just under 100 million illegal downloads of DVDs in 2007, and globally the film industry is said to lose around $6 billion (or just over £4 billion) per year, and some research (Henning-Thurau et al., 2007) appears to demonstrate evidence that consumers' intention to pirate movies "cause them to forego theatre visits and legal DVD rentals and/or purchases."

> *"Technology,"* states the University of Hertfordshire/BMR "Music Experience and Behaviour" report of 2008, *"has made the entire global music catalogue available for them [today's youth] to test, try out, and own. They can copy thousands of music tracks and share them with others, around the world, with virtually no loss of quality, almost instantly, without parting with any of their own music. And they can do all this…for free."* (University of Hertfordshire/BMR (2008).

We would add here that evidentially the same is also increasingly true for film, television, photography, writing, software and computer games – indeed any "core copyright" industry. A cursory exploration of the Internet will find all these things, and more.

There are myriad choices when consuming content and consumers are confused about what is legal and not legal
CIBER confidence rating: ★★★★★
Very strong evidence

It is not simply that the Internet is a realm of information overload; it is also a medium of many consumption methods. This leads to high levels of consumer confusion, and also provides a vibrant source for excuses. Consumers can buy online using legal e-commerce sites; they can also gain access and download many types of content without paying using a variety of sources. They can download digital files, stream them, share them, upload them to "digital lockers", use P2P to up- and down-load, "rent" them, copy them to external drives and share them, "record" them in real time, and – using free "widgets" and/or applications – they can do most of the above on their mobile phone, or their Facebook page. And that is now.

The academic literature explores the consumer "excuses" for many of these behaviours at length. We found the ideas of 'neutralisation theory' (e.g. Ingram and Hinduja, 2008) – one of several methodologies for rationalising unauthorised behaviour – a useful, but far from conclusive approach to creating a profile of the digital consumer. Neutralisation theory suggests four means by which people justify and rationalise their actions. These are:

Denial of responsibility: where factors apparently beyond an individual's control come into play – such as an urgent need for a piece of software, for example.

Denial of injury or victim: where no one suffers as a result of one's actions.

Condemning the condemners: assuming that those who criticize a behaviour engage in their own kinds of unauthorised activities or somehow deserve any injury – such as loss of earnings.

Appeal to higher loyalties: such as obtaining unauthorised material in order to help a family member.

There are also *de-individuation* theories (see e.g. Shang et al, 2008) that inform the issue of unauthorised downloading. 'De-individuation theories' suggest that individuals avoid responsibility for their actions because they are longer aware of their own identity or 'self', or that of others when online. These kinds of behaviour include the ideas of being 'anonymous' online and of being totally immersed in a social network and thus excluded from the social 'norms' of the wider environment. There are parallels in the research on consumer behaviour inside large shopping malls.

None of these justifications explained the sheer volume of unauthorised materials that are being shared; leading us to consider the idea that unauthorised downloading has become a simple reflex for some digital consumers.

The complexity of methods by which digital consumers can access content is heightened by the likelihood that Internet Service Providers will shortly become part of what is called "Network Led Services". That is IPSs will link network access to some kind of broader consumer package that includes content. In this scenario, as with Sky Television, access to the medium comes with various levels of "value added" content such as "free downloads", "free telephony", or even subscription services. Such services will be or are also available on third and fourth generation mobile phones. In each case the downloading of one authorised file makes possible the sharing of an infinite number.

To the digital consumer the economic "message" of "Internet choice" is either confusing or a growingly accepted norm[i]. Users of Google can, for example, sign up for an email account that brings with it access to a variety of "free" and legal services that historically would have a cost attached: blogging software, Google Earth, Google Books, Google Maps, Google Scholar, word processing, and data storage have all at some time been products with a financial implication. Similarly, many hundreds of millions use "free" social networking sites to communicate, share and create. Digital consumers can use Internet telephony without charge, where once phone calls – particularly international calls – had a high cost. They can also download software, often without cost. These are just a tiny example of the "free things" that populate the Internet. The vast availability of "free content" changes existing perceptions of "ownership" and utility. One of the great concerns of industry from these perceptions is the ease with which digital content can be de-coupled by digital consumers from its original platform (and the advertising that supports it) and from its real-world revenue stream. Perhaps a Rights Agency will help in this area.

