



2008 - 2009 IP Crime Report





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Foreword by David Lammy MP, Minister of State for Higher Education and Intellectual Property



The value of the UK creative and innovative industries to the UK's knowledge based economy cannot be underestimated. According to figures from UK Trade & Investment in 2007 the creative industries generated 8.2% of the UK GDP accounting for over 1.9 million jobs - with the brands industries' own figures estimating around £15.8 billion in investments per year in the UK, supporting one million jobs.

IP crime is economic and cultural vandalism which seriously damages businesses' ability to create and innovate. The economic dimension of IP crime is clear. It costs billions of pounds in lost revenue and causes enormous damage to the UK economy, an economy that relies on knowledge and innovation. It also strikes at the heart of local communities, not only undermining business viability, but also community values.

I want to see people move away from thinking that committing IP crime is an acceptable way to behave. They need to understand and respect the value of other people's work. We need to change their behaviour - future business success and cultural enjoyment depends on it.

I am very pleased to see the work and progress that has been made over the last year as highlighted by the report. A key development is the increase in IP crime intelligence sharing. The Intellectual Property Office has led on this work across government with the expansion of their intelligence hub. Since January this year the hub has received in excess of 2,000 intelligence reports – representing a 120% increase over the same period for 2008. I am delighted that intelligence sharing agreements are in place with all optical media industries and some key brand industries. We need to build on this success by ensuring agreements are in place with key partners in all industry sectors.

In other areas, I am heartened by the increase in coordinated effort between various enforcement bodies and rights holders. The number of enforcers forming partnerships with other bodies - whether neighbouring trading standards and police authorities, HMRC and UK Borders Agency staff, other government departments or with rights holders' representatives - is a very positive step. But more work needs to be done in expanding this success throughout the UK. It is through the sharing of intelligence and best practice that IP crime, both nationally and globally, can be effectively tackled. We may never eliminate the threat, but by working together we can certainly reduce its impact.

Success can clearly be seen in the latest available figures on criminal convictions which have shown a rise from 402 in 2002 to over 1,260 in 2007. More custodial sentences and more serious sanctions are being imposed on IP criminals but there are still significant knowledge gaps which need to be filled. The Intellectual Property Office is actively taking this forward by working closely with the Crown Prosecution Service in developing IP education materials. Enforcement agencies are becoming increasingly aware of the full range of legislative options open to them, particularly the Proceeds of Crime Act to confiscate money generated by IP crime. This is an extremely effective deterrent which hits at the very heart of the criminal fraternity.

However, we must not become complacent over the gains made in the last year. There is still a huge amount of work for all parties to do, particularly in relation to the challenge of effectively enforcing IP crime on the internet. The role of industry in protecting its own intellectual property cannot be underestimated, and I am keen to support the work we have seen on new innovations designed to protect these valuable assets.

There is more work to be done in Government as well, particularly in developing and delivering priorities across departments. To keep up the momentum I have set up an Interministerial Group on IP Enforcement to target improved public awareness and make enforcement more effective. This will complement the innovative work done by the IP Crime Group which has produced key information on IP crime for businesses, enforcers and members of the public.

We need this joined up effort to tackle the problem - and enforcement is absolutely a part of that. But our response must be proportionate. Government, enforcement agencies and industry have key education roles to play in helping stamp out IP crime - we need to educate consumers to make them aware of the real cost.

My thanks go to all members of the IP Crime Group whose efforts in working together on IP crime are reaping the excellent progress this report records. I would like to encourage all those involved to continue their good work in the coming year, and I look forward to playing my part in tackling this growing threat over the coming months.

David Lammy



Preface by Giles York, Deputy Chief Constable of Sussex Police and Chair of the IP Crime Group



This latest IP Crime Report clearly shows that IP crime represents a significant threat to UK businesses and consumers. I am seeing more and more cases where serious organised criminals are becoming involved in IP crime where the profits fund other serious criminal activities. As the police lead on IP crime, I have been raising this issue with police forces throughout the UK, highlighting the seriousness of this threat and the importance of devoting time and resources to tackling it. IP crime by itself will never be a top policing priority. But we can mobilise police interest by sharing the information and intelligence which demonstrates the links to serious crime and other policing priorities.

An intelligence led approach is paramount in meeting this threat. The IPO's intelligence database (IPID) is spearheading the targeting of those involved in IP crime which has resulted in notable successes. We can all benefit from these successes and the report shows how the input of intelligence has increased month on month expanding this work. However, we all need to be involved in painting the full picture. The message to those who don't yet share intelligence is clear.

I am encouraged that the IP Crime Group has revitalised its role in the last year. The group has agreed new terms of reference this year and set a clear goal - to achieve measureable progress, year on year, in our collective ability to deal with IP crime. I am very pleased with the achievements of the individuals that make up the group. We have produced a supply chain toolkit, which informs SMEs how to tackle counterfeit goods in the supply chain, and a Proceeds of Crime Act leaflet, which will provide advice and information to consumers and market stall owners. The recent publication of research highlighting the problems of IP crime in the workplace, the so called hidden market place, is an example of the horizon scanning work where the group can excel. The group contains a broad range of experience and expertise, and the value of harnessing this into collaborative action cannot be overstated.

