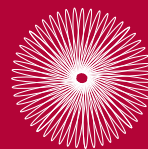


IP Update

Summer 2009



ALLIANCE
AGAINST IP THEFT



PROTECTING RIGHTS IN A DIGITAL BRITAIN

Local authorities unaware of dangers of fake goods

New research commissioned by the Alliance has uncovered uncertainty amongst local councillors over where responsibility lies for stopping the sale of fake goods.

This was revealed in research carried out by the polling company ComRes which also exposed a lack of awareness of the impact sales of fake goods have on consumers and the damage being done to local communities.

Protecting people from fake goods e.g. counterfeit toys, children's clothing, household products as well as CDs and DVDs, and enforcing IP law is the responsibility of local authority trading standards services. However, only half of the councillors surveyed thought this should be the case, with over 40% also believing that central government, amongst others, should have responsibility in this area.

This confusion continued over how enforcement of IP law should be funded. While Trading Standards are funded by local authorities (LAs) 79% of councillors believed funding for IP enforcement should come from central government, instead of out of local budgets.

According to Susie Winter, Director General of the Alliance Against IP Theft, "Counterfeiting and piracy affects every local authority in the UK. Consumers are ripped off and exposed to potential harm; local businesses are unable to compete with sellers of fakes; and criminal

gangs intimidate legitimate traders and embed criminality and anti-social behaviour in the community.

"We are, therefore, very concerned that this confusion over responsibility and lack of understanding about the harm fake goods cause is resulting in inaction and worst, budget cuts in this important area of trading standards work. This is despite funding being directed to local authorities for this purpose as a result of the Gowers Review."

"...we ask all local authorities to ensure their trading standards service is realistically resourced and equipped..."

Ron Gainsford, Chief Executive of the Trading Standards Institute agrees. "The recession risks being a catalyst for more counterfeiting with hard pressed consumers being targeted by these fraudsters. Therefore, we ask all local authorities to ensure their trading standards service is realistically resourced and equipped to deal with the sale of fake goods, and using the Proceeds of Crime Act to take assets off IP criminals so that not only is their ability to reoffend taken away but so that, under the incentivisation scheme, the authority receives a proportion of the monies seized."

▶▶ The Alliance, along with other content owner organisations, has been pressing for greater co-operation from ISPs in stopping illegal filesharing. Next generation access and the expansion of broadband will provide consumers with an opportunity to consume content that is bandwidth hungry, particularly audio-visual content such as film and games, making it in both rights holders and ISPs' long-term interest to jointly tackle copyright theft.

To date, some ISPs have appeared to be unwilling to co-operate in tackling illegal filesharers, who are using their network to engage in illegal activity. Many Alliance members believe that a system can, and should, be developed that provides a framework for educating, informing and where necessary taking measures, including technical measures, against consumers who are persistent in their theft of copyright. Any such system would require checks and measures to ensure consumers have an opportunity to appeal should they feel they have been unfairly targeted. Ultimately, however, a situation where consumers who continue to illegally access material, to the financial benefit of one part of the communications supply chain and the detriment of another cannot continue.

We, therefore, welcome the government's commitment to introduce legislation designed to address this growing and damaging problem and look forward to examining the effectiveness of what is being proposed in more detail.

STOP PRESS

▶▶ The Government has published the Digital Britain report which includes proposals on dealing with illegal peer-to-peer filesharing. The draft legislation requires ISPs to send notification letters

to infringers while placing reserve powers with Ofcom enabling them to require ISPs to introduce technical measures against repeat infringers if it is proved that the sending of letters, coupled with court

action by rights holders, is ineffective. However, these additional measures will not be implemented for at least two years. The full report can be found at www.culture.gov.uk

Janet Anderson, MP for Rossendale & Darwen and chair of the All Party Intellectual Property Group



Janet Anderson MP

both consumers and rights holders as new business models adapt to new technologies but the enforcement regime which protects the rights of creators and manufacturers needs to reflect this change.”

