

2009 GLOBAL Forum

SUMMARY AND ANALYSIS

PREPARED FOR:

CANADIAN MUSIC WEEK

BY: CONNECTUS CONSULTING INC.

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Global Forum 2009

Executive Summary

ISPs can take the lead – but how?
Governments must do more – but in what way?
Technology may provide the answer – but at what cost?

The debate on Internet governance, the role of ISPs and of government, and which business models will emerge as winners, rages on around the world. But, the fundamental issue persists: how to effectively deal with the persistent, unauthorized downloading and file sharing of music.

These questions and this core issue were top of mind for over 179 international music industry leaders who attended the Canadian Music Week 2009 Global Forum held in March, in Toronto.

The theme of this year's event could not have been timelier: **Internet Governance: Who is responsible for what and who pays for what?**

Compelling remarks by **John Kennedy, Chairman and CEO of IFPI**, set the issue squarely at the feet of government, noting those countries that have more successfully dealt with the issue of unauthorized downloading have a strong legislative framework for copyright – unlike Canada.

Serge Sasseville, Vice-president of Corporate and Industry Affairs with Quebecor – one of Canada's leading ISPs – stated that copyright legislation holds great promise, but the true solution lies in a strategy based on cooperation among ISPs, labels, artists and government.

Chris Castle, Music and Entertainment Lawyer, identified a series of models for driving the monetization of music downloading, including voluntary collective licensing, consumer payments, and new registration systems that more effectively control access to music downloading and file sharing.

Global Forum participants had ample opportunity to express their views as well, through roundtable discussions and a survey completed at the end of the session. Since discussion took place in the midst of a severe economic downturn, most participants stated their belief that the music industry is in worse shape now than one year ago – but expressed their resilience and optimism for a strong recovery.

On the role of ISPs, a majority of participants stated that ISPs must do more about unauthorized music downloading and file sharing, although filtering of content was viewed as more palatable than actual traffic shaping. Moreover, it was the strong belief of participants that ISPs are technologically capable of taking more responsibility for dealing with unauthorized file sharing.

Simply put, Global Forum participants strongly supported the view that ISPs can, and must, act.

Global Forum 2009

Executive Summary

(continued)

But participants were also strong in their views that government must take much stronger action to ensure ISP cooperation, most likely by modernizing Canadian copyright legislation that will force ISPs to take action. Citing a poor record of performance to date, participants suggested that government must also do more to educate consumers and develop cooperation among all players.

Participants also supported some actions taken by government in other countries such as France, suggesting similar measures would work well in Canada.

While participants indicated in very strong words that ISPs and government can do more about unauthorized downloading and file sharing, developing the right business model and the formula for sharing revenue was also a key issue for discussion.

Participants were roundly critical of any approach that would mandate a tax or levy on consumers. They were much more supportive of ISP funding for music content development, through their own profits with some pass along of costs to consumers – but ISPs must remain responsible for copyright infringement.

Participants also indicated that it is probably just a matter of time when ISPs will find a way to monetize content through authorized downloading and file sharing.

But all of these moving parts seemed to coalesce with Global Forum participants around the notion of cooperation – ISPs, labels, artists, government and any other stakeholders must work together for any solution to work, and work effectively.

Global Forum 2009

The Canadian Music Week 2009 Global Forum was a workshop attended by some of the world's leading music industry thinkers, who gathered for a dynamic morning of discussion to explore issues surrounding the role of ISPs, the legalities of music downloading, international copyright reform and the role of consumers, and the business of producing, distributing and listening to music.

This is the third consecutive year for the Global Forum event, and was – in the growing tradition of this event – compelling and certainly not short on controversy. The theme for the 2009 Global Forum was “Internet Governance: Who is responsible for what and who should pay for what?”

In this year's session format, the morning opened with presentations by three of the world's leading thinkers in the music business:

J. Serge Sasseville, Vice-president, Corporate and Institutional Affairs for Quebecor Media Inc., a leading Canadian ISP; **Chris Castle**, a highly accomplished music and entertainment lawyer based in Los Angeles, California; and **John Kennedy**, Chair and CEO for the International Federation of the Phonographic Industry (IFPI), United Kingdom

Following their remarks, 179 Forum participants were divided into 18 roundtables for discussion and debate on the issues. Each roundtable was led by a music specialist facilitator.

Following each roundtable discussion, participants were asked to complete a brief survey designed to gather additional opinion and perspective.

The Canadian Music Week Global Forum 2009 Report is based on (i) scribe notes taken during roundtable discussions, (ii) survey results and (iii) observations of roundtable proceedings.

Our Report is divided into four parts, with each part based on a summary of plenary remarks, roundtable discussions and survey results.

We open with a brief Introduction, briefly summarizing perspectives on the state of the music industry, in Canada and internationally.

Part I of our Report summarizes opinions and perspectives on Internet Governance: The Role of ISPs.

Part II of our Report provides detailed views of Global Forum participants on Internet Governance: The Role of Government.

Part III of our Report examines perspectives on Internet Governance: New Models and New Solutions.

