



ALLIANCE

FOR INTELLECTUAL PROPERTY

Business, Innovation and Skills Select Committee

Inquiry into the Digital Economy

Alliance for Intellectual Property Submission

Introduction

1. The Alliance for Intellectual Property represents 24 trade associations from across the creative, branded and design sectors with a collective interest in ensuring that IP rights are valued in the UK and that a legislative regime exists which enables the value and contribution of these rights to be fully realised. Our members include representatives of the audio visual, music, games and software, sports rights, branded manufactured goods, publishing, retailing and design sectors.

2. The Alliance for Intellectual Property welcomes the Business, Innovation and Skills Committee inquiry into the UK's digital economy. The creative, design and branded industries are at the forefront of driving digital demand in the UK, providing innovations in goods and services which have ensured that the UK is at the forefront of the global digital revolution.

3. The UK's creative, branded and design industries are a global success story. The creative industries alone are estimated to be worth £76.9 billion to the UK's GVA and account for 1.7 million jobs. Companies have invested £33 billion in the UK to create and build brands, while the UK's design sector employs 350,000 people every year. Intellectual property (IP) rights are fundamental to this success, allowing businesses and creators to invest, develop and innovate in products and services. The Alliance welcomes the Select Committee's acknowledgement of the fundamental role that IP plays in delivering the digital economy.

4. In 2014, the Alliance published *The UK in 2020: A vision for growth in IP-rich businesses*¹, making recommendations for Government to best support growth in the creative, branded and design sectors. These recommendations were formed from responses to a Call for Views process, through which business and creators expressed what they needed from Government to support the UK's IP-rich industries. The majority of those responding stated that they saw the development of technology as a growth opportunity for their business, which has been demonstrable in the way in which IP-rich businesses have fully embraced the digital world as a fundamental part of their working models, and also in the increasing number of ways consumers are accessing goods and services online.

5. However, the overarching message from these businesses is that stability and support of the UK's IP framework is now crucial in ensuring further investment and innovation in their industries, giving business the opportunity to continue to innovate and grow in the digital economy.

¹ <http://www.allianceforip.co.uk/downloads/pdf/ManifestoTheUKin2020.pdf>

The Digital Single Market

6. Given that embracing the digital world has been core to much of the innovation and success of IP-rich businesses over recent years, the European Commission's focus on developing the Digital Single Market is welcomed by members of the Alliance. Measures to make business across the EU easier, including reforms to VAT, setting up small businesses and transacting across borders, will assist all businesses and in particular SMEs. The Alliance and its members helped frame the 'follow the money' approach to IP enforcement and the Alliance welcomes the Commission's support for action in this area.

7. However, while such rapid growth is taking place in the legitimate digital marketplace across the EU, including a growth in the number of services providing content, and technological innovations increasing the portability of digital products, the Alliance remains concerned that measures focused on changing fundamental property rights or those that would override contractual freedom could result in heavy-handed intervention in markets. The Alliance believes that easier and improved licensing is a better approach to improving access for the public, rather than a fundamental reform of copyright law. The European Commission is now in the process of undertaking the first raft of consultations covering key aspects of the Digital Single Market, which includes looking at the role of online platforms and intermediaries; consumer protection regulations; and geoblocking of websites (the latter not including copyright protected content).

8. Statements by Government, including the Rt Hon John Whittingdale, the Secretary of State for Culture, Media and Sport and Ed Vaizey, Minister for Culture and the Digital Economy, have been welcomed for going some way to clarify the UK Government's view following the publication of a non-paper under the last coalition Government that worried many in the creative industries. Given that the European Commission has begun the process of consulting on these issues and is already drafting legislation in some areas, it is imperative that the UK Government makes a renewed and clear public statement on its position and what it seeks to achieve with the Digital Single Market in order to support some of the UK's most successful and innovative industries.

9. As such, the Alliance believes that:

- The UK Government must clarify its position on all aspects of the Digital Single Market reform programme
- The UK Government should engage more vigorously with the European Commission to ensure its views are understood
- The UK's experience and best-practice in IP enforcement should be taken forward to inform the European Commission's plans and, given the support for the European Commission's plans on enforcement and approach to investigations and enforcement, the timetable to introduce additional measures and powers for enforcement should be brought forward
- The UK Government should ensure greater clarity over the detail of the Commission's proposals particularly in definition of key terms, such as portability, territoriality and geoblocking, and also in respect of any exceptions to copyright including text and data mining

- The UK Government should ensure that any Commission proposals on ‘portability’ should be clearly defined and developed in conjunction with rights holders (who are already working on solutions)
- Any changes to copyright exceptions at EU level must be based on thorough economic evidence, taking into account any harm to rights holders from proposed changes
- The Commission must demonstrate the need for cross-border harmonised application of exceptions, particularly when couched in terms of general terminology that may be interpreted differently in various Member States

Understanding the Value of Intellectual Property and the Creative Industries

10. As with the Digital Single Market, interventions undertaken by the UK Government should be supported by a full understanding of the value of IP and the creative, branded and design industries in the UK. An appreciation of how IP-rich businesses have successfully adapted to changes that have arisen as a result of new technologies can help guide policy-making which encourages further growth in these successful sectors.