However, we would argue from the empirical evidence, that when the digital consumer also gains access to all types of unauthorised digital content through file sharing mechanisms of various kinds to use in any number of ways, they are doing so within an environment where the

idea of choosing "free" is confusingly commonplace. This changes not only perceptions about "ownership" and "sharing" but – perhaps most crucially – "value".

A recent survey (Human Capital (2009) suggests that with digital consumers aged between 15-24 "70% do not feel guilt about downloading music for free from the Internet." That: "61% of the age group do not feel they should have to pay for the music they listen to. This is more marked amongst the 15-19 year olds, of whom 69% do not feel they should have to pay." And that finally: "On average 43% of the music owned and enjoyed by the age group has not been paid for. This increases to 49% for 15-19 year-olds."

We have not seen research that considers older people and asks these same questions.

Attitudes and behaviours towards property in the online and physical worlds are very different
CIBER confidence rating: ★★★★★
Very strong evidence

Technology has changed the way consumers access all kinds of information and content: how and where they buy it, how they use it, and what they do with it. In this new environment web-based search is central to the user experience of digital consumers, and Google has created a service in which "two click" culture is the norm. Speed and efficiency are central to finding content; broadband, wireless (wi-fi) and cellular networks make this possible at all times of day and night, and in all places.

In the physical world there are barriers to consumption: opening times, availability, the comparative difficulty in comparing prices and finding the best deal, and geography itself. In the online world no such barriers exist, indeed for many types of authorised information, content, and resources there is not even a cost barrier. For many industries - and here we highlight newspapers and other forms of news media as an example of a business which has "gone free" online for over a decade and is now experiencing severe economic difficulties in the physical world of print and paper (as is network television) - the consumer reality is that "digital is free", and "physical has a cost". This mindset has inevitable consequences for the economic lifeblood of all content industries: music, film and software have in particular suffered greatly through a combination of technological possibility and opportunity, and much-changed consumer behaviour.

Social media, part of the digital mainstream for a relatively short period to date, is changing the nature of individual and group identity, and makes the sharing without cost of content, be it photographs, texts, music files, videos or applications *part* of the way in which social prestige is established, often in real-time. And this prestige is not based on saving money by not paying, but through reciprocal access to content. LaRose and Kim (2007) suggest that one of the reasons why industry efforts to curtail piracy is failing is that "downloading appears to be as much a social phenomenon as an economic one."

We also note a recent piece of research – once again focused on a sample of 'students' – that explores and questions the idea of the Internet as 'a Safe Haven for Misbehaving'. Selwyn (2008) asserts that the Internet 'may certainly be providing our respondents with more opportunities for *misbehavior and deviance* [our italics], but it appears to be primarily giving individuals the opportunity to misbehave in ways in which they already do offline – as Grabosky (2001) puts it, "a case of old wine in new bottles". Later Selwyn states that whilst his data "confirm that the Internet is certainly a prominent context within which deviant behaviour

takes place, they highlight the danger of individual users and authorities misreading the Internet as a cause of new misbehaviour, rather than a conduit for old misbehaviours."

We strongly disagree, indeed would argue that there are now "two cultures" – the digital and the physical world - which are evolving in different ways and require a far greater structural analysis from economic, information consumption, social and behavioural perspectives.

If all who undertake unauthorised downloading, uploading and sharing were prosecuted, up to seven million Britons would have a criminal record. If all content online was instead "free" and downloading was de-criminalized could new business models such as sponsorship, advertising and the bundling of access with content pay for the variety, depth and quality of the content we current enjoy? And, if the culture of online behaviour does require IP laws to change just for specific industries, could such laws operate also in the physical realm?

