

All-Party Parliamentary Group for Intellectual Property Update on latest issues affecting the UK's IP regime

Date: Wednesday 26th May 2021

Time: 18:00-19:00

Attendees: Pete Wishart MP, Baroness Neville-Rolfe, Lord Clement-Jones, Lord Foster of Bath, Earl of Devon

Issues covered:

- Unlicensed drone filming over racecourses and the impact on the industry
- IP Infringement and the Online Safety Bill
- Government response to Call for Views on AI and IP
- Update on the exhaustion regime
- Copyright considerations in trade negotiations

Speakers

- **Alex Slade, General Counsel at Arena Racing Company** – Briefed the Group's officers on issues faced by the racing industry due to drone filming over racecourses.
- **Dan Guthrie, Director General of the Alliance for Intellectual Property** - Provided the Group's officers and members with an update on key developments in IP policy.

Unlicensed drone filming over racecourses and the impact on the industry

The issue

- With the ability for the public to bet on live sports events 'in running' (i.e after the start of the event), there is a significant advantage to be gained in speed of access to both live pictures and data. For those that can access both of these more immediately than others (who may be watching on tv, or online, for example) there is a significant advantage and financial incentive.
- Since the national lockdown, and the return of racing without spectators in June 2020, racecourses and greyhound stadia across the country have seen a significant rise in the number of drones being flown with camera equipment to broadcast live pictures of the racing. This is broadcasted to nearby operators who can bet in running on the live event, knowing they have an advantage of a number of seconds over those watching via TV or an official online stream.

The challenge

- There is currently no clear legal protection against the use of drones (nor cherry pickers, scaffold or camera poles) operating near to, and capturing footage from live events.
- These drones are piloted from land adjacent to racecourses or stadia, and generally are fully compliant with all of the Civil Aviation Authority requirements and guidelines that relate to their use.

- Being based outside of the racecourse property, any drone pilot is not covered by the Terms and Conditions of Entry.
- There is more protection if a drone were to overfly a racecourse through trespass and nuisance, but with camera technology being so advanced, there is no need to overfly in order to get pictures of suitably high quality.
- Live sporting events are not, in themselves, covered by copyright so the footage captured by the drone operator is, perversely, their own copyright even though their footage is taken of events managed and operated by a racecourse.

The concern

- Drone filming raises a number of significant concerns. Firstly, on a safety basis, noting a number of well publicised drone crashes in recent months.
- There are also significant concerns over the lack of legislation that prohibits what is, essentially, the live broadcast of a private sporting event.
- There are also integrity issues if the sports organiser does not have control over where the footage is being distributed – it may be distributed to unlicensed gaming rooms, overseas, non-Gambling Commission licensed operators, or to underage gamblers. Without a legitimate and auditable licensing trail, backed up with contractual warranties and suitable penalties, there is a real danger to integrity.
- The gambling industry, whose legitimate activities contribute to the Horserace Betting Levy, are also concerned as not only is the footage distributed in an uncontrolled manner, but the simple presence of drones at racecourses being used for in-running betting discourages legitimate punters from placing bets as they do not have the latency advantages that those using drone footage have.
- These concerns are shared across rights holders of all live events, sporting or otherwise, that rely heavily on the exploitation of live broadcast rights as a major revenue stream and to return on the significant investment required to host the event in the first place.

The solution

- It was suggested that a change to legislation could provide the live events industry with greater protection, while also ensuring that there is no threat to the integrity of betting markets. This could be done in two ways:
 1. By ensuring that copyright in an event rests with the organiser regardless of who films it or creating a new 'neighbouring right' to protect sports events.
 2. By making it a criminal offence to film any such sporting, or other defined event, without the organiser's permission (subject to exceptions for genuine personal use or for other legitimate reasons such as news reporting).
- It was argued that by ceasing the unauthorised filming and exploitation of live events through making such activities an offence, the organisers of horse and greyhound racing, along with

other sports and outdoor live events, would have confidence in the value of their product both now and into the future, whilst protecting the integrity of betting markets.

- It was suggested that these issues could be rectified through the Online Safety Bill if the argument were made in relation to gambling regulations. It was noted that the original Online Harms White Paper included a range of issues involving gambling legislation, and although these have been removed from the Bill, there may be an argument to introduce these issues through its association with gambling related harm.
- There may be an opportunity to use the joint pre-legislative scrutiny committee process to get this issue considered.

How the Online Safety Bill could be a way to address IP crimes.

