

ALLIANCE

FOR INTELLECTUAL PROPERTY

Response to the UK IPO's call for views on illicit IPTV streaming devices

07 April 2017

About the Alliance

Established in 1998, the Alliance for Intellectual Property (IP) is a UK-based coalition of over 20 organisations with an interest in ensuring intellectual property rights receive the protection they need and deserve. Our members include representatives of the audio visual, music, video games and business software, and sports industries, branded manufactured goods, publishers, authors, retailers and designers.

The Alliance is concerned with ensuring intellectual property rights are valued in the UK and that a robust, efficient legislative and regulatory regime exists, which enables these rights to be properly protected.

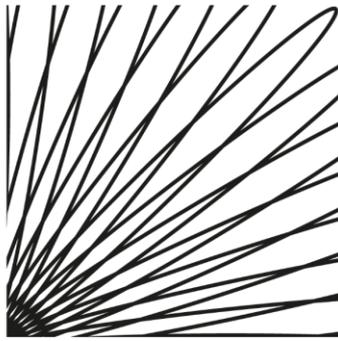
Members work at a national and local level with law enforcement bodies to reduce the harm caused by intellectual property crime in local communities and ensure legitimate businesses and traders are able to operate fairly.

We also work closely with the UK Intellectual Property Office to raise awareness of the harm caused by IP theft. We are participants in the IP Crime Group, which facilitates cross departmental dialogue and joint working amongst the relevant enforcement bodies and organisations.

The Alliance also supports the promotion of IP through educational and consumer awareness initiatives and encourages the development of IP training for businesses and individuals seeking to develop and produce goods, services and content.

Some Alliance members are responding separately to this Call For Views and will be providing more detailed evidence on cases and outcomes of criminal actions.

Every TV programme or film created relies on an underlying web of licences and contracts for source material, scripting, direction, performance, special effects and so on. Any infringement of that one piece of content not only breaches all those agreements but also has a potential impact on thousands of stakeholders each of whose rights are being abrogated, and who rely on licensing of their work for their livelihood and revenue stream that enables them to create and participate in new work.



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In 2015-16, Incopro and ICM Unlimited undertook research on behalf of the audio-visual sector that highlighted the significant and growing problem amongst British consumers of the sale and use of set-top boxes and sticks uploaded with software and add-ons providing access to unauthorised copyright material.

Findings illustrated that 19% of adults admit to engaging with it, with almost 50% starting to engage with Over the Top piracy (use of set top boxes and sticks uploaded with software and add-ons providing access to unauthorised copyright material) in the last year. Findings also indicated that engagement with longer-standing forms of digital piracy (via laptops and smartphones) is currently at 23%. UK Google Search has also had a 243% increase in searches associated with OTT piracy between November 2015 and November 2016.

A consumer survey by ICM in October 2016 has implied that many of the consumer survey's self-confessed infringing respondents said they were spending less on video entertainment, or had cancelled subscriptions to services such as Sky, Now TV, Virgin Media, Amazon Prime Instant Video and Netflix. 41% said they spent less money going to the cinema.

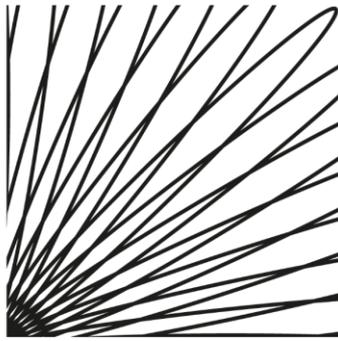
The research also clearly evidences the way in which the use of devices to access infringing content has become normalised, with devices connected to the family TV and people of all ages watching, making it more acceptable and widespread as an activity. Evidence also shows that parents are endorsing their children's involvement in this type of activity, which potentially exposes them to inappropriate content on unregulated and uncensored platforms.

There are three cases that have so far been through the courts, all involving the sale of set-top boxes/IPTV devices:

1. O'Leary/O'Reilly, Nottingham Crown Court, conspiracy to defraud (9/12/16)
2. Montgomery, Airdrie Crown Court, plea of guilty to S296ZB (16/3/17)
3. Mayes, Hartlepool Crown Court, plea of guilty to S296ZB (6/3/17)

This area of criminality is seen as complex both by enforcement agencies and prosecutors. Barristers with experience in such cases cite the problems in prosecuting using different legislation. Ari Alibhai, an expert in this field, has said he would welcome changes to UK copyright laws to deal with cases where technology is used to access copyright-protected content that has not been encrypted¹.

