

All-Party Intellectual Property Group Meeting on Illicit Trade

30th April 2019, Committee Room 11

Speakers

Kristin Jones, Head of the Specialist Fraud Division at the Crown Prosecution Service
Giles York QPM, Chief Constable, Sussex Police and national police lead for Intellectual Property Crime

Parliamentarians

Pete Wishart MP, Chair,
Rupa Huq, MP
Rt Hon John Whittingdale OBE, MP
Baroness Neville-Rolfe

Context

Giles York began by setting out the context of IP crime. He said that there was a huge culture within the public of wanting the cheapest goods and a bargain. He said that this was driven by a market that is willing to buy fake goods, whether that is because they are cheaper, they have been duped or for any other reason of availability. However, from a consumer perspective, more often than not, they do not understand the implications of their purchases. Many do not realise that they have been involved with intellectual property theft or are supporting wider criminality by their actions.

Giles York then discussed the dramatic shift in IP crime, from specific commodities, to the internet and other digital models, which makes tackling the issue an incredible challenge. With the landscape forever changing, for example from counterfeit perfumes to the theft of algorithms, it is difficult to find solutions that are effective in the long term. He gave the example of taking down criminal websites for illegally streaming films will just pop up again within 24 hours under a different URL.

York added, however that strategically we as a country are in many ways leagues ahead of others. The IPO have invested a lot of money into PIPCU which is gathering evidence and is a key benefit for the Crown Prosecution Service. This investment has also allowed it to expand. Kristin Jones stated that to date through PIPCU, 60,000 websites have been taken down. There are also good lines of communication between government and those in the industry and affected sectors. This positive collaboration and willingness to work together helps to target these illicit markets.

Why is IP theft important to tackle and why should the police engage in this area?

York identified three key reasons to tackle IP theft - public safety; associated criminality; and the cross-over of criminality. He particularly highlighted the link to organised crime and where the money generated from IP theft was going – to fund terrorism and drug cartels. He also said that often the same smuggling links used to transport counterfeit products are also used for other contraband.

York said he thought that consumers engaging or buying illicit goods or consuming content illegally fell into three types of groups. He said he believed two groups might be convinced to change their behaviour. The first in this group are those who would be swayed by ethical arguments. If people become aware that a T-shirt was a product of child labour or was funding drug cartels, they can be

discouraged from purchasing those products. If these people realised their purchase of illicit products were funding the drug trade, they might be convinced to change their behaviour.

The second group, he said, were swayed by safety concerns. It has become evident to the public that cheaper electrical goods do not equate to quality safety standards. The issue of phone chargers catching fire, and counterfeit airbags not deploying has forced a sense of distrust. This has helped to educate and change purchasing behaviours and could continue to.

Challenges

York and Jones highlighted the main challenges facing investigations and prosecutions which included;

- Time
- Jurisdiction
- Increases in the use of civil rather than criminal law
- Varying industry enforcement
- Co-operation by online platforms which were no longer just social media sites but market places and streaming platforms
- The sheer amount of evidence available and therefore focusing resources

Responses

Jones said that the Fraud Act has been one of the most effective avenues for prosecution of IP crimes and made it much easier to build a case. Jones said that HMRC was looking into what evidence might be required to build a case around 'failing to prevent a crime'. She said this could be applied to a much broader group of companies and organisations, including elements of the financial system. She highlighted this as an example of how the CPS were being creative to tackle IP crime and stay ahead of the criminals who perpetrate it or facilitate it.

Jones said that it could take years to gather the intelligence and evidence for an IP prosecution. When it comes to IP crime involving the internet, then she highlighted the challenges around multi-country jurisdictions. Jones said that they did not have jurisdiction to prosecute someone abroad as they are not accountable to our legislation. She said there was greater need to have cross-border jurisdiction agreements, and more people across the world who are actively trying to prosecute these offenders. Jones also said that an increase in the use of civil law takes away the opportunities to be able to build criminal cases and take away their stolen property.

Jones also said that it would be helpful if the judiciary, defence and prosecution worked together to build agreement on what evidence is required early on in a case to ensure that there was agreements on disclosure because the sheer weight of online evidence means this is becoming harder to provide.

Recommendations

1. There is no one single solution
2. There is a need to focus on the language when we are articulating these concerns to the public
3. Continued support is required from the IPO, with investment and resources – particularly for PIPCU

4. There is a need to get the Government to recognise these are serious issues with online harms and have them legislate to incorporate the tackling of illegal content online
5. Given the proliferation of the use of civil law – perhaps there is an opportunity to be able to introduce new laws to confiscate the proceeds of criminality
6. Legislation is required that is broad enough to tackle the changing IP environment, rather than just the issues of today