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THE UK EXPERIENCE OF TACKLING ONLINE IP INFRINGEMENT

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THE UK INTELLECTUAL PROPERTY OFFICE

1. The UK Intellectual Property Office¹ (UK IPO) is the UK agency which registers and grants IP rights in patents, designs and trade marks. The UK IPO also leads on developing policy – including IP enforcement – and its legal frameworks, and manages a central repository of IP enforcement intelligence within the UK.

2. Intellectual property crime has long been a problem in the world of physical goods, but with the growing use of the internet, online intellectual property crime is now an increasing threat to the UK's economy. The creative industries alone are worth more than £36 billion a year and employ more than 1.5 million people. Technological advances which offer both great benefits and significant changes to society at large, mean that online IP infringement is a growing threat to businesses and consumers in the form of both piracy and counterfeiting.

* The views expressed in this document are those of the authors alone, and not those of the Secretariat or any of the Member States of WIPO.

¹ <http://www.ipo.gov.uk/>

HOW DOES THE UK TACKLE THE PROBLEM OF IP INFRINGEMENT ONLINE?

3. The UK IP Crime Strategy 2011 provides the framework within which the UK Government takes forward its work on tackling IP crime. It outlines the need for intelligence-led enforcement, coordinated working and the sharing of best practice, and the need for an effective legal framework. Technology and IP crime is one key area identified as requiring additional action. The Strategy notes that the issues we face in the online world are not unique to the UK – they are as global as the internet – and commits to developing an action plan on tackling counterfeiting and criminal piracy online.

4. Additionally the 2011 Hargreaves Review of Intellectual Property and Growth (the ‘Hargreaves Review’) recommended that “...*Government should pursue an integrated approach based upon enforcement, education and, crucially, measures to strengthen and grow legitimate markets in copyright and other IP protected fields*”.

5. An annual update on progress against the UK IP Crime Strategy is provided in the UK IP Crime Report. Since publication of the UK IP Crime Strategy there has been considerable progress made to develop a range of interventions, cooperation and coordination of resources across public and private sectors to reduce online IP infringement whilst promoting consumer awareness and access to legal content. The UK has developed a holistic approach to dealing with online IP infringement. This includes voluntary, administrative, civil and criminal interventions, which have helped to develop a more transparent set of rules and guidelines for conduct regarding IP infringement. Rights holders and enforcement authorities are able to use many different methods, both legal and voluntary, to tackle the problem of online infringement.

THE UK LEGISLATIVE FRAMEWORK

6. The law relating to copyright infringement in the UK is contained within the Copyright, Designs and Patents Act 1988² (CDPA). It specifies the criminal offences and provides the means for rights holders to protect their rights through the civil court process in line with European legislation, namely Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market³ (the “E-Commerce” Directive). CDPA empowers UK courts to provide the means for rights holders to protect their rights, but avoids mandating any specific remedies. Instead, the court is able to order any actions it considers necessary and proportionate to protect IP rights. This helps ensure the action available to rights holders can keep up with technology, as different methods of protection and infringement are developed.

7. There are other offences that may be committed in relation to copyright infringement, including offences under the Fraud Act 2006⁴, and the common law offence of conspiracy to defraud (knowingly enter into a fraudulent transaction – e.g. downloading music tracks known to be illegally obtained). Intellectual property offences are considered a lifestyle offence under the Proceeds of Crime Act 2002⁵ (PoCA), which provides for the confiscation or civil recovery of the proceeds from crime. This allows the prosecuting authority to recover up to 50% of the confiscation, with the remaining amount being allocated between HM Treasury and other parties. There is also civil recovery under part 5 of PoCA, which can be used to recover criminal assets without necessarily gaining a criminal conviction.

² <http://www.legislation.gov.uk/ukpga/1988/48/contents>

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0031:EN:HTML>

⁴ <http://www.legislation.gov.uk/ukpga/2006/35/contents>

⁵ <http://www.legislation.gov.uk/ukpga/2002/29/contents>

VOLUNTARY INTERVENTIONS

8. A number of voluntary interventions have developed, whereby agreements have been reached between rights-holder groups and the relevant industry with the aim of making online infringement more difficult. This includes the internet advertising industry, where the UK Government provides leadership through a regular stakeholder roundtable that looks at the issue of online copyright infringement. As a result of this work, and the engagement of rights holder groups (such as the Federation Against Copyright Theft (FACT) and the British Recorded Music Industry (BPI)), industry trade bodies, in conjunction with internet advertising agencies, are developing a self-regulated process which will substantially reduce the appearance of legitimate advertising on IP infringing sites. The police will act as 'gatekeepers' so that a common understanding and definition of just what constitutes an infringing site can be developed. Discussions at the stakeholder roundtable have also led to action by search engines to change search algorithms – driven by copyright removal notices – so that infringing sites are downgraded in their search results.