¹ <https://www.out-law.com/en/articles/2017/january/uk-cases-highlight-different-routes-taken-by-prosecutors-over-the-supply-of-modified-tv-set-top-boxes>



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The proposed amendments to the Digital Economy Bill that have been put forward, we believe, are a sensible and simple way of plugging any perceived gap in the legislation. It is better to act on this now rather than wait and see important cases fail. History has shown with the TV-Links case that it can take years to rectify the problems of a failed prosecution and we cannot afford to be in that position with this type of crime. We are not aware of any case law that limits the application of current law but the drafting of certain offences discourages charging.

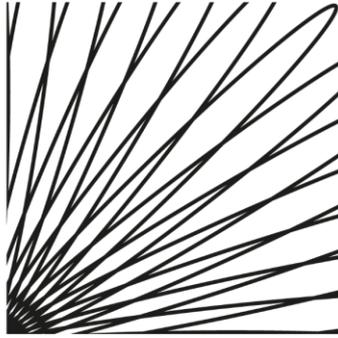
The nature of this type of criminal activity, with organised criminal enterprises, individuals using fake identities and the use of privacy protection services means that cases require considerable investment in time and resource to investigate and gather evidence. This is also combined with a general lack of skills in law enforcement around this and other technologies and uncertainty as to whether a case will be taken to prosecution. Investigations can be costly and time-consuming and trading standards will only deal with specific offences. The Police Intellectual Property Crime Unit (PIPCU) is a unique and valuable asset in the fight against all forms of IP crime. Long term and sustainable funding for PIPCU is needed to ensure that this specialist resource can continue and assist in tackling this and other organised criminal activity that harms the ability of UK creators and businesses to invest in and develop new IP.

The Alliance and its members have raised this issue at conferences and enforcement summits globally. There has been considerable interest from the US and other countries in tackling this problem at an international level and creating a more harmonised approach. However, there remains a need to have effective enforcement and legislation in the UK.

There has been some action taken by Amazon to prevent the listing of 'fully loaded' devices on its platform; more action by other platforms, including retailers, auction sites, social media and search engines, would be welcome; intelligence sharing with rights holders to identify new trends would be useful. Alliance member, the Premier League, has obtained a blocking order via the High Court to curtail streams of live matches at certain times. International cooperation to identify the hosting providers and delivery networks could shut down the services

Clear guidance on the current law from both IPO and CPS would help Trading Standards, police officers and prosecutors. This could then be updated once new legislation is in place. The IP section on the CPS website² has not been updated for over five years. CTSI and/or National Trading Standards Board should also be included

² http://www.cps.gov.uk/legal/h_to_k/intellectual_property_crime/



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in the provision of training and advice and to help prioritise this issue in local authorities. An IP prosecutions portal could easily be created on the gov.uk site.

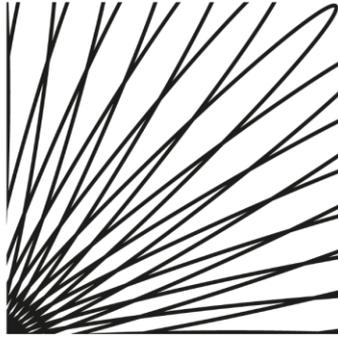
Initiatives to improve the effectiveness of the legal system could include adopting a streamlined process for bringing cases to the attention of law enforcement and prosecutors to allow for discussions in cases where new technology or criminal behaviours fundamentally affects rights holders.

The Government should also chair regular meetings with platforms and others in the supply chain (shipping companies, parcel services, payment processors and ISPs/hosting providers) to share intelligence and create best practice to reduce and deter criminal activity.

A consumer awareness campaign should be delivered by Government with the support of industry and creators to address this issue. This could easily form part of the Get It Right campaign that has already shown progress in helping guide consumers towards genuine content.

The Alliance and its members are committed to working with Government, law enforcement, prosecutors and other sectors to reduce criminal activity and protect UK consumers.

We call on the Government to act swiftly once this Call For Views closes and to bring forward legislation that tackles current threats but is also 'future proofed' to be able to deal with emerging threats.



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About the Alliance

The Alliance for Intellectual Property represents trade associations across the creative, branded and design industries, each concerned with ensuring that IP rights are respected and that a legislative regime exists that enables the value and contribution of these rights to be fully realised. Alliance members represent the audio-visual, music, games and software, sports rights, branded manufactured goods, book and magazine publishing, retailing, visual arts and design sectors.

Alliance Members

Anti-Copying in Design, Anti-Counterfeiting Group, Association of Authors' Agents, British Association for Screen Entertainment, British Brands Group, BPI, Copyright Licensing Agency, Design and Artists Copyright Society, Educational Recording Agency, Entertainment Retailers Association, Film Distributors Association, Motion Picture Association, Premier League, Professional Publishers Association, PRS for Music, Publishers Association, Publishers Licensing Society, UK Cinema Association, UK Interactive Entertainment, UK Music

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