Biographies of the 2009 Global Forum Discussion Panelists are presented in the Appendix to the Report.

INTRODUCTION



Global Forum 2009

Introduction

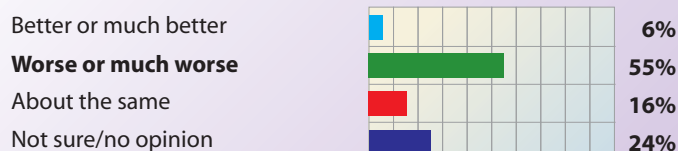
The Global Forum 2009 discussions took place against the backdrop of a major world economic downturn which, according to many observers, is the most severe since the Great Depression.

How would you describe the state of the worldwide music industry as a whole compared to one year ago?



With respect to the state of the worldwide music industry compared to one year ago, 50 percent of respondents suggested that things are either 'worse or much worse'; just 15 percent suggested the industry is in 'better or much better' shape, while 29 percent viewed the state of the industry as largely the same as 2008.

How would you describe the state of the Canadian music industry compared to one year ago?



The state of the Canadian industry – in the view of participants – was viewed through a somewhat darker lens, with 55 percent indicating decline compared to one year ago and just 6 percent with a view of improvement. Another 16 percent indicated the state of the Canadian industry was largely the same as 2008.

Comments from roundtable participants largely echoed this view, with several suggestions – including those voiced by John Kennedy of IFPI in his opening remarks – that Canada needs a modernized copyright regime in order to better protect the interests of creators, and potentially deal with the role of ISPs in providing access to unauthorized content.

**INTERNET GOVERNANCE:
THE ROLE OF ISPS**



Part I: Internet Governance - The Role of ISPs

Although opening plenary remarks from Serge Sasseville, John Kennedy and Chris Castle focused primarily on resolving the ISP issue through various approaches, their individual perspectives set the context for the discussion and survey responses that followed.

Each speaker indicated in their remarks that, simply put, ISPs play a major role in the flow of value within the music industry and are here to stay – now and going forward.

As stated by John Kennedy, Chairman and CEO of the IFPI, “The Internet has become a thriving black market for stolen goods” including music, film television programs, software, games and other intellectual property. And, he added, there is a growing recognition “by all parties involved – not just creators and content industries, but also ISPs and governments – that this just cannot continue”.

In other words, ISPs may be part of the problem but there is increasing awareness among ISPs themselves that they are also part of the solution.

This view was echoed by Serge Sasseville of Quebecor Media Inc., who acknowledged that ISPs have at least some role to play in resolving unauthorized file sharing – and that in Canada, this solution resides in modernizing the Copyright Act. Previously drafted legislation (Bill C-61, which died on the order paper at the last federal election call) would have seen ISPs assume an obligation to notify their subscribers of any infringement allegations the ISP receives from a rights holder.

While John Kennedy suggested that copyright reform in Canada is essential in order to address the role of ISPs, a key challenge has been “getting ISPs to take some measure of responsibility to help control the massive infringement of copyright over their networks” – and getting ISPs to come to the table in the first place.

From Chris Castle’s perspective, the reality of the ISP role must be dealt with through a form of licensing, either voluntary collective licensing or other means. And, he said, “There is ample evidence that major ISPs around the world want to cooperate with rights holders and understand that they are uniquely positioned to help solve the piracy problem.”

Roundtable Discussion and Survey Results

A significant part of the 2009 Global Forum roundtable discussion and survey focused on the role of ISPs with respect to the overarching issue of, “Who is Responsible for What and Who Pays for What?”

Discussions opened with the following question.

ISPs in many jurisdictions now monitor for and filter content such as child pornography. If they already take that step, then is it appropriate and also technically feasible that they take action to end the flow of other content such as unauthorized copyrighted files?

What should that role be? Filtering? Traffic shaping? Graduated response? Other?

This question sparked a major debate within roundtable discussions, eliciting a wide spectrum of comments from participants typified by one participant who stated, ‘ISPs have a responsibility to monitor content downloads’ and another who stated, ‘It’s not the job of ISPs to monitor content’.

Others were more blunt: ‘ISPs are like the doorman of your building letting someone into your apartment and standing by, doing nothing, as you get robbed’.

In fact, participants were quite split on the subject of who the real pirates have been: the ISPs or certain consumers.

Some have suggested that the real pirates were the ISPs and not the consumers. Would you agree or not agree with that proposition?



That division of opinion was very typical of perspectives shared by participants; while some clearly felt it was the responsibility of ISPs to both monitor and take action – as a ‘moral imperative’ if nothing else, others stated that this falls beyond the role of ISPs that function as gatekeepers for accessing file sharing activity. Instead, it may be an issue for government to deal with.

However, there was widespread agreement among participants on two points.

First, ISPs in Canada ‘certainly have the capability to monitor’ and take action against unauthorized file sharing.

And second, if music file sharing were to become a licensed or legitimate activity by subscribers, ISPs lack a business model or business rationale to take on this responsibility. In other words, as noted by one participant and echoed by many others, ‘There is no revenue sharing model and therefore no motivation (for ISPs to take action)...who gets what percent of what? What share do artists and labels get?’

