



EUROPEAN COMMISSION

PUBLIC CONSULTATION ON
CONTENT ONLINE IN THE SINGLE MARKET

*RESPONSE FROM ALLIANCE AGAINST INTELLECTUAL
PROPERTY (IP) THEFT*

13 OCTOBER 2006

Members:

Anti-Counterfeiting Group

British Association of Record
Dealers

British Brands Group

British Jewellery & Giftware
Federation

British Music Rights

British Phonographic Industry

British Video Association

Business Software Alliance

Cinema Exhibitors
Association

Copyright Licensing Agency

Entertainment and Leisure
Software Publishers
Association

Federation Against Copyright
Theft

Federation Against Software
Theft

Film Distributors Association

Institute of Trade Mark
Attorneys

Publishers Licensing Society

Video Standards Council

INTRODUCTION

About the Alliance Against Intellectual Property (IP) Theft

Set up in 1998, the Alliance Against Intellectual Property (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 film/TV and video, music, games, business software 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. Therefore, our comments in this consultation response are limited to responding to the questions concerned with the protection and enforcement of IP rights as opposed to those dealing with the development of individual sector business models.

Value of creative industries and online creative content

Alliance members include, amongst others, the British Video Association, the Film Distributors Association, the Cinema Exhibitors Association, the British Phonographic Industry, British Music Rights, the Entertainment & Leisure Software Publishers Association, the Publishers Licensing Society and the Federation Against Software Theft. All of these organisations and industries have a clear interest in the development of a strong and safe online marketplace.

The importance of the creative industries to the UK economy should not be underestimated. With the creative industries alone contributing at present over 8% of the UK's GDP – a figure which is increasing – they also provide an environment whereby innovation, creativity and enterprise can flourish. However, such a contribution is only possible in an environment where intellectual property is valued and protected.

RESPONSE TO RELEVANT QUESTIONS

3. Do you think the present environment (legal, technical, business etc) is conducive to developing trust in and take-up of new creative content services online? If not, what are your concerns? (fears of a violation of protected content?)

Industry both responds to and shapes consumer demand. Individual industry sectors are developing numerous methods of distributing and making available creative content online. Business models are adapting and technological advancements are opening up new opportunities for industry and consumers alike. The variety of platforms available for people to access content online offer consumers a wide range of options as to how such content is read, watched, listened to or played.

However, at present both consumers and industry are operating in a transitional environment. This can be seen in some of the unresolved technological legacy issues, which present a challenge to a truly successful digital switchover – one example being the “analogue hole”. This means, with the right equipment, it is possible to convert protected digital content into analogue format and then back to digital while stripping it of its associated usage rights.

In addition, whilst opportunities to access content through digital means are already widespread and rapidly expanding, consumers and businesses alike are still adapting to the diverse range of digital platforms, be they Video-on-Demand (VoD), Internet downloading, delivery of content of mobile phones and other devices, or simply the dissemination and sharing of knowledge online for example by peer 2 peer technology.

There is a valid concern amongst industry of the dangers that piracy poses to the spread of new services. Without adequate legal and technical measures to protect content distributed via non-traditional platforms, businesses will be unable to protect their intellectual property, which in turn will impact on consumers.

The Alliance is keen to ensure that during this period of transition and convergence, consumers are adequately protected from scams and the sale of inferior, illegal products no matter where or how purchases are made; and that the rights of IP rights holders are similarly protected.

17. Are there any legal or regulatory barriers which hamper the development of creative online content and services, for example fiscal measures, the intellectual property regime, or other controls?

While the UK legal framework for online services is good, continuing protection of content online is not a matter which industry can tackle alone. The Alliance looks to member states to foster greater cooperation between content owners and ISPs/telcos in order to address online piracy and allow legitimate services to flourish. ISPs and content aggregators must exert greater responsibility over what is sold using their websites. If this is not achieved voluntarily, then it should be imposed via regulation.

In addition, complex product security devices, both overt and covert, now expect to last for six months as a deterrent or means of protection before they will be illegally replicated on fake goods. DRM technologies need to continue to have appropriate levels of legal protection. Under the

WIPO Copyright Treaty and the EU Copyright Directive (now implemented into UK law), an international framework for the protection of such technology has been created.

Individual industry sectors and organisations will have further views on this question, but the Alliance is clear that this international framework has proved vital by ensuring that the technology used to distribute and access content is afforded similar protection to the content itself. Such a move ensures that the opportunities, which increased use of DRM bring, are not cancelled out by those seeking to bypass the technology, to the disadvantage of content providers and consumers alike.