The report details the threat and the progress that has been made – it is up to all of us to sustain and build on this work, particularly during times of economic uncertainty, to ensure the UK is closed for the business of IP crime.

Executive Summary

Just like physical property, intellectual property (IP) can be stolen. 'IP crime' is committed when content or trade marks are copied and marketed for profit without the consent of the rights holder. This is a double-edged crime because it can harm the intellectual property owner and the consumer.

There are two different kinds of IP crime: counterfeiting and piracy. Counterfeiting involves the illegal copying of trade marks on products such as clothing and pharmaceuticals. Piracy involves the illegal copying of content such as music, film, sports events, literary works, broadcasts, computer games and software for commercial gain. Copyright infringement also includes illegal copying and downloading of digital content. The two can often overlap, with both trade marks and copyrights involved in a given product, for example in software.

It is difficult to provide definitive figures on the scale of IP crime because there is no standard method used to calculate loss. However the Rogers Review estimated that criminal gain from IP crime in the UK was £1.3 billion in 2006 with £900 million flowing to organised crime, although many people today feel the figure is significantly higher.

The incidence of IP crime has increased significantly in recent years because of advances in technology, which allow quick and inexpensive production of counterfeit and pirated goods and easy transport of goods and components throughout the world. There are concerns that the situation could worsen during times of financial difficulty.

The situation is further complicated by legal uncertainties that surround particular IP issues. The questions of responsibility for guarding against IP crime in relation to online trading and how best to encourage legitimate content sharing online are two issues which are yet to be fully resolved. The global nature of IP crime and trade on the internet combine to produce enormous challenges for law enforcement.

The effects of IP crime are far-ranging and serious. Individual companies and entire economies are affected by the loss of revenue for legitimate businesses when illegal goods move into their markets.

Many types of goods which have been counterfeited also pose considerable health risks to consumers. This group includes personal care products, food, drink and tobacco products, electrical goods, medicines and machinery. In addition those involved in IP crime have

also been shown to be involved with other crimes. In some cases, profits generated through IP crime have been shown to fund organised crime groups, with some of these groups involved in weapons, drugs and people smuggling.

Nonetheless, there has been progress in the fight against IP crime on many fronts in 2008-2009. Considerable work has been done by both enforcement bodies and rights holders in preventing IP crime through awareness raising and sharing best practice and enforcing IP crime through intelligence sharing and collaborative working.

In terms of prevention, some rights holders have found ways of building deterrents into their products. Manufacturers have found many different ways of giving their products unique identifiers, such as individual codes and invisible 'covert' markings, so that illegal copies are easier to identify and/or genuine products are much harder to copy.

Ways have also been found of presenting consumers with an attractive alternative to IP infringement, such as by making legitimate sharing of content easier and simpler. Some organisations have also made it clearer to consumers how they can access legitimate content and have provided effective means of doing this, such as the recently launched website 'findanyfilm.com', which allows consumers to enter the name of a film and find cinema listings, retailers and authorised download sites where they can gain access to the film.

Several high profile awareness campaigns have also been put together in order to show consumers the true cost of IP crime and to show them the benefits, to themselves and others, of checking thoroughly when they buy goods and ensuring that they are getting the genuine product.

One major campaign was led by Pfizer and the Medicines and Healthcare Products Regulatory Agency and depicted a man coughing up a dead rat after taking a pill purchased from the internet. Campaigns of this sort are hard-hitting and shocking, but convey to consumers the sorts of risks they take if they purchase counterfeit and pirated goods. These campaigns can be persuasive, particularly where consumer wellbeing is involved.

Further positive steps have been made through the sharing of best practice and coordinating of efforts in enforcement activities. Several groups and organisations have brought experts together to share knowledge and

Executive Summary

agree approaches to tackling IP crime, including the Intellectual Property Office's IP Crime Group. The IP Crime Group brings together government, enforcement and industry representatives and is chaired by Giles York, the Deputy Chief Constable of Sussex Police. Other groups, including those formed under the UK Control Strategy for Organised Crime, the Local Authorities Coordinators of Regulatory Services and the National Fraud Strategic Authority, also coordinate work by bringing different parties together.

Enforcement bodies now routinely involve many other organisations in gathering intelligence and planning operations. Over 90% of trading standards authorities surveyed by the Intellectual Property Office had worked together with local police forces to tackle IP crime in the last year; one third had worked together with HMRC or UK Border Agency officers. New money made available to local authorities by the government to enforce copyright law has also enabled trading standards services to devote more time and resources to IP issues and to form partnerships with other bodies.

The sharing of resources and intelligence has resulted in several large scale operations that have led to substantial seizures of counterfeit and pirated goods. Significant operations include a targeted operation by customs officers throughout Europe which resulted in the seizure of counterfeit medicines in Belgium, France, the UK and Spain, and a targeted operation at the UK's largest post parcel depot in Coventry where counterfeit footwear and hair styling products were seized.

There have been notable inconsistencies in the sentences given by courts for IP offences. There was not universal recognition of the seriousness of IP offences and the harm that could result from them. However, significant work has been done to raise awareness among the relevant officials, and a section on IP crime was included for the first time in the May 2008 edition of the Magistrates' Court Sentencing Guidelines, a document which provides guidance on appropriate sentences for different crimes tried in Magistrates' Courts.

