

IP: The Keystone to Economic Success

Wednesday 19th May at the British Film Institute
Summary of discussion

Vince Cable, Secretary of State for Business, Innovation and Skills (VC) started by acknowledging that this is a complex area about which he knows very little but his knowledge is growing through working with the Alliance Against IP Theft and also the many IP rich industries in Twickenham, his constituency.

He described IP as ‘tricky’, in economic terms, because it has two opposite arguments: on one hand it is a monopoly (and monopolies are bad) but on the other a temporary monopoly can encourage growth and protect innovation. The arguments pull in different directions and a tension exists which runs right through the Hargreaves recommendations.

VC stressed that he cannot pre-judge Hargreaves but that after several reports that saw little follow up, the Government is determined to act this time. Instead VC focused on the key messages of the report. Most importantly, the report is not about sacrificing the IP rich industries to Google but neither is it about preserving business models. Rewarding content creation has to go hand in hand with the imaginative use of data. Both aims are compatible.

Vince Cable: “The review has three key themes: stimulating innovation, developing an evidence-based IP framework and helping UK businesses.”

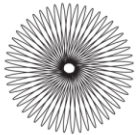
VC noted that Hargreaves is right to say that IP law has not kept up with the ways we can now use data. Furthermore, format shifting is unlawful but a widespread ban might prevent UK companies from competing.

VC stated that the key recommendation to stimulate innovation is the creation of a Digital Copyright exchange which he described as an online copyright shop. On the lack of evidence he proposes a commitment not to make policy without evidence. To make the case to combat this Government needs more evidence and for industry to bring all its evidence into the open and make it subject to peer review. He acknowledged that enforcement was part of the solution.

VC concluded by saying that the IP regime does need to be updated and that changes to the IP regime could generate real growth – adding between 0.3% and 0.6% to GDP by 2020. He noted that Hargreaves is not the end on thinking on IP but it is the beginning of turning thinking into doing.

Q&A with Ed Quilty and Robin Webb

Nigel Warner, ITV asked how the online copyright exchange would work?



Robin replied that it isn't the government embarking on a great IT project but rather federating existing databases to allow you to access the rights you are seeking from your desk top.

Dominic McGonigal, PPL asked about next steps for the Government?

Ed replied that Hargreaves is an independent report so the next step is for Government to decide what to do with the recommendations. You can expect a response from Government before recess.

Christine Payne, General Secretary of Equity, asked about the morals rights of actors?

Robin replied that Hargreaves focused on economic, not moral rights and Ed added that Hargreaves isn't everything and that other pieces of policy such as moral rights could also be part of the policy agenda through other mechanisms as we move forward.

Gilane Tawadros, DACS asked how industry could assist with the government response?

Ed replied that given there has been an extensive consultation there is no point repeating the process although there will be opportunities to express views, through things such as round tables.

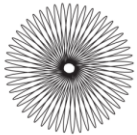
Session One: IP the Economy and Jobs

Participants: Mary Ellen Field, MD, Brand Finance
Will Page, Chief Economist, PRS for Music
Martin Spence, Assistant General Secretary, BECTU
Matthew Fell, Director of Competitive Markets, CBI

Mary Ellen Field (MEF) pointed out that the words Trade Mark are missing from the review. Perhaps for one of three reasons: that they've never heard of trademarks, that they thought they are irrelevant or that they thought everything is fine with trademarks. In reality though Trade Marks are a crucial and integral part of our economy and in reality are infringed online all the time. UK Trade Mark law works well in the UK but it is very hard for SMEs to actually enforce their rights.

Mary Ellen Field: "There are two words missing from this report: 'trade' and 'marks'"

Matthew Fell (MF) suggested that concerns about the direction of the review have now subsided. There is a lot right already in the existing system, he said, and we need real confidence that any changes will be positive. Most importantly, investment needs certainty, and every time we review IP law we reduce the chances of investment.



Will Page (WP) noted that music gets a great deal of attention in these reviews. We need some evidence based conversations about how we calculate export value and government does not capture. WP also presented PRS for Music's latest research on wallet share. The presentation shows that for music, wallet share has been falling since 1997 –before P2P, before broadband. However, since that fall started our wallets have also been shrinking, and will continue to shrink. Also on DVDs wallet share was rising until 2004, but bombed after that, while cinema held constant through up-selling.

Martin Spence (MS) pointed out that huge numbers of jobs depend on IP. The film industry had its best year ever in terms of inward investment and exports last year. Digital Exchange will be easier for music than for film so that will be interesting. There is real concern in the NUJ and amongst photographers about an 'over easy' approach to orphan works. A low risk, low cost legal track for those whose rights are infringed would be very useful. We also need to focus on the skills needed to support the creative talents and industries.

