Jose Ramon Gil Cantons / Eva Faustino Ribas

Spain's music piracy problem

Digital music sales in Spain are quite small compared to its European neighbours. Digital accounts for just 11% of total sales, against the international average of 21%. Illegal downloads are a major reason, so why isn't the law protecting copyright?

There are two key laws that regulate this behavior. One one side there is the Spanish penal code, and on the other there is the copyright law of 1996, which was updated in 2006.

In legal terms, these laws regulate the 'sustain' part – the core of the issue – but when it comes to actually prosecuting infringers to protect copyright, there are in Spain other norms that in practice don't allow a favorable resolution. There are also influential social and circumstantial reasons.

In Spain, the law carries the principle of minimum intervention, fair punishments, and as in every country with an 'Estado de Derecho' [literally - 'Statute of Rights'], people are assumed innocent until proven guilty. Also, in order for an act to become a crime, among other elements there must be a proven intention to profit. It's this that judges have struggled to find in many previous copyright infringement cases.

On the other hand, in Spain it's usual to access digital content without thinking about copyright. It's a widely-accepted practice, and morally people feel there is nothing wrong with it. This has always been shown in the media coverage of copyright-related case sentences.

So, based on the Spanish definition of profit intention, it is almost impossible to secure a punishment for someone who consumes music illegally. The user is not doing it for profit, and the company that provides the content or the technology, which often produces revenues, is not involved in the direct act of downloading.

Another problem is that if someone wants to claim against the final user, the current Spanish data and privacy protection laws do not allow ISPs to identify them without a judge's order, which due to limitations in their civil jurisdiction are very difficult to obtain.

If the aim is to claim civil responsibility for the party or person behind the technology that allows users to download the content, it's also difficult. The defence tactic here is that

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the technology per se is not good or bad, and that controls cannot be put in place without infringing the right to privacy of users.

Should those who develop a technology not also be responsible for its use, though? They should at least be sure that its service does not break or will not be used to break any law. Can an arms business sell weapons to people without the licence or permission to use them, or are we willing to accept the commercialisation of a technology to unlock cars parked in public spaces?

But another element fuelling this overcomplicated situation in Spain is the public's misconception of what legal or illegal behaviour really is. There is a huge lack of information on what is covered under the original private copy canon, imposed back in 2003 for all CDs and DVDs, and then updated and converted into a digital canon in 2006 for all digital devices with storage capacity.

To clarify: the digital canon only covers reproductions for personal use of content that came from an original source – like ripping a CD – but does not cover copies made from P2P content, since this is clearly not a legitimate source.

The other problem is that there are a lot of people who are benefitting from the access to free music, who support the free access to content on the Internet. In many cases, this free flow will ensure that their revenues keep growing.

This legal black hole has had an obvious impact on the local recorded music industry, which declined by 7.8% last year, and has more than halved from what it was in 2001.

Now that Spain has reached this point, the government must react, and legislators must guarantee the respect for digital content. If not, then very soon there won't be a business model here, with a resulting backlash on the creation side.

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