



ALLIANCE

FOR INTELLECTUAL PROPERTY

Scottish Affairs Select Committee Inquiry into Scotland's Creative Industries Response from the Alliance for Intellectual Property

The Alliance for Intellectual Property ('the Alliance') welcomes the Scottish Affairs Select Committee's inquiry into Scotland's creative industries. Scotland is the home to some of the world's most iconic and innovative creators, designers and brands, from the Mercury Music Prize award winners Young Fathers to record breaking games designers Rockstar North to heritage Whisky brands Johnnie Walker.

The Alliance notes that the Scottish Government has recognised the importance of the creative industries to the economy through development of its strategy to help grow investment and talent in Scotland. Supporting intellectual property (IP) rights is key to ensuring that any returns on investment can be secured and maximised.

Innovation in the creative industries are underpinned by IP rights across copyright, trade marks and design. The role IP plays in delivering sought-after content and quality products is not just seen in well-known artists, titles and companies, it is also fundamental to the success and growth of lone, micro, small and medium-sized business in Scotland and across the UK. As such, any recommended measures to support Scotland's creative industries should demonstrate a clear understanding of the vital role IP plays to innovation, investment and creativity. Scotland's commitment to supporting IP is already demonstrated by the positive engagement that Alliance members report with organisations such as Police Scotland, where joint working on protection of IP rights has set strong examples for the rest of the UK.

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 through which business leaders and creators expressed what they needed from Government to support the UK's IP-rich businesses.

Given the substantial reviews which have taken place on the UK's IP framework over the last decade, it is perhaps unsurprising that there was a call for stability from IP-rich businesses with the majority (74%) of respondents stating that a stable IP framework was crucial to ensuring investment in their business. As a result, the Alliance calls for an end to the instability caused by frequent reviews into the IP framework in the UK as a key priority. Instead businesses and creators made clear that there is a need to assist the development and growth of IP-rich businesses across the UK through targeted

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

interventions, but only as a result of a proven and clearly defined need. The full list of recommendations can be found in the [Annex A](#).

Since the publication of *The UK in 2020* there has been action on two recommendations. The UK Government announced continued funding for the City of London Police's IP Crime Unit (PIPCU) until 2017², a move fully supported by the Alliance. Although PIPCU is based in London, its remit is across the UK and work undertaken to throttle income to criminal groups profiting from IP crime has benefited all parts of the UK.

The Intellectual Property Office has also recently consulted on proposals to increase the maximum criminal penalties available for infringement of copyright online to 10 years, in line with the maximum criminal penalty available for infringement of copyright in physical goods, registered trade marks and registered design rights.³ Harmonisation of penalties was previously also supported by the Culture, Media and Sport Select Committee during its inquiry *Supporting the Creative Economy*.⁴

Although these are positive developments, the Alliance believes that there are areas of clear priority that the UK Government needs to pursue in order to ensure that IP across the UK is properly promoted and protected.

Understanding the Value of IP and the Creative Industries

The Alliance believes that any interventions undertaken by the UK or Scottish Governments should be supported by a full understanding of the value of IP and the creative, branded and design industries in the UK. Concerns about some of the underlying economic assumptions of recommendations from the Hargreaves Review for Intellectual Property and Growth are well recorded⁵, and going forward it seems advisable that such problems should be avoided in order to support robust policy making. As such, more should be done to support the underlying evidence base.

For example, it is currently estimated that Scotland's creative industries are responsible for 102,000 jobs, although the UK Government has acknowledged in Annex D of their report the limitation of this data⁶. These shortcomings are problematic and make it hard to assess the full impact of any given policy.

As such, the Alliance believes that:

- The Governments of the UK and Scotland should work with the creative industries to achieve a better understanding of the creative sectors in Scotland
- A thorough economic case must be made when proposing changes to the IP framework including assessing whether legislative intervention is proportionate to the problem

² <https://www.gov.uk/government/news/3-million-government-cash-boost-to-tackle-digital-piracy-and-fake-goods>

³ <https://www.gov.uk/government/consultations/changes-to-penalties-for-online-copyright-infringement>

⁴ <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmcomeds/674/674.pdf>

⁵ <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmcomeds/674/674.pdf>

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/394668/Creative_Industries_Economic_Estimates_-_January_2015.pdf

Digital Single Market

Like many people in the UK, Scottish consumers are accessing content in a growing number of ways. Just under half of Scottish consumers are using catch-up services to watch film and TV online, while 21% of Scots are using watching video or films on a standalone video subscription service, a 9% increase on the previous year.⁷ Changes in consumer habits are being supported and led by changes in technology and increasing innovations by digital retailers, service providers and creators themselves.

