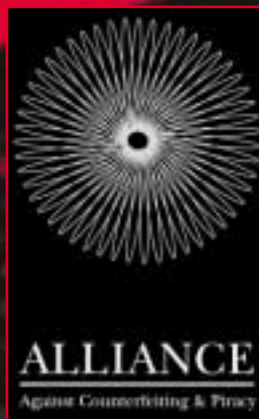


# Proving the Connection

links between  
**intellectual property theft**  
and **organised crime.**



Printed with the generous support of:

**Anti-Counterfeiting Group**

**British Video Association**

**Business Software Alliance**

**Film Distributors Association**

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Picture courtesy of ELSPA



# Foreword

Ever since the Alliance officially launched in the Summer of 1999, announcing £6.4 billion lost to the UK economy through counterfeiting and piracy, we have made references to links between intellectual property (IP) theft and organised crime. Although anecdotal, we knew that these links existed because of the evidence which our members' anti-piracy units were turning up in the course of enforcing the intellectual property rights (IPR) within their industries.

However, none of it was being systematically documented. Then, for the first time, the National Criminal Intelligence Service (NCIS) listed intellectual property theft in its 2000 National Threat Assessment and accorded it a high impact assessment. The report also stated that "money laundering is integral to practically all criminal activities that generate high volumes of cash proceeds." The connection was reinforced in the following year's National Threat Assessment, but there were issues surrounding the sharing of confidential operational information which caused a real lack of coordination of any hard facts.

The Alliance believed that in various files dotted about industry's anti-piracy units were useful case histories accumulating amongst the miscellaneous press cuttings covering their operational successes. So we set about unearthing this information to produce solid examples to support our claims of the growing attraction of the low risk activity of counterfeiting and piracy to organised crime groups.

This report is our first attempt at publishing our findings. It represents the tip of the iceberg. It is indicative of the global nature of the problem that two similar reports have just been published in France and the USA.<sup>1</sup>

Thanks must go to our members who have spent hours digging up the details of recent cases, and particularly to Roy Murphy, who has diligently sifted through the information with his detective's eye for evidence to compile this document. I am hopeful that our modest start will begin to persuade those in control of the purse strings and policies of public enforcement agencies that the growth of the £10 billion business of IP theft merits a review of their priorities, before counterfeiting and piracy spiral out of control allowing organised crime to get the upper hand in wider areas than the current notorious localised hot spots in the United Kingdom.



**Lavinia Carey**

*Chair, Alliance Against Counterfeiting and Piracy*

# Executive summary

Organised crime in the UK has been attributed both a definition and identified characteristics by the National Criminal Intelligence Service (NCIS). The term “organised crime” should accord with the NCIS definition and its nine characteristics (in whole or in part) when used in the context of intellectual property fraud.

So as not to risk exaggerating claims that organised crime and intellectual property fraud are linked, and to justify the assertion that syndicates of criminals are committed to exploiting this lucrative form of criminality, the NCIS definition and characteristics are used as the basis of this document.

This document provides clear and unambiguous evidence of organised crime controlling, exploiting and benefiting from intellectual property fraud. It is on the increase.

The NCIS 2002 National Threat Assessment, the World Customs Organisation, the European Parliament and the recent emergence of Interpol as a key player in IPR enforcement, all represent an awakening to the potential for organised crime to establish permanency in intellectual property fraud.

There is evidence of proscribed groups in Northern Ireland using intellectual property fraud as a fund raising activity for their criminal activities. The PSNI (Police Service Northern Ireland) takes a proactive approach to the problem and it has established an Organised Crime Task Force specifically to address this area of illegal activity and its role in funding paramilitary groups.

Without doubt, dedicated “Task Forces” produce the most effective results, being able to build a close association with industry and develop expertise through training and experience in the field of IPR protection.

There is also evidence of the exploitation of illegal workers and vulnerable ethnic groups as the front line “sellers”, working for poor wages and in impossible conditions. Intimidation and threat of exposure to the authorities are common.

Despite this evidence, there continues to be reluctance among police, customs and trading standards services in some, but not all, regions to regard intellectual property fraud as a priority, often being unaware of its association

with organised crime and the wider impact of unfettered piracy and counterfeiting on local crime and disorder.

There have nevertheless been many successful operations, uncovering large scale, international counterfeiting and piracy networks. These have been shown to succeed where a trust or a bond has been achieved between individuals (often more so than between organisations) intent on bringing perpetrators to book. These successes must be recognised and published for public consumption.

Industry continues to “lift the burden of investigation” from law enforcement agencies wherever possible, by providing an immediate and positive response to crimes discovered and by developing ethically sound pro-active capabilities, for example, engaging confidential “inside” sources or undercover operations to detect on-going criminal activity.

There is a greater need for identifying and expanding regimes of “best practice”, both within industry and law enforcement agencies. In the event of significant operations, contingency planning for providing specialist services and skills need to be drawn up and agreed. Those best practices identified during this research are appended.

Existing legislation, whilst undergoing significant advances as regards IP law enforcement, puts the onus on the police and customs to investigate where the structure and complexity of organised crime exists. It requires a level of competence and power not generally available to the private sector. Convincing police to resource investigations into such crimes, requires powerful persuasion.

Initiatives to foster a harmonious relationship between the private and public sectors need to be developed further, through joint training, shared data and greater contact. “One stop” provision of evidence and support is a prime example. The Joint Action Group (JAG) against organised crime, comprising representatives of all agencies, is an example that can be built upon.

Adding to this is the employment, by some anti-piracy and industry groups, of forensic scientists and financial investigators that will greatly enhance the capabilities of the private sector to police its own commercial environment. Law enforcement agencies benefit from working in unison with such groups.

The full impact of an expanded European market and the potential for the proliferation of illegal imports from countries both inside and outside the European Union will call for more effective border control. Issues affecting the employment of existing legislation are being clearly identified in the context of draft EU legislation, and the “application for protection” system more widely used and maintained. Customs have a vital role in seizing illegal imports and this needs to be reinforced vigorously.

The use of “applications for protection”, empowering customs officers to intercede on behalf of industry and to adopt an intelligence capability to profile and target movement of illicit goods, needs to be more actively considered and thereafter supported resolutely by industry to suspend goods at point of entry/exit. The process of applying for protection is being simplified in the European arena.

Combating organised crime calls for a multi-tasked approach. An endeavour to rid the market place of the street vendor or market-stall owner offering illegal goods is a start, where intelligence gained from these sources enables enforcement agencies to move up the supply chain towards targeting key players in distribution, and beyond them to those manufacturing and exporting, thus identifying trans-national routes. An analogy can be drawn with narcotic investigation techniques.

Legislation without effective enforcement is meaningless. Hence the urgent need to activate provisions of the 1998 Copyright Designs and Patents Act, section 165, to empower trading standards professionals (under section 107A) to take the lead in copyright offences and their prosecution, and to encourage local authorities to support this action by funding operations at “ground level”.

Other opportunities for a multi-agency approach exist. Law enforcement agencies, adopting an “intelligence led” approach, have long since engaged with the private sector to undermine a single criminal or an organisation - taking more than one route to disabling or disrupting their activities. Joint training initiatives, shared funding, contingency planning and the provision of manuals, aide memoirs and web-based information, all serve to illustrate some of the more dynamic efforts for sharing strategies and information.

Also needed are databases - secure online systems - and multi-media materials for storing and circulating vital information; for example, product identification, to distinguish genuine from illicit goods, and to maintain awareness of manufacturing and design changes. Such databases would ideally include intelligence and geographical mapping systems (technologies such as i2, and Mapinfo). Such data can be linked to customs alerts (for example, through REACT<sup>2</sup> and the World Customs Organisation), thus arming customs officers at borders to act.