The challenge, wrote Emily Bell, Director of Digital Media for the Guardian News & Media, "for the courts, the regulators, the distributors and the publishers of all manner of content is not to try to bind the digital inside the analogue rulebook, but to look beyond it for something that is quintessentially digital and fits this freer world." (Bell, 2009).

It has never, ever been easier to break the law
CIBER confidence rating: ★★★★★
Very strong evidence

There are several assertions we have heard in interview that "the media" are to blame for the vast numbers of digital consumers who download unauthorised materials - as it reports on the issue and gives examples of the types of unauthorised services, such as LimeWire or Pirate Bay, that are available and thus provides a guidebook of "how to" commit "digital piracy". We have been told in interview that Wikipedia's definition of Intellectual Property is the number one reason people download, and have heard criticisms of the Guardian and the BBC for detailing how unauthorised downloading takes place. We question this: simple search enquiries for items such as "free music", "Illegal videos", "Get audio mp3 from YouTube videos" return many pages of results from thousands of information sources. Consumers can quickly find methods to get free content (both legal and illegal), and in the case of file sharing and Peer-to-Peer (P2P) networking software how to download the application that is required. There is also the central issue of "practice" and "peer pressure" when within online social networks, which posits the implicit question: *If everyone is doing it that I know, how can it be wrong?* In the physical world a shoplifter requires skill, opportunity and nerve to steal one CD. Online 160 million CDs are available on the digital locker room "Rapidshare" alone (Music Ally, 2008). All that is required to access them is a computer, a connection, and the ability to search. In fact, all that is required is that one person has the computer: he or she can copy, without cost, as many files as his or her friends' request.

There are fewer cues to guide behaviour in the online world

CIBER confidence rating: ★★★

The evidence base is somewhat inconclusive and contradictory here

Put simply, online there are no "shoplifters will be prosecuted" signs, or government health warnings. In the broader landscape new ethical standards (or their absence) are being established through peer-groups such as the differing types of communities that evolve around social media (Facebook, Blogger, YouTube, Pirate Bay, etc.)

The cues that shape consumer behaviour, and in particular the consumer behaviour of those who are post-education, are not yet fully clear. Some research suggests that peer pressures within social media used by young people may have more impact than traditional external factors, such as family, school or college. Others see connections between 'real world' ethical values and the online.

Some UK research indicates that up to 70% of those that do download unauthorised materials would "cease pirating" if they received a letter from their Internet Service Provider warning them about their behaviour. We will be able to test these figures if the Government establishes a "Digital Rights Agency" with the power to work with ISPs in this manner. We note here part of the response of the ISP Talk Talk to the interim Digital Britain report on this idea. Broadly in agreement with the DBR proposal of an obligation "requiring ISPs to notify alleged infringers of rights (subject to reasonable levels of proof from rights holders) that their conduct is unlawful" Talk Talk (2009) add many provisos including: "Rightsholders (RHs) must actively, properly and effectively pursue their role in education, alternative services and prosecutions. Without this the effect of other initiatives (such as this) will be limited. More generally, it would be wholly unreasonable that an industry that has been the author of its own demise from illegal file sharing does not 'self-help' and take the lead role in tackling the problem." This is fighting talk talk!

At the same time new communities of creators are producing content for the online environment which is purposefully free: published as "freeware", "open source", a "free app", under limited licence such as a Creative Commons agreement, or given away such as Google "books", online newspapers, and CNET's download.com.

Finally, many of the services available to the digital consumer that create the opportunity to access unauthorised digital content are developing "brand identity" that is as powerful as those of large and legal corporations. Garland and Page (2008) are clear. They describe websites such as Pirate Bay, or P2P networks such as Limewire as "*venues* because they are destinations, and like any retail outlet (iTunes, HMV), they are popular because of their brand reputation, convenient location, superior value proposition, and ease of use...They are considerably more widely used than iTunes, HMV, and all other retailers…combined." Ambiguous brand authority removes yet another ethical cue.

