

IPR Enforcement - The Olympics, The Challenge!

Nearly seven years after the British Olympic bid succeeded, ACG's Conference at Wembley Stadium showcased the enforcement measures being put in place to protect rights holders, sponsors, consumers and competitors before and during 'the Games of the XXXth Olympiad'.

To launch the Conference, the Minister for IP, Baroness Wilcox, joined ACG for an early walkabout and a visit to the terraces.



Baroness Wilcox speaking at Wembley

The Minister gave a rousing keynote speech, praising the co-operation across government, industry, enforcement bodies and the public in preparing for the event, and noting that - so far - we have not seen huge amounts of counterfeit product arriving in the UK.

Other speakers included John Alty (CEO of the IPO) and Dave Lowe (IPO Enforcement Hub), officers from the agencies responsible for IPR enforcement at the Games (Customs, Border Force and Trading Standards), Olympic sponsors BP and adidas, Luke Minford on the lessons to be learned from Beijing, and credit card provider Visa, whose online counterfeit ticketing operations would offer a model for dealing with online IP crime in future.

The IPO's work with source countries was cited as a major factor in the relatively low level of fakes in evidence to date. Improved intelligence also plays its part - for example, the rate of successful IPR prosecutions now exceeds 83%, significantly higher than most other kinds of criminal prosecution.

However, Customs and the Border Force reported that they had just started to see Olympic products coming through, including 7,000 draw-string bags and Zippo-type cigarette lighters, covered with unauthorised Olympic trademarks.

In the afternoon, representatives from the Government Olympic Executive, the Olympic Delivery Authority and LOCOG joined a panel chaired by Bryan Lewin MBE for a special session entitled At The Front Line. Everyone agreed that a major legacy benefit for IPR enforcement in the future was the increased collaboration between the various law enforcement agencies, enabling a smarter use of resources and better use of intelligence, proving that it was possible to meet such challenges with more teamwork, and by developing a regional or national, rather than simply local, approach.

Report from Ruth Orchard,
Director General of ACG

Changes to Copyright Law before Parliament

A number of clauses relating to reform of copyright and intellectual property have been included in the recently published Enterprise and Regulatory Reform Bill. While the Alliance welcomes the measure to restore copyright protection in designs of artistic craftsmanship, this does not address the wider disparity which still exists between the lack of legal protection afforded to design rights in comparison to copyright.

We are also seeking urgent clarification over the scope of Clause 56 of the Bill, which the Government has stated is to allow the level of penalties for copyright offences to be maintained if exceptions need to be altered. However, given how widely drafted the clause currently is, we feel an amendment is needed to make sure it will only do what the Government says it is designed to do. The Alliance will continue to monitor the Bill's developments closely.



At the Trading Standards Annual Conference, the Alliance Against IP Theft and National Markets Group supported a panel discussion on the successes of the Real Deal campaign in cracking down on fake goods in Manchester.

STOP PRESS

The Business, Innovation and Skills Select Committee has published its long awaited report into the Hargreaves Review of Intellectual Property. Commenting, Susie Winter, Director General of the Alliance, said:

"The Alliance welcomes the emphasis the BIS Select Committee has placed on the importance of evidence to the development of intellectual property policy and the acknowledgement that the economic estimates contained in Hargreaves were 'optimistic' and in need of further analysis. It is also welcome to see the Committee endorse the Digital Economy Act and we echo the Committee's call to Government to press ahead and ensure that this is brought fully into force".

Q+A with John Whittingdale MP



John Whittingdale MP

The Chair of the APPG for IP answers key questions ahead of the Group's report into *The Role of Government in Protecting and Promoting Intellectual Property*.



► **Why is the All-Party Intellectual Property Group looking into how the Government develops IP policy?**

There have been a number of concerns raised about IP policy development recently and we wanted to understand whether they were valid. The Group therefore asked a range of organisations to give us their thoughts, both in writing and then in person, on a range of questions looking at the purpose and goal of IP policy; where and how IP policy is developed in Government; how IP policy has developed and been co-ordinated within the digital policy environment; how the Government interacts and co-ordinates IP policy at an international level and how policy impacting the protection of IP is co-ordinated across departments.