ADMINISTRATIVE INTERVENTIONS

9. As set out in the E-Commerce Directive, Internet service providers (ISPs) cannot be held liable for the content on their systems, but once notified that there is infringing material, an ISP is obliged to remove it to maintain their status as a mere conduit/safe haven. Rights holders and their trade bodies monitor the internet using a range of software and forward the details of the sites they identify as infringing IP rights. There is rarely any human intervention and the ultimate liability for the 'take down' is the rights holder rather than the ISP.

10. The Government is also restricting use of the .uk domain. The police have examined a range of criminally infringing websites and the registrar for .uk websites has acted to remove the site registration. Work is ongoing with foreign domain registrars.

11. The UK Government is encouraging industry-led interventions to make it more difficult for criminals to benefit from the proceeds of online crime. The police, payment service providers and rights holders have worked together in the UK to identify criminally infringing sites and remove the payment facility from them using Money Laundering Regulations.

12. The Digital Economy Act 2010 contains provisions to address online copyright infringement resulting from unlawful peer-to-peer file sharing, through introducing a mass notification system designed to educate consumers about copyright and change consumer behaviour. The Government is committed to implementing these provisions.

CIVIL INTERVENTIONS

13. In recent years use has been made of the legislative provisions for blocking access to seriously infringing websites. Section 97A of CDA provides for the High Court to grant an injunction against a service provider where that service provider has knowledge of another person using their service to infringe copyright. This power has been granted in line with Article 8(3) of European Parliament and Council Directive 2001/29/EC 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, which affirms that 'member states shall ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right'.

14. By the end of 2013 some 9 such injunctions have been made, blocking access to nearly 40 infringing websites. As more use has been made of these provisions, so the timescale and cost in obtaining such an injunction has been reduced.

15. In addition a 'Norwich Pharmacal' Order may be granted. This allows the court to order a third party to release information to discover the arguable wrong doers/wrong doing, where there is no other way of finding out that information. This has been used to seek the disclosure of the details for those suspected of downloading infringing content.

CRIMINAL INTERVENTIONS

16. In June 2013 it was announced that the IPO would provide funding of £2.56 million over two years to the City of London Police to establish and run the Police Intellectual Property Crime Unit (PIPCU)⁶. This is an operationally independent law enforcement unit, dedicated to tackling serious and organised intellectual property crime (counterfeiting and piracy) affecting physical and digital goods (with the exception of pharmaceutical goods). PIPCU's focus will be on offences committed using an online platform. The Unit launched on 12 September 2013 and by the end of 2013 had arrested a total of 13 individuals for a range of intellectual property crime offences.

17. PIPCU connects industry, government, law enforcement agencies and a range of other public authorities, centralising and co-ordinating resources to deal with serious online IP crime. This systematic integration of activities to counter IP crime will deliver significant improvements in tackling piracy and counterfeiting. One of the first of its kind in the world, the unit will keep the UK at the forefront of IP enforcement.

18. The Prosecution of Offences Act 1985⁷ provides for industry to undertake private prosecutions. This was most recently demonstrated in 2012, in the case brought by the Federation against Copyright Theft (FACT) against Anton Vickerman, who set up and ran one of the world's most visited pirate websites, surfthechannel. Mr. Vickerman was found guilty of Conspiracy to Defraud by facilitating the infringement of copyright, and handed a four-year prison sentence.

UNDERSTANDING CONSUMER BEHAVIOUR

19. In order to develop solutions to the problem of IP infringement, there needs to be an understanding of consumer behaviour. In line with the recommendation in the Hargreaves Review, between May 2012 and May 2013 the UK IPO funded Ofcom⁸ to gather information to improve understanding of consumers' behaviour and attitudes towards lawful and unlawful access of copyright material using the internet.

20. The research demonstrates the clear demand for online access to copyright material, with well over half (58%) of internet users downloading or streaming at least one item of content during the year. However, infringement was a minority activity; it is estimated that 17% of internet users consumed at least one item of infringing content, which equates to around a third (29%) of all consumers of online content. The research also shows that 44% of all internet users aged 12+ were not confident (not particularly or not at all confident) of the legality of online content. 30% of people would be encouraged to stop infringing if cheaper legal services

⁶ <http://www.cityoflondon.police.uk/CityPolice/Departments/ECD/PIPCU/>

⁷ <http://www.legislation.gov.uk/ukpga/1985/23/contents>

⁸ The UK's independent regulator and competition authority for the communications industries.

were more available, and 24% would be encouraged to stop infringing if everything they wanted were available legally.

