



## Coming Soon to an Unlawful Download near You

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After years of following a widely criticized policy of launching copyright infringement suits against unlawful file-sharers, content creators, owners, and advocates from the Recording Industry Association of America (“RIAA”), the Motion Picture Association of America (“MPAA”), and other major movie and music media conglomerates<sup>1</sup> have now joined forces with major internet service providers (“ISPs”)<sup>2</sup> to launch a new weapon in the battle against unlawful file-sharers – the Copyright Alert System (“CAS”). At a glance, the CAS provides a mechanism to allow ISPs to reduce instances of peer-to-peer (“P2P”) online infringement, and has the mutual benefit of allowing content owners another mechanism to police their content, while giving ISPs an opportunity to preserve valuable bandwidth by slowing access to unlawful file-sharers.

The CAS was created on July 6, 2011 through the execution of a Memorandum of Understanding (“MOU”) between the content owners and ISPs. The MOU outlines two major initiatives. First, the parties created an educational initiative, the Center for Copyright Information (“CCI”), to inform the public about the harmful costs of file-sharing and the possible legal consequences. For example, CCI’s website, [www.copyrightinformation.org](http://www.copyrightinformation.org), highlights the impact of content theft on the economy (\$58 billion in lost revenue), jobs (373,000 lost American jobs), earnings (\$16 billion in lost employee earnings), and taxes (\$3 billion in lost federal, state and local tax revenue). Second, the parties agreed to establish the CAS. The CAS allows copyright owners to scan P2P networks for evidence that copyrighted content has been unlawfully transferred online and to identify the corresponding IP addresses. The content owner can then notify its ISP of the evidence of unlawful file transfers and the responsible IP address. The ISP can then match the IP address to its customer and send an “alert” through the CAS.

For the first and second notices an ISP receives for a given customer, the ISP will send an “educational copyright alert” notifying him or her that evidence of an unlawful file transfer was detected from his or her account, while providing information regarding the illegality of such activity and the corresponding prohibition of such activity pursuant to the ISP’s Terms of Service.<sup>3</sup> After the third and fourth notices, the ISP will send an “acknowledgement copyright alert” that will, in addition to the same information provided in the educational alert, require the customer to acknowledge the notice and agree to cease infringing conduct. The fifth notice will result in a “mitigation measure alert,” notifying the customer that any further infringing conduct will result in punitive actions. These actions can include a temporary reduction in the customer’s provided service speed, redirection to a permanent landing page for all internet activity until the customer contacts the ISP to discuss the alerts, or suspension of the customer’s internet account. Notified parties may challenge the propriety of any alert by paying a \$35 fee for an independent review which demonstrates that their use was not infringing. Furthermore, parties retain their right to seek a remedy in court.

Critics of the plan worry that ISPs will begin terminating users’ accounts, but ISPs currently retain that power through their terms of service and through DMCA section 512. The CAS gives ISPs the freedom to choose the appropriate “mitigation measure,” and they are highly unlikely to disconnect internet service to their own customers except in egregious circumstances. Furthermore, in an effort to allay privacy concerns, the MOU does not require the ISP to identify its customer to the content owner.

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Because the CAS has not been officially launched, the efficiency of the infringement identification system and the impartiality of the independent review are unknown. In the meantime, we advise internet users to continue to monitor downloading activity on their networks and personal computers to avoid unauthorized reproduction of copyrighted material. And we advise content owners to alert their content managers of this new and potentially powerful tool against unlawful file-sharers.

<sup>1</sup> Walt Disney, Paramount Pictures, Sony Pictures, Twentieth Century Fox, Universal Studios, Warner Bros., UMG Recordings, Inc., Warner Music Group, Sony Music Entertainment, and EMI Music North America.

<sup>2</sup> AT&T, Verizon, Comcast, Time Warner Cable, and CSC Holdings.

<sup>3</sup> Most ISPs require customers to agree to an Acceptable Use Policy. For example, Comcast requires its customers to agree not to “upload, post, publish, transmit, reproduce, create derivative works of, or distribute in any way information, software or other material obtained through the [Comcast] Service or otherwise that is protected by copyright or other proprietary right, without obtaining any required permission of the owner.”

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