Education isn't working, yet

CIBER confidence rating: ★★★★

Strong empirical evidence, although some findings are contradictory

In terms of intention to engage in what is sometimes called "digital piracy", that is the consumption "of illegal copies of digital services", we have repeatedly found that despite the potential severity of the legal threat, and significant numbers of prosecutions of individuals who have undertaken such activities, the figures for unauthorised downloading remain extremely high. Effective models of persuasion have not yet worked in significant ways; and where they

have changed behaviour[ii], (for example with the prosecution of the first generation of file sharing products, such as the original Napster application), new methods have evolved rapidly that create a new set of behaviours (for example, BitTorrent). If neither education nor legal threat has apparently succeeded to date in curbing the behavioural proliferation of unauthorised downloading, it would seem that using actions against a (relatively) small group of individuals to send a message to all digital consumers is not the (only) answer. Indeed it is argued by some that this failure to shift attitudes is because the underlying psychological model of the behaviour is not well understood. Research suggests that "deterrence" strategies may work for some, but may "actually increase piracy tendencies in others (Taylor et al., 2009). And it is these "others" who actively argue that "copying" and "sharing" are not stealing; that downloading unauthorised materials is not a crime. IP laws suggest otherwise.

There is a powerful idea that there is "no victim", and so "no crime"

CIBER confidence rating: ★★★★

Strong empirical evidence, although some findings are contradictory

A main theme emerging from the literature is that the 'victims' of digital copyright infringement, or 'piracy' i.e., software developers, musicians etc. or companies, are perceived to be far removed from and impersonal to the copier. As such, the content creators and distributors are not thought to be harmed by the act of downloading or sharing. Logsdon, (1994), for example, found in a questionnaire study that respondents believe that 'only a few individuals or companies will suffer at all' and copiers believed that 'the probability that the act of copying software will cause harm is low…'. Ingram and Hinduja, (2008) also studied this. Their findings indicate that the denial that anyone is harmed - and the denial there is a victim - significantly predicted at least moderate levels of piracy participation. Finally, many of Freestone and Mitchell's (2004) survey respondents felt that they were 'doing no direct harm to sellers as they cannot see the direct economic consequences of their actions'. The justification is made that they, consumers of content, are the victim of inflated software, music or movie prices, blaming 'industry' for keeping prices artificially high. This result was echoed by Levin et al, (2007) who found even when consumers were conscious of harm being done through the act of 'piracy' it had no impact on student respondents' intentions to download in the future.

Internet service providers and the consumer electronics industry: two elephants in the room

CIBER confidence rating: ★★★★★

Strong evidence, but inconclusive predictions for the future

In recent months there has been much speculation that a Digital Rights Agency will force Internet Service Providers to reveal the extent of their knowledge about the behaviour of online consumers. In particular, to make available data about the consumption habits, and especially unauthorised uses, of their users when they are believed to be infringing copyright. We could find no published data about ISPs' knowledge of their own users' consumption patterns, and thus cannot estimate how big is the issue of unauthorised downloading, which they find. Nor is it clear how access to this data would be used by industry – and Government[iii]. This is a large lacuna. In interview a spokesman for the ISPA stated that there was no available research on unauthorised downloading that we could see. "It's not really the ISPs concern," he said.

There is another elephant in the room. The consumer electronics industry has facilitated the downloading revolution through its hardware and software; without this industry there would be no widespread Internet, computers, digital televisions, cameras, and portable devices to

name just a few examples. As part of this industry is, as defined by Picard and Toivonen, "copyright dependent", that is to say:

> *"Industries whose operations essentially depend on copyrighted works. Industries that would be considerably smaller without copyrighted works and other subject matter."*

it is clear that further research into new ideas (in terms of the hardware and software developments of these manufacturing industries) should be conducted as a matter or urgency. If the digital revolution has shown us anything it is that consumers have grown accustomed to increasing levels of personal control – over when, how, and where they consume types of content – and thus the products of the consumer electronics industries are central, if sometimes forgotten part of the copyright eco-sphere. For Picard and Toivonen these include:

> *"the manufacture and distribution of electronics (TV sets, radios, VCRs, CD players etc.), manufacture and distribution of computers, manufacture and distribution of musical instruments, photographic and cinematographic equipment."*

