



# Inquiry into whether copyright infringement is hurting New Zealand music; how can artists use new media to get their music sold rather than stolen

## Recommendation

The Commerce Committee makes the following recommendations to the Government:

- that it acknowledge that further legislation is unlikely to be effective in preventing the dissemination of music through the internet and other forms of new media
- that it seek, instead, to encourage the music industry to develop new business models to balance the interests of artists with those of consumers
- that it contribute to increasing public education about the risks inherent in peer-to-peer file sharing, and the benefits to be gained for both artists and consumers from respecting copyright and accessing music legitimately
- that it investigate measures to make it easier for artists to enforce their rights, at a lower cost that is more proportionate to the level of harm suffered.

---

## Introduction

This report summarises the issues we considered in our inquiry into whether copyright infringement is hurting New Zealand music, and how New Zealand artists can use new media to get their music sold rather than stolen.

The growth of the internet and digital media in the past few decades has completely changed the music economy. Whereas the pre-digital era relied on recording labels finding talented artists and arranging to record their work in a studio, then marketing and distributing the recording, technological innovations have given artists more direct access

to their audience, and consumers have many new means—both legal and illegal—of accessing the music they want to hear.

Because music plays a vital part in the lives of many young people, we believe it is important to weigh up the benefits and risks of this new environment, for both consumers and musical artists, and to consider how the music industry might best develop. While we have focused on music, many aspects of our inquiry relate equally to the film industry, and to the illegal downloading of movies and copying of DVDs.

### **Balancing new opportunities and challenges**

We agree with submitters that the growth of the internet and other “new media”<sup>1</sup> technologies over recent decades present both opportunities and challenges for New Zealand artists. New media allow music to be copied readily, and, unlike tape recordings, each copy still sounds as good as the original. This benefits artists, who now find it much easier to get their music out via YouTube or their own websites, and even to record their own music using software such as *GarageBand* without hiring a recording studio. It is also good news for consumers, who can hear new material through many sources, such as YouTube or on-line chat rooms. On the other hand, the ability to download music free runs the risk that artists cannot make a living and give up trying to disseminate their music, and that the industry can no longer afford to invest in developing and promoting musicians.

### **The Copyright Act**

New Zealand’s Copyright Act 1994 automatically grants those who create music, films, or other artistic works the exclusive rights to copy their creation, and to make it available to the public however they see fit. By giving an artist a monopoly over their work for a limited time so they can make money from it, the Act aims to encourage further artistic innovation. Unless an artist specifically indicates that a work may be copied, consumers should assume that it cannot be copied or downloaded.

By copying music and making it available to the public, the “peer-to-peer” (P2P) file-sharing network breaches both of the rights granted by the Copyright Act. While an artist can try to prove that their rights have been breached and seek remedy through the Courts by means of an injunction, a refund of their losses, and hand-over of the infringer’s profits, this enforcement process is costly for both parties and can be difficult to prove. We understand that such cases have almost always been settled out of court.

We believe the Copyright Act offers important protection for artists, but we would like to see measures developed that would make it easier for artists to enforce their rights, at a lower cost that is more proportionate to the level of harm suffered.

### **Damage from copyright infringement**

We have been unable to gather any clear evidence that copyright infringement is hurting New Zealand music, and note that opinions remain divided over the “sales displacement effect” of illegal downloads on physical sales. On the one hand, data collected by the

---

<sup>1</sup> The term “new media” encompasses the digital, computerised, or networked information and communication technologies that emerged in the later part of the 20th century.

Recording Industry Association of New Zealand (RIANZ) suggests that a drop in CD sales over recent years can be only partly explained by the trend toward purchasing digital formats—suggesting that the balance is due to illegal downloads—and that there may be almost 5,000 users potentially infringing copyright per day.

Other sources, however, suggest that claims of economic loss by the recording industry are questionable, or that losses may be due to factors other than piracy, such as competition from other forms of entertainment. We note in this context, however, that the Australasian Performing Rights Association (APRA) has continued to announce record profits over recent years.

We note also that a 2009 study by the Government of the Netherlands into peer-to-peer file sharing found that illegal downloaders are also the largest consumers of music, and are more likely to go to concerts and seek out lesser-known bands. This suggests to us that there are opportunities in taking an alternative approach, rather than trying to tighten New Zealand's copyright legislation.