# Defining organised crime in the context of intellectual property fraud

## **Definition:**

**“Organised crime constitutes any enterprise, or group of persons, engaged in continuing illegal activities which has as its primary purpose the generation of profits, irrespective of national boundaries” NCIS**

Defining organised crime is a challenge, owing to its extremely varied nature, make-up and structure<sup>3</sup>. The imperative is not to over-elaborate the term, rather to emphasise that it describes a “group or network focused on illegally obtained profits in a systematic way, involving serious crimes with societal consequences”. Organised crime employs diverse business operations. There is seemingly no limit to its activities. For this reason, the impact on intellectual property rights (IPR) and the commercial and industrial environment is inevitable; “It is the case that whilst intellectual property is itself intangible, it will be embodied in real objects.”<sup>4</sup>

Organised crime within the UK has been attributed both a definition (above left) and a set of characteristics by NCIS, The National Criminal Intelligence Service (see page 6). These are used by both the police and HM Customs. Without such definitions, the term “organised crime” risks becoming an over used and abused expression, lacking considered application.





## Characteristics of organised crime:

- 1 **Collaboration of a minimum of three people**
- 2 **Criminal activity which has, or is intended to be, continued over a prolonged period**
- 3 **Commission of serious criminal offences which, taken as a whole, are of considerable importance<sup>5</sup>**
- 4 **Motivated by the pursuit of power or profit**
- 5 **Operations are international, national or regional**
- 6 **Use of violence or intimidation**
- 7 **Uses commercial or business like structures**
- 8 **Engages in money laundering**
- 9 **Exerts influence upon politics, the media, public administration, judicial authorities or the economy**

**NCIS**

A common understanding is that those involved in organised crime have heightened entrepreneurial skills, are highly intelligent and adept at adopting technological and economic advantage. The ability to supply illicit counterfeit versions of goods, such as pharmaceuticals, apparel, music, video, jewellery, designer accessories, software, and aeroplane and car parts, supports that contention. Organised crime signals for the police and customs a higher level of criminal involvement and expertise. It assumes a criminal hierarchy and structure. It means discipline and control, often through intimidation, corruption and violence, and is thus above other criminal institutions. Proof of its existence brings with it extended legislative support and powers in many international jurisdictions, emphasising a commitment by government and the private sector to fund dedicated agencies to combat the menace.

*“Organised crime requires a long term, resource intensive commitment but there can be no hiding place for these people who are exploiting our communities.”<sup>6</sup>*

The term organised crime has to be applied with care by the intellectual property rights community to avoid the real risk of exaggeration or of unproven connection. Only then will there be a sustainable belief within government and law enforcement agencies (LEAs) that organised crime and IPR fraud, including counterfeiting and piracy, are inextricably linked. “To neglect these activities is therefore to neglect an increasingly important area of criminal activity.”<sup>7</sup>

The characteristics of organised crime most frequently encountered in IPR fraud are:

- **the continuing nature and longevity of criminal enterprises;**
- **the pursuit of profit;**
- **the use of commercial or business-like structures.**

Intellectual property crime is taking place on a vast scale globally. Advances in technology have facilitated its growth by enabling the speedy reproduction of high quality counterfeit goods, the best of which are difficult to differentiate from the genuine articles. The counterfeiting of CDs, DVDs and other digital media, much of it done in the Far East, is well-publicised, but the counterfeiting of all types of goods from designer clothes to pharmaceuticals is also rife. Many serious and organised criminals are involved, either in the manufacture of counterfeit products, or in their distribution, attracted by the high profits, the low risk of detection, and no doubt the fact that the penalties for intellectual property crime offences are rarely more than minimal. Meanwhile, there remains a public perception of intellectual property crime as a victimless crime. However, where serious and organised criminals are involved, it is reasonable to assume that a proportion of the profits is used to fund other serious crimes. **NCIS**

Increasingly, links to money laundering, by adopting the facade of legitimate business, ranks among the most common traits in organised criminal enterprises.

Previously, there may have been a suspicion among statutory law enforcement agencies that a degree of imprecision exists among IPR agencies applying the term organised crime. But the same can be said of police, customs and other enforcement agencies that have yet to identify with the extent of the problem<sup>8</sup>. The growth in IPR fraud which is reported by The Alliance<sup>9</sup>, is attributed by Alliance members to ease of offending, huge profits and lack of credible sanctions.

David Lowe of the Federation Against Copyright Theft (FACT) states:

*"There is now significant evidence that film piracy has attracted organised crime groups and has a pan-European and international dimension."*<sup>10</sup>

This is confirmed by the debate currently underway in Brussels under the Chair of the Directorate General of Internal Justice and Affairs, who is leading a forum for the prevention of organised crime. The forum recognises that:

*"The greater involvement of criminal organisations and sometimes even of terrorist groups in major international trafficking of counterfeits and pirated goods is evidence of the particularly lucrative nature of these activities and of the increased sophistication of methods of fraud. This new threat, because of its scale, requires the setting up of new instruments within the Union and new techniques to detect fraud."*

DCI Tony Drain of the Credit Card Unit of the City of London Police, led an investigation into a Russian organised crime group operating in London in 2000, which was involved in importing counterfeit CDs. He explained:

*"You are always going to get organised levels of crime when there is a lot of money to be made. In fact there are*

**“The impact of serious and organised crime is felt by everyone throughout the UK, sometimes very directly and personally, but also in more subtle and insidious ways. The trades in drugs, people and illicit goods, the related crime and violence, the corruption of people from all walks of life, cause damage to families, communities and society in general. By raising public awareness the aim is to make it harder for serious and organised criminals to find new victims and to go about their criminal business.” J Abbott, Director General, NCIS.**

*probably three factors, all of which exist: one, there is a lot of money, a lot of easy money, to be made; two, there is a very reduced chance of apprehension because police do not get involved; and thirdly, on the odd occasion that people are apprehended, the sentencing is very poor. So there is no real deterrent and they (the criminal element) will get involved in areas where they can make that money.”<sup>11</sup>*

Dr Vincent Cable MP, Liberal Democrat Trade and Industry spokesman, puts it succinctly:

*“Perhaps the most invidious thing about copyright theft and piracy is that organised crime has realised that it’s a high margin, low risk way of funding so many other activities – from drugs and paedophilia, to even gun-running and terrorism.”<sup>12</sup>*

Interpol, introducing the newly formed Interpol Intellectual Property Crime Action Group<sup>13</sup>, an alliance of business and police, states that: *“extensive evidence is now available from the public and private sectors which demonstrates that organised criminals and terrorists are heavily involved in planning and committing these (IPR) crimes.”*

The extension of EU boundaries proposed for the next decade is likely to further facilitate unfettered cross border, trans-national crime, by enabling criminal communities residing in one territory to manufacture illicit goods in another, intended for sale in a third, in a spider’s web-like formation. The UK will not be left untouched. As indicated by the European Commission:

*“Currently, there are important differences in Member States’ legislation concerning the enforcement of intellectual property rights. Pirates and counterfeiters have been taking advantage of these differences by carrying out illicit activities in those Member States where enforcement mechanisms tend to be applied less effectively.”<sup>14</sup>*



**Many serious and organised criminals are involved, either in the manufacture of counterfeit products, or in their distribution, attracted by the high profits and the low risk of detection, and no doubt conscious of the fact that the penalties for intellectual property crime offences are rarely more than minimal. NCIS, UK Threat Assessment 2002**



Industry frequently highlights the persistent intrusion of organised crime into IPR fraud both at the domestic or national level, and at an international, trans-national level. Global corporate investigators Maxima Group PLC, recently said:

*“One of the most dangerous aspects of organised crime, in all its forms, is the ability to insinuate itself into the national, political and economic systems and to graft its illegal operations onto apparently legal commercial operations, which make it difficult for the relevant authorities to detect and combat it effectively.”<sup>15</sup>*

Identifying and reclaiming the proceeds from such crime has meant a necessary extension of state powers, though this is not as simple or straightforward as it might first appear.<sup>16</sup> The introduction of the Proceeds of Crimes Act 2002 has yet to be tested in court, although Home Office Minister Bob Ainsworth has said:

*“These powers are essential if we are to make a real difference in asset recovery work and send out an unequivocal message that criminals will not be able to profit from their crimes.”*

However, the role of the newly established Assets Recovery Agency begs questions. The role is defined thus:

*.... to provide for confiscation orders in relation to persons who benefit from criminal conduct and for restraint orders to prohibit dealing with property, to allow the recovery of property which is or represents property obtained through unlawful conduct or which is intended to be used in unlawful conduct, to make provision about money laundering, to make provision about investigations relating to benefit from criminal conduct or to property which is or represents property obtained through unlawful conduct or to money laundering, to make provision to give effect to overseas requests and orders made where property is found or believed to be obtained through criminal conduct, and for connected purposes.<sup>17</sup>*

Any assistance rendered to, or made available to, the private sector has yet to be determined. How will such a function dovetail with private (criminal) prosecutions or enable asset tracking in the private sector? Will restraint orders act immediately and proactively to avoid the re-distribution of ill-gotten gains?

