

All-Party Parliamentary Group for Intellectual Property Note for Virtual Meeting on International IP Enforcement

Date: Tuesday 26th January 2021

Time: 18:00-19:00

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

Issues covered:

- Enforcement cooperation in the EU, and the exchange of information.
- Importance of UK IP attaché network, and the benefits of a UK IP attaché in Brussels.

Background

This meeting is the final session in the series discussing the Intellectual Property Office's (IPO) proposed five-year Enforcement Strategy, which is due to be published in the Summer of this year. Following the conclusion of these meetings, the Group will publish a short report along with a set of recommendations to encourage the Government to enhance and protect the UK's IP regime.

It is important that the UK continues to co-operate with international enforcement organisations, particularly Interpol and EUROPOL. Clearly now the UK has left the EU, its relationship with EUROPOL will change, as it also will in broader non-IP co-operation. The TCA UK-EU agreement commits to continuing dialogue between the two parties on IP issues such as enforcement co-operation, and it is crucial to the UK's creative sector and IP rich businesses that this happens in a meaningful way.

The global IP framework, established by multilateral institutions such as the World Intellectual Property Organisation (WIPO) and the World Trade Organisation (WTO), form the foundation of international and national IP discourse. Input from UK stakeholders and businesses are crucial when shaping international IP narratives. It is therefore vital that post-Brexit the UK IPO continues to build and boost its presence in Brussels to maintain a platform for cooperation on IP enforcement.

The UK IP attachés help ensure UK businesses' interests are protected in international export markets. The attachés are based in embassies and consulates around the world and are the points of contact for businesses to gain a crucial understanding of their IP rights abroad. These attachés also offer UK businesses the opportunity to engage with host governments and stakeholders and advise on how to protect and enforce their IP rights in key markets. There are now attachés covering South East Asia, China, Brazil, North America, and India. There is also an attaché based in Geneva which covers the relevant multilateral organisations that will be increasingly important now the UK has its own seat at, for example, WIPO.

Intellectual property enforcement cooperation in the European Union

Currently there is a lack of clarity over the extent of IP enforcement and the limitations of cooperation between the UK and the EU.

The need for collaboration with EUROPOL and exchange of information

- EUROPOL is extremely important for the protection and enforcement of IP rights of UK businesses, and is key for a collaborative approach to IP enforcement between the UK and the EU. Not only does it empower policing; it empowers customs officials to enforce IP rights at border crossings as well.
- The European Intellectual Property Office (EUIPO) recently funded significant improvements in EUROPOL which has allowed IP crime to be maintained as an operational and tactical priority within the EU and has benefited UK businesses seeking to enforce their IP rights.
- For effective IP enforcement across borders, EUROPOL relies on significant information input from all member states. This shared intelligence forms databases such as the Applications for Action (AFA), which is a customs-based database that allows businesses to register their rights to be protected at the borders.
- Now that the UK has left the EU, we are at risk of losing access to that shared information and key databases, which have proved to be critical for UK businesses in protecting their rights.
- The UK introduced a system on 1st January 2021, which allows UK companies to be able to register their rights with UK customs. But for this to function properly, the UK needs enforcement authorities within the EU to reciprocate the exchange of information and provide access to databases.

Key issues

- This reciprocal exchange of information is crucial to combating IP wholesale, and the use of 'nearshoring' as methods of supplying and selling illicit goods.
- The sale of illicit goods is becoming increasingly difficult to police because counterfeiters are setting up different elements of a business in different jurisdictions. For example, websites are hosted in one jurisdiction, while a business is run from a second, manufacturing in a third, and distribution of illicit wares globally by mail or international carriers in another.
- Nearshoring means that an organisation has transferred work to another organisation within its own region. For UK organisations, Europe is a nearshoring region and companies prefer to outsource within its boundaries mainly because of its data protection laws. Nearshoring countries are often bound by similar financial and legal constraints.
- With the disruption of supply chains, counterfeiters are looking to build production sites in the UK. This practice of nearshoring by counterfeiters threatens both the EU and UK borders, and could encourage further wholesale of illicit goods.
- To mitigate these threats and effectively enforce IP rights, the Government needs to continue its negotiations to ensure the reciprocal exchange of information.

The challenges

- For political reasons, the EU may not wish to allow full access of their databases to third countries. The EU may be concerned that if they give access to the UK, they might be forced to give access to other countries.
- While other countries, most notably the US, do have certain access rights, the request for full reciprocal exchange of information is an arrangement that no other third country currently has with the EU. Although they have respect for the UK's enforcement regime, the difficulty is designing a bilateral arrangement that will maintain our previous level of collaboration with member states of the EU.
- The discussion of enforcement will also bring into question the jurisdiction of the European Court which could prompt issues of sovereignty.