### **Risks to consumers from piracy**

From discussions with our constituents, we are concerned that the relatively high cost of purchasing music and films, and their relatively limited and slow availability in New Zealand, leads many young people to take the risk of illegal downloading. The incentive appears to be particularly strong with films, due to the limited range of titles available legally and the painfully slow release by the industry of DVDs.

Not only is the quality of downloads through peer-to-peer file sharing programmes such as Limewire often very poor (unlike legally copied tunes), they directly connect the user's personal files and data with others via the internet, opening them up to a very high risk from viruses and other forms of "malware". We are concerned that this risk is not adequately understood by many teenagers, and we would like to see more public education about this, along with reduced incentives for illegal downloading.

Increased competition that encouraged music (and film) providers to lower their prices and release new material more promptly would be likely to reduce the incentive for illegal downloading. Growth in the availability of debit cards, usable online, would also help teenagers who cannot obtain credit cards to purchase music online.

### **Making money from music—possible approaches**

The Copyright Act does not specify whether, or how, an artist should sell their work, but it gives them the choice of how they wish to "monetise" it. Increasingly, artists and music companies are choosing to distribute their music free of charge, in order to gain more exposure, to promote a tour, to encourage sales of other music or merchandise, or for other reasons such as hoping to make money from sales of album artwork. We heard evidence that giving away electronic copies can increase sales of physical copies.

We were pleased to hear that organisations like the New Zealand Music Commission are working with industry representatives to investigate and develop such new approaches. We believe it is important for artists to embrace new media, and recommend that the Government encourage such efforts. We note that this could entail increased funding for

existing Government avenues such as the New Zealand Music Commission and NZ On Air.

We understand that other new media strategies being tried include the following:

- streaming services for music on demand, supported by advertising or subscription fees
- using new media social networks, such as MySpace, YouTube, and Facebook, to promote music
- giving music away to boost demand for cover art, or for live performances, merchandise, or high-quality or limited edition recordings
- aggregation of retailers into a few online superstores, such as Amazon
- “donationware”, as trialled in 2007 by Radiohead, which released an album for electronic download, for which customers could pay what they wanted, or nothing
- online distributors for independent artists, such as CD Baby.

Other possibilities include a suggestion that internet service providers charge customers a levy of, say, \$10 a month to cover the cost of illegal downloads, with the proceeds distributed to artists through an existing avenue such as the Australasian Performing Rights Association. We have some doubt that such a “wide net” approach would be popular if it captured all internet users, and not just those who are keen on downloading music, but it might work if offered as an optional addition to the monthly phone bill. We also wonder how the proceeds would be distributed fairly.

We were interested to hear that different approaches may develop depending on the genre of the music. Some artists, such as Lady Gaga, who can count on releasing hit singles, are relaxed about people downloading their music free, as they make their money from touring and merchandise sales. Other artists prefer to release full albums, and the internet can offer the possibility of earning money by selling online to niche markets around the world—what is known as the “long tail” approach. We doubt that a make-money-from-touring option would work in New Zealand’s small market, where most musicians still need to keep a day job to make a living.

## **Conclusion**

We accept that peer-to-peer file sharing creates risks for consumers from potential viruses and malware, and probably causes lost revenue for artists and the music industry, although to what extent is unclear. However, we do not believe that music piracy can be stopped by legislation. Technological innovations will continue, and we believe they should be embraced for all the benefits they offer in terms of sharing information. Rather than trying to fight the trend, we consider that the Government should encourage the music industry to develop new business models that embrace new media and create new ways to make money from music. We believe increased efforts at education could be more effective than harsher penalties.

## **Appendix**

### **Committee procedure**

The committee met on 6 and 7 July 2010 to consider the inquiry. We received four submissions, and heard evidence from the Creative Freedom Foundation, the Ministry for Culture and Heritage, and the Ministry of Economic Development.

### **Committee members**

Cory Dixon  
Rakaitemania Parata Gardiner (Chairperson)  
Caleb Jago-Ward  
Ben Keren  
Emma Lucas  
Thomas Maharaj  
Amelia MacDonald  
Alasdair MacLeod  
Kieran Welsby  
Joseph Xulué