Assets seized can, in some circumstances, be re-cycled as funding for the interdiction of like offences, thus making

**According to ACPO (the Association of Chief Police Officers), even if convictions are secured, “analysis of the present confiscation law will show that we are hopelessly ineffective at depriving criminals of their wealth. Quite simply the present law does not work.” ACPO says that the criminal standards of proof required, wariness of evidence based on association and the need to begin procedures after prosecution “will always allow sufficient time for clever criminals to have removed their wealth from the grasp of the courts.”**

**The report<sup>20</sup> also calls for greater powers to obtain evidence of potential criminal wealth: “To prove racketeering it is necessary to prove 'life style' and associations. Evidence of criminal contacts and lavish access to wealth without legitimate means, are critical evidential matters. The law governing such cases needs to facilitate the presentation of such evidence not regard it with the traditional distaste it reserves for 'similar fact' evidence”.**

available the means and resources for the state to fight back. It is an attractive proposition. In the case of *R v Priestley* 2002, a judge directed that from the assets seized, the West Yorkshire Police should be compensated to the tune of £40,000<sup>18</sup> for storage costs of counterfeit products pending trial. A cost equated to the total cost of investigating a category C major crime<sup>19</sup> murder. We have seen evidence of this approach most recently where the Government has recognised that fines from speeding, detected by cameras, will be ring fenced for the police authority in the relevant area. Further afield, in the USA for example, vehicles or other assets used in the course of crime are inevitably awarded to law enforcement agencies for their use and deployment in further enforcement activity.

Prioritising deployment of finite resources for law enforcement and government agencies, such as trading standards, is a given in today's financial climate. Performance measurement, taken as indicators of achievement, is well understood, though rarely applied to

IPR fraud. Urging the need to raise the importance of IPR fraud, alongside so many other forms of criminal or anti-social activity, is at best difficult. It is achieved only by presenting evidence that proves unequivocally that organised crime and IPR fraud, in the form of copyright infringement and trade mark counterfeits, are linked. Industry recognises its responsibility and is responding to it. To neglect or ignore the links between IPR fraud and organised crime risks eroding a healthy and wealthy commercial environment, and threatens to undermine investment and opportunity in the 21st century.





# Evidence of links between counterfeiting and piracy and organised crime, drawn from industry representatives and organisations.

## INTRODUCTION

Evidence that organised crime and intellectual property fraud are linked has been collated over the last two years by industry, from cases that have come before the courts and from elsewhere. Taken together, the selected case studies in this section clearly confirm the relationship. They are, of course, only representative samples.

### **Russian organised crime groups: “Mafia” music pirates in London**

In February 2001, two Russians were jailed for four years in what the police described as “the most sophisticated fraud network ever encountered in the UK”. The investigation began when the BPI<sup>21</sup> and IFPI shared intelligence on the availability of counterfeit CDs from Eastern Europe and Russia. An undercover operation was mounted and once confidence was established between the undercover agent and the culprits, the supply of illicit music products became frequent. In addition, the counterfeiters invited orders for the supply of counterfeit credit cards, weaponry and pornography. The link to these more high profile offences persuaded the police of the involvement of organised crime and led to the Credit Card

Fraud Unit of the City of London Police taking an active role in the investigation. Working in collaboration with industry enforcement agencies, the true scale of the operation began to be exposed. A protracted investigation, over many months, subsequently led to the arrest of a number of men and women. Over 30,000 stolen credit card numbers were found on computers belonging to the suspects, and 10,000 blank credit cards. The scale of the fraud and the links established to other forms of criminality, clearly mark out this case as the work of organised crime.





### **International criminal network: Asian “Mafia” groups and illegal immigrants in Southall**

In Christmas 2002, the BPI reported a record number of pirate CDs being imported into the UK. Their investigations confirmed that known Asian criminal groups were importing these CDs from the Indian subcontinent. Afghan asylum seekers were then used to sell the product on UK streets and markets. As a result, trading standards officers raided locations across the UK, seizing counterfeit DVDs, CDs and video cassettes, including the latest albums of popular artists. The international scope of the operations, as well as the sheer number of people involved, are key criteria in identifying organised crime.



### **International criminal network: Triad gangs and film piracy**

In December 2002, a piece of investigative journalism by The People newspaper uncovered a Triad operation whereby well-known criminal gangs were flooding Britain with pirate DVDs of the latest Harry Potter and James Bond blockbusters, months before their legitimate release for home viewing. The paper's investigators found copies of the DVDs as far afield as London, the West Midlands, Manchester and Nottingham. They reported that the recruits selling the DVDs included Chinese illegal immigrants smuggled in by the Snakeheads Triad group, which traffics people from mainland China.



### **Terrorist involvement in counterfeiting in Northern Ireland: Nutts Corner Market bomb threat**

In its Threat Assessment 2002, The Organised Crime Task Force in Northern Ireland reported that *“IPT (intellectual property theft) is a major local problem and there are close links with organised crime and the paramilitaries. The Police Service of Northern Ireland (PSNI) seizes more counterfeit goods than all of the other UK police forces combined”*. Counterfeit goods to the value of £6.7 million were seized by PSNI in 2002, up from £4 million in 2001, according to the Organised Crime Task Force. The scale of these offences means not only that they are, by definition, the work of organised criminal groups, but also - given the nature of criminality in the Province - it is inconceivable that terrorist organisations are not directly complicit.

In fact, the Threat Assessment Report confirms that 34% of the organised crime groups in Northern Ireland were involved in product counterfeiting (clothing, CDs, power tools, etc). Furthermore, it states that *“nearly half of the organised crime groups known to law enforcement agencies are either associated with, or controlled by, loyalist or republican paramilitary organisations. The insidious nature of some local problems can be traced directly to terrorism. Some important local criminals derive their status and influence from their current or historic paramilitary links.”*

The Northern Ireland Organised Crime Task Force's assertion of the links between counterfeiting, organised crime and terrorist groups adds validity to a Belfast newspaper's report about an alleged bomb plot against police officers at a local counterfeiting black-spot, the Nutts Corner Market in Belfast. The market has been the subject of a series of raids by the PSNI and industry anti-piracy units. In January 2003, The Belfast newspaper, Sunday World, reported that *“Renegade Republicans”* were planning a bomb attack on a police unit at the market. It said:

*“A car bomb was to be used in the operation, a consignment of high grade explosives had been brought into Belfast for the attack. A 40lb device consisting of Frangex – similar to Semtex – and packed with live ammunition, nuts and bolts, was to be placed in the car and driven to the Sunday morning market. A republican terrorist group masterminds the attack. The target is a police unit, which patrols the open-air market on the lookout for counterfeit goods.”*





**Major commercial operations:  
the case of Ronald Priestley**

2002 saw one of the biggest IPR frauds in the UK uncovered by NCIS. Their target was Ronald Priestley, a professional criminal with a long history of offending, theft, drugs, and armed robbery, underpinned by activities linked to copyright and trade mark fraud. He had previous convictions for counterfeiting and had served a substantial period of imprisonment from which he was released in 1996. Based on accurate intelligence, the NCIS North East regional office launched an operation, which took three years to come to fruition. Initial information was that Priestley was seeking to cash in on the Millennium celebrations. He was importing large quantities of low quality, sweet and cheap wine and then bottling and labelling the produce as Moët & Chandon champagne, which was then sold at £15 per bottle. This well organised business structure was operated by twelve close family members to ensure loyalty, discipline and control.

In 2002, a police raid at four factory locations uncovered the extent of the fake champagne deception and also identified IPR fraud involving perfume brands such as Chanel, Yves Saint Laurent, Christian Dior, Calvin Klein, Estee Lauder. Also involved were spirits, vodka, clothing and CDs.

