



ALLIANCE

FOR INTELLECTUAL PROPERTY

Reform of damages

Abuse of intellectual property is a highly lucrative activity and hugely damaging to the businesses or individuals whose intellectual property is being infringed. Across industry, hundreds of millions of pounds are lost annually through IP theft, with similar sums finding their way into the pockets of those criminals infringing and abusing IP rights. Jobs are being lost, shops forced to close and innovation stifled.

The Alliance is calling for a change in the law to ensure that civil damages awards for IP infringement act as a visible deterrent to those who breach copyright and trade mark laws with apparent impunity. Unfortunately, the Ministry of Justice (MoJ), in its consultation paper *The Law on Damages*, appeared to disagree but in doing so is ignoring clear recommendations, accepted by Government, from a number of influential reviews.

The Gowers Report into Intellectual Property stated:

“Damage awards should act as a disincentive to infringement”,

while the Culture, Media and Sport Select Committee Report into New Media and the Creative Industries commented that:

“The deterrent effect of the present law in this respect is near zero: it should be substantial, as are some of the illicit profits being made”.

The Alliance is urging the Government to reconsider its position outlined in the MoJ consultation. The current regime offers little opportunity for organisations to claim back the true costs of the losses they suffer – providing no deterrent and creating if anything an incentive to infringe. In some cases it would be just as if a driver found not paying the congestion charge faced no penalty and only had to cough-up the fee. In the absence of any deterrent penalties, many more people would run the risk of nonpayment. If criminals know they faced significant damages if brought before the civil courts, they may think twice before engaging in that theft.

What is needed?

The Alliance is calling for the introduction of pre-established and exemplary damages for cases of intellectual property infringement. Current remedies offered under the existing damages regime are ineffective and do not address the changing nature of IP infringement. A solution offering rights holders the ability to seek damages which act as a deterrent is clearly needed in order to stem the growing problem of IP infringement in the UK and address the damaging, corrosive effect it is having on UK industry and the UK economy.

The fact that the system for damages awards in the context of the 21st century digital

revolution is inadequate is not a problem of the MoJ's making. However, the solution is very much in its hands. The Alliance urges meaningful and lasting changes to be made to the IP damages law that will have, in turn, lasting and substantial benefits to the UK's creative and industrial economies.