► **What issues have been raised?**

Many people seem satisfied with the policy process, but there do seem to be some questions around the role of the Intellectual Property Office in policymaking. It seems to have a good reputation in its role as a registry of patents and people have been supportive of other operational roles, but it doesn't appear to

have the full support of its stakeholders when it comes to policy making. That view isn't shared across the board, but it does concern us that confidence in it isn't high.

► **Why do you think that is?**

That's something we are still trying to get to the bottom of. It's fairly unusual for a body such as the IPO to have a policy function but it's also about the role and objectives it is given, so we are looking at a range of possible reasons. In addition, some have questioned the fact that the IPO reports to a different Government department to the one that is responsible for the creative industries, so that is a further issue that we will be looking at.

► **When do you think you will publish the Group's report?**

We intend to publish it before the summer recess. It's not going to be a long report, but will suggest some recommendations. Of course it's not binding and the Government doesn't have to respond, but we hope it will influence thinking.

Design and IP playing a key role towards growth in the UK economy



Dids Macdonald, CEO of Anti Copying in Design (ACID) and a Vice Chair of the Alliance, outlines the current focus on design and the need to raise further awareness about design's significant contribution to the UK economy.

From the iconic to every day, UK designers are ranked amongst the world leaders as individuals whose ingenuity and artistry have broken moulds, opened new horizons and made a lasting impact. Designers' innovation has helped to shape the world we inhabit. We were transformed into a supersonic age of travel by the Anglo-French design and precision engineering of Concorde. iPod users experienced a seismic shift in the way they interact with technology through design championed by Jonathan Ive and every day, millions experience efficiency as a result of Dyson's endless experimentation with a

simple roller ball movement. "For me", he said, "it's engineering, it's innovation and it's rarely a flash of brilliance!"

Every successful product has been designed and IP in design has great value for the UK economy provided it is properly protected (£33 billion). The UK is increasingly earning more from designing successful products than from manufacturing them. Design is a diverse, multi-sector industry with over 50 design disciplines, all underpinned by IPRs. Unlike copyright theft, if a design is stolen no criminal offence has been committed and the only recourse is under civil action. ACID, with the Alliance's help, aims to address these inequalities and ensure that designers have the same level of protection as other forms of IP.

UK designers lead in socially responsible and environmentally sustainable innovation. The majority of the UK's formidable design army of 350,000 are micro enterprises or SMEs with fewer than 4 employees and unable, easily, to combat infringement. World IP Day 2012 saw the launch and Government endorsement of ACID's "Commission it, Don't Copy it" campaign as a positive initiative to invite retail buyers to sign a voluntary Code of Conduct and comply with a simple set of guidelines to avoid unintentional infringement of design.

There is a need to improve understanding of the potential of design and creativity among policy makers and design customers – both private and public organisations. The Hargreaves Review highlighted that IP design policy had been neglected over the last decade so now there are some useful research studies currently being finalised by the IPO which will help to map out economic data to influence future policy. The most compelling aspects of these research initiatives have been the case studies of real design businesses who have voiced their frustrations at potential job losses through lack of funding and infringement but, at the same time, offered tried and tested heuristic solutions to fuel growth and seek opportunities. The IPO's initiative to help SME's get value from their IP "From ideas to growth" is an encouraging first step.

Innovators, especially designers, have the vision to push boundaries and change things for the better of mankind - that is their strength. They deserve to be supported by policy which provides incentives to grow and a robust IP system which has a tougher stance on enforcement.

www.acid.uk.com

The Economics, Evidence and Research Team at the Intellectual Property Office provides an update on the work it is undertaking into research on IP enforcement.

Enforcement of IP rights is an increasingly important part of our work. A study on the enforcement system and SMEs has already been published. A much bigger challenge is building the economic case for IP enforcement spending by Government. IPO's economists have held discussions with the Alliance Against IP Theft and other stakeholders both domestic and internationally on how best

- to measure the impact of IP infringement and
- to give the IPO the evidence and data it needs to inform enforcement policy.