The scale of Priestley's operation was massive and well organised, incorporating:

- 138,000 bottles of counterfeit perfume, worth up to £12 million
- employment of a chemist to produce 356,000 bottles of perfume
- 1,500 bottles of wine purporting to be champagne
- deposits in off shore accounts of £250,000
- perfume valued at £5.5m
- £112,000 hidden behind a bath panel
- 8 packaging machines capable of packing perfume at 5,000 units per hour.

At Priestley's factory units, police also discovered equipment, such as fork-lift trucks, along with quantities of stolen antiques, which were suspected of having been stolen from Merseyside.

Links were confirmed with Brussels and Spain, and key players were identified including two well-known Irishmen using Spain as a base for supplying illegal products.

At Bradford Crown Court in 2002, Priestley received an 18 months' prison sentence and a financial hearing in December awarded a financial penalty against Priestley of £2.6m, £30,000 prosecution costs and £40,000 towards costs of securely storing the illicit goods pending trial (£5,000 per month falling to West Yorkshire Police). In default of payment within two years, Priestley faces 10 years' imprisonment.

There can be no doubt that Priestley's operation constitutes criminality on a scale commensurate with the definition of organised crime and using commercial structures in accordance with NCIS' criteria.



**Counterfeit Moët & Chandon champagne (the two bottles on the left of the group) compared to the genuine item (on the right).**





**Major international criminal operations:  
Operation Aaron**

In a major joint operation, code named Operation Aaron, the film industry, HM Customs and Excise and the police discovered and dismantled a sophisticated trading venture, involving the importation of counterfeit DVDs and CDs from Malaysia, which were distributed via a UK website based in Kent.

A series of raids at the main suspect's home and business addresses, where he operated a computer and DVD shop, uncovered a substantial amount of evidence. Included among the items seized were 1,600 counterfeit DVDs, 2,000 counterfeit video compact discs, 1,000 counterfeit PlayStation games, and blank CD-Roms. Additionally, police uncovered a number of ON-Digital electronic circumvention devices, small electronic printed circuit boards that, applied to a television set-top box, reverse the signal encryption, thereby authorising receipt of all broadcast pay-for-view channels free of charge. The combined total of goods seized on this occasion was estimated at a £104,000 loss to industry. It is, however, the business-like structure and the international reach of these offences (with links to factories half way around the world), which ensure that this case study qualifies for inclusion in this document.

**Manufacturing on an industrial scale:  
theft through decoders**

2001 saw one of the largest IPR fraud deterrent sentences passed in a UK court – a collective sentence of six years as a result of a detailed and protracted enquiry by FACT into the theft of television satellite programmes. Eleven people were sentenced for various offences, ranging from conspiracy to defraud, to making and distributing unauthorised decoders.

The case started when search warrants were executed at various addresses in Essex and a factory was found to contain electronic components, which, when made up, formed computer cubes capable of by-passing the computerised encryption systems used by the cable companies. Sufficient material was discovered that equated to 7,500 devices being manufactured. Several people throughout the country were responsible for placing multiple orders for these devices and then selling them on at an inflated price. In total, it was estimated that the key players had manufactured 15,000 devices over a short period of time, making an estimated £353,000 in up to eight months. This figure rose to over half a million pounds once all conspirators had been identified. A Proceeds of Crime action led to orders of £500,000 and £190,000 being made against the ringleaders and forfeiture orders of £155,000. Potential loss to industry was considered to be £9 million.

The manufacturing and distribution systems used in this offence - which closely mirror those of legitimate business operations - are a hallmark of organised crime.



### **Illegal commercial activities: Operation Wolf**

In early December 2002, Operation Wolf was concluded after nine months of investigation by the ELSPA Anti Piracy Unit<sup>22</sup>, when the internet trader known as Brian Green Software Café, was put out of business. The unnamed trader and his accomplices allegedly operated by “spamming” internet adverts worldwide and offered a massive range of pirate product. He produced a disc containing a list of the items available each month, which ran to 890 A4 pages. He offered a huge selection of video games as well as music, film and business software.

Near the end of his operation, he also began to offer a service whereby customers sent their hard drives to him and he would then download on to them a large amount of illegal content. He moved premises in the UK three times and his ISP from the UK to Southern Ireland and then to Canada. He is also suspected of changing his UK postal “drop” address twice. ELSPA made numerous test purchases over the internet and obtained fingerprint evidence from the discs and DNA from the stamps. Working closely with the South Wales Police Financial Investigation Team revealed a lucrative lifestyle with over £100,000 believed to be passing through two bank accounts. On the morning of the raid by ELSPA, trading standards and police at a house in South Wales, the trader’s packed bags were found on the landing as he was

thought to be intending to move out that day. A search revealed a server and two PCs with ten DVD and CD copiers. Approximately 5,500 master discs were found and a large proportion contained zip files. A large amount of paperwork and packaging, necessary for a worldwide operation, was discovered. Two further bank account details were also found and are now being investigated by police financial investigators. That same morning, his “drop” address in Cardiff was searched and orders from the UK, US, Canada and Europe were seized. Proceedings are pending.

### An investigation of a major fraud: Covroc

A two year investigation and private prosecution by FACT<sup>23</sup>, on behalf of the film and video industry, uncovered Europe's largest video counterfeiting operation, resulting in a successful criminal prosecution.

In June 2000, the industry became concerned that the sales figures for blockbuster video titles were falling, with a parallel decline in the prices being charged for some videos in the high street, coupled to a massive increase in the returns of faulty or poor quality videos by members of the public.

By late 2000, an explanation was apparent: the market had been flooded with over 1.5 million counterfeit versions of top titles, with packaging which was almost indistinguishable from the genuine items.

In December 2000, a video wholesaler, was identified as the main source of supply of the counterfeit videos in question. Enquiries with this company revealed that they were purchasing their stock in good faith from a video duplication company based in Thetford, Norfolk, called Covroc (UK) Limited.

Covroc offered a duplicating service to the video industry, producing, on commission, low volume and low budget videos. It soon transpired that this was a front for a major video piracy operation. Following an initial investigation, FACT presented its evidence to the police and on the morning of 7 February 2001, police officers executed search warrants on various premises.

At a small shop on a council estate, officers discovered and seized 184 video cassette recorders connected by leads for copying, and a relatively small quantity of video duplicating paraphernalia.

A disused motor garage and the home of a principal were being used as a storage unit where police and FACT discovered a video editing suite and equipment that enables the electronic security system of a video to be circumvented and the programme to be copied. Blank and used video cassettes were also found, for use in the counterfeiting production process.



At the home address of the Managing Director of Covroc, Allen Watts, police found and seized master copies of many of the films that Covroc was counterfeiting, as well as receipts for the purchase of over 700,000 blank tapes and video cases.

Documents found there revealed that Covroc had sold about 516,000 counterfeit videos and had grossed approximately £2 million. Bank records indicated that about £1.5 million had been paid into, and then withdrawn from, various known bank accounts.

During the search of Watts' home address, which doubled as the company's head office, police also discovered documents that linked him to industrial premises where they discovered a huge illicit video duplicating facility, the largest such factory ever uncovered in the UK. Over 150,000 counterfeit tapes and 250,000 counterfeit sleeves were seized, preventing these too entering the retail system.

This case was privately prosecuted by FACT with the operational assistance of Norfolk Constabulary. On 12 December 2002, Allen Watts was sentenced at Norwich Crown Court, to a three years and 11 months' sentence. To date, it is the largest case of video piracy ever discovered and prosecuted in Europe. The sheer scale of the operation leaves no doubt that this was a major organised crime operation.

### **Illegal commercial operation on the internet**

In May 2002, FACT, with Trading Standards from Surrey, attended a computer fair at Kempton Park racecourse. Whilst at the fair, information was received concerning an internet video pirate who was, at that time, already subject to an investigation by FACT and Surrey Trading Standards.

Together with the information supplied at Kempton Park, this led to an operation by Trading Standards, FACT Senior Investigators and Hampshire Police, at a business premises in Hampshire.

There, 31 DVD burners were discovered, which were used in the manufacture of DVD-Rs. Also found were five computers with CD re-writers, seven printers, 3,900 film titles, on both DVD-R and VCD formats, including "Spiderman" and "Star Wars: Attack of the Clones", 7,000 blank DVDs and many thousands of other discs still awaiting identification, including music and pornography.