21. To what extent does your business model suffer from piracy (physical and/or online)? What kinds of action to curb piracy are taken in your sector/field of activity and in the country or countries you operate in? Do you consider unauthorised uploading and downloading to be equally damaging? Should a distinction be made as regards the fight against pirates between “small” and “big” ones?

All members of the Alliance are seriously affected by the theft of intellectual property – physical and online. Research conducted for the film and video industry shows the film industry lost £719 million in 2005 through physical counterfeiting and piracy¹. Similar research shows that the music industry lost £165 million² with the business software sector losing over a staggering £1 billion a year through piracy³. Such activity is also generating huge profits for criminals, with consumers at physical risk through the sale of dangerous products and financial risk from paying inflated prices for what are often shoddy, substandard items.

Online IP theft is also growing – both through illegal filesharing and the purchasing of fake product online. So far in 2006, the BPI has issued take down notices for, and removed, 324,246 auctions on eBay alone. Other industry sectors report similar numbers of illegal and infringing product for sale on internet auction sites.

Internet investigations in May 2006 over a one month period by the Federation Against Software Theft (FAST) revealed a significant & continuing illegal software file sharing problem in the UK. In this investigation, named Operation Tracker, research was conducted into the extent of illegal file sharing on a limited number of member products. Results revealed 15,308 instances of unlawful sharing of FAST member software product in the UK. Further, 80 businesses and 28 higher education establishments were implicated. Software that must be paid for is being obtained for free impacting on vendors.

Industry works continuously to combat such criminal activity, through the development of copy protection measures to allocating huge investment and resources for on-the-ground enforcement. Industry enforcement bodies such as the BPI's Anti Piracy Unit, FACT and ELSPA work closely with government agencies to curb piracy, with joint actions undertaken.

The Department of Work and Pensions (DWP) formed part of a national multi-agency investigation into persons involved in the production and sale of counterfeit goods, predominately CDs, DVDs and computer games, while claiming benefits from the DWP. The DWP Counter Fraud Investigation Service (CFIS), industry Anti Piracy Units, Trading Standards and the Police have come together for two operations so far to uncover this criminal activity. These are excellent

¹ Research conducted by IPSOS in November 2005 into Digital and Physical Piracy in Great Britain

² Research conducted by IPSOS in Q1 2006

³ Business Software Alliance/IDC Global Software Piracy Study 2005

examples of multi-agency working. One operation saw raids that netted over half a million pounds' worth of DVDs and CDs, with 123 people arrested – 96 of whom were in receipt of state benefits. The total value of the goods seized was over £3 billion pounds⁴.

In addition, the Alliance is very supportive of, and a key player in, the Patent Office's IP Crime Group. The Group performs the important function of bringing together all those involved in IP protection and enforcement, from the individual industries to the police, HMRC and trading standards. This has created a welcome focus on IP crime within the Patent Office and crucially has brought with it liaison with other government departments allowing, for the first time, a central point for intelligence gathering and information dissemination.

The success of the IP Crime Group was seen in the hugely successful Operation Dawn, which took place just before Christmas 2005. This cross industry, multi agency operation in Wembley saw the seizure of counterfeit goods worth more than £1.5 million. Co-ordinated by the IP Crime Group, this operation also led to the arrest of two people, the detention of a number of suspected illegal immigrants and the identification of a number of benefit fraudsters.

Turning to the second part of this question, 'uploading' is theoretically a more damaging activity since it involves making available globally, and in perpetuity, free copyrighted material. In addition, uploading encourages downloading; the very presence of uploaded files acting as an enticement to those considering downloading. However, it must be remembered that unauthorised uploading and downloading are both examples of intellectual property theft. Even though, downloading is sometimes perceived as less damaging as it deprives the industry of the revenue from just one individual's single purchase, millions of such single, individual purchases impacts severely on industry. While it is the action of making available – uploading – that is the criminal action, downloading content without making proper payment to the rights holder has serious implications for industry. From 2003-2006, the music industry lost £1.1 billion from illegal downloading⁵.

In addition, the practical distinction between uploading and downloading is fast disappearing. Most of the peer2peer clients that are today used to exchange illegal content operate in such a way that as soon as content (or any portion of that content) is downloaded, it is simultaneously made available for upload from that person's computer, sometimes without the person's knowledge. Some services go further as to actively punish users if they do not make downloaded content available for upload.

It must be remembered, though, that peer2peer is only a technology and can be put to exciting legitimate uses, as witnessed by the commercial agreement struck by SNOCAP.COM for legitimate music delivery and Warner Bros' deal with BitTorrent in the US. The Alliance's concern is aimed at the many peer2peer services that induce and / or encourage copyright theft.