As a result of those discussions the IPO has decided to break down the big question, 'Where the IPO should direct its money and resources on effective IP Enforcement Policy?' into a series of projects with building blocks.

The benefit of splitting this work into building blocks is that the project can evolve and continue to address specific issues around 'how much' and 'where', but will also give us useful enforcement information along the way to achieving our

ultimate objective.

The IPO is developing two streams of work that will guide us through our enforcement journey to measure infringement and the costs of enforcement.

To start, the IPO will commission a piece of work to provide an evaluation of current methods used to estimate levels of IP infringement and subsequent harm. This will be scoped over the summer and should provide results by late Autumn. This will give us a firm starting point, ensuring that we don't reinvent any wheels. Over the summer, decisions will be taken as to which blocks the IPO can take forward and where there might be opportunities for external partners to take forward.

The IPO will need to look at physical and digital areas of the economy, criminal and civil enforcement methods, and at consumer and business issues. Each of these matters to the overall picture.

So, where can the AAIPT help? The IPO need your input on a number of areas:

- What building blocks do you think are crucial?
- Which sectors would be most suitable as pilot studies?
- Are there any willing volunteers to act as pilot studies?
- Is there evidence / research that IPO should take account of?

Any help you can provide will be very useful. The IPO will publish all of its commissioned research and organise workshops around our research findings as and when the results are made available.

The IPO looks forward to working with you and can be contacted at research@ipo.gov.uk.



Work continues on new EU Customs Regulations

The proposal for new Customs IPR regulations in May 2011 followed sustained lobbying over several years and many rights holders, including the ACG, contributed to the subsequent review of existing regulations. A new draft Regulation has been progressing through stages of the 'co-decision' process, and at the time of writing a compromise text has been proposed by the Danish Presidency. This is still under wraps, and being discussed between the European Parliament's Internal Market & Consumer Protection Committee (IMCO), the Commission's customs authority, and the Council Presidency. The vote on the joint text is expected in July 2012.

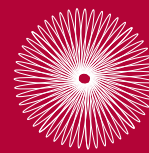
The main issues for rights holders relate to goods in transit; for example, allowing Customs information to be used for rights

holders' own enforcement purposes, a simplified procedure for seizure/detention of suspect goods, proposals for higher costs and more responsibilities for rights holders; and the reversal of the burden of proof, so that the importer of the suspect goods has to prove they are genuine, instead of the rights holder having to prove they are fake.

Additionally, guidance on goods in transit was recently issued by the Commission, separately from the Regulation, to clarify a ruling of the Court of Justice of the European Union (CJEU) in a referral from a UK case brought by Nokia, relating to goods passing through the EU between non-Member states.

It provides that the grounds for suspicion justifying Customs seizures of such goods can include correspondence indicating likely diversion into the EU, undeclared destination of goods, lack of precise information on manufacturer of consignee identity or lack of co-operation with Customs.

There is considerable political support for rights holders' position on transit issues, at both national and European levels. But it seems increasingly likely that changes to transit procedures will only be made via EU trade mark legislation, rather than via the new Customs Regulation, and that rights holders will remain in limbo for several more years, until such changes can be implemented.



View from the Chair



Lavinia Carey

After 15 years as Chairman of the Alliance I am passing the torch to another runner. When members vote in July I know they will elect a successor from our fantastic family who is more than qualified to guide us through the coming era of Alliance campaigning.

I feel proud of the Alliance's achievements; intellectual property was rarely discussed in the corridors of power when we began as a small group; rather it was seen as the dusty preserve of the legal fraternity. Today people understand that IP underpins a great swathe of Britain's economic output, particularly in knowledge driven, highly skilled industries – exactly the sectors that Britain needs to build upon to

remain an economic power.

We've had some notable successes. We've improved the regulatory environment, increased protection for IP owners and created a single unified voice for industries whose fortunes, and those employed within them, rely on creativity and innovation. The Alliance now has a full time secretariat, commissions its own research and with its expertise acts as a go-to point for politicians and officials, enforcement agencies and those wanting information about IP.