Awareness of IP crime has also been raised among prosecutors by the inclusion of IP training materials in the Global Prosecutors' E-Crime Network, an online training tool for prosecutors. Still more work needs to be done in this area to build on this strong foundation.

As a result of this work into increasing knowledge of IP crime and its effects among prosecutors and courts, there have been developments in sentencing outcomes

for IP crime. The last five years for which figures are available, 2002-03 to 2007-08, saw a steady increase in the number of people sentenced for offences under the Trade Marks Act 1994 and the Copyright, Designs and Patents Act 1988. 1260 people were sentenced under the two Acts in 2007, compared to 402 in 2002 - a percentage increase of more than 200% over a five year period.

A large amount of work has also been done into increasing awareness and use of the Proceeds of Crime Act 2002. This Act enables courts to confiscate money which has been made by criminal means. It has been of great use to IP crime cases, since these cases can involve large criminal gangs generating huge profits, who historically have not been significantly affected by traditional criminal sanctions.

Through training of prosecutors, the amount confiscated under the Act for all crimes has increased from £54.5 million in the financial year 2003-2004 to £135.7 million in the financial year 2007-2008. This represents a percentage increase of almost 250% over the five year period.

These successes show that by coordinating work and sharing best practice, the threat posed by IP crime can be significantly reduced. The seriousness which government, industry and enforcers place on this kind of offence, as highlighted in the report, is very positive and sets the tone for intensification of collaborative activity in this field.





Chapter 1 IP crime – setting the scene

A The scope & scale

Introduction

IP crime has posed a significant threat to businesses in Britain and worldwide for many years. The Rogers Review estimated that criminal gain from IP crime in the UK was £1.3 billion in 2006 with £900 million flowing to organised crime. Many industries are severely affected and attribute high levels of financial loss to IP crime. The European Commission reported that the total number of counterfeit and pirated articles seized by customs official in Europe was 79 million in 2007¹.

It is difficult to establish precise figures for the level of IP crime since there is no standard recognised methodology for calculating loss. Consumer purchasing habits and other variables differ too much across different sectors. However, the following examples from a range of sectors affected illustrate the magnitude of the problem. The British Software Alliance and International Data Corporation estimate that 26% of software installed in the UK in 2007 was illegal. This equates to an estimated loss of US\$1.83 billion to the industry². The Anti-Counterfeiting Group and the Alliance Against IP Theft estimate that the cost to the clothing and footwear industry due to counterfeiting in the UK is £3.5 billion each year across manufacturing and retail³.

The World Health Organisation (WHO) estimates that up to 1% of medicines available in the developed world are likely to be counterfeit. This figure rises to 10% globally, although in some developing countries the WHO estimate one third of medicines are counterfeit. The WHO estimates that up to 50% of medicines, which are sourced from websites that conceal their physical address, are counterfeit. New research highlighted that more than 330,000 men purchase prescription only medicines from unregulated sources, such as internet sites, every year in the UK⁴.

Indications of positive developments

IP crime is certainly a major threat to many sectors. However there are indications that those sectors which have invested in enforcement and awareness initiatives will begin to see reduced levels of counterfeiting and piracy. As this report goes on to discuss, 2008–2009 has seen many positive steps forward from industry and enforcement bodies, which fit in to part of a long term strategy.

Many positive initiatives in different sectors have started to see gains made in the fight against IP crime. It is important that all parties seek to continue and build on these steps in the coming year. Through coordinated working and the sharing of best practice techniques, it may be hoped that the current damage done by IP crime may be reduced significantly in future.

Threats for the future

There are fears that the problem will continue to grow due to advances in technology and consumer demand for easily accessible goods. There are also fears that certain economic crimes may increase in the global economic downturn.

An American report⁵ by the Internet Crime Complaint Center, run by the Federal Bureau of Investigation and the National White Collar Crime Center, stated that internet fraud reported to US authorities increased by 33% in 2008 compared with 2007, and that losses due to this type of crime reached a record \$264.6 million in 2008. There are concerns that IP crime could increase and that enforcers and rights holders will have to intensify their efforts if they are to keep IP crime at bay in future years.

1 Community Customs Activities on Counterfeit and Piracy, Results at the European Border 2007, DG Taxation and Customs Union May 2008

2 Fifth Annual BSA and IDC Global Software Piracy Study, British Software Alliance and International Data Corporation, May 2008, available at http://global.bsa.org/idcglobalstudy2007/studies/2007_global_piracy_study.pdf

3 Available at: http://www.a-cg.org/guest/useful_info/guest_information_scale_of_counterfeiting.php#

4 Cracking Counterfeit, Pfizer, October 2008

5 2008 Internet Crime Report, Internet Crime Compliant Center, available at: http://www.nw3c.org/downloads/2008_IC3_Annual%20Report_3_27_09_small.pdf

B Digital IP crime

Introduction

Digital IP crime covers a broad range of activities where protected content is illegally copied and distributed in a digital format. It encompasses illegal peer to peer file sharing of music, film, literary and software files, illegal streaming of live sport events, and large scale factories producing huge quantities of CDs and DVDs.