Martin Spence: "The creative industries alone support 2 million jobs."

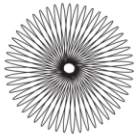
Session 2: IP and society: why is IP important to Consumers?

Participants: Caroline Rolfe, Head of Online, Links of London
Liz Bales, Director General, Industry Trust for IP Awareness
Detective Inspector James Clancy, City of London Police
Andy Foster, Operations Director, Trading Standards Institute

Caroline Rolfe (CR) opened up the discussion explaining how Links of London is increasingly relying on social media channels to communicate the value of IP to its customers, and the dangers of purchasing counterfeit items. The Links Facebook page currently has 33,000 members. Links also works closely with other brands including GHD and Mulberry to talk to consumers and there is a general feeling that progress is being made. Links currently view consumers in two distinct categories: 1) The type who do not or cannot recognise the difference between a fake and genuine item 2) Consumers who actively search for counterfeit products, and are unlikely to be persuaded to act differently. Links is focusing on the former group.

Detective Inspector James Clancy (JC) opened by highlighting the links between counterfeiting and serious organised crime. He went on to suggest that in some cases

James Clancy: "Industry should use more realistic and pragmatic"



money was not the motivating factor for counterfeiters, with strong links to anarchists and anti-capitalists. The police face significant challenges in overcoming some of the many obstacles in reducing IP crime. It is extremely important to work closely with US but this is not always happening. Furthermore POCA is not viewed as a motivator, with the police more interested in “simple catching crooks”. Industry has made good progress in terms of working closely with police, particularly the likes of the Premier League and the BPI. These examples of good practise should be replicated and centrally coordinated, possibly through the IPO.

JC called for industry to use more ‘realistic and pragmatic language’ when liaising with the police, who do welcome emotive pleas about the ‘value’ of IP.

Andy Foster (AF) explained how front line trading standards services were currently, and would continue to suffer, due to budgetary cuts. Trading Standards are already stretched, he explained, and with the likes of the OFT disappearing TS officers are having to take on further responsibility despite the cuts. AF went on to give examples of how POCA has been used successfully both to deter criminals, but also incentivise police. AF highlighted how only £200m is currently spent on trading standards services, despite the fact it is a £billion problem. He concluded by calling for greater enforcement of current IP regulations. AF later highlighted research which found that 80% of consumers said they would not purchase counterfeit items if they knew where the proceeds were going.

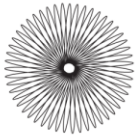
Discussion later focused on the challenges posed by different local authorities not working together, or not communicating – particularly amongst the 37 London authorities. Wales was cited as an example of best practise, where a single enforcement authority operated.

Liz Bales: “Large sections of society are involved in illegal downloading”

Liz Bales (LB) from the Industry Trust talked at length about the challenges of educating consumers about IP. While historically young males were viewed as the ‘core’ target group, in reality a large cross section of society is involved in illegal downloading and purchasing counterfeit products. LB pointed out that woman over 35 years old were the most prolific at illegal downloading of e-books. Industry has adapted its messaging around value and respect to suit

different demographics and audience. Recently there has been recognition of the need to engage directly with parents, in order for them to act as advocates for IP with their children. In regard to children LB suggested the following:

- 9-10 year olds – are not yet engaged with illegal downloading
 - 11-13 year olds – becoming more aware – the ‘tipping point’
 - 13+ - actively engaged in illegal files sharing
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Ivan Lewis (IL), Shadow Secretary of State for Culture, Media and Sport thanked the Alliance for an “incredibly well-timed” conference. He said that the outcome of the Hargreaves Review, despite its misgivings about lobbyists, proved that the creative industries “have a point”. He criticised the Coalition for not doing enough to support the creative industries during their time in Government, and spoke about Labour’s record on culture, media and sport.

IL stated his view that stealing, whether physical or online, is plainly wrong; but said that the creative industries must push innovation and high quality content in order to keep up with the times, rather than resorting to the status quo.

He welcomed the Hargreaves Review’s support of fair dealing, rather than fair use, and said that we need a ‘one stop shop’ for copyright in Government, supported by an overarching framework. IL questioned where responsibility for IP actually sits within Government; whether with Vince Cable, or Jeremy Hunt, who claims to be ‘in the driving seat.’ IL also slammed the delay in implementation of the Digital Economy Act as ‘no longer justified.’ He believes that intellectual property should be near the top of the list of priorities within Business, Innovation and Skills, next to skills and access to finance. Lewis himself intends to be a ‘champion’ of the creative industries, although he stopped short of promising to be a Tsar for IP.

