



SUBMISSION TO ALL PARTY IP GROUP INQUIRY ON THE ROLE OF GOVERNMENT IN PROTECTING AND PROMOTING INTELLECTUAL PROPERTY

The Alliance Against IP Theft welcomes the All Party IP Group inquiry into the Role of Government in Protecting and Promoting Intellectual Property.

Established in 1998, the Alliance Against IP Theft is a UK-based coalition of trade associations and enforcement organisations with an interest in ensuring intellectual property rights receive the protection they need and deserve. With a combined turnover of over £250 billion, our members include representatives of the audiovisual, music, games and business software, and sports industries, branded manufactured goods, publishers, retailers and designers.

The Alliance is concerned with ensuring that intellectual property rights are valued in the UK for the following reasons:

- IP is essential to the creative industries which support around 1.5m jobs, contribute over £36 billion to UK Gross Valued Added (GVA) (DCMS Creative Industries Economic Estimates) and “makes a substantial contribution to UK export figures”¹.
- IP is also the basis for the £16 billion which companies invest annually in the UK economy by building brands, and allows the UK’s brand-building industries (including advertising, marketing and design agencies) to generate around £1 billion in GVA through exports alone.
- Brand manufacturing still accounts for 14% of UK manufacturing and over £50 billion of gross output.
- The design industry employs up to 350,000 people and UK businesses spend around £35 billion on design each year².
- It is people’s desire for IP-rich content that will drive demand for broadband and the online economy
- Ensuring that IP rights are valued, protected, and enforced, providing businesses and investors with the requisite certainty to invest in the creative industries, plays a fundamental role in driving growth and employment.

1. What should the objective of IP policy be?

Intellectual property rights fall under core property rights, and as such are protected by the UN Declaration on Human Rights. The objective of IP policy must be to ensure that individuals and businesses are able to create and innovate, safe in the knowledge that their product is firstly, protected; secondly, unable to be used without their permission and finally, that they can earn a living from the proceeds, if they so wish.

¹ <http://www.bis.gov.uk/assets/biscore/economics-and-statistics/docs/u/10-803-uk-trade-performance-growth-patterns>

² <http://www.ipo.gov.uk/ipresearch-designsreport1-201109.pdf>

Industries which rely on intellectual property have historically been, and continue to be, a great British business and cultural success story. As such, a strong framework is vital not just to ensure the success of British business, but also the success of the UK economy. With IP theft growing and becoming more ingrained as an organised criminal activity, British industry is currently losing billions of pounds a year, the Treasury is losing significant tax revenue and consumers are being ripped off.

2. How well co-ordinated is the development of IP policy across Government? Is IP policy functioning effectively on a cross departmental basis? What changes to the machinery of government do you believe would deliver better IP policy outcomes?

It is our experience that development of IP policy is poorly co-ordinated across Government departments. IP policy formation formally sits within the IPO, an Executive Agency of the Department for Business Innovation and Skills (BIS), but in our members' experience there is a distinct divide in formation of IP policy between BIS and the Department for Culture, Media and Sport (DCMS.) DCMS takes a particular interest in the creative industries, digital policy and copyright, and there is no clear delineation of responsibility, which can be confusing for businesses hoping to engage with policymakers on the issues affecting them. In addition, the Home Office, Ministry of Justice, Department for Communities and Local Government along with the devolved governments all have roles to play when it comes to enforcing IP policy. When the numerous enforcement agencies which are responsible for tackling IP enforcement on the ground are included, it is apparent that a complex web of responsibility has been created in this area which is compounded by the fact that IP enforcement is devolved but IP policy and legislation is not.

Mike Weatherley MP (Con, Hove) recently asked a Parliamentary Question of each Government Department to ascertain what they saw as their role in developing IP policy; the answers were often mismatched and uninformed, providing an insight into a lack of awareness on the importance of IP policy and its effect on British business. We would especially like to see greater awareness and engagement from the Treasury, particularly given the fact that IP is responsible for 20% of UK labour productive growth (2000-07), or £65 billion in 2008.