Due to limited resources and an increasing criminal activity, there is naturally a greater focus on the 'big pirates' as opposed to the 'small' ones. However, this is a distinction we would not encourage, particularly given that while the bigger pirates are more likely to be involved in other forms of criminal activity and therefore require an appropriate law enforcement response, smaller pirates, in aggregation, can be just as damaging to industry. Attempting to separate in such a way sends a confused message to consumers, industry and law enforcement. One clear message needs

⁴ UK Patent Office Annual Enforcement Report 2004

⁵ TNS three year study April 06 that tracked purchasing habits of downloaders against non-downloaders

to be communicated – that intellectual property theft is wrong, illegal and comes with serious consequences.

22. To what extent do education and awareness-raising campaigns concerning respect for copyright contribute to limiting piracy in the country or countries you operate in? Do you have specific proposals in this respect?

Industry plays a lead role in encouraging people to respect copyright. It is already making headway to ensure intellectual property is respected and protected through such initiatives as British Music Rights' Respect the Value of Music and the Industry Trust for IP Awareness's communications campaign from the video and film industry, targeting different types of users and audiences. In addition, 'Digital File Check', a simple consumer facing software tool developed by industry, enables computer users to identify and remove file-sharing software and illicit files and provides guidance on how to enjoy copyright works legally. Also, in June 2005, the record industry teamed up with ChildNet to launch a campaign aimed at educating parents about the dangers of peer2peer filesharing⁶.

Research does show, however, a worryingly lack of understanding by the public about piracy, particularly concerning its links to other criminal activity. In recent research carried out for the audio-visual industry by OTX, video piracy was seen as a less severe crime than shoplifting and credit card fraud⁷. This demonstrates first, that theft of content is still not being viewed as seriously as theft of a physical product, and second, that despite communication campaigns mounted by industry, there remains an unwillingness to accept that there are many organised and associated crime units behind counterfeiting and piracy.

Given this, it is important that the member states governments' loudly echo the message of industry, and instil the importance of, and value in, intellectual property firmly in the education system.

25. Do you consider DRMs an appropriate means to manage and secure the distribution of copyrighted material in the online environment?

Yes. In the increasing digital environment, with content access ever more varied and mobile, owners of copyright need to be able to protect their creation and receive payment for its use. Without this, investment in innovation along with the incentive to innovate will be lost. DRM technology is therefore crucial both to aid rights holders in ensuring fair remuneration for use of their copyright, and enable consumers a choice of access to copyrighted material. In this DRMs work in favour of rights holders *and* consumers. DRMs offer consumers the ability to enjoy content in a much more flexible way than in the offline environment. It gives them the wide menu of choices they legitimately expect, and the opportunity not only to enjoy content when and where they want, but also to pay only for what they want.

It is also important to remember that DRM technology is not new, as can be evidenced in the UK by services such as BskyB's satellite broadcasting. Such existing and new services could not operate without DRM, significantly reducing consumer choice. DRM allows for the legal streaming and downloading of a movie, or a single online purchase of a music track to be transferred legally onto an iPod or other MP3 device, with the rights holder paid for such access.

⁶ See www.childnet-int.org/music

⁷ OTX research into Digital Piracy in the UK conducted between March 04 and Sept 05

DRM technology is not just an appropriate means to manage and secure the distribution of copyrighted material in the online environment it is vitally necessary.

26. What are the consequences for you of not having access to a robust DRM system?

As outlined in our responses to earlier questions, DRM technology provides greater access, choice and flexibility to consumers along with the reassurance for content owners that proper reimbursement can be made for such access. Without robust DRM systems all the benefits described for both consumers and content rights holders would be restricted.

Consumers would be at risk from scams, unable to trust their purchases in an environment where they can't be inspected before being bought. Content owners and IP rights holders would find it increasingly difficult to ensure payment for their work.

33. What actions (policy, support measures, research projects) could be taken at EU level to address the specific issues you raised? Do you have concrete proposals in this respect?

There are two initial measures the EU could usefully take that would assist in ensuring online protection for intellectual property rights:

1. That the review of the EU's 'Telecom Package' ensure ISPs and network providers contribute responsibly to the development of a thriving online environment for legitimate delivery and exchanges of online content.
2. That the results of this consultation into 'Content Online' translates into a robust inter-industry code of conduct that encourages the emergence of new services in a secure, consumer-friendly environment; and ensures cooperation to fight piracy by facilitating the development of efficient on-line enforcement mechanisms.

**Alliance Against IP Theft
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