There was also much more agreement among participants that ISPs directly benefit from the availability of unauthorized downloaded content, and from having no responsibility to monitor or take action against subscribers.

There was a clearly stated sense among many participants that ISPs must in some way take on more responsibility than is currently the case in Canada. As stated by one participant, ‘ISPs don’t care about music content, so they

Economics Professor Olivier Bomsel’s thesis at CMW 2008 was that the rollout of broadband networks is subsidized by the availability of free content – mostly music – and the average subsidy is 120 Euros per subscriber per year (about \$200 CDN). Do you agree that ISPs are ‘free riders’ on music and other unauthorized downloaded content using access to sell connections?



don’t play nice’. Another participant noted, ‘It is mind boggling that three big Canadian ISPs are in the business of selling music; one has ads showing kids how to give music to each other for free over their phones’.

At the very least, said several participants, ISPs may not be willing or able to control the content that is accessed, but they should ‘be more aware of the actions they can take’. This view was voiced often during roundtable discussions and captured by one participant who stated, ‘(It is) not the place of ISPs to police infringement, but they are the only ones who can monitor what is going on’.

However, it was generally acknowledged that ISPs also face their own barriers so far as monitoring and taking action against unauthorized downloading is concerned, including (i) strain on infrastructure by excessive use of broadband and (ii) the cost of setting up systems that will effectively monitor subscriber activity.

With respect to what a more active role in monitoring and enforcement by ISPs would consist of – i.e. filtering, traffic shaping, graduated response or other means, participants clearly indicated that (i) ISPs should be enabled to monitor and take action against unauthorized downloading of music, and that (ii) filtering is a preferable option to the slowing of access to P2P file sharing sites.

All major ISPs attempt to address the tremendous burden they claim unauthorized P2P file sharing puts on their networks. 'Traffic shaping' is slowing or curtailing wholesale downloading and uploading of files on P2P networks. Do you agree or disagree with the following statements concerning traffic management on networks?

ISPs should filter infringing material but allow authorized (legitimate) file sharing to take place.



ISPs should manage network traffic through slowing access to P2P file sharing sites.



ISPs should be prohibited from doing anything to address P2P file sharing, regardless of the effects on their networks.



The subject of content filtering sparked considerable discussion during the roundtables, in part as a result of a comment made by John Kennedy during his opening plenary remark that, if China engages in the filtering of content, then it can be done in Canada as well.

Participants also pointed out that consumers 'simply don't see (unauthorized music file sharing) as illegal like terrorism or child pornography' – with the latter two governed by law and involving the police and other authorities.

However, there was general agreement that the filtering of illegal content points to the reality that ISPs have the capability of filtering any type of content – including unauthorized P2P file sharing.

While content filtering was viewed as a more legitimate activity on the part of ISPs – and one they are clearly capable of implementing – there was less agreement among participants about the prospects of 'traffic shaping' by ISPs (i.e. limiting consumer access to peer-to-peer file sharing).

'Net neutrality' is a term that can mean many different things. What would you agree or disagree with the following statements when it comes to 'traffic shaping'?

ISPs should be prohibited from discriminating against any particular sites or services, but should be allowed to 'traffic shape' by curtailing P2P file sharing on a non-discriminatory basis



ISPs should be prohibited from engaging in any 'traffic shaping' even if it is non-discriminatory and even if this means that all subscribers might suffer diminished service.



ISPs should be able to enter into market-driven 'preferred partner' arrangements and 'traffic shape' without limitation.



Very few participants voiced their support for traffic shaping during roundtable discussions; while two participants suggested that universities have had some success with this practice, many others agreed that content filtering is a much more desirable option.

**INTERNET GOVERNANCE:
THE ROLE OF GOVERNMENT**



Part II: Internet Governance: The Role of Government

Two of the three opening plenary speakers addressed the role of government with respect to Internet governance – Serge Sasseville and John Kennedy.

For his part, Serge Sasseville suggested that the Canadian federal government can be and should be an active participant in stemming the tide of copyright infringement. The central vehicle for this participation, he suggested, is modern copyright legislation that can address the illegality of unauthorized P2P file sharing.

He noted as well that a previous legislative attempt at reforming Canadian copyright law – Bill C-61, An Act to Amend the Copyright Act (which died on the order paper as a result of an election call in 2007) – provided ‘major reform’ on a number of fronts, including the protection of creators’ rights from unauthorized file sharing.

Specifically, rather than making ISPs liable for copyright infringement by their subscribers, Bill C-61 adopted a ‘notice and notice’ approach. This obliges ISPs to forward notification of copyright infringement to their subscribers when complaints are received from rights holders.

Although ‘far from perfect’, Bill C-61 attempted to ‘bring Canada into sync with the rest of the industrialized world’.

However, he emphasized that confronting the issue of music piracy is not the job of government alone and that industry coalitions such as CAST (Canadians Against Satellite Theft) together with legal prosecution of satellite signal theft have proven to be effective strategies for the television distribution industry.

