

5 Fostering and protecting intellectual property

Challenge

Improving IP enforcement

Improving IP awareness

Response

IP in the curriculum
Awareness campaign

Legislation on illegal file sharing
Online IP crime fund
'Fake Free' London
National Centre of Excellence

One area of the regulatory framework with which most creative industries are concerned is intellectual property. IP rights are the catalysts which help turn creative activity into creative products and services. The UK IP regime delivers protection beyond international norms, but new digital technologies challenge the traditional means of managing and valuing intellectual property.

While continued legal protection for creativity is essential, the Government must also respond to a market that is creating radical new opportunities to which consumers are responding with enthusiasm. Our regime must ensure that new innovations can be spread widely so consumers can benefit while providing the right incentives for creators to create. All intellectual property is a balance between encouraging innovation and ensuring it can be spread as widely as possible. We need to ensure that our regime continues to evolve to achieve that balance, so consumers can benefit from the huge explosion in content that is underway, while giving the creators the right incentives to create.

To achieve this we must continue to take action on a number of fronts. We need a balanced IP framework relevant to today's world. We need new business models which recognise changes in technology – and their democratisation of content – yet capture the value provided by content producers and distributors. We need the right enforcement tools in place to tackle IP crime. We need to improve education and understanding of IP. And we need to anticipate technical developments that will further challenge IP enforcement.

New business models

- 5.1 As the Gowers Report observed in the context of anti-piracy activities, the Government prefers voluntary solutions between content owners and network operators rather than regulation. We would like to see co-operation extended to new business models that enable innovative commercial services, enhancing choice and value for money. The business imperative for collaboration between content owners and distributors is becoming increasingly important for two reasons:
- Content owners are seeking to offset the decline in their traditional revenues from unit sales of CD and DVD downloads by developing new models.
 - Network operators, having invested considerably in infrastructure and faced with an increasingly standardised access charge as their primary revenue, are seeking ways of generating incremental revenue. They see content as providing extra value and as a way to differentiate their services from those of their competitors.
- 5.2 There is already commercial collaboration in the market place. We believe that the integration of anti-piracy measures into a wider collaboration between content and network providers could create a healthier digital environment which would benefit consumers and creators. We are encouraged to see attempts at commercial solutions to the problems of piracy involving collaboration between rights holders and ISPs, and look forward to the further development of these types of solutions.

Improving IP enforcement

- 5.3 Since most of the value of the creative sector derives from intangible assets, creative businesses must be able to value them accurately and have confidence that they will be vigorously defended under the law. This is particularly important for the UK creative sector, which has more content producers than distributors. A recent London Business School study noted that 'Content distributors (studios, record labels, publishers) are bigger and more powerful than content creators. As a result, distributors capture much of the value that producers of creative content generate'.
- 5.4 Although the relationship between producer and distributor is usually mutually beneficial, the continuing success of the creative industries depends heavily on clear terms of trade and a robust regime of intellectual property regulation.
- 5.5 Online IP infringement, in particular, continues to grow. If creative artists cannot earn a living as a result of their work, then our creative industries will not thrive.
- 5.6 Recent action, such as steps to expand the powers of Trading Standards Officers to help tackle IP crime – for which ongoing funding has been secured, including almost £8 million funding for 2008/09 with further increases to come over the next three years – and the initiatives being taken forward under the National IP Crime Strategy demonstrate our commitment to tackling these issues. The *2007 National IP Crime Report* reports progress that has been made. However, further action is required: we cannot be complacent.

European Union Intellectual Property Rights II (IPRII) Project

IPRII supports China's transition to a market economy, and in doing so seeks to address European industry concerns. The key aim is to improve the effectiveness of IP enforcement in China, and capacity building of copyright enforcement is an essential part of this. EU experts will be working with China's National Copyright Administration to train new recruits and improve the capacity and knowledge of existing staff. The Government will also be working in partnership with Chinese authorities to help them meet the challenges of internet infringement and to help build a network of collecting societies.

IP and the international dimension

- 5.7 Doing business in overseas markets is also of critical importance for UK creative industries, but they need the confidence that their IP will be properly protected. In countries where such protection cannot be guaranteed, there can be a significant barrier to market access.
- 5.8 UK-IPO therefore works at a number of levels to support UK businesses. It works (in partnership with fellow EU Member States) through multilateral institutions, such as the World Intellectual Property Office and the World Trade Organisation, to ensure that member countries have enforcement legislation that complies with international norms. However, compliant legislation does not always translate into effective enforcement. UK-IPO is therefore involved in a series of capacity building programmes with major emerging economies such as India, China and Brazil, either bilaterally or as part of wider EU programmes, or in collaboration with international partners such as the United States Patent and Trade Mark Office.