- The Online Safety Bill defines two different types of harm, or content. One is illegal content, and the second is harmful, but legal content. It then splits between those harms, as they affect children and adults and creates two different regimes; one for search and one for other platforms.
- However, the Bill does not define what harmful but legal content is. It is in essence a framework Bill that enables the Secretary of State and Ofcom to undertake research to decide what the harms are and decide later what the priority illegal content is that should be tackled first, and what the harmful but legal content is.
- Intellectual Property crimes is excluded under the illegal definition.

Digital Markets Taskforce

- The Competition and Market Authority's Digital Markets Taskforce suggested that the platforms and other digital services should take proactive steps to reduce economic harms that were harming consumers.
- This recommendation, in conjunction with the Online Safety Bill provides a twin track to have online IP crimes addressed.
- The Alliance for Intellectual Property noted that it will seek to use the Online Safety Bill to ask the Government how it intends to take forward the findings of its own independent Digital Markets Taskforce, which came up with some very specific recommendations.
- The Alliance would want the IPO to be closely involved with the new Digital Markets Unit at Ofcom, and to be more closely aligned with the Competition and Markets Authority, the Information Commissioner's Office and all the regulatory cooperation forums that they are setting up.

The Product Safety Review

- There is currently a call for evidence on the Product Safety Review.
- This could provide another opportunity to require online platforms to take more responsibility for IP crimes where there is a cross over with product safety issues.

Government response to Call for Views on AI and IP

- The IPO published a response to its consultation on how AI technology interacts with the IP framework. The consultation considered different rights, such as trademarks, design rights, patents and copyright.
- On trademarks and design rights the consultation suggested there were not any immediate issues of note, but it would stay aware of potential developments.
- On copyright, there was the suggestion that there might be some difficulties. For example, there are concerns about whether the product of AI is eligible for copyright protections, or whether it needs to be a different protection.
- There remain questions over how much creative input there is over AI generated works.
- However, the question of protection for the works that get fed into an AI machine, is a different matter. For example, if the Beatles' music were to be fed into the AI to create a new Beatles song, should the AI pay for a license for the material?
- There are concerns that this will turn into a copyright vs AI technology debate. The Alliance is keen to avoid such perceptions as there are many copyright industries that use AI technology on a day-to-day basis.

Expanding text and data mining for commercial use

- There are issues relating to text and data mining. There is the suggestion that the exception is broadened for commercial use, which would mean the AI owners would be able to use vast amounts of data and information, without having to pay for it.
- The Alliance believes that the licensing regimes are sophisticated enough for rightsholders to be able to licence that kind of data to AI technologies. If they are then commercialising the product of the AI, there is the view that content should be paid for.
- It is likely that the IPO will launch a consultation this year looking into these issues relating to text and data mining.
- The counter argument is that AI will not be developed quickly enough if licencing is involved in the process.
- It should be seen as a sustainable future income stream for the creative industries that significantly contribute to the UK economy, and have been damaged by the impact of the pandemic.

Update on the exhaustion regime

- It has become clear that in order to make a change to the exhaustion regime it would require primary legislation and be phased in over time.
- Given the challenge of finding time for primary legislation for these issues, it is likely that this will take some time.
- However, the current interim arrangements are causing difficulties for some industries. Particularly for those licencing products in the EU or across different territories.

Copyright regime in trade negotiations

Mexico and Canada

- Following the announcement that the Government would be focused on expanding the initial rollover trade agreements with Mexico and Canada, concerns were expressed over copyright duration and some other issues regarding the IP laws and protection in both countries.
- It was highlighted that some of those issues are due to be changed by Canada and Mexico under the USMC trade agreement (USMCA), however they have not all been passed into law yet.
- There are a number of issues faced by rights holders in Canada. Two examples include the broad copyright exception for education publishing, which has meant it is almost impossible to make any money from textbooks in Canada. There is also a cap on royalties from radio stations which impacts the music sector.

CPTPP

- The issues surrounding IP provisions within CPTPP are being considered across the Department for International Trade, however there is a significant political drive to sign up to it.
- When it comes to tariffs you can make a clear argument by showing how reducing them will provide a certain amount of income. To argue against CPTPP, by having weak IP laws and measures, restraints and actively harms the ability to grow UK industries. This is a more challenging economic impact assessment to calculate and evidence.

Recommendations

- Provide evidence that there is no impediment to the licensing of text and data for AI technologies to avoid polarising the debate between copyright and tech.
- Where possible collate case studies to provide an economic impact assessment that outlines the implications of signing up to CPTPP.
- The Group is supportive of any new measures to protect sporting events from the impact of drone filming.

Next steps

- The Group is to consider the issue of exhaustion following the publication of the consultation and call for evidence and hold another meeting on the subject in September.
- The Alliance is to share their responses to the group regarding for the Mexico and Canada Trade Agreements and CPTTP for the Group's consideration and review.

For more information please contact:

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