John Kennedy also addressed the issue of Canadian copyright reform, stating that ‘Weak copyright protection – particularly an outdated copyright regime – remains the major factor underlying the relative weakness of Canada’s music market’. In fact, he said,

‘More than a decade after signing the WIPO Internet treaties, Canada still lacks a modern, robust, digital-ready copyright regime’.

This ‘digital black hole’, Kennedy suggested, is affecting the integrity of Canada’s music marketplace, resulting in limited choices for digital music services. And all of this is taking place in a business environment that continues to see declining music sales, ‘the highest rate of unauthorized file sharing in the world’ (according to the OECD) and consumer confusion about what is ‘free’ and what is not.

Discussion by Roundtable Participants and Survey Results

Discussions opened with the following question:

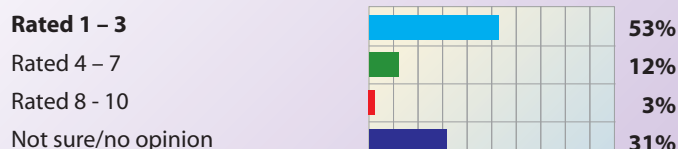
Should the government legislate ISP action against unauthorized downloading and file sharing?

Alternatively, should ISP responsibility be voluntary? For example, is the graduated response approach, as now being considered by France (such as three offences and you are disconnected) and other countries, a fair and effective way of tackling Internet piracy? And if so, which methods are best (account suspension, just warnings)?

This question prompted considerable discussion about the role of government in Internet governance, and steps that should or must be taken in order to address the issue of unauthorized music file sharing.

Echoing the comments of Serge Sasseville and John Kennedy, a number of roundtable participants argued that copyright reform that captures unauthorized file sharing has been slow in coming; as noted by one participant and echoed by many others, ‘government must do more (in Canada)’. Simply put, said another participant, ‘there has been an overall lack of government leadership’.

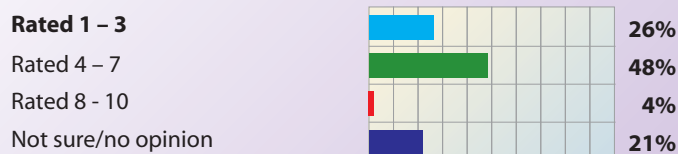
To the best of your knowledge, how would you rate the performance of the Canadian government in the past 12 months when it comes to dealing with copyright issues on a scale of 1 (couldn't be worse) to 10 (couldn't be better)?



Based on the above response, 64 percent of participants rated the performance of the Canadian government at 'less than 5' on a scale of 1 to 10, while only 8 percent ranked performance 'higher than 6'.

Participants indicated that the governments of other countries in the G7 have been performing on a slightly higher level in dealing with copyright issues.

To the best of your knowledge, how would you rate the performance of the G7 governments in the past 12 months when it comes to dealing with copyright issues on a scale of 1 (couldn't be worse) to 10 (couldn't be better)?



Based on the above response, 60 percent of participants rated the performance of the G7 governments at 'less than 5' on a scale of 1 to 10, while 19 percent ranked performance 'higher than 6'.

In addition, participants noted that across the G7, legislation and policy have been slow to catch up with

music piracy, i.e. legal and/or policy mechanisms that would pose barriers to unauthorized file sharing have typically lagged well behind the pace of piracy itself. But there is no doubt about the views of roundtable

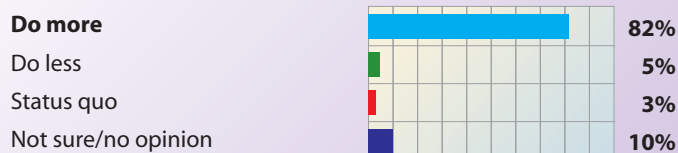
Author Deborah Spar asserted at CMW 2008 that the age of piracy in digital goods would end with the reassertion of the rule of law which would reign in digital piracy. Do you think that she was correct and we are now seeing the 'rule of law' imposed on digital piracy in the G7 nations?



participants on the importance of government action on unauthorized file sharing.

The question is, do more in what way? How?

Do you think national government should do more, do less or stick with the current program to protect music and other copyright industries?



Roundtable participants had plenty to say on this front.

For most, ISPs should be the focus of government, although participants differed on the type of action needed. As suggested by one participant, 'it worked with Cancon: government says, you guys figure this out or we will figure it out for you' – i.e. ISPs should become active and collaborative. And 'government can help create an environment where the ISPs and the music industry can collaborate'.

For other participants, 'voluntary participation by ISPs won't happen'. As stated by one participant, 'we need a foundation in law to create any authority that an ISP would have to regulate activity'. This view was also borne out by the survey responses.

Do you think that government in general should take action to force ISPs to deal with unauthorized downloading and file sharing?



At least part of this perspective about the use of government action concerning ISPs is informed by what is taking place in other countries. A number of participants especially pointed out the 'three strikes and you're out' approach of France which, in the words of one participant, 'is having the right effect'.

If you think governments should take action that forces ISPs to deal with unauthorized downloading and file sharing, what kind of action do you favour?