Growth in the creative industries and digital sectors has been highlighted as a priority area for development by the Scottish Government. Plans by the European Commission to create a Digital Single Market across the EU may be a key opportunity to support creative and digital businesses in the UK, lowering some of the barriers to trade with Scotland's biggest export area.

European Commission proposals to support enforcement work protecting IP rights are welcomed and we await the detail in the autumn. In particular the Commission's support for the 'follow the money' approach, which has been pursued and refined by rights holders and enforcement organisations in the UK, across the EU is a welcome development.

However, as part of its plans to create a Digital Single Market for the EU, the European Commission has outlined other potential changes to IP rights which are so fundamental to innovation and trade in the creative industries. Proposals that seek to make changes to the way that films, TV programmes and other creative content is distributed will seriously undermine the ability of creators to get investment. This investment is often needed before production can commence and without this funding many independent and niche films and programmes will not get made, depriving citizens of vital diverse cultural output.

Additional proposals to revise copyright exceptions threaten to lead to a transfer of value from rights holders and creators to other commercial interests and the Alliance is asking for clear evidence to be presented before making any changes to the current market arrangement. License arrangements for educational use of content currently provide flexible usage for institutions and students whilst also rewarding creators and we see no need for change.

The Alliance believes that:

- The UK Government should ensure that the interests of the creators, rights holders and businesses across the UK are properly promoted at a European level
- 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
- The Commission's timetable to introduce additional enforcement measures and powers should be brought forward

Protecting IP in the UK

⁷ http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr15/2015_Scotland_CMV.pdf

The Alliance Call for Views process revealed that rights holders, businesses and creators wish to see stability in the UK's approach to IP. Targeting anomalies in legislation and supporting greater education and awareness of IP issues in the UK will also help to ensure that the UK remains one of the best places in the world to launch and run an IP-rich business.

The scale of online infringement of copyright is vast. In the past year alone, nearly 6,000 copyright owners have made over 55 million requests to Google to take down URLs linking to over 8,000 domains from search linked to infringing content.⁸ As such, it is important that rights holders and enforcement organisations have the right tools available to tackle the complex network that can enable online infringement of IP rights to thrive.

There are a number of ways in which rights holders seek to protect against IP infringement online in the UK, including the use of Section 97A actions, 'notice and takedown' procedures to have links to infringing content removed from websites and from search engine results, and seeking to deny revenue for infringing websites through such initiatives as Operation Creative⁹.

The UK Government is now taking a step forward to tackle some of the ongoing anomalies in the UK's IP system through the ongoing review into harmonisation of penalties available for online copyright infringement under Sections 107(2A) and 198(1A) of the Copyright, Designs and Patents Act 1988 ('the CDPA') with those available with physical infringement 10 years.

As highlighted in the 2015 report *Penalty Fair? Study of Criminal Sanctions for Copyright Infringement under CDPA 1988*¹⁰ enforcement organisations have reported difficulties which have arisen because the maximum penalty under these sections of the CDPA is currently set at two years. This has led to a dearth of prosecutions utilising these provisions, and the resulting lack of case law on these specific sections of the CDPA may mean that prosecutors are much more hesitant to bring forward cases referring to online copyright infringement in general because the penalty does not reflect the severity of the crime. As such, the Alliance fully supports providing a 10 year maximum for online infringement in order to support enforcement action against those who have infringed copyright on a commercial scale.

Additionally, in recent years the importance of design to the creative economy has been gaining the recognition it deserves. The Alliance welcomed the long-awaited introduction of criminal penalties for infringement of registered designs through the Intellectual Property Act 2014 in order to provide those designers the extra protection in law that they require. However, many of the UK's 350,000 designers rely on unregistered rather than registered design rights.

Criminal sanctions need to apply to unregistered design rights (as they apply to copyright) in order to have any real and lasting benefit to support the majority of UK designers. Currently a 2D drawing is protected by copyright but when it translates into a 3D product it is only protected by either registered or unregistered design.