Surrey Trading Standard Officers described this as "the biggest seizure that they have undertaken."

The retail value of the seized items was estimated to be in excess of £2 million. The website involved has now been closed down.





#### **Far Eastern counterfeiting operation: Operation Producer**

The importation of counterfeit discs, produced in illicit pressing facilities in SE Asia, is the largest single source of counterfeit videos in the United Kingdom. The films that are pirated are often pre-cinema releases and have been produced from sub-standard “cam-corder” recordings, filmed using a digital camera at the back of a cinema. The recording is then transferred on to DVD and sold illegally as a digital product for around £10 per disc, resulting in substantial profits for the pirates.

In June 2002, a year-long investigation, code named Operation Producer, conducted by a FACT Senior Investigator, targeted a number of websites that advertised and sold, via mail order, counterfeit DVDs imported from SE Asia, particularly Malaysia.

The investigation revealed that two brothers, aged 31 and 27, living in Hastings, operated the websites. Further enquiries also revealed the use of postal ‘drop’ addresses and covert payment methods through a third party internet based organisation.

Based on this information, raids were carried out by Hastings Police on five addresses in the Hasting and

Bexhill areas of Sussex. Following arrests, searches of the residential properties uncovered thousands of counterfeit DVDs, software and games media. The value of the haul was conservatively estimated to be in excess of £1 million.

Internet orders and documentation were found, revealing that illicit DVD products were being sent all over the world. Currency and e-mail orders were being received from the United States. Cash and foreign currency were also seized along with computers and mobile phones.

The investigation identified at least eight websites that can be attributed to the brothers as well as the original “mother sites” known as “PSX-Copy.co.uk” and “Silverdvd.co.uk”.

These sites were “spin-off” projects that were created, it is suspected, as the mail order operation became a substantial commercial business. The business needed to fragment to minimise the disruptive effect of any ‘take-down’ procedure.

Following the action by Sussex Police, FACT have instigated a “take-down” procedure through the internet service providers (ISPs) against all the web sites and also have started a financial investigation to establish the profit to the perpetrators and loss to the industry as a result of the activity of the brothers.



### **Criminal operator: David Stanley**

In March 2003, David Stanley, aged 32, was sentenced to four years and 5 months' imprisonment at Maidstone Crown Court, having been charged with conspiracy to defraud, and attempting to pervert the course of justice. The court heard that Stanley was the ringleader of a major piracy operation.

The result followed a two-year investigation, 11 arrests and the seizure of hundreds of thousands of pounds worth of illegal MP3 CD-Rs and hardware.

Stanley had been trading in CD-Rs, containing illegally copied music and software at computer fairs all over the South East of England. A repeat offender, he had been arrested three times throughout the course of the investigation, having committed further offences whilst on bail. When passing sentence, His Honour, Judge Croft, said that "loss to the industry was massive and incalculable" and Stanley had been in effect "stealing the property of the producers of these items".

BPI investigators were alerted to the scale of Stanley's operation when a routine investigation at a Bexleyheath computer fair in May 2001 led to the seizure of illegal MP3 CDs with a street value of over £125,000.

Members of Stanley's gang were later arrested and charged with attempting to pervert the course of justice, having been filmed removing computers used to manufacture CD-Rs from a private address. Further raids in December 2001 led to six more arrests and the seizure of fake PlayStation games, Microsoft business software and videos.

The activities uncovered in this operation, certainly conform with a number of the key criteria for organised crime: on a serious scale, using commercial structures, over a prolonged period, involving the collaboration of a significant number of individuals, in the pursuit of significant profits.

### **Businesslike structures: Derrick Davies**

In January 2002, the longest ever UK sentence for counterfeiting offences was handed down to Derrick Davies, following his arrest in December 1998 when more than 6,000 counterfeit goods, with a street value of £500,000, were seized at a warehouse raid in Leyton Industrial Village.

When they raided the warehouse, Waltham Forest Trading Standards and the Metropolitan Police, found more than 100,000 labels and packaging for 52 different designer brands, including Nike, adidas and Armani, and four women attaching them to un-branded clothing such as T-shirts and jackets. Also found were counterfeit perfumes, watches and champagne. Davies attempted to escape via a back door but was detained by officers.

Davies pleaded not guilty at Waltham Forest Magistrates' Court and the case was referred to Snaresbrook Crown Court under the recommendation of Trading Standards. The defendant absconded to Majorca following his first appearance but was arrested eight months later by the National Crime Squad at a drugs raid at a lay-by in Harlow, Essex. The drugs charges were not substantiated but he was forced to appear in court on previous charges of handling counterfeit goods.

Davies was subsequently sentenced, in January 2002, to four years' imprisonment for breaching Section 92 of the Trade Marks Act 1994. Trading Standards claimed he had made profits of £1m in just 18 months. Under a separate Proceeds of Crime action, he now also faces losing his £500,000 Essex house and £250,000 villa in Majorca.



# A review of existing legislation, identifying perceived weaknesses and impracticalities gained from Alliance members.

Taking actions against organised crime firstly requires effective legislation and secondly the enforcement of that legislation by rights owners in conjunction with the authorities<sup>24</sup>. Examining key aspects of UK legislation, and relating it to investigation and enforcement, often identifies what might be considered as limitations or impediments to its effectiveness. One has always to be mindful of the burdens of proof in civil and criminal proceedings and, in the case of the latter, the heightened standard of “evidence beyond reasonable doubt” is always an issue for objective assessment.

Copyright law in the UK is primarily governed by the Copyright, Designs and Patents Act 1988 (CDPA 1988), recognising a need to conform to minimum standards of protection according with international conventions. Infringement of copyright is both a civil wrong and may be a criminal offence. Civil actions may be brought in the High Court and the County Court and the copyright owner or licensees may sue for copyright infringement, though this may require, in some circumstances, a joint action. Civil remedies offered by way of relief from continuing infringement include an interim (or interlocutory) injunction, and at trial, damages or an account of profit<sup>25</sup>. The CDPA 1988 specifies that damages are not available if the

defendant did not know or had no reason to believe that copyright subsisted in the work (section 97). In most cases involving IP infringements the copyright owner will typically be as concerned with stopping dealings in infringing works as with collecting damages and the interlocutory (interim) stage can be the most crucial period.

To halt infringing production, distribution or sale, one has first to identify its existence, through information or intelligence. Indeed, a great body of reliable information or legitimately gained intelligence<sup>26</sup> must be available before one is able to embark on any course of action. Having information or intelligence initially, one might then consider what opportunities exist within the civil code for locating, searching and seizing illicit goods both for copyright and trade mark violations. The range of legislation currently allows for:

- *obtaining a civil search order (otherwise referred to as an “Anton Piller”*
- *an order to deliver up (infringing goods) referred to in section 99 CDPA 1988 and similar provisions in the Trade Marks Act 1994*
- *seizure of goods exposed for sale, section 100 CDPA 1988.*





The “search order” (formerly the Anton Piller Order) was once considered the most powerful and controversial weapon in the lawyer’s armoury. Arising from *Anton Piller v Manufacturing Processes* [1976] three criteria were established:

- *the claimant must have a strong prima facie case*
- *there must be clear evidence of the possession of incriminating goods or documents AND if put on notice there is a genuine risk that they might be destroyed*
- *that the damage caused to the claimant must be very serious.*

Subsequently, and in the light of an over enthusiastic response from rights holders (RHs), areas of concern in its application emerged, for example the plaintiff not having opportunity to gain access to obtaining expert and urgent legal advice at unsocial hours. In 1996, therefore, a Practice Direction of the High Court set out a standard form covering the execution of such an order and of particular importance was the requirement for an independent solicitor to oversee the execution of the order once served.

The obvious impracticalities involved in the exercise of applying for, and gaining, such an order (and the resources expended in time and cost) and of the weight of evidence required to meet the conditions before action, often preclude its use. Industry anti-piracy units protecting their members’ rights favour the criminal enforcement approach and do not often employ the search order.

The CDPA 1988 allows for the granting of an order to “deliver up”. This offers certain advantages. Orders<sup>27</sup> can be granted by the court to “deliver up” or surrender existing illicit goods, where the accused has them in his possession, custody or control, in the course of a business.