Commitment 15

We will consult on legislation that would require internet service providers and rights holders to co-operate in taking action on illegal file sharing – with a view to implementing legislation by April 2009

- 5.9 The Government recognises the value of the current discussions between internet service providers (ISPs) and rights-holders; we would encourage the adoption of voluntary or commercial agreements between the ISPs and all relevant sectors. While a voluntary industry agreement remains our preferred option, we have made clear that we will not hesitate to legislate in this area if required. To that end, we will consult on the form and content of regulatory arrangements in 2008 with a view to implementing legislation by April 2009.

Intellectual property in the creative industries

IP is complex and encompasses IP rights and informal IP such as 'know-how', which can be protected by a variety of means, for example confidentiality agreements. While copyright is the predominant intellectual property right in the creative industries, Trade Marks and Registered Designs are likely to play a role. Patents may also be an important to those which develop new and improved technologies.

Whilst formal IP rights provide security it is often business know-how, 'informal IP', that represents the majority share of a company's intellectual asset base. Understanding the full range of IP rights and how to protect and exploit them are key business skills. IP laws may vary between different jurisdictions, for example the patenting of software, and these might influence IP strategies.

UK-IPO is working to ensure that the UK companies make best use of IP. It works across government and with organisations such as BERR's Small Business Service, the English Regional Development Agencies, and the British Library's Business and IP Centre to provide valuable help and to deliver outreach programmes to promote a better understanding of the value of IP in the business community.

Commitment 16

UK-IPO will put into action a plan on IP enforcement

- 5.10 The UK-Intellectual Property Office (UK-IPO) will deliver improvements within the current enforcement arrangements. It will:
- **Explore options for voluntary enforcement funds.** We recognise there is already a great deal of effective partnership working between enforcement agencies and industry. We want to build on this and would welcome proposals from the creative industries for new industry-funded initiatives to help tackle physical and online IP theft. Such funding could be targeted on the establishment of mobile specialised enforcement teams to crack down on illegal activity.
 - **Pilot a 'Fake Free London' campaign on IP enforcement.** Building on the work of the UK Film Council and other rights holders, Fake Free London will bring the rights holders, creative industries, the Government and enforcement agencies together to maximise resources to make London free from counterfeit goods in the run up to the 2012 Olympics. UK-IPO will pilot a project across key authorities, including all five Olympic boroughs. Findings from the pilot in late spring 2008 could provide a model for a much wider roll-out across London and in other cities.
 - **Establish and fund a National Centre of Excellence** to deliver expert police resource focused on tackling IP Crime and to help provide a national perspective to the work going on at a local level.

- **Work with Trading Standards Officers** and local authorities to make best use of the Proceeds of Crime Act – which is generating around £500,000 per month in IP crime-related assets.
- **Work with the Association of Chief Police Officers** to provide extra focus on enforcement activity and encourage further action.
- **Establish a Ministerial and industry forum** to bring together rights-holders, consumer groups, the Government and technology companies to discuss new ideas, issues and solutions to the challenges and opportunities afforded by new technology.

Penalties for copyright infringement

- 5.11 Copyright infringement is a serious economic crime. It is important that the penalties available are proportionate to the harm caused to UK industries and that they act as an effective deterrent. For this reason we intend to consult on introducing exceptional summary maxima (above £5,000) in the Magistrates' Courts for offences of online and physical copyright infringement.

IP infringement in the creative economy

- The cost of pirate audio-visual goods and illegal downloads amounted to £460 million in 2006 alone.³¹
 - A 10% reduction in software piracy in the UK would generate 30,000 jobs and contribute £11 billion to the official economy.³²
 - The IFPI estimates the trade of pirate discs was worth \$4.5 billion globally in 2005. At the same time, almost 20 billion tracks were illegally swapped or downloaded in 2005.³³
 - The OECD reports that approximately US\$200 billion worth of counterfeit goods were seized across national borders in 2005. The actual trade value of these goods is likely to have been several hundred billion dollars more.³⁴
 - A recent study by the Centre for Medicines in Public Interest forecasts global sales of counterfeit prescription drugs is set to reach \$75 billion by 2010.³⁵
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Respecting the creativity of others – understanding intellectual property

- 5.12 Intellectual Property Rights are generally poorly understood. Many members of the public don't see anything wrong with free or pirate access to content.³⁶ 29% of consumers say they have acquired or viewed pirate video content. Improving the message – and its targeting – is therefore central to the whole IP agenda.