⁸ <http://www.google.com/transparencyreport/removals/copyright/?hl=en>

⁹ <https://www.cityoflondon.police.uk/advice-and-support/fraud-and-economic-crime/pipcu/Pages/Operation-creative.aspx>

¹⁰ 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

The Alliance believes that:

- Support should be given to the process of harmonising criminal penalties available for online copyright infringement with those available for physical copyright, trade marks and registered design
- The Government should recognise that infringement of unregistered rights can be as damaging for UK designers as infringement of registered designs, and seek an opportunity to make available criminal sanctions for unregistered rights

Protecting IP in Scotland

Infringement of IP represents real risk to businesses and creators, undermining investment and innovation across the creative, branded and design industries and ultimately impacting on jobs and growth. Recent campaigns have also highlighted the harm presented by infringing goods and services present to consumers.¹¹¹²

There have been positive examples of joint working between Scottish public bodies and private organisations to tackle the problems associated with IP theft. The Scottish Anti Illicit Trade Group has been recognised as having a pivotal role in bringing together public and private sectors to reduce the harm caused by IP crime across the country. Alliance members ACG, BPI and FACT are part of the group and sit alongside representatives from law enforcement and Government agencies, developing strategic objectives and sharing intelligence and best practice.

Joint Working in Scotland

A North Lanarkshire Trading Standards officer was attached to Police Scotland's Lanarkshire Division to assist police officers, along with partners including North and South Lanarkshire Councils, the Federation Against Copyright Theft (FACT) and the British Phonographic Industry (BPI), effectively target serious and organised criminals by disrupting their legitimate activity whilst enforcing the law on their illegal operations.

Additionally, Police Scotland introduced the targeting of counterfeit goods as a Key Performance Indicator (KPI) in 2014. Although the KPI has been reformed to a Management Information (MI) indicator, the acknowledgement of issues surrounding IP infringement is a welcome move by Police Scotland. Alliance members report great success working with the force including action taken against those running pirate websites and selling counterfeit goods.

The Alliance also notes that the Scottish Parliament held its first Anti-Illicit Trade Summit in 2014 to bring together organisations from across sectors to help tackle the criminality surrounding the sale of counterfeit goods. The Scottish Parliament Economy, Energy and Tourism Committee also noted that affirmative enforcement action had made an impact on illicit trade and took evidence on what more could be done.¹³

¹¹ <http://news.sky.com/story/1485834/arsenic-and-urine-found-in-fake-cosmetics>

¹² http://www.industrytrust.co.uk/press-releases/the-bogus-features-lurking-behind-pirate-film-and-tv-sites/#_ftn1

¹³ http://www.scottish.parliament.uk/S4_EconomyEnergyandTourismCommittee/General%20Documents/2014_1118_Convener_Letter_to_John_Swinney_re_illicit_trade_issues.pdf

The Alliance believes that:

- Recognition of the importance of IP rights through enforcement work in Scotland should be welcomed
- Best practice in enforcement, especially in multi-agency and public-private partnership working, should be encouraged and developed further
- The Scottish Anti Illicit Trade Group should be bolstered and have increased resource

About the Alliance

The Alliance for Intellectual Property represents 23 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.

Alliance 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
PRS for Music
The Publishers Association
Publishers Licensing Society
UK Cinema Association
UK Interactive Entertainment
UK Music

Annex A

Alliance for Intellectual Property - *The UK in 2020: A vision for growth in IP-rich businesses (2014)*

Alliance for Intellectual Property Recommendations for Government
Create an intellectual property enforcement framework for the digital age. The technology and creative sectors rely on each other and the framework should ensure all players in the digital economy have a duty to protect businesses and consumers online from intellectual property infringement: <ul style="list-style-type: none">• Strongly commit to implement statutory measures to secure responsible conduct by intermediaries should self-regulation or voluntary arrangements fail to reduce online infringement• Commit to continue to fund the Police Intellectual Property Crime Unit (PIPCU)• Direct the National Crime Agency and others to deliver on the commitment in the latest IP Crime Strategy to enhance legitimate trade and disrupt illegal activity
Address outstanding anomalies in legislation such as the inconsistency of penalties for copyright offences, inconsistency between the legal protection afforded to different IP rights, the lack of redress for copycat packaging, and lack of deterrent in the damages regime
Continue to monitor the value of IP businesses to the UK economy
Ensure a thorough economic and social case is made when proposing changes to the IP framework including assessing whether legislative intervention is proportionate to the problem
Give the IPO a statutory objective to promote and protect IP <ul style="list-style-type: none">• Require it to report annually on how its activities have: contributed to the creation of new copyright works; improved the enforcement of IP rights, and; increased the awareness of the importance of IP to society and the economy
Ensure IP is properly recognised by the investment community <ul style="list-style-type: none">• Create a new IP finance team based in BIS which would be tasked with ensuring that those involved in government backed loans understand IP-backed finance• Support IP businesses through the Government's Business Bank by setting a base level for funding for IP businesses from the bank• Create a memorandum of understanding between UKTI and the UKIPO to ensure that they work to promote IP-rich exporters and provide suitable advice including expansion of the successful IP attachés
Stand up for the interests of UK IP-rich businesses at a European level