



Report into the Protection of Intellectual Property

28 February 2017

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All-Party Parliamentary Group on Intellectual Property Inquiry into the Protection of Intellectual Property

Background

Intellectual Property is vital to economic prosperity in the UK. It is the foundation upon which people can derive value from their innovation and investment. From small businesses and creators to larger companies, intellectual property fuels their creativity and research and development, providing new products, content and ideas for global markets.

In a globalised world, intellectual property is what can differentiate our economy and enable the UK to compete internationally, creating employment, funding research and pushing the UK up the knowledge value chain. The UK might not be able to always compete on cost with lower-wage economies, but we can compete if our products, services and content have higher value, driven by intellectual property.

Investment in intellectual property is only sustainable, however, if it can be monetised which requires it to have a strong level of protection.

The UK's decision to exit the European Union offers potential new opportunities to build new trade agreements internationally. It also offers an opportunity to look at how the UK protects its intellectual property at home and abroad. The current legal framework is strong but is always being challenged by new forms of technology and at times a lack of enforcement activity.

The All-Party Parliamentary Group on Intellectual Property has recently undertaken an inquiry to hear where there are new challenges to the intellectual property framework and what steps the Government could do to either strengthen the law or improve enforcement of current protection, with the understanding that the public finances are likely to make increased spending in this area challenging.

Introduction

It is clear from the evidence we have received as part of our inquiry that there continues to be many challenges for IP rights holders in the protection of their rights. As we have highlighted before, Intellectual Property rights are crucial for our economy and cultural life. They enable creators and businesses to generate income from their creativity, whether they be designers, brand owners or content creators. It also provides security for those investing in that creativity and those who help creators distribute their products, content and services to the public.

Intellectual Property protection will become ever more important as the UK seeks a new trading agreement with the European Union and other countries following the UK's exit from the EU. Ensuring that we encourage other countries to respect IP rights and enforce them should be central to any negotiations.

In sending that message, however, it is important that the UK maintains its well respected IP legal framework and also enforces that law.

Emerging threats

We heard from witnesses about a number of emerging threats being faced by IP owners. What is of particular interest is how quickly these new threats are emerging.

We have been surprised that we are hearing about new challenges to rights owners that didn't exist a short while ago. It is evident that whilst technology provides huge opportunities for businesses to expand their market and access new customers, it can also dramatically and quickly undermine a creator's ability to commercialise their intellectual property. Those that seek to profit from IP infringement, whether their motives be commercial or not, are fleet of foot and are prepared to exploit new technological developments to challenge the law.

Examples of new and emerging challenges we heard about include:

- A British designer with registered designs who has found it near impossible to get a major online retailer to delist copycat designs made and sent to UK customers from India.
- Stream ripping which is an increasing issue for the music sector and threatens not only musicians but new digital streaming services
- Digital TV piracy which is increasingly bringing piracy into the living room through set top boxes that whilst legitimate to sell, can then offer access to infringing software allowing easy access to pirated digital content.

- Substitute selling where branded products are advertised but then non-branded products are switched and sold instead leading to significant consumer confusion.
- 3D printing offers immense opportunities for creators, businesses and consumers but also presents some risks.

Responding to these challenges is not, however, easy. As many have said, legislation takes a long time to come to fruition and is only effective if it can be enforced. With digital TV piracy, there seems to be a natural opportunity presented by the Digital Economy Bill, currently making its passage through Parliament, to tackle the issue. Providing some enabling legislation to enable measures to be introduced in this regard seems a sensible approach.

We were particularly interested to hear about the role of intermediaries, raised by many organisations, not just from the creative industries but also designers and trademark owners. We welcome the Voluntary Code of Practice signed between Google, Bing, the BPI, MPA and Alliance for Intellectual Property which aims to demote links to websites that are dedicated to infringing content for consumers in the UK. The Code clearly demonstrates that government pressure can lead to change, however it has taken three years of effort and a manifesto commitment to bring this to bear, which, as we have mentioned above is too long when change is happening so quickly.

We believe that in the future intermediaries should not have the same freedom to operate using the 'mere conduit' defence as they have in the past. We believe there needs to be greater scrutiny of how companies benefit from linking to or facilitating IP infringing content or products. We are particularly interested to hear more about how online retailing platforms are acting to prevent the sale of IP infringing goods, content and services.

Enforcement

A number of respondents have made clear that whilst they are satisfied with the legislative framework, its enforcement can often be lacklustre and patchy. Whilst the Police Intellectual Property Crime Unit has done great work, it was never designed to be a panacea for IP enforcement. Trading Standards are one of the key enforcement bodies for intellectual property however they have been tasked with more roles by Government and at the same time have been hit hard by reductions in funding and therefore IP enforcement has naturally reduced. We attach no blame to hard-working trading standards officers however it is clear that in the absence of a significant increase in funding, which is unlikely to happen, trading standards needs to re-organise how it approaches IP enforcement. One suggestion, made by the Anti-Counterfeiting Group is for a new national enforcement body that would include trading standards officers but also others including those from customs and HMRC.

We certainly think the Intellectual Property Office should champion a review to look at the feasibility of such a group and how it might be funded.

Legislative challenges

We also heard about the Digital Single Market proposals being pursued at an EU level. Clearly these remain crucial to the UK's commercial and creative interests, whatever the outcome of the negotiations for the UK to leave the EU. We were very disappointed to hear that the UK has not clarified its position on a number of issues since it published its call for views four months ago. The UK will not be a lone voice if it takes a strong pro-copyright stance that enables the distribution of digital content to flourish whilst protecting copyright. The UK government should prioritise the publication of its view as a matter of urgency and make sure UKREP are clear on the Government's view.

Exiting the EU

The UK's decision to leave the European Union will have a potential impact on IP legislation. Most people have told us that they would prefer to see the existing legislative framework maintained. With significant reviews having been undertaken in recent years, there appears to be little appetite for any new review, particularly of exceptions. We agree with this approach.

However there are some gaps in legislation that should be fixed in order to ensure that UK creators and businesses are able to protect their IP in global markets. For example any erosion or loss of access to EU design rights post-Brexit (currently available to UK designers) would have a significant and negative economic impact on this sector and to the UK's GDP. The majority of UK's 350,000 designers rely on unregistered EU and UK design rights and being unable to rely on EU unregistered design rights would seriously affect them. Currently, both EU registered (with one application) and unregistered rights (which arise automatically) offer UK designers design protection in 28 member states for 25 and 3 years respectively.

Unregistered Design Rights are a much stronger design right and loss of access may well influence UK designers seeking to launch new designs to find alternative European locations to secure better design protection.

Creators

We heard from a number of bodies representing creators who have concerns about how income from digital revenue is distributed to their members. Clearly there is a united front on the desire to see more income derived from digital sources by reducing copyright theft. Whilst as a group we don't take a view on commercial relationships, it does appear that more could be done to improve transparency and ensure the benefits of income derived from IP rights are fairly allotted.