Ever-growing worldwide use of the internet and sophisticated technology make digital communications and transactions faster and easier. These advances have fundamentally changed business practice in every sector. However, they have also aided the procurement, manufacture and distribution and sale of IP infringing goods and the illegal sharing of copyright protected property.

The government's Digital Britain Interim Report⁶ stated that the UK's digital economy accounts for around 8% of gross domestic product (GDP) and by 2012 £1 in every £5 of all new commerce in this country will be online. In addition it reported that the rate of growth of the creative industries is at an average of 6% per annum, compared to 3% for the rest of the UK economy. It also stated that the audiovisual content production sector in the UK accounts for annual production activity of between £5.5 and £6 billion.

Digital businesses are a very significant part of Britain's economy, in terms of both Gross Domestic Product and as an employer. The Digital Britain Interim Report estimated that in summer 2006 creative employment in the UK totalled 1.9 million jobs. Figures from the Entertainment and Leisure Software Publishers' Association (ELSPA) state that the UK computer and video games industry alone employs over 22,000 people, and the Annual British Software Alliance and International Data Corporation Global Software Report 2006 states that a 10% reduction in piracy in the UK would generate 30,000 jobs and contribute £11 billion to the economy.

These figures demonstrate how central the creative industries and particularly their digital branches are to Britain. The threat posed by IP criminals undermining this industry is therefore immense and must be defended against in order to safeguard the creative economy and jobs.

Future steps

The Digital Britain Interim Report discussed ways forward for businesses in the online age, and particularly in light of modern threats. The report highlighted the importance of businesses taking significant steps to protect their businesses themselves, whether this is through the development of new business models which make allowances for modern habits of content sharing, or whether it is through the use of their own security measures to minimise the damage done.

Many businesses have already adapted their products to allow their customers legitimate access to copyright content online. For example, in September 2008 Nokia launched a product called 'Nokia Comes with Music'. Customers buy a Nokia phone device whose purchase includes a one-year subscription to unlimited music downloads from around four million songs. Nokia negotiated a contract with major record labels as well as some independent musicians, and pays the license from the original sale cost of the handset. Consumers can then legally download music for the year of their contract in the knowledge that the fee has already been paid.

Many books, journals, digital games and sports broadcasts are available through digital download from legitimate sites and through live streaming online. Several websites have also been developed to help direct consumers to means of accessing content legitimately online. The website www.findanyfilm.com allows consumers to search for cinema listings, legal download sites and rental and sale sites for any film. The website www.pro-music.org also provides a one-stop shop, directing consumers to legitimate music sites, including i-tunes, Spotify, last.fm, DJ Download.com, Nokia Music UK and Track It Down.

It is important for other businesses to find legitimate ways for their customers to benefit from the fast exchange of information in the digital age while still respecting the intellectual property of others. Those businesses who have already taken these steps must continue their good work and take full advantage of new digital media developments as they occur.

⁶ Digital Britain Interim Report, Department for Culture, Media and Sport and Department for Business, Enterprise and Regulatory Reform, January 2009



The role of enforcement

The importance placed on developing further new business models and adapting to the digital age must not be seen to detract from the necessity of input from enforcement agencies and from the industry itself. The following case studies show some significant gains that have been made in the last year by enforcers, including notable seizures and raids that have gone some way towards disrupting major copying gangs. Positive steps have been taken by enforcers in the last year but there is still much more that needs to be done.

Case Study – carboot sale seizure

In March 2009, more than 20,000 counterfeit DVDs and blu-ray discs were seized from a Huntington carboot sale. A team of 20 police officers, including officers from the Special Constabulary, and Stafford Trading Standards conducted a plain clothes operation at the carboot sale on Cocksparrow Lane. The goods were estimated to have a street value of £500,000. Five people, four from the West Midlands and one from Staffordshire, were detained at the scene and were dealt with by trading standards officers.