11. Alliance members have produced robust evidence demonstrating the importance of IP to the success and future growth of creative, branded and design businesses across the UK. The UK Government should continue to welcome such research, as well as continue to bolster attempts to make policy-making more evidence led in this field. The Intellectual Property Office, which has a dedicated and experienced research team, can play a leading role in ensuring that this happens.

12. In particular members of the Alliance have raised concerns that the SIC codes used to understand the size and strength of the creative industries are not robust enough to support balanced evidence-led policymaking. The UK Government has acknowledged in Annex D of their report the limitation of this data². These shortcomings are problematic and make it hard to assess the full impact of any given policy.

13. As such, the Alliance believes that:

- The UK Government should work with industry to further develop its evidence base to achieve a better understanding of the creative, branded and design industries in the UK
- A thorough economic case must be made when proposing changes to the IP framework including assessing whether legislative intervention is proportionate to the problem

Promoting Intellectual Property

Education and Awareness Initiatives

14. Industry has been at the forefront of helping consumers to navigate the new digital environment and promoting awareness of the role that IP plays in ensuring that consumers can access safe, legitimate goods and services online.

15. The Government has taken positive steps to support education of consumers through support of campaigns such as Creative Content UK’s ‘Get It Right From A Genuine Site’ – a joint initiative of the

²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/394668/Creative_Industries_Economic_Estimates_-_January_2015.pdf

BPI, the Motion Picture Association and the major UK Internet Service Providers. The public awareness campaign launched this autumn, and encourages consumers to help support the UK's creative sector by signposting sites where consumers can access content legitimately rather than from illegal sources.

16. "Design Out IP Crime"³, guidance for small and medium size business on protecting their IP from the very start of the creative process, has been developed by Anti-Copying in Design and the City of London Police IP Crime Unit.

17. Other innovations, such as the development of The Copyright Hub⁴, will make it even easier for people to find and use material online in a way that supports IP rights and rewards creators. It is important that Government and business continue to support the development of The Copyright Hub and encourage its use in other countries.

18. The Alliance believes that:

- The UK Government should continue to support initiatives such as 'Get It Right From A Genuine Site' and The Copyright Hub, helping to drive consumer demand for legitimate content and assisting potential users of content to access and license it easily

Promoting Innovation

19. In order to allow the IP-rich industries to fully embrace opportunities that arise out of new technologies, Government should promote the valuable role that IP rights can play in ensuring that consumers can access the goods and services in new and innovative ways.

20. 3D printing is one area where potential for growth and innovation for the creative, design and branded industries can be developed. In order to get ahead of the curve, the Alliance believes that the UK Government should carefully assess what role IP can play to help promote the work of creators and businesses in the design sector. The Intellectual Property Office has already published research reports into the legal implications of this technology. This should be further developed to ensure that IP rights, including both registered and unregistered design rights, are fully appreciated and protected.

21. The impact of gaps in the legal protection of IP rights when new technologies are developed has been well demonstrated in the film and music industries in the past. A government working to ensure that this experience is not repeated on design businesses should look again at the importance of unregistered design rights to designers, upon which Alliance member Anti-Copying in Design has estimated the vast majority of designers rely.

22. The Alliance believes that:

- The UK Government should further develop work to understand the implications of technologies such as 3D printing for the development of digital businesses
- Given the potential impact on the UK's design industries in particular, the UK Government should reassess the importance of both registered and unregistered design rights and look

³ http://www.acid.uk.com/tl_files/2015/PIPCU%20A5%2019.12.2014...pdf

⁴ <http://www.copyrighthub.co.uk/>

again at providing designers the same level of protection for unregistered design rights as that afforded to registered design rights

- 3D printing will enhance the ability to replicate designs easily by those who seek to do so illegally and intentionally. Currently, as the majority of UK designers rely on unregistered rights, there will be little or no deterrent and weak protection under existing laws

Protecting Intellectual Property Rights

23. Industry is working to protect IP rights in the digital world, allowing for the development of legitimate businesses and services which allow access to digital content. However, the scale of online infringement of IP rights is vast and represents both a significant and ongoing challenge for rights holders and creators. In the past year alone, the BPI has sent over 66 million notices to Google to remove links to infringing URLs.⁵ ‘Operation Jasper’, a joint enforcement project undertaken by Alliance members Anti-Counterfeiting Group, Federation Against Copyright Theft and the BPI along with public sector organisations including Trading Standards led to the removal of 4,300 listings of counterfeit products on Facebook.⁶

24. Legitimate businesses looking to utilise the opportunities provided by the growth of the digital economy are hindered by having to compete with those who infringe upon IP rights, and who do not properly contribute to creators and rights holders who fully invest in the creative ecosystem. In order to support development of the legitimate digital economy it is imperative that the law helps deter criminal activity in this area.