To give one practical example, the Intellectual Property Crime Group (IPCG) was founded by the Intellectual Property Office (IPO) in 2004, ostensibly to 'bring together expert resources including senior industry, Government and enforcement agency officials to combat IP crime³.' Yet other Government departments, including the Home Office and Treasury, rarely attend IPCG meetings.

The IPO's mission is to 'promote innovation by providing a clear, accessible and widely understood IP system', but it does not currently take responsibility for championing the importance of IP within Government. We believe that the IPO should be the pre-eminent champion in Government of intellectual property and the value and contribution IP rights make to society and the economy, while ultimate responsibility for IP policy should be brought back into a properly accountable Department, ideally one with an economic and industrial policy brief, and represented by a strong Minister of State.

We also urge the Group to review the work of the Office of the US Enforcement Coordinator and how its strategic plan draws in all relevant Government departments, agencies and enforcement bodies.

³ <http://www.ipo.gov.uk/ipenforce-group.htm>

3. There have been numerous attempts to update the IP framework in the light of changes brought about by the digital environment. How successful have these been and what lessons can be learnt from these for policy developments?

The Gowers Review (2006)⁴, Developing a Copyright Agenda for 21st Century (2008)⁵ the Digital Britain report (2009)⁶, and the Hargreaves Review of Intellectual Property and Growth (2011)⁷ have all considered this issue. Each time the framework has been reviewed it has created uncertainty for industry, which has a real impact on investment. We question the value to strategic policy development, and the long term vision required in this area, of independent experts being parachuted in to conduct what are reasonably quick reviews. The experience of our members is that the current regulatory framework is remarkably flexible, and most importantly technology neutral, which has enabled it to adapt to the digital age. The Alliance would be loathe to see the framework amended to suit current trends or a particular device, as with the current pace of technology development it would undoubtedly be out of date within years, if not months.

Moreover, the Alliance believes that the role of government is to help ensure a level playing field to allow innovation and growth to take place without regulatory intervention artificially influencing market forces. The current tried and tested IP framework for copyright should not be changed to suit current political and commercial aspirations which bestow advantages to certain industries at the expense of others.

We are also seeing a worrying tendency for IP policy to be developed in isolation to initiatives and reviews being conducted not only elsewhere, but even within the UK Government. For example, the European Commission has a process underway with respect to appointing a levies mediator, yet in the UK a major policy change is being recommended in relation to private copying which fails to take this into account. In addition, the UK Government has appointed Richard Hooper to conduct a feasibility study into the potential of a Digital Copyright Exchange. Given the benefits such an exchange could deliver, and its potential as a solution to a number of the issues raised in Hargreaves, we question the logic behind deciding on the future of copyright exceptions before this process has finished.

4. How effective is the Intellectual Property Office and what should its priorities be?

As stated earlier, we believe that the IPO should include the promotion of intellectual property rights within Government as part of their mission statement. We believe that the Intellectual Property Office should be the pre-eminent champion in Government of intellectual property and the value and contribution IP rights make to society and the economy.

We believe this is not happening for a variety of reasons:

- The IPO's statutory duties are concerned only with providing services in support of registered rights (i.e. patents, trade marks and registered designs)
- The nature of Executive Agencies means that the IPO is less accountable, and holds less influence within Whitehall than a Government Department
- There is no effective co-ordination of Government Departments and other interested parties in the formation of IP policy

⁴ http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/gowers_review_index.htm

⁵ <http://www.ipo.gov.uk/c-policy-consultation.pdf>

⁶ <http://tinyurl.com/2cb35cc>

⁷ <http://www.ipo.gov.uk/ipreview-finalreport.pdf>

- The IPO has relied on poor and incomplete evidence to support policy decisions; for example, the Economic Impact Assessments of the Hargreaves Review and the Government Copyright Consultation (as shown by Oxford Economics recent study⁸)
- A high turnover of Ministers with responsibility for IP (four over the past five years) has led to issues with consistency and knowledge.

It is worth noting that Hargreaves considered the role of the IPO and commented that “the IPO’s Culture and character is still not sufficiently outward looking and strategically focused”⁹.