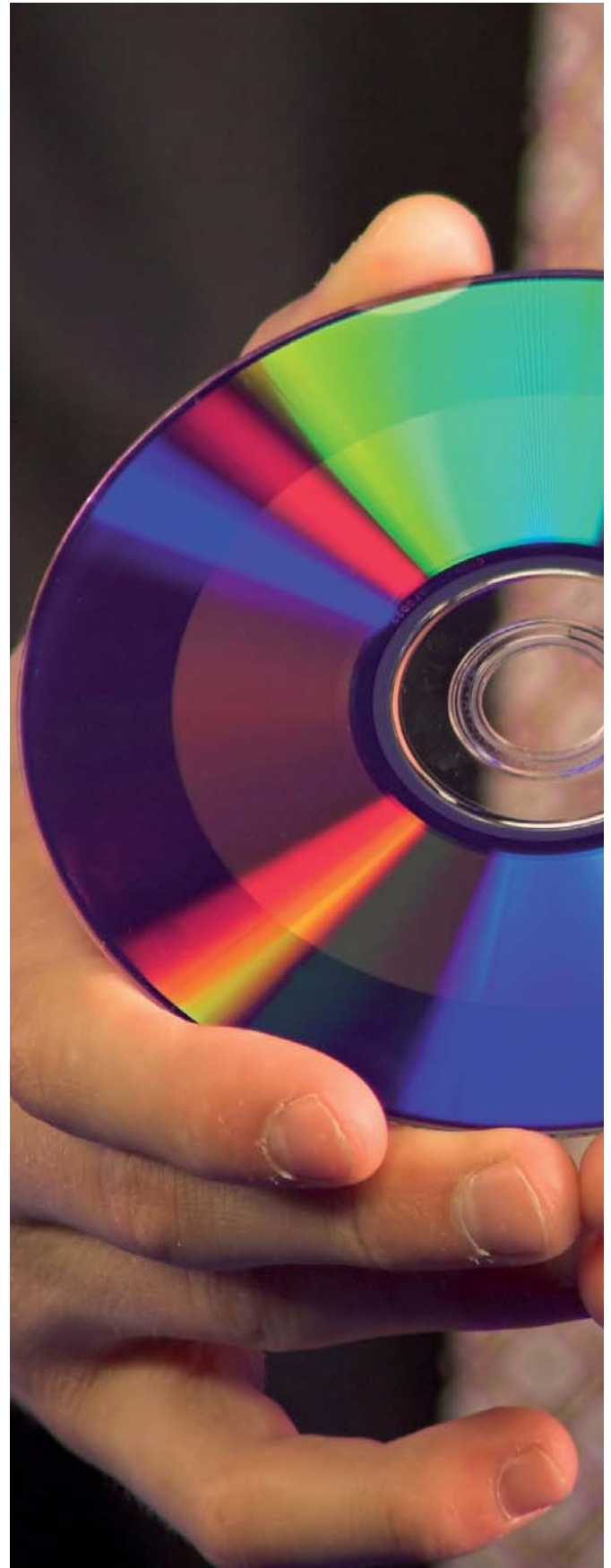
Case Study – raid on counterfeiting factory

Raids in London in early 2009 led to the closure of a sophisticated large scale printing operation, printing covers for counterfeit DVDs, and the UK's largest ever illegal DVD manufacturing facility in a joint operation with the City of London Police, the Metropolitan Police and Federation Against Copyright Theft (FACT).

Following a major investigation, a commercial printing operation in Wembley, North West London was raided in March 2009 and a significant number of printing plates, used to produce the covers, were seized. Titles that had been printed included *Watchmen*, *Slumdog Millionaire*, *The Curious Case of Benjamin Button*, *The Reader* and *Gran Torino*.

Four people were arrested in connection with the large-scale production and distribution of counterfeit DVD covers and money laundering. FACT stated at the time that they estimated the business had printed millions of covers over the past year.

The arrests and seizures by officers from City of London Police's Central Detective Unit in March followed another raid at a large illegal DVD factory in Southall, West London in February 2009, which resulted in the arrest of five people and the seizure of large quantities of copying equipment and discs.





At that raid 420 DVD burners were confiscated together with other equipment. In addition, there were approximately 60,000 burned and packaged DVDs ready to be despatched. Many of the discs featured recent Hollywood blockbusters, including copies of *Slumdog Millionaire*, *The Curious Case of Benjamin Button* and *Milk*, which had just been released in UK cinemas. Also in the premises were 38,000 blank DVDs and one million printed covers.

City of London Police's Detective Chief Inspector Dave Service said:

"This operation provides further evidence of the scale of the organised criminal networks involved in DVD counterfeiting and how big a problem it has become. This type of criminality is often looked upon as a victimless offence. However the proceeds gained are massive and can be used to fund other criminal operations while substantial damage is inflicted on the film industry, and on the UK film industry in particular."

Kieron Sharp, FACT Director General, said:

"The illegal factory in Southall would have been capable of generating a criminal profit in excess of £1 million per week and we know there are dozens of such factories operating across London and in other cities in the UK. FACT is working in partnership with the City of London Police and the Metropolitan Police to take out those criminal organisations and individuals who are seeking to profit from this illegal trade."

Executive Producer of *Quantum of Solace*, Callum McDougall, said:

"We have a hugely valuable film industry here in the UK, and we have to do whatever we can to make people aware of the impact of purchasing fake DVDs or illegal downloads.

"The UK film industry provides huge benefits to hundreds of external suppliers, film and television facilities, creative advertising agencies, television stations and also to tourism - We have seen the damage already caused to the music industry and we have to continue to make the public and government bodies globally aware of the damage that will happen if DVD piracy is not brought under control."

The online problem

The ease of sharing content online, and the fact that this accessibility is abused by some people for illegal purposes, is another area that has taxed enforcers and rights holders for some time. Illegal peer to peer file sharing of protected content is a major threat and one to which the solution is not clear. The problem affects many industries and sectors, from sports to music and film.

The sheer scale of online content sharing is demonstrated by the notorious case of The Pirate Bay. The Pirate Bay is a site based in Sweden and one of the most widely used 'BitTorrent' trackers for music, movies and software. The site works by allowing users to access content hosted on other users' computers. It directs them to 'torrent' links, which allow the file-sharing program 'BitTorrent' to download and upload files among potentially thousands of users. The Pirate Bay website itself does not host any protected content though.

