



**INTELLECTUAL PROPERTY OFFICE (IPO)
CALL FOR VIEWS
ON ILLICIT IPTV STREAMING DEVICES**

**SUBMISSION FROM
THE BRITISH SCREEN ADVISORY COUNCIL (BSAC)**

4 April 2017

Introduction

The British Screen Advisory Council (BSAC) is an independent, industry-funded umbrella group bringing together many of the most influential people working across the value chain in the UK audiovisual industry, including television, film, video games and new digital media businesses. BSAC Members include not only all of the segments in the UK audiovisual value chain (including development, production, sales, acquisition and licensing of content), but also leading technology firms and Internet Service Providers (ISPs)¹.

We welcome the IPO's call for views on Illicit Internet Pay TV (IPTV) Streaming Devices. This does, of course, deliver on the Government's commitment in the IP enforcement strategy² to consider what legislation would be effective in addressing the growing problem of illegal streaming via set top boxes. This strategy noted the fast growing method of infringement from illegal access to subscription TV services and this trend has continued. Evidence shows that IPTV piracy is experiencing exponential growth, with 19% of adults admitting to engaging in it, of whom nearly half had started to participate in just the last 12 months³.

-
- 1 See a full copy of BSAC's Membership list, at <http://www.bsac.uk.com/membership/>
 - 2 See IPO, 'Protecting creativity, supporting innovation: IP enforcement 2020' (May 2016), at <https://www.gov.uk/government/publications/protecting-creativity-supporting-innovation-ip-enforcement-2020>
 - 3 As indicated in the Industry Trust for IP Awareness study on 'IPTV Piracy: A study on set-top-box and stick infringement for the industry'

Copyright underpins the success of the audiovisual sector in making and distributing content that is valued by consumers and so IPTV piracy is of great concern to many of our Members. The audiovisual sector is just one part of the creative industries, one of the most important sectors in the UK in terms of their economic contribution. This importance can be seen as measured by GVA, employment, exports and growth. In particular, the creative industries added £87.4 billion GBP to the UK economy in 2015 (5.3% of UK GVA), and have grown 34% since 2010, in comparison with 17% for the economy as a whole⁴. Given the impact of IPTV piracy on such an important part of the UK economy, addressing difficulties with enforcement by making appropriate legislative changes is therefore a matter of considerable urgency. As we have explained below, there is also a significant adverse impact on consumers from IPTV piracy that is likely to be easier to address with legislative changes.

Our support for legislative change does not, however, mean that we believe that pursuing IPTV piracy by prosecutions for criminal offences is the only effective approach: addressing audiovisual piracy has always required a multi-pronged approach. Many of our Members have and will continue to use civil remedies to deal with copyright piracy when that is a sensible response. In this respect, the FA Premier League, supported by a number of others who own rights in audiovisual content, has very recently been granted an injunction requiring a number of ISPs to block servers being used to power illegal streams of content⁵. Actions such as this to reduce illegal streaming of content does, however, need to work alongside criminal prosecutions of those selling IPTV devices pre-loaded for access to illegal streams.

Approaches that do not involve enforcement action under either the civil or criminal law are also helpful. In this respect, big strides have been made by right holders over the last few years in making more material available legally online. Also, some progress has already been made with outreach to online platforms where IPTV devices pre-loaded for access to illegal streams are offered for sale, seeking voluntary cooperation from those platforms. Our Members are, moreover, active in educational campaigns, such as those run by the Industry Trust for IP Awareness, and these must also continue to play an important part of how IPTV piracy is dealt with⁶.

Legal access to content, voluntary cooperation with platforms and consumer education will all continue to play their part in dealing with IPTV piracy, but they cannot replace effective enforcement action in appropriate cases. Moreover, clarity of what is legal and illegal is important. We do not believe that this is possible without a clear copyright offence applying to those who sell pre-loaded IPTV devices⁷. In this respect, the recent statement by Derbyshire Trading Standards Officers (TSOs) that:

4 See DCMS, 'DCMS Sectors Economic Estimates' (August 2016), at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/544103/DCMS_Sectors_Economic_Estimates_-_August_2016.pdf

5 See the order granted by Mr Justice Arnold on 13 March 2017 at <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Ch/2017/480.html>