Other roundtable participants suggested a more stringent penalty regime for heavy downloaders balanced with other legal action. As noted by one participant, 'with strong penalties for a few and notices for others, this will create a widespread basis to encourage word of mouth'.

(Participants would likely have had plenty to say about the decision of the Swedish courts to sentence the operators of Pirate Bay – a major BitTorrent peer-to-peer file sharing site based in Sweden – to one year in jail and a \$4M fine. The Swedish court decision was announced several days after the Global Forum workshop; observers of the decision suggest that it may prove to be important as leverage to persuade ISPs to more actively police their networks.)

A number of participants pointed to the considerable barriers posed by a lack of education – of children, youth and parents – about what constitutes unauthorized file sharing and what constitutes legal activity. As noted by one participant and raised in a similar fashion by a number of others, 'education is a real problem – children don't understand the implications of downloading pirated products'.

Other roundtable participants identified the importance of educating not just children and youth, but parents – and in doing so, 'focus on the benefits of legal downloading: no viruses, no legal issues, better quality'.

On the other hand, the music industry 'must wake up to the fact that government can't do all of this on its own...' and, with the help of government, develop strategies that will 'bring ISPs to the table'. In fact, this view was held by a large number of Global Forum participants: solutions will only emerge (as has been the case in other countries) out of the full participation of all key players.

**INTERNET GOVERNANCE:
NEW MODELS AND NEW SOLUTIONS**



Part III – Internet Governance: New Models and New Solutions

Not surprisingly, a good deal of roundtable discussion focused on resolving the issues around Internet governance and unauthorized music file sharing. In the course of opening remarks, roundtables and survey responses, a number of solutions were proposed.

Chris Castle provided a number of possible directions in his opening remarks on Best Practices for ISP Licensing. He noted that ‘there is no single solution – but we live in a fourth world economy online and a first world economy offline’.

Noting that a core issue underpinning the question of Internet governance and methods of managing unauthorized downloading and file sharing remains the lack of a solid model for monetization, he discussed the option of ‘voluntary collective licensing’.

Voluntary collective licensing functions by having consumers pay an optional, small amount of money each month (e.g. \$5) to their ISP, which is then collected from the ISP by a non-profit collective. Rights holders then opt in to the program to gain a share of these revenues – and agree in exchange ‘not to sue’.

However, voluntary collective licensing can be confusing for consumers, who may believe that they do not have to pay and do not have to worry about legal action from rights holders. It is also unclear what this licensing structure would mean for existing collectives and existing tariff-based royalties, and how revenue distribution would take place among rights holders.

More viable, according to Chris Castle, would be an innovative system of online payments; content files would require identification by ‘psychoacoustic fingerprinting’; but users would know that their service is licensed. He noted, however that the required ‘fingerprint registries are a delicate question under international law and practice’.

Castle noted that, as a third prospective model, creators would set their own pricing to be paid by transparent

third parties, adapting software used for P2P file sharing. However, this would require ISPs to get into the ‘royalty accounting business – which is naïve, unrealistic and maybe even silly’.

A key to any solution, Castle noted, is cooperation among all players; in concluding his remarks, he stated that ‘there is ample evidence that major ISPs around the world want to cooperate with rights holders and understand that (ISPs) are uniquely positioned to help solve the piracy problem’.

As noted earlier in our Report, John Kennedy stated that the key to resolving Internet governance and unauthorized downloading/file sharing is modernized copyright legislation, given that in Canada, ‘copyright law remains stuck in an analog time warp’. Kennedy further noted solutions have been implemented in a number of countries, given the increasing recognition of the problem by all players.

Serge Sasseville called for the introduction of modern copyright legislation and cooperation among players as keys to a solution. He further stated that the imposition of a new tax on ISPs to fund content development (and in doing so, potentially deal with unauthorized downloading) is an untenable solution – as discussed at length during a recent CRTC proceeding. Such levies, he suggested, would simply be passed on to consumers, causing additional confusion and concern.

Discussion by Roundtable Participants and Survey Results

Discussions opened with the following question.

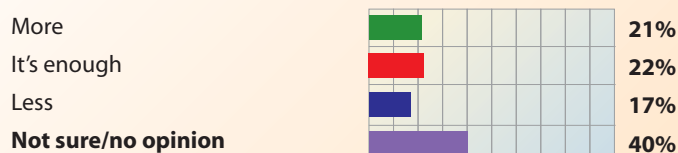
One proposal to compensate content creators and owners for unauthorized file sharing is to allow that content to flow unrestricted, and to charge a levy on monthly bills paid by ISP customers. Is this workable within current copyright law and international agreements?

**Who should receive payment (and who should not)?
Is it fair to ISP customers who would pay the levy,
including those who do not engage in P2P file
sharing?**

**As an alternative, should we simply wait for
“business deals” to emerge between content
providers and ISP’s? Will this ever happen?**

With respect to the question of levies charged to ISP customers, our survey posed the following question.