One user's computer, seized in March 2009 by Swedish police during a raid on a flat in Stockholm, contained around 56 terabytes of data, the equivalent of about 16,000 full-length movies. With users contributing such large quantities of protected data, it is clear that the site's potential to aid the distribution of copyright content is huge.

In February 2009, John Kennedy, Chairman of the International Federation of the Phonographic Industries (IFPI), representing 1,400 member record companies worldwide, said:

"The Pirate Bay has hurt creators of many different kinds of works, from music to film, from books to TV programmes. It has been particularly harmful in distributing copyrighted works prior to their official release."

Since the site does not host content itself and sees itself merely as a digital catalogue, and since it can be used for legitimate filesharing, its owners believed they were not open to prosecution for copyright offences. Individual users' computers can be detected and removed by enforcers, but without a way of tackling the host site itself, other users simply replace those which are removed and the content sharing facilitated by the site continues.



In early 2008 a criminal trial was brought against The Pirate Bay with supporting witnesses from several audiovisual entertainment groups led by IFPI. On 17 April 2009 four individuals associated with the running of the site were found guilty of being accessories to copyright crime and were sentenced to a year in prison by Stockholm district court. They were also ordered to pay 30 million kronor (£2.4 million) in damages to a number of entertainment companies, including Warner Bros, Sony Music Entertainment, EMI and Columbia Pictures.

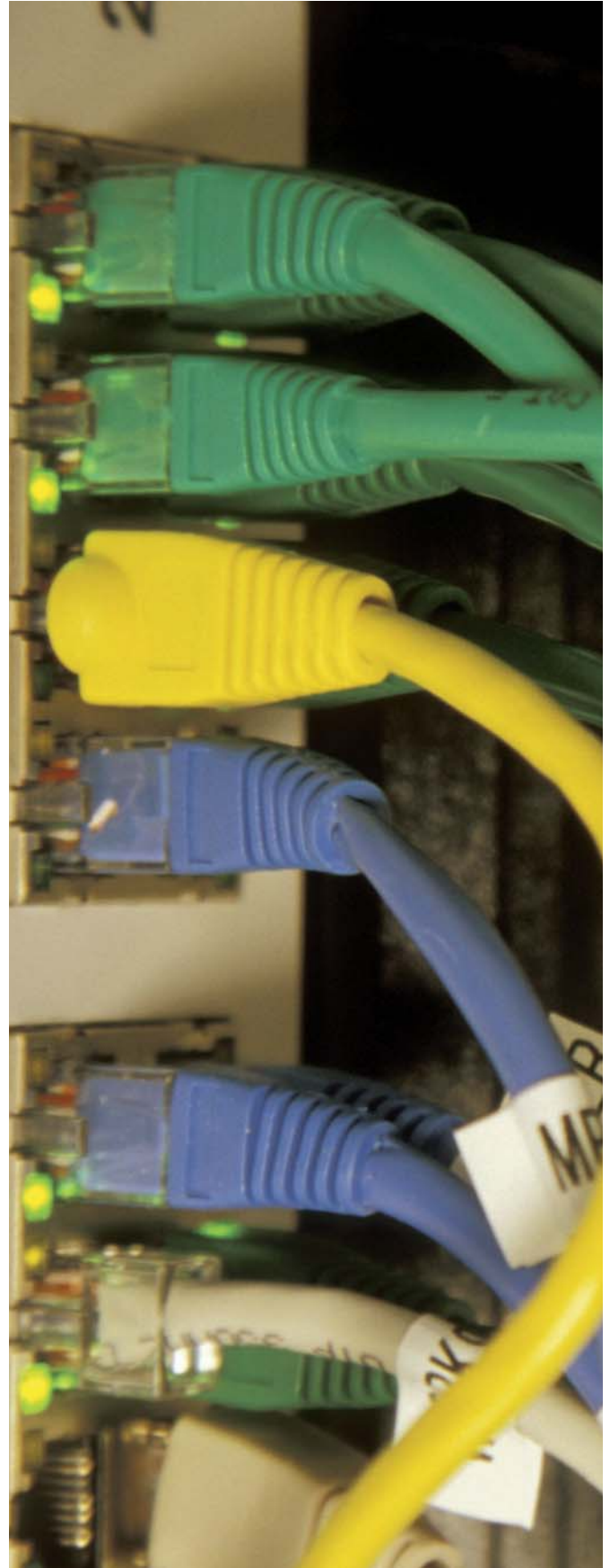
At the time of going to press, it was believed that the four men intended to appeal the decision. Under Swedish law the verdict is not lawful until all appeals have been processed, meaning that the outcome of the case is by no means clear.

The relative ease and impunity with which protected content can be illegally shared online has led rights holders, enforcers and government to conclude that the current copyright protection system could be more effective. Government consultations have explored different options for the field. The Digital Britain Report, which was being published as this report went to press, is due to summarise the conclusions of the consultations and set out the path for the future in this field.

A continuing threat

It is acknowledged that the digital media industries have recently made significant and necessary steps in tackling IP crime⁷. It is hoped that the industry will soon see rewards for these positive moves. However, according to a recent report⁸, various forms of copyright theft still cost the audiovisual sector £531 million each year.