Some people view IP crime as a ‘victimless crime’. What would you say to these people?

What has the All Party Group been doing this year? “Our focus this year has been in undertaking a review of the progress and effectiveness of the recommendations made by the Gowers Review of Intellectual Property in ensuring IP rights can be properly protected and enforced. Gowers reported over two years ago and a number of key recommendations have not yet been translated into actions. As parliamentarians we were keen to investigate the reasons behind this and evaluate any repercussions of these delays. We received written submissions from a variety of organisations and were particularly lucky to hear from an excellent range of stakeholders including the Premier League’s Richard Scudamore, Ian Fletcher, Chief Executive of the Intellectual Property Office, Giles York, Deputy Chief Constable of Sussex Police, Ed Mayo from Consumer Focus and David Godber from the Design Council. Our report, which can be found on our new website, highlighted a number of key actions needed in areas such as damages, markets and online penalties. Since its publication in February, we have been taking our findings directly to the relevant Ministers to ensure the need for action is properly understood.

Some people view IP crime as a ‘victimless crime’. What would you say to these people?

“They need to look at the facts. Consumers are put at risk through the sale of dangerous or untested products and have little comeback for

substandard goods. At the same time a growing body of evidence shows that British industry is losing billions of pounds annually through the theft of IP, with the Exchequer also losing a significant share of revenue. This of course contributes to job losses throughout our economy at a time when we really cannot afford to lose them.

“We also hear growing evidence from Trading Standards of the role IP crime plays in anti-social behaviour. At local level, criminal gangs exert control over markets and legitimate local traders are being forced out of business unable to compete with the cheap fakes. There is also a growing dossier of criminal cases proving the links between IP crime and other forms of local criminality such as benefit fraud and the exploitation of young people.”

“There is also a growing dossier of criminal cases proving the links between IP crime and other forms of local criminality”

What, then, do you think Parliamentarians can do to protect IP rights? “As legislators we need to do all we can to nurture and encourage the wealth of talent that the UK has to offer. Many consumers, for example, still view the illegal downloading of the latest music album as a victimless crime, without understanding the affect it can and does have on the development of British music. Crucially, many consumers also have yet to fully understand the extent to which IP crime can harm them, whether this is through dangerous fakes, shoddy products or links to organised crime. This is a simple message all MPs can and should take back to their constituents.”

Information on the work of the APIPG can be found at www.allpartyipgroup.org.uk

Reform of damages remains stalled

▶▶ As we go to press, the government has yet to respond to its consultation on whether the damages regime should be reformed. As readers may remember, this consultation closed on 27 July 2007, with a summary of responses promised in October of that year. Various MPs have tabled parliamentary questions seeking answers on the reasons for the delay from the government and the Alliance has written to the Secretary of State for

Justice, Rt Hon Jack Straw MP. Janet Anderson MP, Chair of the All Party Parliamentary IP Group has even led a delegation of MPs to see Justice Minister, Bridget Prentice MP. None of these approaches have resulted in an acceptable explanation as to the delay. This is an incredibly important issue for many Alliance members as current remedies offered under the existing damages regime are ineffective

and do not address the changing nature of IP infringement. A solution offering rights holders the ability to seek damages which act as a deterrent is clearly needed in order to stem the growing problem of IP infringement in the UK and address the damaging, corrosive effect it is having on UK industry and the UK economy. The latest timing we have on when to expect a response is ‘imminent’. Let us hope this proves correct.

Alliance launches strong defence of copyright

The past year has seen a series of consultations from BERR, as it was, the Intellectual Property Office, and the Strategic Advisory Board for Intellectual Property, which question how the current system of copyright operates and whether change, radical or otherwise, is required.