Ivan Lewis: “I intend to be a champion for the creative industries”

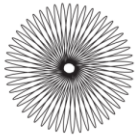
IL urged the audience to contribute to the shadow DCMS team’s policy review, and asked the creative industries to tell the shadow teams what changes government can make in order to help improve their creativity and competitiveness.

Session 3: The International Picture: what can we learn from other countries?

Participants: Ted Shapiro, General Counsel, MPA Europe
Andy Baker, Serious Organised Crime Agency
Heather O’Malley, Assistant Attache, US Homeland Security Investigations

Heather O’Malley (HM) gave an overview of how IP regulation is managed in the US, within and outside the IP Centre outside Washington DC. She explained the history behind the inception of the Centre, and said that from 2008 the new IPR Centre has been operating with 17 agencies working on the same physical site. She said that

Heather O’Malley: “The UK is ahead of the game”



the IP Centre has been working towards tougher sentences, especially for those criminals who are linked to organised crime. HM said that in comparison to many other European countries, the UK is ahead of the game on IP issues, but that there was still work to be done and that the UK and the US could collaborate very effectively to help solve these issues.

Andy Baker: "The risks of counterfeiting are low, and the rewards are high"

Andy Baker (AB) explained his role with SOCA, and how SOCA works with the police, TSI and the creative industries to fight organised crime. He says that in the past, SOCA has failed to effectively tackle IP issues within organised crime, but through a new tiered approach they hope to 'get the basics right.' AB felt that international partnerships need to be more consistent and beneficial to both parties, and that the UK needs to 'expose' countries such as Turkey and Italy who export counterfeited goods en masse. AB went on to say that the rewards of copyright infringement and IP theft are often high, and the risks low, and that some brands do 'let it go' and do not liaise effectively enough with the police and other bodies.

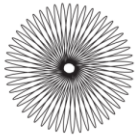
Ted Shapiro (TS) from the MPA said that when deciding where to base their business, rights holders' first priorities should be finding a law enforcement system which is willing to fight for their creative industries. TS said that the MPA invests money in the UK because we have a legal system which promotes and incentivises investment in IP, and in particular a copyright system which in his view, is one of the best in the world, and the best in Europe. He particularly praised the UK's innovative online video services.

TS said that the US has made progress on tackling IP outside of their territorial remit, but that they could only go so far in doing so. He believes that site-blocking is one way of tackling copyright infringement online which has so far proved effective. The US Rogue Sites Bill is an example of legislation which will endeavour to tackle harmful websites based abroad; he also praised the UK government for discussing the possibility of voluntary site-blocking. There is also site-blocking legislation which has just been implemented in Spain and Italy, while the French Hadopi law will be tested in their courts very soon.

Final thoughts...

Participants: Nick Munn, Deputy Director, Copyright and IP Enforcement, IPO
Andrew Orłowski, from the Register
Mary Ellen Field, MD, Brand Finance

Andrew Orłowski (AO) has been frustrated by the over-simplified debate on IP, but attending the conference had reminded him that IP is about much more than copyright. He thinks Hargreaves failed to live up to his mission statement, and that the review should have



looked at trademarks and brand names. AO stated we ought to value creativity more, and claims that Hargreaves 'belongs to that part of academia which doesn't value intellectual property'.

On the relationship between IP industries and search engines, AO criticised the Government, and specifically George Osborne for being 'in the pocket' of Google, and said that such a close relationship with a media-owning organisation such as News International would not be tolerated. He acknowledged that where online copyright infringement is concerned, the rights industries focus too much on enforcement rather than innovative solutions to solve the problem, as increasingly consumers want to consume media for free online. AO also said that he thought the Hargreaves Review may be discarded in the same way that the Gowers report was; Lavinia Carey, Chair, objected and said that there were a number of completely impractical recommendations by Gowers which could not have been implemented.

Nick Munn (NM) said the review *did* mention trademarks, but that Hargreaves didn't focus on them enough, and this was mainly due to timing constraints, along with a lack of evidence when compared to other issues. NM said that Hargreaves had done his best, with a difficult brief, and that the 'fair use' objective had made the job more difficult and meant he had to focus on copyright. He praised ACG and the British Brand Group as two bodies which did submit detailed, 'weighty' evidence on trademarks. He reiterated that Government needs more evidence from rights holders on copyright infringement if they are to continue to tackle these issues and enforce the law; in doing so, they can create the space for innovative new businesses and services.

Mary Ellen Field (MEF) said that much of the Hargreaves review was very positive, although it did not address trademarks thoroughly. She believes that IP is a tool to enable creators to make profit, rather than an end in itself, and that she was disappointed with the fact that the review is in no way commercial. MEF said that IP should not be thought of purely in an academic sense, but that we should consider how it can best be used to further our economy.