6 For more information on these, see the Industry Trust for IP Awareness website, at <http://www.industrytrust.co.uk/>

7 Both here and elsewhere where we refer to a copyright offence applying to those who sell pre-loaded IPTV devices, we do not intend this to be restrictive of the type of provision needed. At the moment we believe that a new offence or offences is/are needed to encompass various means of facilitating access by consumers to illegal streams of audiovisual content, including by selling pre-loaded devices, supplying apps which give access to illegal streams for

“Accessing premium paid-for content without a subscription is considered by the industry as unlawful access, although streaming something online, rather than downloading a file, is likely to be exempt from copyright laws⁸”;

reinforces the need for greater clarity. Effective enforcement under the existing law is an even greater challenge if those who have an official role in the fight against copyright piracy are making statements that appear to be encouraging consumers not to worry about using illegal streaming set top devices to access illegal streams.

We cannot easily provide the detailed evidence of where enforcement action has been possible and where there are problems with enforcement, as invited by the specific questions indicated in the IPO’s call for views, as BSAC does not have any involvement in actual enforcement action. However, enforcement against various forms of copyright piracy is a key issue for many of our Members and we expect that a number of them will provide some of this specific information regarding IPTV piracy. Indeed, some of our Members have already been active in providing the sort of evidence the IPO is now asking for⁹. It is, however, important that both such evidence and wider issues are taken into account when decisions are made on the way forward. For example, it is important to consider whether or not deterrence and enforcement would function more effectively if there was more clarity regarding what is illegal, and the role of TSOs, as well as the police and industry, in enforcement action. We are not, therefore, attempting to answer the specific questions, but hope that the following points we make are nevertheless carefully considered by those making decisions about the need for legislative interventions.

Impact of IPTV piracy on consumers and consumer education

Legislative change is not only justified because of the damaging effect on the creative industries, but also because of threats to consumer protection from devices offering access to inappropriate content direct to consumers’ main TV screens. IPTV piracy is something that is frequently delivered to the family TV where children may be watching alone. Even when parental controls have been set on an IPTV device, IPTV piracy can expose children to unsuitable advertising, such as for alcohol and gambling, and to age-inappropriate content, including pornography. IPTV piracy is also often coupled with serious risks of exposure to malware and scams, including that which can affect another device, such as a smart phone, because it is often necessary to pair these devices with an IPTV box in order to use unauthorised apps and add-ons for pirate content. Consumers may as a result have been persuaded to part with their own money, and often their credit card details, for none of the rewards indicated.

consumers to load themselves, or selling devices and guiding consumers to such apps which they are able to load themselves.

8 See the report in the Derby Telegraph, ‘Derbyshire trading standards warns Kodi users about illegal access of premium content’ (4 March 2017), at <http://www.derbytelegraph.co.uk/derbyshire-trading-standards-warns-kodi-users-warns-about-illegal-streaming/story-30171321-detail/story.html>

9 See, for example, the briefing ‘Protecting Intellectual Property’, provided to the House of Lords by Sky UK Limited in connection with the Digital Economy Bill.

The significant increase in the levels of illegal streaming does, of course, undermine the ability to secure a return on the investment for the creative industries from the business models making content available to consumers. This in turn threatens investment in new content creation, which is also damaging to the interests of consumers who may get less new content and a narrower range of material to enjoy. In this respect, the reduction in consumer expenditure on genuine content as a result of accessing content illegally through IPTV piracy is significantly greater than has been the case for other forms of piracy¹⁰.

The need for action is therefore urgent as there is a serious risk that IPTV Piracy, which commonly takes place with several family members watching the content together, will lead to people believing that this type of copyright infringement is 'normal' and that there is no need for those who invest in making the creative content accessed illegally to receive any payment, whether in the form of a direct payment, a payment from advertising associated with the content or so on. The success of many years of education campaigns supported by the creative industries and Government to raise awareness of the value of creativity and the need to respect copyright may then be very quickly undermined.

However, consumer education, specifically directed at the issues involved in IPTV piracy, is obviously important as one of the ways of addressing the problem. In this respect, the Industry Trust for IP Awareness has recently stated that consumer education will play a central role in the overall industry efforts to deal with IPTV piracy. The Industry Trust has indicated that, supported by partners representing Internet safety, child protection and fraud prevention, it will make sure people are aware of the risks of IPTV Piracy and address confusion surrounding infringing sources by signposting safe, legal services¹¹. However, in our view, education alone is very unlikely to be sufficient to deal with the problem of IPTV piracy.