**Do you think that if ISPs were required to pay a \$200 CDN
subsidy per subscriber annually, this amount would be
sufficient to compensate music copyright holders for all
unauthorized use of content on the Internet? Should it be
more or less?**



In general, there was widespread agreement among participants that charging an additional levy on monthly bills paid by ISP customers is a poor idea to begin with. Although participants noted that Internet access should be treated as a consumer service and paid for by customers, ‘a tax is not a business model – and we need a revenue sharing model, for sure’.

Overall, participants viewed the development of a solid business model as much preferable to a tax on consumers, and expressed concern that many consumers would be forced to pay a tax even though they do not engage in unauthorized downloading.

In fact, the need for a strong revenue sharing model prompted considerable discussion during roundtables, and was viewed by a number of participants as ‘the hook, the focus’ for bringing all players to the table in a cooperative manner.

Similarly, participants felt that asking ISP customers to pass along a voluntary contribution is a ‘utopian dream’, and that this solution would ‘severely complicate any solution’ that may be driven by new copyright legislation.

Others suggested that the solution developed in France, which combines a business with an education focus and a separate policy entity, is the most viable approach.

Some noted that the cable television distribution model in Canada ‘is highly successful and lucrative, and should be adapted by ISPs’. However, this perspective is viewed as potentially problematic, since ‘ISPs could turn into gatekeepers’ (i.e. exercise control over who gets their content carried).

Nonetheless, participants believe that ISPs will, at some point in time, create business based on the legitimate distribution of music to their subscribers. The problem may rest with how soon this will happen.

**Do you think that ISPs will create businesses based on the
authorized distribution of music to their subscribers and
compensation of participating rights holders?**



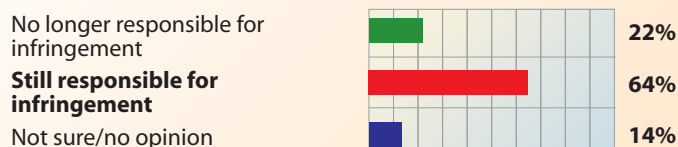
Participants also discussed the viability of having ISPs pay into a fund to support the development of music content. Although not necessarily viewed as a solution to unauthorized downloading and file sharing, such a fund would more actively engage ISPs with the music industry and potentially foster more cooperation from ISPs overall.

In Canada, some have suggested that ISPs should pay into a fund to support content development, including musical content. Do you think that ISPs should be paying into a content development fund?



However, even if ISPs were to pay into a content development fund, a strong majority of participants believe that ISPs would still have responsibility for infringement taking place on their networks.

Should any such contribution to a content development fund relieve them of their responsibility for infringement taking place on their networks?



Participants were more split on the issue of how the funding of content development would be paid for by the ISPs.

Do you think that ISPs should be allowed to pass that cost along to consumers, or be required to take it from profits?



As another way of looking at the results of the above question, some 64 percent of participants supported the idea of ISPs taking the required funds out of profits or a 50/50 split between profits and passing along the cost

to consumers; 57 percent supported passing along the cost to consumers or a 50/50 split.

While generally supportive of such a fund, participants expressed some concerns, such as the distribution of money ('the most successful artists would benefit the most') and administration of the fund ('somebody will have to administer this – who or what would that be?').

Participants also suggested that there may be other, more sophisticated models for generating cooperation among all players and 'really dealing with the problem' of unauthorized file sharing – such as advertising-based models or a revenue sharing model exclusively for mobile platforms such as smart phones, 'where the big money will be very shortly'.

Other participants suggested a solution that focuses on bandwidth usage, where 'heavy users of bandwidth are more likely to be downloading and file sharing, and should pay more'.

In general, Global Forum participants agreed that any solution has two indispensable elements.

First, 'the goal is a business model that delivers monetization and revenue sharing'.

Second, 'we have to work together – ISPs, labels, artists, everyone. There's no other way'.

SURVEY RESPONSES



Discussion Questions

TABLE DISCUSSION POINTS

ISPs in many jurisdictions now monitor for and filter content such as child pornography. If they already take that step, then is it appropriate and also technically feasible that they take action to end the flow of other content such as unauthorized copyrighted files? What should that role be? Filtering? Traffic shaping? Graduated response? Other?

Should the government legislate ISP action against unauthorized downloading and file sharing? Alternatively, should ISP responsibility be voluntary? For example, is the graduated response approach, as now being considered by France (such as three offences and you are disconnected) and other countries, a fair and effective way of tackling Internet piracy? And if so, which methods are best (account suspension, just warnings).

One proposal to compensate content creators and owners for unauthorized file sharing is to allow that content to flow unrestricted, and to charge a levy on monthly bills paid by ISP customers. Is this workable within current copyright law and international agreements? Who should receive payment (and who should not)? Is it fair to ISP customers who would pay the levy, including those who do not engage in P2P file sharing? As an alternative, should we simply wait for "business deals" to emerge between content providers and ISP's? Will this ever happen?

Survey Responses

How would you describe the state of the worldwide music industry as a whole compared to one year ago?

Better or much better	15%
Worse or much worse	50%
About the same	29%
Not sure/no opinion	7%

And, to the best of your knowledge, how would you describe the state of the Canadian industry?