There have been several positive developments in terms of awareness raising and communications. Nonetheless the level of loss due to IP crime is still very significant. There is much more work to be done by all parties to combat this threat.



⁷ More information on awareness campaigns is included in Chapter 2B

⁸ Economic impact of legislative reform to reduce audio-visual piracy, Oxford Economics, March 2009

C Physical IP crime

Introduction

Physical IP crime refers to the manufacture, distribution and sale of physical products which infringe the intellectual property rights of others, and usually involves counterfeiting, where the trade mark of a known brand is used on imitation products. The goods it affects are many and varied, ranging from luxury goods to medicines, electrical products, sportswear, cigarettes, car parts, toys and building materials.

Traditionally physical IP crime has most often occurred in markets and carboot sales, and this continues to be a major threat. Important work is undertaken by trading standards and police officers to combat illegal goods traders working in these settings, and their work is supported by rights holders in the field.

Increasingly some IP criminals are using online methods of distribution, and particularly the online auction sites. The internet has enabled physical products to be sold quite anonymously across huge geographical areas. Individual transactions are often so small in quantity that they escape the notice of enforcers or rights holders, and when they are detected their source is often difficult to trace.

Areas of risk

A survey of trading standards authorities throughout the UK conducted in December 2008 by the Intellectual Property Office⁹ identified some key emerging threats in relation to physical IP crime. Some general comments can be made about the emerging trends.

Markets and carboot sales remain a prevalent location for the sale of IP infringing goods and an area in which many trading standards resources are spent. Many authorities devote considerable resources to tackling the problems at these events by conducting intelligence-led raids.

Some have also managed to secure the support of market organisers in their areas and have developed codes of conduct in cooperation with them to try to help eliminate illegal trade at these events. This approach provides an effective way of stopping illegal trade, without reverting to the lengthy and difficult process of prosecutions.

Authorities have recognised though that a merely regional approach can have the effect of pushing illegal traders from one area to any neighbouring districts which are less well resourced in tackling IP crime. For this reason, enforcers are keen to adopt a national approach, both for gathering intelligence and for establishing codes of conduct.

Reports from trading standards officers throughout the UK covering the last year have shown that another target area is bars and clubs. Many different counterfeit and pirated goods are sold at these locations, including DVDs and clothing. Increasingly counterfeit tobacco and cigarettes are also being seized from this type of venue.

Trading standards officers questioned in the survey reported that consumers who buy counterfeit tobacco and cigarettes often believe that they are contraband rather than counterfeit, and they do not realise the substantial health risks involved. Many enforcers are increasingly worried about the threat posed by goods sold in these venues.

A third category of location where IP infringing goods are sold, as reported by trading standards officers, is in the workplace¹⁰. Enforcers refer to workplaces that allow traders to sell goods at their premises, either not realising that the goods are counterfeit or knowingly allowing it to happen. Enforcers have reported that many businesses are often not aware of their obligations to prevent sales of counterfeit and pirated on their premises, or are unsure of how best to ensure they do not happen.

Online trading in physical goods

In addition to the traditional 'real' markets for illegal goods, a fast-growing market is the internet. Increasingly, online methods of distribution for fake goods are being used, in two different ways. Business to business trade is used for the wholesale of illegal goods, in bulk, where criminals trade internationally. Some IP criminals sell directly to the consumer, including via auction sites such as eBay.

A number of trading standards services questioned in the above survey reported an increase in the number of consumer complaints relating to goods bought online, and especially via auction sites. They described the enforcement problems when illegal goods are traded online, including the ease of setting up and changing online accounts, and of the account holder's online

⁹ Unpublished research conducted by the Intellectual Property Office in December 2008

¹⁰ Further information on this threat is available in Chapter 2A



presence disappearing. Additional problems include the difficulty of tracing offenders geographically and the fact that offences reported in one region often relate to sellers in other areas, and the sheer scale and speed of the internet.

Some goods are also sold through links that appear as sponsored links on search engine results pages. There has been legal uncertainty as to the extent to which responsibility lies with the websites which provide the links, or which operate the search engines, when counterfeit or pirated goods are sold through them.

A landmark ruling in Reims, France in July 2008 found eBay directly responsible for the sale on its website of three Hermes bags, including two which were counterfeit, for a total of €3,000. The court also ordered eBay to publish the ruling on its French homepage for three months.

The prosecution argued that the auction site is an active player in the transactions and that they are party to the trading that they facilitate. This verdict appears to indicate that in some countries there is a degree of culpability placed on those who facilitate illegal online trading.

Cases in other countries appear to have found that there is a limit to the amount of screening online auction sites can be expected to do for products traded through them. In July 2008, a US district court in New York found, in a case involving eBay and the jewellery maker Tiffany, that eBay was not responsible for screening all products listed for counterfeits. The judge said that eBay's policy of removing any specific listings brought to its attention by the trade mark owner was sufficient.

These two rulings are far from establishing legal certainty on the matter, and ongoing court cases in Britain are yet to clarify the extent to which they will follow either ruling.