*The owner of the copyright in the work may apply to the court for an order that the infringing copy or article be delivered up to him or to such other person as the court may direct. (Section 99)*

Furthermore the CDPA 1988 recognises a “right to seize” or self-help remedy where it:

*...is found exposed or otherwise immediately available for sale or hire, and in respect of which the copyright owner would be entitled to apply for an order under section 99, it may be seized and detained by him or a person authorised by him. (Section 100)*

However conditions apply and bear consideration:

*A person may for the purpose of exercising the right conferred by this section enter premises to which the public have access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business of his, and may not use any force.*

Note: It is open to conjecture as to whether the regular or frequent use of a single location - for example a boot fair - could represent “a regular place of business”.

Trade mark law in the UK is recognised in the Trade Marks Act 1994 (TMA 1994) and this piece of legislation represented a major overhaul of trade mark law since introduction in 1875. Traditionally (ibid), the function of trade mark protection has been to protect the origin of the goods and services to which it attaches, serving for the benefit of the proprietor against competition and offer a guarantee of quality for the purchasing public (*Bristol-Meyers Squibb v Paranova* [1996]). The monopoly assigned to a registered trade mark can only apply if the proprietor uses the mark in the course of business. Trade Marks Actions are brought in the High Court, though it is exceptional for a case to come to full trial. Again, a proprietor’s concern is to prevent further exploitation as quickly as possible, and interim injunctions are crucial in this endeavour. Damages, injunctions and accounts of profits are available as relief to infringement and authority to “deliver up” can be granted by the court:<sup>28</sup>

*The proprietor of a registered trade mark may apply to the court for an order for the delivery up to him, or such other person as the court may direct, of any infringing goods, material or articles which a person has in his possession, custody or control in the course of a business. (Section 16(1))*

Criminal actions focus on “counterfeiting” operations where often civil remedies are both inadequate and slow to

respond. Underpinning a criminal action is a requirement that there must be “a view to gain to himself or another or with intent to cause loss to another and without consent of another”. The burden of proof being upon the prosecution, those elements of the law requiring evidence of an intention require careful consideration and investigative expertise. Criminal sanctions apply where the use of the mark is in relation to goods (and not services) and the mark that has been applied to the goods in question is either identical, to or likely to be mistaken for, a registered trade mark. A defence is accorded to an accused who believed on reasonable grounds that the use of the sign in the manner in which it was used or was to be used did not infringe the rights of the proprietor of the registered trade mark in question. The legal requirements of both the offence in section 92 and the defence in sub-section (5) have been explored in detail in the recent House of Lords decision in *R v Johntone* [2003]. The Lords held that the infringing sign must be used as a trade mark ie as an indication of trade origin. They further held that the burden of proving the defence lay with the accused.

A recent area of dispute has been the unauthorised use of football club logos on items of football clothing. This has now been held to be trade mark use in the recent Court of Appeal and ECJ decision in *Arsenal Football Club PLC v Matthew Reed* [2003].

Forfeiture under TMA 1994 is enshrined in section 97:

- (a) *goods which, or the packaging of which, bears a sign identical to or likely to be mistaken for a registered trade mark,*
- (b) *material bearing such a sign and intended to be used for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods, or*
- (c) *articles specifically designed or adapted for making copies of such a sign.*

In the case of trade mark violations specific investigative and prosecution authority has been granted to trading standards authorities, viz:

*It is the duty of every local weights and measures authority to enforce within their area the provisions of section 92 (unauthorised use of trade mark, &c. in relation to goods). (Section 93(1))*

(Note: a similar requirement not yet in force for copyright offences is mentioned in detail later).

And the provisions of the Trade Descriptions Act 1968 apply in relation to enforcement:

- section 27 (power to make test purchases),
- section 28 (power to enter premises and inspect and seize goods and documents). Note: the term inspect is assumed to include search.
- section 29 (obstruction of authorised officers)
- section 33 (compensation for loss of goods seized).

Sanctions and penalties for copyright and trade mark offences within the criminal code have, since the 20th November 2002, been more or less harmonised by the Copyright &c. and Trade Marks (Offences and Enforcement) Act 2002:

The three areas in which rationalisation is provided by the Act are maximum penalties for certain offences in intellectual property law, police search and seizure powers relating to offences and court orders on forfeiture of illegal material that may have been seized during investigation of offences<sup>29</sup>. (Summary from the Act.)

Whilst recognising a range of penalties – unlimited fines to 10 years imprisonment on conviction on indictment – it is often unrealistic to expect courts to be persuaded to impose anything like such penalties for contravention.

The modernisation of the law, however, reflects the way in which the increase in such crimes is perceived in the political, commercial and economic environment. This is illustrated by the power of arrest now being available for certain copyright offences by virtue of section 24(1)(b) Police and Criminal Evidence Act 1984 (PACE). It is deemed an arrestable offence because a person aged 21 years of age or over (not previously convicted), may be sentenced to a term of imprisonment of at least 5 years.

When dealing with elements of “organised crime” in the context of intellectual property rights, much of the hard “evidence” is often away from the centre of production, distribution or sale and is not generally on public display. Evidence gathering is, therefore, much more than merely searching for seizing and subsequently destroying illicit

product. It is a painstaking, often forensic enquiry to discover the extent and reach of the clandestine operation and scale of operation. Where for example, as previously stated, an organised crime group is entrepreneurial in its ambitions, record keeping, customer directories, stock trails, invoices, cash flow and e-mail traffic are highly desirable pieces of intelligence (and if gathered correctly – evidence). Mirror imaging the hard drive of a computer used in illicit audit control is a prime example of the type of evidence sought, but requires the police to employ powers of search and seizure afforded by, for example section 109 CDPA: for the issue of search warrants.

*Where a justice of the peace ... is satisfied by information on oath given by a constable ... that there are reasonable grounds for believing –*

*(a) that an offence under section 107(1) or (2) has been or is about to be committed in any premises, and*

*(b) that evidence that such an offence has been or is about to be committed is in those premises,*

*he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary. (Sub-section (1))*

*A warrant ...*

*(a) may authorise persons to accompany any constable executing the warrant, and*

*(b) remains in force for 28 days from the date of its issue. (Sub-section (3))*

*In executing a warrant a constable may seize an article if he reasonably believes that it is evidence that any offence under section 107(1) or (2) has been or is about to be committed. (Sub-section (4))*

Other options to obtain warrants are available by virtue of section 8 of PACE.

An application can be made by a constable to a justice of the peace where he has reasonable grounds to suspect a serious arrestable offence has been committed and there is material on the premises which is likely to be relevant evidence.

Under sections 15 and 16 there is a general power to provide that any warrant may authorise persons to accompany the constable.

Under section 19 when a constable is lawfully on any premises he can seize anything which he finds on the premises if he has reasonable grounds for believing:

- (i) that it has been obtained in consequence of the commission of an offence; or
- (ii) that it is evidence in relation to an offence which he is investigating or any other offence; and
- (iii) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

Under these powers the premises are not specified as a place of business per se and the “material on premises” can be extended to include “relevant evidence” (and may not just amount to illicit goods).

The recently increased penalties for copyright infringements assumes that both copyright and trade mark offences can now be deemed “a serious arrestable offence” by virtue of section 116 of PACE where they involve “substantial financial gain or serious financial loss”.

Similar powers of search and seizure are found in section 18 of PACE, following the arrest of a person for an arrestable offence, if they have authority in writing from an officer of the rank of inspector.

Sections 19 and 20 add to the opportunity for evidential seizure in cases where perhaps the extent of the infringing and counterfeiting is sophisticated, or on a significant scale, or is international in scope using computer technology. For example e-mail evidence stored and seized on a hard drive presented the investigators and prosecutors with ideal evidence of guilty knowledge, as outlined above.

As indicated earlier, a constable may seize anything he has reasonable grounds for believing has been obtained in consequence of the commission of the offence, to prevent it being lost, destroyed, etc. Section 20 requires computerised information to be presented in a form, which can be taken away. Retention can under these provisions



extend to the time required to produce the article at a trial or for forensic examination.