We believe the effectiveness and accountability of the IPO would be enhanced by reviewing its statutory duties.

To this end, new statutory duties may include:

- Duty to inform and educate on copyright awareness [there are currently no statutory duties in relation to copyright];
- Duty to measure the impact of IP policy on the UK economy or value of IP rights to the UK economy and report to the Secretary of State on an annual basis along with a duty to develop strategies and policies to see this increase year on year; and
- Duty to ensure policies are grounded in evidence.

5. UK IP policy sits within European and supranational agreements. How should the UK government co-ordinate its policy at an international level and what should it do to promote IP abroad to encourage economic growth? Do you have examples of good and poor practice in this area?

It is the Alliance’s view that in order to co-ordinate IP policy at an international level, the UK should have at its heart policies which seek to ensure UK businesses get the best deal abroad; and are able to trade and export in confidence. To achieve this, Government must:

- Ensure that policies which it advocates at EU level properly reflect its policies domestically and do not pre-empt the outcome of any live consultations
- Provide advice for IP-rich industries looking to export by connecting closely with UK Trade & Investment and EU helpdesks as key avenues for UK businesses looking for information and guidance on how to acquire, protect and exploit IP abroad
- Take a strong stance at international level on the protection of intellectual property rights by making sure that UK officials engaged in discussions and negotiations fully understand the significance of legal protection for IP in realising value for UK exports and attracting inward investment
- Align with and support those countries taking steps to improve their IP framework via action plans and MOUs, and encourage others to take similar steps
- Provide advice for IP-rich industries looking to export by connecting closely with UK Trade & Investment and EU helpdesks as key avenues for UK businesses looking for information and guidance on how to acquire, protect and exploit IP abroad
- Focus UK law enforcement agencies on the impact that the reduction of economic crimes will have on domestic wealth and employment opportunities when prioritising work with their international partners and within international organisations such as Interpol
- Provide practical and business-focused advice on foreign IP regimes and jurisdictions to UK SMEs to assist in their development and expansion overseas

⁸ <http://www.allianceagainstiptheft.co.uk/downloads/consultations/current/Oxford%20Economics%20Consultation%20on%20Copyright.pdf>

⁹ <http://www.ipo.gov.uk/ipreview-finalreport.pdf> chapter 10

- Work to place further 'IP attachés' in embassies around the world.

We welcomed the publication of the IPO's International Strategy in May 2011 but believe, in order to be effective, it requires specific metrics and specific mechanics to ensure the aspirations it contains translate into policy objectives.

6. Protecting, and enforcing, the IP framework often sits in very different departments to those that develop IP policy and those that have responsibility for the industries most affected. What impact does this have and how can it be improved?

As stated earlier, as an Executive Agency the IPO holds less political 'clout' than a Government Department when it comes to the formation of policy, meaning that the Departments responsible for enforcement are likely to de-prioritise IP policy.

It is our belief that enforcing policy would be an issue whichever Department had responsibility for IP, as no single department can have responsibility for all IP enforcement across the courts and local authorities; however bringing ultimate responsibility for formation of IP policy back into a Government Department, represented by a strong Minister of State would go some way to mitigating this issue.

The All Party Group may also wish to consider whether the creation of a Commissioner for IP would deliver better IP policy outcomes. This would not be a replacement for the Chief Executive / Comptroller General of the IPO who would remain responsible for the operational running of the IPO but instead look at IP from a policy perspective. This Commissioner would report to the Secretary of State. Benefits of this may include:

- a. Such a Commissioner would have IP as their only function. Part of the problem with ministerial responsibilities is that even if a more senior minister was given responsibility for IP then they invariably have other portfolio responsibilities with which we need to compete (as occurred with David Lammy as he was a Minister of State but also had responsibility for Higher Education).
- b. If the roles and duties of this Commissioner were tightly defined, they would be able to view IP in a much more economic framework than the IPO currently appear able to do. For example, a Commissioner could be specifically tasked with coordination of policy across international, national, local and law enforcement agencies.

**The Alliance Against IP Theft
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