Policy implications

The Digital is Different. It is changing very basic assumptions about the idea of ownership, sharing, and copying content. New business models are needed, and serious questions are raised about the quality and breadth of content material that will be created without new thinking. CIBER confidence rating: ★★★★★

The potential criminalization of up to seven million UK citizens has tremendous economic costs, and even if unauthorised downloading behaviour is changed in this country it is not yet clear that this is possible on a global scale. CIBER confidence rating: ★★★★★

The technology of the digital is about consumer experience, wherever and whenever. Expectations have been established for the consumer that include fast access to free information, the ability to copy and share such data, and the ability to consume this on a variety of platforms and devices. CIBER confidence rating: ★★★★★

There is a triangle of digital responsibility: between those that create and distribute content, those that consume, share and copy it, and those who manufacture the products that enable these exchanges. To date research and legal action has focused on the consumer – but not on the responsibilities of industry. Ethical reciprocity is not yet clearly defined. CIBER confidence rating: ★★★★★

The Consumer Electronics industry is copyright-dependent, yet is predicated increasingly on technologies that allow the infringement of these copyrights. Hardware and software applications will only become more efficient at these and many other communication processes. CIBER confidence rating: ★★★★★

Web access, like the products of the computer and software businesses, is also going to get better. As it does so more consumers will have the ability to download vast amounts of material, legally or not. Digital literacy education for all ages must include simple information on the complexities of downloading culture. Downloading and sharing *per se* is not wrong. CIBER confidence rating: ★★★★★

"…downloading appears to be as much a social phenomenon as an economic one." LaRose and Kim (2007). The Internet is built on a paradox of privacy. Surveillance is easy and, as well as posting and sharing their own and others' content, consumers are revealing their interests to third-parties such as advertisers all the time simply by being online. ISPs are the part of the Internet Triangle that knows what consumers do online, yet they – for obvious and understandable reasons – do not want to become the Internet Police. If they are forced to reveal consumers' consumption and downloading habits will this impact on the actions that consumers take with the Internet in quite legal ways? And where does this process end? CIBER confidence rating: ★★★★★

Digital consumers do not think they will get caught downloading from the Internet. Digital Convergence, the evolutions in digital television, wi-fi, mobile phones, and other devices will further complicate the evidence base for prosecutions and add to data protection issues. Will mobile phone networks be made to hand over consumer data as well as ISPs? CIBER confidence rating: ★★★★

If it is the case that many digital consumers believe there to be no victim when undertaking unauthorised downloading, is it also the case that, as Soham, 2008 states: "…consumers appear to employ a double ethical standard. Specifically, they expect high morals and spotless ethics from businesses and managers, but not from themselves." CIBER confidence rating: ★★★★

By the time they reach further education, an active downloader may in the future have at least seven years of experience (and stored content to share)
CIBER confidence rating: ★★★★

Many digital consumers take for granted – indeed expect – free content of all kinds from the Internet to copy. We have a nascent, or perhaps, established, copycat culture.
CIBER confidence rating: ★★★

It is quite possible that we are witnessing the "death of the back catalogue" CIBER confidence rating: ★★

[i] 'One key, defining principle of things that are "digital" is that they can be very easily copied, compressed and transmitted. In other words, "digital" and "free" (in every sense, not just the monetary sense) go together like Morecombe and Wise, fish and chips, or banks and bailout. This is something that the media, their ruling institutions, governments and regulators are all currently coming to terms with: once something is digitised, the ability over time to control it, charge for it, regulate it or contain it exponentially decreases.' (Bell, 2009).

[ii] The RIAA in the USA has prosecuted over 20,000 illegal downloaders (Kravets, 2008).

[iii] Of the Home Secretary's proposal to build a database to store information currently held by internet service providers and telephone companies, Mr Thomas said: "A government-run database of the communications of all citizens, every phone call, every e-mail, every text, every internet use; a database of all those activities held by the Government would be a step too far for the British way of life." The Times, February 29, 2009 (Mostrous and Ford, 2009).