If a suspect is not cooperating, but has not committed an arrestable offence, nevertheless they may be arrested under the constables' general provisions in section 25.

In the prosecution of large-scale counterfeiting operations it has become the norm to pursue offences of "conspiracy to defraud" for very good reason; the extent of the organisation is capable of being exposed at trial. The following cites the legal position regarding this approach: It is an offence contrary to the common law for two or more persons to agree to embark on a course of conduct which, if the agreement is carried out in accordance with their intentions, will necessarily amount to or involve some third party being deprived of some-thing which is his or to which he is or would be or might be entitled. The offence is extremely wide and even agreements which might have the effect of injuring a third party's proprietary rights in copyright material have been held to constitute the offence. (*Scott v Metropolitan Police Commissioner* [1975].)

In *Rank Film Distributors Ltd. v Video Information Centre* [1982] the respondents were suspected of selling pirated video cassettes, thereby infringing the appellants' copyright. Lord Wilberforce said conspiracy to defraud was "an exact description" of that activity.

Similarly in *Scott* the indictment charged conspiracy to defraud "such companies as might be caused loss by the unlawful copying and distribution of films, the copyright in which and the distribution rights of which belonged to (others)."

The House of Lords ruled that deceit was not a necessary ingredient of a conspiracy to defraud; an agreement by dishonesty to injure some proprietary right of a person was sufficient.

A range of ancillary actions is available to investigators and prosecutors. These include prosecutions for conspiracies and criminal attempts; and application for confiscation, compensation and forfeiture orders, viz<sup>30</sup>:

- *Forgery and Counterfeiting Act 1981 – sections 1 and 3.*

- *Statutory conspiracy: Criminal Law Act 1977 - section 1.*
- *Going equipped to cheat: Theft Act 1968 - section 25.*
- *Attempts to commit crime: Criminal Attempts Act 1981 – section 1.*
- *Powers of forfeiture:*
  - *Trade Marks Act 1994 - section 97.*
  - *Powers of Criminal Courts (Sentencing) Act 2000 - section 143.*
  - *Copyright, Designs and Patents Act 1988 - section 114 A & B.*
- *Compensation – Powers of Criminal Courts (Sentencing) Act 2000 - section 130.*
- *Confiscation – Proceeds of Crime Act 2002, schedule 2.*

The extent, then, to which industry is able to help itself in the search for evidence without the support of the police and trading standards officers is severely limited. To have that support, even when copyright theft and piracy is escalating in the UK, is not always guaranteed. Industry has to provide convincing evidence that a case is "deemed solvable using proportionate resources<sup>31</sup>" to effect a response.

On the question of the importation (and to a lesser extent exportation) of infringing goods, HM Customs and Excise confirms that steps can and should be taken by RHs to prevent the importation of infringing products. Making an application for protection to the Commissioner of Customs and having the goods declared "prohibited" goods and thus liable to suspension from "free circulation" is the first line of defence at the border.

Where a valid application from a RH is in force, prohibited counterfeit goods may be seized by customs officers under powers contained in the Customs and Excise Management Act 1979 (CEMA). The importer/owner then has one calendar month to appeal against the legality of the seizure. If no appeal is received, the goods are condemned as forfeit to the crown and disposed of as the Commissioners may direct.

*“Key to effective enforcement is the targeting and profiling of people and organisations engaged in the illegal trafficking of contraband goods. To this end all available information and on-going support from RHs is essential for effective border control. Filing for protection is only the start of the process and to be truly effective requires the RHs to commit to on-going and timely support, not sit back and pass the responsibility to Customs Officers alone. It is a two way process.”*

(Adrian Baccas: HM Customs and Excise)

And further, if there is to be a reduction in the impact of illegal importation of illicit goods, a frequent method of exploitation adopted by organised crime groups, one particular issue has to be addressed:

*“The evidence required to prove the illegal importation of prohibited goods requires proven guilty knowledge on the part of the importer. ‘Knowing or believing the goods to be prohibited goods’ infers that the importer is aware that an application for protection has been filed and accepted. This is not likely to be determinable by the importer who is able to evade prosecution, as he would be unaware that a valid application for protection was in force at the time of importation covering the trade mark goods.”* (Baccas)

With the expansion of the European Union, accession countries with hitherto questionable regimes for anti-piracy enforcement will ultimately test border measures at the perimeter. It is hoped this will be mitigated against by the extension to the accession countries by a revised and improved EU Customs regulation which has proved useful in defending RHs’ rights across the EU. Nevertheless, searching out where border measures will be proven to be least effective – the weakest link - is commonly exploited by criminals to the full. The free movement of goods often facilitates criminals who look for opportunities to manufacture illicit goods within the EU, or alternatively to export to/import from outside the EU and transport across EU member states without fear of interdiction.

In some developing countries, the authorities have had, at best, an ambivalent attitude towards the booming manufacture of fake goods in their midst. After all, it creates jobs for local people and, at first sight, appears only to hurt foreign firms. Thus the richer countries whose

firms are the main victims have had to use a mixture of persuasion and threats to get poorer nations to crack down on the pirates. The Uruguay round of world trade talks, which ended in 1994, resulted in an Agreement on the Trade-Related Aspects of Intellectual-Property Rights (TRIPs), which obliges all member countries of the World Trade Organisation to impose penalties for counterfeiting and other breaches of intellectual property rights; to enforce their piracy laws adequately; and to help firms inhibit trade in faked versions of their products.

Besides announcing proposals for tough new penalties against counterfeiting, the Commission is proposing that customs officers be given more powers to inspect and seize goods suspected of being faked. It is especially worried that, since most of the faked goods sold within its borders come from east of the EU, things will get much worse from next year, when new members like Poland and the Baltic states join the Union and their customs services become preoccupied with guarding their eastern frontiers.<sup>32</sup>

Having briefly summarised the current state of the law, it is perhaps appropriate to ask, “What other difficult areas exist for taking effective action against criminal groups?”

The need to identify a lead agency for the investigation and prosecution of copyright offences (recognising the distinction from trade mark offences) is foremost amongst the concerns of industry.

Section 165(2) Criminal Justice and Public Order Act 1994 was intended to oblige trading standards officers acting within local authority regimes to enforce copyright legislation, as is required for trade marks investigations and prosecutions.

This provides in a new section 107A CDPA 1988 that:

*it is the duty of every local weights and measures authority to enforce within their area the provisions of section 107.*

However, Government has set no date for enactment of this essential provision. Behind this failure to implement, lies the financial impact on local authority funding of the statutory obligation to enforce copyright law.

As a first approach to dismantling and disrupting organised crime it is imperative to attack it at its grass roots. This can be compared to narcotics investigation where traditionally one gathers intelligence from the end user and thus is able to travel up the supply chain to the sponsors, organisers, distributors, importers and exporters. Action needs to be taken at street level, where the bulk of the intelligence is to be found. It is a catalytic approach; it causes events and opportunity for expansion of the investigation to occur. Enforcement at street level, in the market place or boot fair, calls for a capability from such a lead agency. As Lavinia Carey, of the Alliance Against Counterfeiting and Piracy, puts it:

*"We are now in discussion with the Government and local authorities about how to improve resources for enforcement to protect industry and consumers from this pernicious crime.*

*"With billions of pounds being lost through counterfeiting and piracy, the Government needs to find a solution to better funding for Trading Standards. Intellectual property is being stolen and consumers put at risk through the sale of shoddy, sub-standard and potentially harmful products. It is still far too easy for criminals and free-riders to take advantage of car boot sales and open markets to sell fake and dangerous goods. The Alliance Against Counterfeiting and Piracy is urging the Government not only to provide such funding but also to equip trading standards to fulfil the same statutory duty to enforce copyright law as currently exists for other infringements of intellectual property."*

# Best practice

## **Incorporating the Memorandum of Understanding<sup>33</sup>: co-operation in the fields of the detection, investigation and prosecution of intellectual property rights offences, dated 4th June 2001.**

The following initiatives have been identified as providing best practice in the fight against organised crime.