Alliance submissions to these consultations challenged a number of myths which have been gathering steam on the back of little or no evidence; the most significant being that copyright is complex, broken and in need of a fundamental overhaul. We do not agree with this. Copyright in the UK is based on a balance of rights and exceptions, giving it a flexibility which allows the system to adapt and evolve. This is because

inherent in copyright is a very simple message – if you have created an original piece of work, be you a multi-national company or an ordinary member of the public, it is yours and it is protected. Apart from the existing exceptions, if you did not create it and you wish to use it then you need permission from the rights owner.

What is perhaps lacking is the necessary degree of information and public education to support this. Consumers need to be clear about what the law allows them to do and what remains impermissible. If concerns regarding clarity and certainty are to be properly addressed more investment, from both government and industry, is needed. Fundamental to this are initiatives which promote the value of copyright

and the damage caused by copyright theft to which, for example, the audio-visual sector invested £2.5m in 2008.

What must remain clear, however, is that the unauthorised distribution of content, be it music, film, computer software and games software, publications or unauthorised retransmission of sports broadcasts, is against the law. Most people agree that it is a crime to help oneself to the property of another without payment or permission, and accessing content online must be viewed in the same way. This fundamental principle must be upheld if we are to ensure the creative industries’ survival as we go further into the digital age.

Campaign launched to ensure people get the ‘Real Deal’

Even in the age of the internet, car boot sales and other forms of markets remain the biggest source of counterfeit goods in the UK



Launching at this year’s Trading Standards Institute Conference is an initiative aimed at ensuring when people buy at markets they get the Real Deal. Alliance Director General Susie Winter and Liz Bales, Director General of the Industry Trust explain more:

Markets play a valuable part in the consumer shopping experience, allowing people to often purchase goods more cheaply than in retail shops. Visits to such markets also provide an outing for the whole family, in the belief that they offer a safe shopping environment. Unfortunately this isn’t always the case. Consumers are being ripped off and sold potentially dangerous goods, legitimate traders, unable to compete, are going out of business and criminality is spreading amongst the local community.

Targeted at market organisers and local authorities this campaign, *Real Deal: Working Together to Ensure Fake-Free Markets*, brings together trading standards, copyright and trade mark owners, market operators and traders,

providing them with tools and information to ensure their markets are free of fake goods and illicit traders.

■ Why is a national initiative needed?

Markets (including car boot sales) are not uniformly regulated and offer easy opportunities for those who wish to trade illegally, including racketeers and criminal gangs for whom IP crime is just one of many illegal activities making up their criminal lifestyle. The trade in counterfeit and pirated goods is low risk with a high return and markets – be they occasional, fixed or permanent – are the venues of choice.

There is also increasing evidence of children being used to front up stalls in order to protect the counterfeiters, and of violence and intimidation in the enforcement of traders’ patches. The link between the trade in counterfeit goods and organised crime such as people smuggling and the drugs trade is also well-established.

While this is being addressed effectively in some areas, unfortunately the nature of the

counterfeit business means that illicit market traders often move between markets and areas to escape detection. Therefore, only by adopting a national approach can we hope to see a real reduction in this continuing and growing problem.

In addition, the recent case in Hertfordshire involving market organisers, Wendy Fairs, has given rise to some uncertainty among enforcement agencies on how best to deal with markets where illicit goods are openly traded.

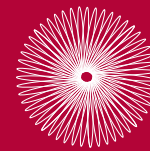
■ How will this campaign help?

At the heart of the *Real Deal* campaign is a national Markets Charter, containing broad principles for market organisers, trading standards and industry to sign up to and abide by. Individual trading standards services can then choose whether to support this charter with a more detailed code of practice, as already exists in some areas.

Information packs are also being produced for both market organisers and trading standards providing them with the necessary information and support they need to, first, confidently exclude illicit traders from market sites, and then ensure any appropriate legal action is taken against such criminals. Posters and other campaign materials designed to raise awareness of the campaign and the issue it is trying to address will also be available.

We are delighted that this initiative is being supported by LACORS, trading standards and NABMA as it is only by working together can we achieve real change.