Nevertheless, we haven't ticked all our boxes and I don't underestimate the challenges ahead. Great shifts in the economics have changed our landscape and the internet has brought huge opportunities for e-commerce in manufacturing, retailing and creative industries. Unscrupulous and criminal operators have also grasped these opportunities, which has led to vast losses in business and tax revenues. Protecting IP in this environment requires different skills, regulation and smarter ways to deliver legitimate goods and services to consumers. Our industries have adapted and the UK's internet economy is the biggest per capita in the world. We have more music services delivering digital content in the UK than the US, exciting new ways to watch video entertainment online, huge communities of gaming fans playing across national boundaries and publishers generating new revenues from e-books. It hasn't been possible for these services to be launched at the same time and

with the same speed, but that's not a failure of the UK's IP laws, but because different industries require different structural and commercial conditions in which to flourish and grow.

This is why it's so important to see IP as an asset, not a regulation. To whittle away at the edges solely in the interests of users of IP, without understanding the impact on different British industry sectors who create it, will do long term harm to our country's economic health and our world-renowned strength in innovation, design, creativity and culture and sporting excellence. Generating intellectual property enables individuals and businesses to make money from their efforts so they can continue to create and grow successful companies, employing millions of people. When we look to reform IP laws, which we should when circumstances require, we need the debate to be as broad as possible to avoid throwing out the baby with the bathwater.

Championing IP, and the economic and cultural activity that it underpins, is a constant that government must never lose sight of. I will continue to do this – no longer as Chairman of the Alliance, but as a founder member, representing video entertainment. I wish our new chairman every success.

EU Update

ACTA

The Alliance Against IP Theft has increased its engagement in Europe in response to a number of key developments affecting UK rights holders, including the passage of the Anti-Counterfeiting Trade Agreement (ACTA) through the European Parliament and the enactment of legislation to effect the transfer of the EU Observatory from the Commission to OHIM. ACTA has been making turbulent progress in Europe, with five Committees in the European Parliament voting to oppose the Treaty.

Susie Winter, Director General of the Alliance Against IP Theft, spoke alongside David Martin MEP and Jim Killock of the Open Rights Group at a seminar organised by the European Parliament's London office in May. Susie emphasised the serious costs to UK businesses and consumers of ACTA not being enacted, including the loss to the economy due to counterfeit goods, and the risk that these goods posed to the health and safety of consumers.

European Observatory on Infringements of IP

The regulation transferring the EU Observatory on Counterfeiting and Piracy from the European Commission to the Office for Harmonisation in the Internal Market (OHIM) came into force on 5th June. Renamed the European Observatory on Infringements of Intellectual Property Rights, the Observatory's stated key tasks are to improve understanding of the scope and costs of infringements to intellectual property, increase knowledge in the public and private sectors on protecting intellectual property rights, and highlight tools used to prevent and tackle infringements.

At the present time, OHIM is holding a consultation among stakeholders with the aim of "making it the credible and useful body that we all want it to be" to which the Alliance is making a contribution. This will serve as the basis of the Observatory's work programme in 2013.

News in Brief

- ▶ The Intellectual Property Office and Imperial College London recently estimated that an additional £3 billion is contributed to the national economy by copyright industries in the UK. Commenting, Sarah Faulder, Chief Executive of the Publishers Licensing Society, said, "while we believe there is more work to be done to ensure the scale of the industry is fully reflected, we commend the IPO for having undertaken this crucial and challenging task at a time when copyright policy is under review by the Government."
- ▶ Responding to the Government consultation, 'Enhancing Consumer Confidence through Effective Enforcement', the Alliance highlighted that any reform to trading standards' powers must not affect their ability to investigate cases of IP crime. For example, spot checks can play an important role in how trading standards uncover criminal activity and therefore they should be able to continue this practice. We have asked for reassurance and confirmation that changes in this area will not impede the investigation of criminal activity. The Alliance's full response can be found on our website.