Better or much better	6%
Worse or much worse	55%
About the same	16%
Not sure/no opinion	24%

How would you rate the performance of the G7 governments in the past 12 months when it comes to dealing with copyright issues on a scale of 1-10? (1 is couldn't be worse and 10 is couldn't be better)

Rated 1 – 3	26%
Rated 4 – 7	48%
Rated 8 -10	4%
Not sure/no opinion	21%

To the best of your knowledge, how would you rate the performance of the Canadian government in the past 12 months when it comes to dealing with copyright issues on a scale of 1-10? (1 is couldn't be worse and 10 is couldn't be better)

Rated 1 – 3	53%
Rated 4 – 7	12%
Rated 8 – 10	3%
Not sure/no opinion	31%

Author Deborah Spar asserted at CMW 2008 that the age of piracy in digital goods would end with the reassertion of the rule of law which would reign in digital piracy. Do you think that she was correct and we are now seeing the "rule of law" imposed on digital piracy in the G7 nations?

Yes	21%
No	43%
Not sure/no opinion	36%

Do you think national government should do more, do less, or stick with the current program to protect music and other copyright industries?

Do more	82%
Do less	5%
Status quo	3%
Not sure/no opinion	10%

Economic Professor Olivier Bomsel's thesis at CMW 2008 was that the rollout of broadband networks is subsidized by the availability of free content – mostly music – and that the average subsidy is 120 Euros per subscriber per year (about \$200 CDN). Do you agree that ISPs are "free riders" on music and other unauthorized downloaded content using access to sell connections?

Agree	62%
Disagree	23%
Not sure/no opinion	15%

Do you think that if ISPs were required to pay the amount of subsidy \$200 CDN per subscriber annually, this amount would be sufficient to compensate music copyright holders for all unauthorized use of content on the Internet? Should it be more or less?

More	21%
It's enough	22%
Less	17%
Not sure/no opinion	40%

Some have suggested that the real pirates were the ISPs and not the consumers. Would you agree or not agree with that proposition?

Agree	38%
Disagree	40%
Not sure/no opinion	22%

Do you think that governments in general should take action to force ISPs to deal with unauthorized downloading and file sharing?

Yes	78%
No	16%
Not sure/no opinion	6%

What kind of action would you favour?

Three strikes and you're out like in France	60%
Warning to offenders	10%
Warnings and turn over names to copyright owners	15%
None of the above	14%
Not sure/no opinion	16%

Do you think that ISPs will create businesses based on the authorized distribution of music to their subscribers and compensation of participating rights holders?

Yes, they will	38%
Yes, but not soon enough	37%
No	11%
Not sure/no opinion	15%

All major ISPs attempt to address the tremendous burden they claim unauthorized P2P file sharing puts on their networks. "Traffic shaping" is slowing or curtailing wholesale downloading and uploading of files on P2P networks. Do you agree or disagree with the following statements concerning traffic management on networks?

ISPs should manage network traffic through slowing access to P2P file sharing sites

Agree 50%
Disagree 32%
Not sure/no opinion 18%

ISPs should filter infringing material but allow authorized (legitimate) file sharing to take place.

Agree 65%
Disagree 19%
Not sure/no opinion 15%

ISPs should be prohibited from doing anything to address P2P file sharing, regardless of the effects on their networks.

Agree 16%
Disagree 63%
Not sure/no opinion 21%

"Net neutrality" is a term that can mean many different things. What would you agree or disagree with the following when it comes to "net neutrality" issues?

ISPs should be prohibited from discriminating against any particular sites or services, but should be allowed to "traffic shape" by curtailing P2P file sharing on a non-discriminatory basis.

Agree 38%
Disagree 34%
Not sure/no opinion 28%

ISPs should be prohibited from engaging in ANY "traffic shaping", even if it is non-discriminatory and even if this means that all subscribers might suffer diminished service.

Agree 28%
Disagree 43%
Not sure/no opinion 30%

ISPs should be free to enter in market-driven "preferred partner" arrangements and "traffic shape" without limitation.

Agree 21%
Disagree 47%
Not sure/no opinion 32%

In Canada some have suggested that ISPs should pay into a fund to support content development, including musical content. Do you think that ISPs should be paying into a content development fund?

Yes 47%
No 27%
Not sure/no opinion 25%

Should any such contribution relieve them from responsibility for infringement taking place on their networks?

No longer responsible for infringement 22%
"Still responsible for infringement" 64%
Not sure/no opinion 14%

And if yes, do you think they should be allowed to pass that cost along to consumers or be required to take it from their profits?