INDUSTRY INITIATIVES

21. The Hargreaves Review found that enforcement and education alone have struggled to make an impact on levels of copyright infringement, but that there has been more evidence of success where industry has responded to illegal services by making available lower priced legal products in a form consumers want.

22. As well as developing various automated technologies to search for copyright infringing content online and issuing take down notices, the UK industry is developing solutions to help the consumer differentiate between legal and illegal copyright content online. Online music providers (and other publishers) operate a variety of business models including: free downloads supported by advertising; free downloads for light users, with premium charges for heavier or advanced use and various subscription services, including storage services where consumers can keep “their” libraries. As a result the UK has more legal offerings than anywhere else in the world.

23. Chapter 2 of the UK IP Crime Report provides an annual update on the coordinated response to tackling IP crime, and highlights initiatives and projects to address the key threats posed by IP crime, such as the online environment. A number of examples are set out below, but these are not exhaustive.

24. PRS for Music is developing a technology solution to help the consumer differentiate between legal and illegal copyright content online before engaging with a website, allowing them to make informed choices about where to obtain content. The “Traffic Light” – a green tick or a red cross – would appear next to the name of the site or via a pop up when the consumer sees links to, directly accesses or searches for, a site. It would apply to all sites, whether hosted in the UK or elsewhere.

25. In response to the problem of differentiating legal and illegal sites, the Alliance for Intellectual Property launched The Content Map⁹ in November 2012. This is an online portal which showcases the wealth of legal services available to UK consumers across films and TV, ebooks, music games and sport sectors.

26. The Industry Trust for IP Awareness aims to address the ongoing challenge of film and TV copyright infringement by inspiring audiences to value great movie moments and choose to watch film, TV and video via legitimate sources. The Industry Trust’s education activities have been running for a number of years and have recently been assessed to have restrained the spread of piracy by around two million people a year. The industry’s flagship integrated multimedia campaign, ‘Moments Worth Playing For’, inspires viewers to respect the value of creative content by demonstrating that film, TV and video have an entertainment value worth paying for. The campaign points consumers to the legal film search-engine, FindAnyFilm.com, as a great starting point for enjoying legal films, across all formats. The Industry Trust has also re-launched the ‘Music, Films and the Internet’ guide, which provides advice and information to help parents and teachers distinguish whether a site is selling legitimate content or not, and advice on the consequences of accessing infringing materials.

⁹ <http://www.thecontentmap.com/>

27. Brand-i¹⁰, which launched in June 2011, provides a forum for consumers to locate genuine branded goods online and to report any suspected counterfeit websites. Consumers are able to search by the brand directory for websites approved by the brand owner to sell their goods. Consumers can also report suspicious websites. This information is relayed back to the rights holders' protection department, for them to take the necessary action, and to the Trading Standards E-Crime Centre¹¹, to ensure that non-member or non-brand related queries are investigated.

THE TECHNOLOGICAL CHALLENGE

28. As technologies develop, the scope for IP infringement widens. The UK therefore considers it is important to develop solutions to the technological problems. As well as helping to prevent IP infringement it has the added benefit of assisting growth in legitimate businesses. Therefore in 2013 the UK IPO, through the Technology Strategy Board's Small Business Research Initiative, ran a competition aimed at boosting the enforcement of IP rights, and highlighting the availability of legitimate sources of supply by seeking answers to the question "how can new technology assist the growth in legitimate markets, whilst reducing markedly the accessibility of infringing products online?" Nineteen proposals were received from a range of businesses and academic institutions, and two projects were funded. The University of Surrey has developed a novel scheme for protecting digital media content, whilst whiteBULLET¹² has designed a system which allows websites to be classified as low, medium or high risk in an IP Infringement Index. This will help users identify websites that are selling pirated goods or breaking IP law.

SUMMARY

29. In summary the UK approaches the challenge of tackling online IP infringement in an integrated manner, through a combination of enforcement, educating the public and providing consumers with the ability to access legitimate digital content.

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¹⁰ www.brand-i.org

¹¹ <http://www.tradingstandardsecrime.org.uk/>

¹² <http://www.white-bullet.com/>