Harmonisation of Criminal Penalties for Online Infringement of Copyright

25. The Government recently undertook a consultation on harmonising the maximum criminal penalty available for infringement of copyright online under Sections 107(2A) and 198(1A) of the Copyright, Designs and Patents Act 1988 to ten years – in line with the maximum penalty available for infringement of copyright in physical goods, registered trade marks and registered design rights.

26. The current difference between the maximum penalty available for online and physical infringement of copyright stems from the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002, which increased the penalty for physical copyright theft from two to 10 years imprisonment, and the introduction of new criminal sanctions for online infringement being implemented through secondary legislation via the European Communities Act 1972, under which maximum sentences are capped at two years.

27. The Intellectual Property Office’s 2015 report *Penalty Fair? Study of Criminal Sanctions for Copyright Infringement under CDPA 1988*⁷ highlighted some of the problems associated with the current anomaly, including the lack of prosecutions that have been brought forward under these sections of the CDPA, as enforcement organisations seek to utilise alternative – but potentially less suitable – legislation to secure convictions against those who seek to make money from copyright

⁵ <http://www.google.com/transparencyreport/removals/copyright/?hl=en>

⁶ <http://www.independent.co.uk/life-style/gadgets-and-tech/news/police-deleting-thousands-of-facebook-posts-in-operation-jasper-privacy-crackdown-10345388.html>

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/405874/Penalty_Fair_Study_of_criminal_sanctions_for_copyright_infringement_available_under_the_CDPA_1988.pdf

infringement online. Harmonisation of penalties is not about targeting consumers who may unwittingly access illegitimate content online; rather, it is about deterring criminals from undermining the legitimate online economy.

28. The Alliance believes that:

- Support should be given to the process of harmonising criminal penalties available for online copyright infringement to 10 years, in line with those available for infringement of copyright in physical goods, trade marks and registered design

Follow the Money

29. Sites carrying IP-infringing content can utilise a number of methods to evade detection and monetise criminal behaviour. For example, criminals can utilise privacy and proxy services in domain registration to hide their identities, hindering effective enforcement activity.

30. However, the UK has led the way in finding innovative solutions to deal with the proliferation of counterfeiting and content piracy online through non-traditional enforcement methods. This includes the 'follow the money' approach which seeks to stem the flow of money to organised criminal networks that operate without impunity across the internet. Removing websites' ability to take payments or to generate revenues from advertising has a serious detrimental impact on their operations and is particularly effective when the criminal operators are hard to identify or trace.

31. The Police Intellectual Property Crime Unit (PIPCU), based within the City of London Police, has adopted this strategy - branded Operation Creative - and achieved a 73% decrease in advertising from the UK's top ad spending companies on copyright infringing websites since 2013⁸.

32. Additionally there has been success in removing payment processing for major credit cards and online payment systems from criminal websites with the cooperation of the major UK and global payment processors.

33. The Alliance believes that:

- The 'follow the money' approach should continue to be supported and recognised as best practice both in the UK and overseas, particularly as part of the European Commission proposals for the Digital Single Market

Online Intermediaries

34. The Government's manifesto commitment to reduce the availability of infringing content and counterfeit goods on the internet accessed via search engines was welcomed by the Alliance. It is encouraging to note that the round table discussions with rights holders and search engines continue under the auspices of the Minister for Intellectual Property and with the support of data gathered by Ofcom. However more progress is needed to ensure that search engines are acting to make it harder for both innocent and dedicated users to find infringing content. This requires concerted action to both delist and demote such content but also, crucially, to allow genuine

⁸ <https://www.cityoflondon.police.uk/advice-and-support/fraud-and-economic-crime/pipcu/pipcu-news/Pages/Operation-Creative-sees-73-per-cent-drop-in-top-UK-advertising-on-illegal-sites.aspx>

licensed content to rise towards the top of search listings. Licensed sites are at a disadvantage due to the way that pirate sites create a spider's web of links that help push them up search rankings.

35. The Alliance believes that:

- There should be a continued dialogue with search engines that sets targets and measurements to ensure that infringing content is removed from search listings and that genuine content is allowed to appear prominently

Alliance for Intellectual Property Members

Anti Copying in Design

Anti-Counterfeiting Group

Association of Learned and Professional Society Publishers

Association of Authors' Agents

Authors' Licensing and Collecting Society

British Brands Group

BPI (British Recorded Music Industry)

British Video Association

BSA| The Software Alliance

Copyright Licensing Agency

Design and Artists Copyright Society

Educational Recording Agency

Entertainment Retailers Association

Federation Against Copyright Theft

Film Distributors Association

Motion Picture Association

Premier League

Professional Publishers Association

PRS for Music

The Publishers Association

Publishers Licensing Society

UK Cinema Association

UK Interactive Entertainment

UK Music