Starting points to address these issues

- The Government could negotiate access based on 'advocacy'¹, because the UK's qualified data protection rules were built in line with the EU. This would allow certain access to data and would be a good starting point. However, it should be noted this would be the same access that the US has, and it is unlikely to be enough in light of the nearshoring issues present between the UK and the EU.
- As part of the Trade and Cooperation Agreement the UK now has a six-month window to negotiate data adequacy provisions with the EU. This may offer an opportunity to discuss enforcement data exchange, particularly against the background of cooperation with the EU.

Importance of the IP attaché network

The UK's IP attachés are crucial to protecting UK business interests in key export markets and ensuring the effective enforcement of IP rights. Particularly for sectors such as publishing which is built on exporting to a hugely diverse set of markets around the globe.

- Attachés provide vital intelligence on anything from the political state of play within a country, to flagging consultations that would impact UK businesses, through to engagement with governments and key stakeholders.
- Many trade associations representing UK businesses lack the resources needed to mobilise a team on the ground for gathering in-country intelligence and engaging authorities and Governments to effectively protect their interests.
- Businesses often look to these trade associations for leadership on enforcement, particularly in key global markets where IP regimes are incredibly complex. Being able to liaise with the IP attachés means that trade associations can offer real time support to UK businesses who export abroad.

¹ Advocating the EU Council: A Civil Society Guide. EU Office: <https://transparency.eu/wp-content/uploads/2016/10/Advocating-the-EU-Council.pdf>

- As the UK builds its international trade networks following Brexit, it is vital that BEIS - which has departmental responsibility for the IP attaches - continues to work closely with the FCDO to ensure there is the necessary funding and resourcing in place to maintain and grow the attaché network.

Case studies of effective IP attaché engagement

Indian IP attaché

In India there is an ongoing consultation examining the domestic copyright exception for use of educational publications. These exceptions to copyright allow certain use of copyright protected works without the permission of the copyright owner. Currently the Indian education copyright exception is broad. Due to the extent of the exception, Indian universities can essentially use UK content for free.

This means that UK content companies who are selling publications such as academic textbooks to India find it a difficult and unattractive market to export to.

The IP attaché in India, not only flagged the consultation, but it also gave the Publishers Association the opportunity to feed into the UK Government's submission to the Indian consultation and thereby extended the influence of the industry.

The attaché has also shared important intelligence and insight about the reaction to the consultation from other organisations and stakeholder groups in India. For example, a group of academics in India suggested that the education exception should be broadened further to include online content. This would again make it a more difficult market for UK publishing companies to export to.

With India being such a key market for publishing, the intelligence provided by the UK IP attaché has been invaluable, and it is crucial that trade associations are able to continue this collaboration to protect UK businesses.

China's IP attaché

There is a new copyright law in China and the implementation guidance is about to be rolled out. However, UK publishers are faced with the same challenges of capacity required to really understand the market in depth.

At present the UK attaché in China is putting together a stakeholder roundtable with the local copyright office there, and in doing so are helping UK businesses to navigate a complex IP regime and maximise their ability to sell and protect their products in one of the world's largest markets.

Need to develop an IP attaché in Brussels.

As the UK Government seeks to develop its trade relationships as part of its Global Britain agenda, attachés are becoming even more important for protecting UK business interests abroad and for effectively enforcing IP rights.

- Having a consistent dialogue with stakeholders within key international markets opens up opportunities to build alliances with industry partners to gain intelligence for influence.

- It is therefore important that the UK continues to extend the attaché network and ensure there are long-term in-country placements for building knowledge of the IP regimes within key markets.
- Currently the UK Mission in the EU does not have an IP attaché based in Brussels. With issues such as the lack of clarity over the extent of cooperation and exchange on information for IP enforcement within Europe, an attaché in Brussels is becoming increasingly important.
- The Group heard from the IPO that it is currently working to bolster the IP attaché network, and ensure intelligence is being shared as much as possible. The IPO is also considering where additional need is required.

Recommendations

- Ensure that the current UK IP attaches around the world continue to be resourced, and that the Government opens an attaché in Brussels as a first priority.
- Consider using the negotiations on data adequacy provisions as an opportunity to discuss enforcement data exchange with the EU.

Next steps

- The Group will produce a report to publish its findings on IP enforcement following the completion of this series of meetings.
- The Group will follow up on issues relating to CPTTP.

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