- *A multi-agency approach to training enforcement officers, funded by industry, hosted by enforcement agencies and involving lawyers, police officers, trading standards officers and industry anti-piracy personnel. The training is both cognitive and affective in content.*
- *Collaborative training of HM Customs officers to improve border measures against importation and exportation of infringing materials. Delivery at ports of awareness training and road shows.*
- *Road shows and joint presentations to meet and greet enforcement agencies face-to-face, and to demystify the issues of counterfeiting and piracy.*
- *The continuing provision and maintenance of literature and other media, identifying trends and techniques employed by organised crime syndicates and promoting successes achieved in disrupting and dismantling such organisations.*
- *The training of industry personnel in the requirements of lawyers, police, trading standards and customs officers in obtaining evidence and achieving successful prosecutions.*
- *“One-stop” enforcement regimes within industry, often maintained by anti-piracy organisations, who represent their clients and members in providing to enforcement agencies documentary, expert and forensic evidence, and holding authorisation and/or power of attorney to make representations in judicial proceedings and decision making processes.*
- *A multi-industry approach to joint funding of specialist services where a single criminal organisation affects more than one industry, such as music and video. Examples include the provision of computer examination, asset tracing and expert evidence.*
- *Telephone “hot lines” for immediate and confidential contact with industry representatives or anti-piracy personnel enabling a swift and supportive response. Use of the Crimestoppers confidential phone lines.*
- *Provision of “point of contact” information, supplied via a manual or through the internet, capable of linking any product with the appropriate industry representative who can provide support and make necessary decisions.*
- *Payment systems for informants who provide confidential information and systems for ethical and transparent management of such systems based upon, or similar to, the standards required by legislation and codes of conduct for police and customs.*
- *Anti-piracy websites providing generic and specific information on piracy, enforcement practices, resources, legislation, and success stories.*
- *Development of in-house forensic services to provide expert evidence of infringement – for example, document and product examination. Such services qualify for expert witness status in the judicial system and offer a degree of independence from the investigative function to prevent allegations of collusion, contamination or corruption of evidence.*
- *Contingency planning for the eventuality of a major seizure, identifying processes and procedures that reduce or minimise costs for police, customs and trading standards – for example identifying potential storage facilities that are secure and acceptable to agencies for long term storage pending trial.*



- *Development of pro-active investigative regimes – a capability to mount ethical operations incorporating observation and surveillance. Use of undercover officers and digital evidence collation. Such services can be bought in or developed in-house. These methods must conform to the law and recognise codes of conduct endorsed by police and customs.*
- *Simple guides and aide memoirs to assist police and customs officers to identify infringing products, often web-based and downloadable.*
- *Manuals of guidance or “Instant Guides” for the use of police and customs in operational activity (raids) directed at piracy and counterfeiting. De-mystifying what is often perceived as a difficult and confusing extension from “normal” criminal investigation.*
- *Definitive “trade marking” of products. For example a single mark registered to an anti-piracy unit that in itself represents counterfeiting if illegally copied or represented. This is in addition to “company” markings in the normal sense.*
- *Employing, recruiting and/or training of financial analysts to assist law enforcement agencies in tracing assets gained from illegal activity connected with IPR fraud.*
- *Establishing links and contingencies with international courier companies; joint training initiatives, site visits providing posters and informative literature inviting co-operation with courier companies to flag up suspicious consignments or to take more draconian action (for instance, declining to carry questionable consignments).*

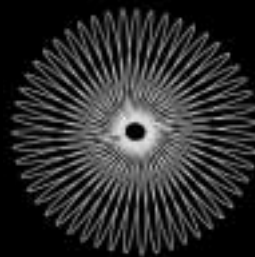


# Footnotes

- 1 [www.unifab.com](http://www.unifab.com) and [www.iacc.org](http://www.iacc.org)
- 2 REACT UK was founded in 1999 with support from the European Commission. It is a "not for profit company". It supports trading standards, police and customs officers by facilitating access to accurate and relevant information on intellectual property theft (IPT).
- 3 [www.ex.ac.uk/politics/pol\\_data/undergrad/Nielson/define.html](http://www.ex.ac.uk/politics/pol_data/undergrad/Nielson/define.html)
- 4 *Intellectual Property Law: Davis J, p2, Butterworth 2001.*
- 5 *Considered as involving significant gain for oneself or loss to another, or punishable on conviction by punitive damages or a period of imprisonment.*
- 6 ACC Chris Albiston PSNI reported in Response – News Sheet of the Organised Crime Task Force PSNI January 2003
- 7 Croall. H. (1998). 'Business Crime and the Community', in *The International Journal of Risk Security, and Crime Prevention*. Perpetuity Press. Leicester. October 1998.
- 8 *Between 1998 and 2001, the number of goods infringing intellectual property rights, intercepted by customs administrations at the external frontiers of the EU, increased by 900% (from 10 million to a 100 million items in four years).*
- 9 *Significant increases being seen in certain industries:*
  - Manufacturing lost £6 billion in 2001, an increase of nearly 15% on 2000.
  - Music piracy was up 30% in 2001, not including downloading from the Internet.
  - Loss to the video industry rose in 2001 by a massive 83% to £330 million.
- 10 BVA Yearbook 2002, p21.
- 11 Interviewed for video – "Tracking the Music Pirates".
- 12 BVA Yearbook 2002 p23.
- 13 Newsletter dated September 2002, introducing the structure and purpose of the IIPCAG.
- 14 [www.europa.eu.int/comm/enlargement](http://www.europa.eu.int/comm/enlargement)
- 15 *Inside IP. Published October 2002 – Lindsay Hudson.* [www.maxima-group.com](http://www.maxima-group.com)
- 16 *See the Auld Criminal Courts Review 2001.*
- 17 *Proceeds of Crimes Act 2002.*
- 18 *£30,000 prosecution costs and £40,000 towards costs of securely storing the illicit goods pending trial (£5000 per month falling to West Yorkshire Police).*
- 19 *Category C - major crime where the identity of the offender(s) is apparent.*
- 20 *Taken from an extract:* [www.observer.co.uk/politics/story/0,6903,615656,00.html](http://www.observer.co.uk/politics/story/0,6903,615656,00.html). Detailed ACPO reform agenda was set out in a 6000-word submission to Lord Justice Auld's Criminal Courts Review, seen by The Observer.
- 21 *British Phonographic Industry – [www.bpi.co.uk](http://www.bpi.co.uk) and International Federation of the Phonographic Industry – [www.ifpi.org](http://www.ifpi.org)*
- 22 *Entertainment and Leisure Software Publishing Association – British video and computer games industry body - [www.elspa.com](http://www.elspa.com)*
- 23 *Federation Against Copyright Theft – [www.fact-uk.org.uk](http://www.fact-uk.org.uk)*
- 24 *State agencies or LEAs – Law enforcement agencies: Police, Customs or Government agencies with authority and responsibility for IPR enforcement.*
- 25 *Intellectual Property Law: Davis J, p118, Butterworth 2001.*
- 26 *A clear distinction has to be made between information and intelligence for a number of reasons.*
- 27 *A similar Order can be made arising from criminal proceedings – Section 108.*
- 28 *Intellectual Property Law: Davis J, chapter 6, Butterworth 2001.*
- 29 [www.legislation.hmso.gov.uk/acts/en/2002en25.htm](http://www.legislation.hmso.gov.uk/acts/en/2002en25.htm)
- 30 *Courtesy of [www.fact-uk.org.uk](http://www.fact-uk.org.uk)*
- 31 *Guidelines of the Metropolitan Police as published by The Mail on 13.01.03.*
- 32 *Findings of the European Commission - 30th January 2003 (as reported in the Economist).*
- 33 *Memorandum of Understanding on Co-operation in the Field of Detection, Investigation and Prosecution of Intellectual Property Rights Offences, between industry enforcement bodies and public enforcement agencies, dated 4 June 2001.*



**Members:** Anti Copying In Design, Anti-Counterfeiting Group, British Association of Record Dealers, British Brands Group, British Jewellery and Giftware Federation, British Music Rights, British Phonographic Industry, British Video Association, Business Software Alliance, Copyright Licensing Agency, Entertainment & Leisure Software Publishers Association, Federation Against Copyright Theft, Federation Against Software Theft, Film Distributors Association, Institute of Trade Mark Attorneys, Newspaper Licensing Agency, Publishers Licensing Society



**ALLIANCE**  
*Against Counterfeiting & Piracy*

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