Why legislative change is needed

Various legislative changes in relation to the copyright offences in section 107 of the Copyright, Designs and Patents Act 1988 (CDPA) have been made since the CDPA was enacted for exactly the same sort of reasons that action is now needed to address IPTV piracy. The legislative changes we have indicated below may have been made by previous Governments, but they did receive wide cross-party support at the time when they were made.

The first important change was made in 1994 to insert section 107A into the CDPA to enable effective enforcement of the copyright offences by TSOs. This change quite rightly recognised the important role that such enforcement can have in dealing with offences that involve copyright infringement. Another important change was made in 2002, when a Government supported Private Members' Bill was enacted to increase the maximum term of imprisonment for the copyright offences in section 107 of the CDPA from 2 years to 10 years. This was in recognition of the serious nature of the

¹⁰ See, for example, the figures about the impact of IPTV piracy on consumer spending provided on page 4 of the Industry Trust study, as referenced in footnote 3.

¹¹ See page 5 of the Industry Trust study, as referenced in footnote 3.

activity of some of those involved in copyright piracy and the links to organised crime. The change was made even though cases of copyright piracy could often be dealt with other than under the copyright offences, such as by prosecutions for conspiracy to defraud or trade mark offences. The third important change in 2003 was the addition of a new offence to section 107 of the CDPA, directed at those knowingly and illegally disseminating copyright-protected content online, to ensure that new forms of piracy came within the scope of the copyright criminal offences. Making this clear, even though once again the offending behaviour may often have fallen within the scope of offences such as conspiracy to defraud, was considered important.

The Digital Economy Bill is, of course, now equalising the maximum penalty for that online copyright offence with that enacted in 2002 for the offline copyright offences¹². This change was proposed by the Culture, Media and Sport Select Committee's report, 'Supporting the Creative Economy', published in September 2013. The Committee's recommendation that copyright offences in the online world should attract the same penalties as those applying in the physical world acknowledges that the offences can be equally serious. A number of those who have spoken in the debate on the Digital Economy Bill have pointed out the importance of there being no distinction between offences applying to offline and online copyright infringement. Moreover, the Secretary of State for Culture, Media and Sport said at second reading of the Digital Economy Bill in the House of Commons regarding this increase in the penalty that:

"Criminals such as Paul Mahoney, who profited by almost £300,000 and cost industry millions by facilitating access to illegal films on the internet, need to be sent a clear message."¹³

The underlying policy behind the various changes that have been and are being made to the copyright offences in the CDPA is therefore based on the need to increase transparency, improve deterrence and ensure that there are no differences between the responses possible for similar types of offending behaviour. In addition, ensuring that there can be effective enforcement by TSOs has been important. These reasons are exactly why there needs to be action now to make specific provision in section 107 of the CDPA in relation to IPTV piracy.

A new copyright offence directed at those pre-loading and distributing IPTV devices that give easy access to illegal content would send criminals a clear message, in the same way this has been considered important by the Secretary of State regarding equalisation of the penalties for offline and online copyright offences. It may sometimes be possible to pursue criminals under existing offences, but legislative change is still needed, especially as it is still unclear whether existing offences will always be appropriate for this type of activity. The Secretary of State has clearly rejected the argument that possible action under existing offences negates the need

¹² We believe that the penalty for the online offence was set at a maximum of only 2 years in prison due to the constraints in the European Communities Act 1972, which provided the powers to enable the new offence to be added to the CDPA in 2003.

¹³ See Hansard, HC Deb 13 September 2016, vol 614, col 777, at <https://hansard.parliament.uk/Commons/2016-09-13/debates/1609132600001/DigitalEconomyBill>

for equalisation of penalties for the offline and online copyright offences by highlighting the need for a clear message for criminals like Paul Mahoney. She presumably believes that the increased penalty for the online copyright offence provides a much more transparent deterrent for such criminals than is currently the case where prosecutions are possible for other offences¹⁴. An offence targeted at IPTV piracy would provide the same very necessary clarity and deterrence.

