



INTERIM DIGITAL BRITAIN REPORT: INITIAL COMMENTS

The Alliance Against IP Theft welcomes the publication of the interim Digital Britain Report (DBR) and the commitment to tackling the ongoing and growing problem of digital copyright theft. Given that further consultations are to be published imminently on the Rights Agency and the proposed legislation to deal with Peer2Peer filesharing (the issues of main interest to Alliance members), our comments in this note are confined to some brief initial thoughts with the detail reserved for our responses to these new consultations.

Broad comments

- We understand the aim of DBR to be the development of broadband access for everyone in the UK so that we can all benefit from access to content and technology in a way that transforms our lives. We think this is an essential public policy goal in the 21st century and our members without exception stand ready to help the Government achieve it.
- **Increased, effective online enforcement** must develop hand in hand with the delivery of the new business models which enhance digital access. The solution to wholesale widespread copyright infringement does not lie simply in making available more legal content. The DBR itself acknowledges this; *“we should look at the environment within which [rights owners] operate, and for rights holders that means the sea of unlawful activity within which they have to swim.* Please see attached submission to the Intellectual Property Office’s *Copyright: the Future* consultation for further information.

The DBR is correct in that an effective enforcement framework must address both criminal and civil infringements. However, we, respectfully, do not share the confidence contained in the report that developments since the National IP Crime Strategy have led to an increase in the government’s capability to ‘rise to the challenges of criminal piracy’. In our view there is no clear, national, on-the-ground, operational strategy to deal with any sort of IP crime. Progress is being made regarding the sharing of intelligence and best practice. However, without enforced national priorities for trading standards, and without IP crime featuring as a priority for the police, any progress is only ever likely to be piece-meal and dependant on the interest or otherwise of individual agents operating locally.

We believe this is an area the Digital Britain Steering Board needs to investigate further.

- However, there are those who do continue to access content illegally, knowing that it is indeed illegal to do so. In so far as it refers to widespread illegal activity online, we strongly disagree with the line in the report which states that *“Where there is very widespread behaviour and social acceptability of such behaviour that is at odds with the rules, then the rules, the business models that the rules have underpinned and the behaviour itself may all need to change”*.

In our view, copyright should not be remoulded to accommodate their wrong doing and any perceived ‘right’ to something for nothing they may claim to have – anymore than shoplifting should be excused because it was deemed socially acceptable to the perpetrator.

- In particular, this sentiment appears at odds with the comment that *“If we expect the whole value chain to benefit from new ways legitimate content can be accessed and consumed then it is reasonable to expect the whole value chain to work together to tackle unlawful activity”*. This is absolutely right and we look forward to this being reflected in policy developments.

Initial comments on Action 13 – P2P legislation

The announcement to entrench in legislation the key role ISPs have in combating the illegal downloading of content is welcome. As explained in the Alliance’s submission to the consultation on peer-2-peer filesharing, in the absence of agreement on a voluntary solution, legislation is necessary to ensure a level playing field.

While details of this proposal and how the accompanying code will be created and enforced will be contained in the upcoming consultation paper, to which Alliance members will comment on in due course, the Alliance would like to take this opportunity to raise the initial following points:

1. Notification letters

The DBR makes little reference to how this will operate in practice. Agreement will need to be reached on:

- What information rights holders will be required to provide,
- How many notifications the ISPs will send,
- The method used to send the letters,
- Who the letters will be from,
- What messages / information they will contain, and
- Where will the cost of administering this fall.

Any notifications regime must be effective in changing behaviour and must deliver a significant reduction in illegal P2P filesharing (such as that envisaged by the MOU). The regime should include some form of escalation that discourages continued infringing conduct and educates and steers infringers towards legitimate sources, without entailing recourse to litigation.

There is too big a gap between the two policy provisions: notifications and litigation. Bringing legal action, as page 41 of the Report itself notes, is costly, time consuming and unpopular with consumers. Nor is there any evidence that it has a deterrent effect on infringement.

For government to advance a policy which essentially encourages rightsholders to “sue their consumers” is highly disappointing and seems to be at odds with the wider political context of the Digital Britain report and sentiments recently expressed by the Minister for Intellectual Property.

2. Other accompanying initiatives

As alluded to above, the Alliance would like to see further information on what other measures are being proposed to prevent and stop illegal activity on ISPs networks. The proposed legislation can only go so far and, therefore, further initiatives (potentially encompassing education and reform of damages) will be needed.

3. To whom should the legislation apply?

The Alliance believes the legislation should apply to all ISPs. Without such a level playing field market distortions could well arise.

Initial comments on Actions 11 and 12 – Rights Agency

Whilst still a rather nebulous concept, the Alliance believes there could be real value in the creation of such a body, so long as it has a clear role and remit and was able to deliver against a clear set of objectives and goals. We do not believe it should act as a central collecting society, as this commercial function is best fulfilled (and in fact is already being fulfilled) in the private sector, but instead, following on from the MOU, consider initiatives which would lead to a reduction of illegal P2P filesharing by 80% in the next 2-3 years.

Questions which we hope the document will address include:

- Possible roles and remits for the Rights Agency.
- The regulatory basis of the Agency.
- The extent to which the Agency might have powers to ensure stakeholders undertake actions which the Agency concludes are necessary; will it have ‘teeth’?
- How would the membership be constituted?
- How and by whom would it be funded?
- Would it have a function in civil enforcement or other administrative measures?

Conclusion

IP infringement is a growing problem and one which affects all content industries. The government’s commitment to tackling this problem is welcome but a) can only be viewed as a first step and b) must be signed up to by all relevant government departments. Digital piracy is not simply an issue for BERR, DIUS or DCMS, but one which will require action from the MoJ, DCLG and DCFS in order to achieve a real, sustainable solution.

We look forward to providing full responses to the upcoming consultations.

About the Alliance Against IP Theft

Established in 1998, the Alliance Against Intellectual Property (IP) Theft is a UK-based coalition of 21 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, video games and business software, and sports industries, branded manufactured goods, publishers, 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. Our Members work closely with trading standards and local police forces to reduce the harm caused by intellectual property crime in local communities and ensure legitimate businesses and traders are able to operate fairly.

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

Alliance Members

Anti-Counterfeiting Group
Authors' Licensing and Collecting Society
British Brands Group
BPI (British Recorded Music Industry)
British Video Association
Business Software Alliance
Cinema Exhibitors Association
Copyright Licensing Agency
Design and Artists Copyright Society
Entertainment and Leisure Software Publishers Association
Entertainment Retailers Association
Federation Against Copyright Theft
Federation Against Software Theft
Film Distributors Association
Institute of Trade Mark Attorneys
Motion Picture Association
Premier League
Publishers Licensing Society

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| CONTACT: Susie Winter 020 7803 1324 susie@allianceagainstiptheft.co.uk |
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