31 British Video Association/IPSOS 2006.

32 *Annual BSA and IDC Global Software Report 2006*.

33 *The Recording Industry Piracy Report*, IFPI 2006.

34 *The economic impact of counterfeiting and piracy*, Organisation for Economic Co-operation and Development (OECD), 2007.

35 *21st Century Health Care Terrorism: The Perils Of International Drug Counterfeiting*, Peter Pitts, Center for Medicines in the Public Interest (CMPI), 20 September 2005.

36 British Video Association/IPSOS 2006.

An automated content access protocol for the publishing industry

The licensing of information collected from the internet is one issue that has emerged as traditional publishers develop new businesses on line. Pupils may use such content as reference material for their course work. Bloggers may link to it to promote their argument. And aggregators will typically collect content on a common theme from different sources.

Each group has very different requirements, but web-based licensing systems have not kept pace. Consequently, many publishers are not able to tune licences to users' needs as they can with print. And traditional income projections are now unreliable because web based material can be repackaged in different ways without acknowledging the original source. The existing online licensing cannot discriminate between users' needs and has limited application.

A group of international IP experts drawn from newspapers, magazines and content aggregators has been developing a new standard which can be adapted to differing end-uses of content. UK companies played a major part in this work, which has been led by Mark Bide of Rightscom Ltd since 2006. Following a £500,000 pilot to test the concept, a new Automated Content Access Protocol was launched in New York in November for extended commercial use. Its scope will be extended beyond text in the future to include still images, sound and movies.

- 5.13 Children and young people are even greater consumers of the output of the creative industries as adults. Those with creative talent should understand the importance of IP and its relevance to future creations. UK-IPO's Cracking Ideas project, aimed at 9 to 11 year olds, is designed to encourage children to be innovative and to show them how they can protect and profit from their ideas. British Music Rights has provided free, on-line lesson plans covering IP issues, for Key Stage 3 Music teachers.
- 5.14 It is also vital that IP awareness runs through the school curriculum for children of all ages. This is particularly important as they reach adulthood, when their spending power increases and they become potentially both producers and consumers of IP.

Commitment 17**We will promote better understanding of the value and importance of intellectual property**

- 5.15 The Government will work with schools and industry to ensure that relevant IP is considered as part of the forthcoming primary curriculum review and consideration is given to including it in the Principal Learning element of relevant Diplomas and other relevant qualifications as specifications are reviewed. We will work with stakeholders, including the CREATE Group, industry and subject associations to increase understanding of IP issues among teachers and to identify ways in which it might be successfully incorporated into teaching and learning. We will also work with specialist schools, in particular those focusing on arts and music, to promote IP within their partner school and community links.

- 5.16 UK-IPO will work with stakeholders on an awareness campaign to inform people of their rights in purchasing creative content, should the results of their consultation on format shifting – including the transfer of CDs to MP3 players – propose the introduction of an exception to existing rules on illegal copying.
- 5.17 UK-IPO wishes to develop a wider programme of raising awareness – working with rights holders to share platforms and deliver joint messages – and this work will be taken forward through the CREATE Group.

Convergence Think Tank

As digital technologies converge, communications and access to content are possible across an increasing number of platforms (including mobile phones and the internet) and types of equipment, and from a vastly increased number of domestic and international providers. Consumers can now generate their own content at relatively low cost and have the facilities to copy and share content.

These changes bring both huge opportunities and challenges, for businesses, consumers and government. We need to consider how best to ensure universal access to high quality content and empower consumers while maintaining a vibrant open market that also ensures sufficient rewards for content creators and providers in a converged digital environment.

We need to ensure that the future regulatory framework supports the development of the market, empowers and educates consumers and ensures the UK remains the location of choice for the creative industries. In September 2007, the then DCMS Secretary of State, James Purnell, announced a new Convergence Think Tank to engage the public and industry in debate, to identify the key challenges and concerns posed by convergence, and if appropriate, make recommendations for changes to the existing regulatory framework. A series of public seminars began on 7 February.

The Think Tank will take full account of other relevant initiatives, including the forthcoming review of next generation broadband announced in the next chapter.

www.culture.gov.uk/convergence

Conclusion

- 5.18 Effective protection of copyright will enhance Britain's competitive advantage in content creation. We will raise awareness of the importance of copyright in schools and colleges, and across the wider population. We will strengthen our efforts to tackle IP crime by setting up a National Centre of Excellence and, by working in partnership with the industry, to help boost our enforcement capability.