Pass along 21%
50/50 36%
Out of profits 29%
Not sure/no opinion 14%

APPENDIX



Appendix – 2009 Global Forum Discussion Panelists



John Kennedy
CEO, IFPI
London, UK

John Kennedy is Chairman and CEO of IFPI, an organization representing the recording industry worldwide with 1,400 member record companies. With 30 years of experience in the music industry, Kennedy started his career as a lawyer working in the record companies. In 1983 he set up a private practice specializing in music industry business and was awarded an O.B.E. by the Queen for his work as a trustee of The Band Aid Trust and Live Aid. In 1996 Kennedy accepted the post of Chairman and CEO at Polygram and is credited with ending chart hyping in the UK. He was further appointed Chairman and CEO of the newly created Universal Music UK, the largest record company in the UK, and provided the investment (on behalf of Universal UK) to launch Mamma Mia!, one of the most successful theatrical productions ever. In 2001 Kennedy was appointed President and Chief Operating Officer Universal Music International, the largest and most successful record company in the world. In July 2005, he produced, with Bob Geldof and Harvey Goldsmith, the Ten Live 8 concerts around the world and was awarded jointly with Geldof and Goldsmith the Chevalier de L'ordre des Arts et des Lettres, by the French Government.



Christian Castle
Attorney, Christian
L. Castle Attorneys
Sherman Oaks, CA

Chris Castle is Managing Partner of Christian L. Castle, Attorneys, with offices in Los Angeles and San Francisco. The firm represents recording artists, film makers, independent record labels, film studios and technology companies. Chris also consults leading organizations on public policy matters, is a Contributing Editor to Entertainment Law & Finance and writes a column on current intellectual property policy issues for The Register.

He is an occasional contributor to IPOsgoode, the intellectual property blog of Osgoode Hall Law School at York University in Toronto.

Chris was previously Senior Vice President, Legal & Business Affairs at SNOCAP, Inc., held senior positions at Sony Music Entertainment, Inc. and at A&M Records, Inc. and was of counsel to Wilson Sonsini Goodrich & Rosati. He is one of the few executives to have held senior positions at both music and technology companies.

Chris has been a member of the Advisory Board of the Austin Music Foundation since its inception, and also contributes his time to California Lawyers for the Arts. He co-chairs the legal committee of the American Association of Independent Music, is a member of the Alumni Advisory Board of the Entertainment and Media Management Institute at the Anderson Graduate School of Management at UCLA, and lectures at Anderson, the University of Texas School of Law and other law schools from time to time. Chris is an MBA/JD graduate of Anderson and the UCLA School of Law where he was an Olin Fellow in Law and Economics, National Editor of the Harvard Journal of Law & Public Policy and a member of the UCLA Law Review. Chris graduated from UCLA with a B.A. in Political Science, magna cum laude.

Prior to law school, Chris was a working musician, performing or recording with artists such as Long John Baldry, Yvonne Elliman and Jesse Winchester, and Canadian artists Diane Dufresne, Jackson Hawke, Wally Rossi and Nanette Workman.



Serge Sasseville
Vice President,
Corporate &
Institutional
Affairs, Quebecor
Montreal, QC

J.SERGE SASSEVILLE is Vice President, Corporate and Institutional Affairs of Quebecor Media Inc. He has been a member of the Quebec Bar since 1981 and has practised law at the law firm Stein, Monast, in Quebec City, from 1981 to 1987. Mr. Sasseville has been with the Quebecor group of companies since 1987 where he has held previously the positions of Director of Legal services of Quebecor Inc. and Corporate Secretary of Quebecor Group

Inc. (now known as Quebecor Média Inc.), Vice President, Legal Affairs, Corporate Secretary and Assistant to the President of Groupe Archambault Inc. (a subsidiary of Quebecor Media Inc. and Quebec's leading distributor and retailer of cultural products with a strong presence in music production, publishing, distribution and retailing), Vice President, Strategies, Legal and Corporate Affairs and Corporate Secretary, New Media, of Quebecor Media Inc., Vice President, Strategies, Legal and Corporate Affairs and Corporate Secretary, Cable TV and Internet/Portals, of Quebecor Media Inc., Vice-President, Legal Affairs and Secretary of Vidéotron Itée (and its subsidiaries), President, Music Sector, of Groupe Archambault Inc. and Vice President, Corporate Affairs, Entertainment and Multimedia of Quebecor Media Inc.

As a lawyer, Mr. Sasseville has focused his practice on Entertainment, Media, Telecommunications and Internet law. He is the founder of the Archambault.ca e-commerce Web site and was one of the key players in the launch of the digital music download service Zik.ca of Groupe Archambault Inc. Mr. Sasseville was a member of the Management Committee of Star Académie (the most popular reality-TV show in Québec since 2003). He is a member of the Canadian Bar Association, AJAVA (Association des juristes pour l'avancement de la vie artistique), IAEL (International Association of Entertainment Lawyers), ALAI CANADA (International Literary And Artistic Association), ADISQ (Association québécoise de l'industrie du disque, du spectacle et de la vidéo) and CARAS (Canadian Academy of Recording Arts and Sciences). Mr. Sasseville is a member of the Boards of Directors of ADISQ, Musicaction, CWTA (Canadian Wireless Telecommunications Association) and Fonds Quebecor and also a member of the Commission du disque et du spectacle de variétés of SODEC.

The Canadian Music Week 2009 Global Forum Summary and Analysis was compiled and written by Richard Cavanagh, Partner, CONNECTUS Consulting Inc. He has extensively researched and analyzed issues in the Canadian and international music industry, and has recently completed a major year-long study on the impact of digital technology on the value networks of the arts and cultural industries in Canada.