Legislative change by an addition to the copyright offences in the CDPA would also make it much more likely that there is no problem where TSOs are involved in enforcement action and wish to prosecute those pre-loading and distributing IPTV devices. We understand that normally only the police can investigate and prosecute under legislation such as the Fraud Act 2006, the Proceeds of Crime Act 2002 and the Serious Crime Act 2015, which may, sometimes be routes for addressing IPTV piracy at present. We believe that TSOs also do not generally have the delegated authority to pursue prosecutions under the common law conspiracy to defraud offence. Ensuring that there is a clear offence applying to IPTV piracy, where TSOs have the powers to investigate and prosecute, is therefore as important now as it was when changes were made in 1994 regarding the offline copyright offences. Ensuring TSOs can take action when appropriate is also crucial when there may often be insufficient police resources to deal with this type of crime; for example, we know that, whilst the Police Intellectual Property Crime Unit (PIPCU) is taking action on some IPTV piracy cases, it has limited resources.

We have indicated above how IPTV piracy can seriously impact on consumers in ways that many may not understand. A clear criminal offence directed at those who might sell pre-loaded IPTV devices would certainly help in constructing a simple message when conducting consumer awareness campaigns that this activity represents IP theft. Those selling pre-loaded IPTV devices may also be making large profits at the expense of the consumers who buy them, unaware of the illegality of the content they have been set up to access¹⁵. Where pre-loaded IPTV devices can be bought via recognised and respected retail brands, many consumers do not have any concerns that anything might be illegal¹⁶. There are therefore various reasons why legislative change to improve clarity and deterrence, and to enable enforcement action by TSOs, is necessary to improve consumer protection.

14 Paul Mahoney was sentenced to four years in prison for the offences of conspiracy to defraud, acquiring criminal property and converting criminal property and not the online copyright offence – see the press release from the Federation Against Copyright Theft, ‘Man sentenced to four years for film piracy scam’ (8 September 2015), at <https://www.fact-uk.org.uk/man-sentenced-to-four-years-for-film-piracy-scam/>

15 The research indicated on page 18 of the Industry Trust study, as referenced in footnote 3, provides the example of an M8 android box: this was being sold for £99.95 with unsupported apps, which give access to illegal content, and which are bundled onto the device before selling; or which is offered for around £30 on Amazon without these apps, and onto which Kodi and its legal add-ons could then be downloaded for nothing.

16 Nearly half (48%) of those surveyed by ICM for the Industry Trust study referenced in footnote 3 said that, if they bought the item via an online retailer such as Amazon, then the product must be legal.

At a time when we are in the process of leaving the European Union it is more important than ever that the UK's copyright framework is fit for purpose. The difficulty of dealing effectively with IPTV piracy undermines the message that the current copyright framework is working well. The UK will be better able to show its support for the creative industries in the UK and its commitment to proper respect for copyright internationally by taking action without delay to deliver a clear copyright offence applying to IPTV piracy.

Conclusion

We do support a multi-pronged approach to deal with the growing and very challenging problem of IPTV piracy. This must include educational campaigns and use of technology as well as increased enforcement activity. But the last of these will continue to be challenging in the absence of clearer laws which are simpler to enforce, including by TSOs. Action to deal with this problem should therefore be taken as a matter of urgency. We certainly agree with the former IP Minister, Baroness Neville-Rolfe, who, when launching the Government's IP enforcement strategy in May last year said in relation to IPTV piracy:

“It is clear that we need some new thinking in this area. The satellite and cable industries and broadcasters continue to invest in better security and enforcement, but it is also clear that the criminals are serious and this sort of organised crime generates huge profits.”¹⁷

We note that there has been a very recent arrest of 5 people in connection with IPTV piracy¹⁸. Whilst we welcome this action by PIPCU, the fact that enforcement action is sometimes possible under existing laws does not mean that there is no need for legislative changes. For the reasons we have indicated, an appropriate addition to the copyright offences in the CDPA is one of the actions that must be taken without any further delay.

*For more information about the
British Screen Advisory Council (BSAC)
Please see our website
www.bsac.uk.com*

¹⁷ See Baroness Neville-Rolfe, 'Launch of intellectual property enforcement strategy' (11 May 2016), at <https://www.gov.uk/government/speeches/launch-of-intellectual-property-enforcement-strategy>

¹⁸ As indicated in a report by the City of London Police, 'Five arrested in crackdown on illegal TV set-top boxes' (8 February 2017), at <https://www.cityoflondon.police.uk/advice-and-support/fraud-and-economic-crime/pipcu/pipcu-news/Pages/Five-arrested-in-crackdown-on-illegal-TV-set-top-boxes.aspx>