The campaign has been produced by the Industry Trust for IP Awareness. For more information contact the Trust on 020 7079 6230



The Alliance's website has received a make over. Visit for information on current campaigns and issues, briefing sheets, and downloadable responses to various consultation papers.

Visit us at
www.allianceagainstiptheft.co.uk

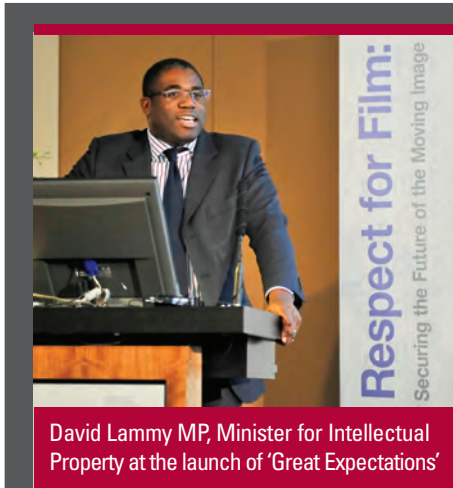
The Alliance welcomes two new members

Membership of the Alliance continues to grow with both the Premier League and the Authors' Licensing and Collecting Society joining in the past year.



ALCS

protecting and promoting authors' rights



David Lammy MP, Minister for Intellectual Property at the launch of 'Great Expectations'

NEWS IN BRIEF

▶▶ According to research from Oxford Economics, if the government were to implement some straightforward steps to tackle film piracy, UK economic output would increase by £614 million, the jobs of many thousands of people employed in the film industry would be protected, and some 7,900 jobs in the wider economy created. Great Expectations: A report on the economic opportunities for the UK film sector, commissioned by Respect for Film, shows that a series of legislative changes would bring extra gross revenues of £268m to the audio-visual industry, £310m in GDP would be generated across the entire UK economy, while £155m would be generated in added revenue to the Exchequer. The recommended legislative changes include: making camcording illegal in cinemas; regulating car boot sales and other markets; introducing legislation to tackle illegal filesharing in the long term; and creating an effective damages regime.

CAMPAIGN ROUND-UP

Copycat Packaging

▶▶ In anticipation of next year's review of the effectiveness of the Consumer Protection from Unfair Regulations in dealing with copycat packaging, the British Brands Group has commissioned research which exposes how this practice is misleading consumers.

The study was conducted by BMRB and found that packaging products to look like familiar brands prompts mistaken purchases and provokes mistaken assumptions about the nature of the product. Key findings included: 38% of shoppers admit to having been confused or misled by the packaging of grocery products which look similar; one-third of shoppers admitted to having accidentally brought the wrong product because of its similar packaging; and 64% expressed concern over the practice of making packaging similar in order to suggest a connection with a brand which did not exist.

The full findings of the research can be found at www.britishbrandsgroup.org.uk/pages/parasitic-copying



An example of copycat packaging (left) and the branded packaging (right)

IP Infringement in the Workplace

▶▶ The Alliance continues to work with the IP Crime Group in addressing this growing problem. The IPCG commissioned research to uncover the scale of the problems and attitudes of businesses to intellectual property which showed that 40% of businesses surveyed took no practical action such as trade mark registration or employee training to ensure their IP was protected. This scant regard for their own IP was reflected in the absence of any policies or processes to ensure the IP of others was protected and respected in the

workplace. For example, a third of businesses are not aware whether goods being sold by external traders on their premises are legitimate or not, and over a quarter do not make staff aware they must not download illegal content at work.

It is important that action is taken to address this lack of awareness exposed by the research. We are working with the IPO to develop further materials and ensure existing communication avenues are fully utilised, which promote the clear message that IP infringement can not only damage your business if it is not properly protected but that you as the director / manager can face criminal sanctions if you knowingly allow staff to engage in unlawful activity. It is important that managers and directors understand that it is in their interest to ensure correct processes and procedures are in place, particularly given that trading standards now have the power and duty to inspect businesses to ensure IP infringement is not taking place.