Cooperation with online auction sites

Rights holders suggest that a workable solution to the sale of counterfeit and pirated goods via online auction sites will need to include the auction sites themselves. eBay does operate a programme for rights holders which aims to eliminate the sale of illegal goods on the site. The Verified Rights Owner (VeRO) Programme allows anyone who holds IP rights that might be infringed on eBay to register and report any listings that infringe their rights, so that the site can remove illegal listings.

EBay states that it has 10,000 participants in the VeRO scheme, including both companies and individuals who have registered as rights holders. Registered rights holders are able to send 'notice of infringement' forms to eBay reporting infringing listings. The site then removes the items in question from auction and informs the seller of the action being taken.

Many rights holders have criticised the scheme, saying that it is reactive and not proactive, that it does not do enough to protect their rights, saying that the scheme still relies on rights holders to search for and identify infringing items themselves and does not provide its own systematic policing service.

EBay has defended itself, saying that it is not in the site's interest to sell counterfeit, illegal and inferior goods, and that it is doing all it can to eliminate such sales. Some believe that it is the sheer scale of the site and other similar auction sites that means they are very difficult to police thoroughly.

According to eBay's own website, the UK site alone (www.ebay.co.uk) has 14 million active users and more than 10 million items for sale at any one time. With online auction sites operating on such a large scale it is clear that there is a large amount of work for enforcers, rights holders and the sites themselves to do to overcome the problems of IP infringement through such sites.

Case Study – seizure of counterfeit goods

In an operation on 21 November 2008, officers from Birmingham Trading Standards Service seized counterfeit sportswear estimated to be worth about £3 million. The officers executed entry warrants at two related premises in the area.

The officers found around 15,000 cartons containing designer labelled counterfeit sportswear and clothing and blank garments waiting for labelling. Birmingham Trading Standards reported this as their largest ever seizure. The existence of such a large quantity of counterfeit goods, and with such a high estimated loss to the industry, shows the scale of the problem in this field.

D Effects of IP crime

Introduction

IP crime was once perceived as a comparatively victimless crime. It was not clearly understood as a crime by consumers with little anxiety as to its effects and not a high priority with enforcers. However there is growing recognition that the effects of IP crime are serious and need to be treated as such.

The formation of the industry-funded Metropolitan Police Film Piracy Unit (FPU) in March 2006 dedicated to tackling film piracy is indicative of the gravity with which enforcers now treat this crime. The increasing involvement of the Serious Organised Crime Agency (SOCA) in IP crime issues also demonstrates the growing understanding of the true effects that result from IP crime.

It is now recognised that IP crime can cause considerable financial harm to businesses from loss of revenue and damaged reputation, and to the economy and public finances through loss of tax revenue. It has been reported that some manufacturers and retailers of genuine goods have been forced to recover some of the loss by raising the price of their goods, and thus the financial burden is shared by consumers.

IP crime is also now understood to be linked closely to sophisticated networks of organised criminals. It is a high profit, low risk crime and as such can generate potentially huge revenue for gangs involved in crimes such as people and arms trafficking and drugs smuggling.

José Manuel Barroso, President of the European Commission, observed in his speech to the Global Anti-Counterfeit Summit in Brussels in March 2008:

“When a kilo of fake CDs fetches 50% more on European markets than a kilo of cannabis leaf, no-one should be surprised that organised crime is getting involved.”

Counterfeit and pirated goods are not subjected to the rigorous testing required for genuine goods sold through legitimate supply chains. Thus any type of product which could cause health risks, such as electrical goods and personal health and hygiene products, poses a danger to the public if it is not the genuine article.

Recent trends reported in IP crime have highlighted the most severe effects of IP crime. There are two

distinct ways of selling counterfeit and pirated products. Products are sometimes sold as counterfeits, where the low price and poor quality of the packaging and presentation, as well as the place and manner of the sale make it clear to customers that the goods they are buying are not buying original items. Goods sold in this way can cause considerable harm as described above.

Some counterfeit and pirated goods are sold as genuine items. Consumers are led to believe that they are buying genuine goods, from the sophisticated appearance and presentation of the goods. Although this type of IP crime has been less prevalent historically, when it does occur it can pose a much graver threat. Goods sold in this way share the negative financial and social implications of all counterfeit and pirated goods. However, when consumers buy goods believing they are genuine, they are unprepared for any flaws in product quality that may occur and hence may be exposed to health and safety risks.

Financial repercussions

The December 2008 publication from the Home Office entitled ‘Business Views of Organised Crime’¹¹ examined the effect of organised crime on businesses in three areas of Britain. The compilers of the report interviewed the owners or managers of 420 businesses.

The report found that 20% of businesses thought that the local supply of stolen or counterfeit goods¹² adversely affected their trade. 45% of all businesses questioned said that counterfeit goods were a problem in their area. This figure was considerably higher, at 55%, in London. These figures show that IP crime is operating at a level that is noted widely by businesses, and that a large number of businesses see this as a serious threat to their trade.

In January 2008, a publication entitled ‘Counterfeiting, a Global Spread, a Global Threat’¹³ was released by the United Nations Interregional Crime and Justice Research Institute (UNICRI). This document discussed the scale of counterfeiting and the impact it has on communities. UNICRI states that counterfeiting causes a new reduction in Gross Domestic Product in EU countries.

11 Business Views of Organised Crime, Home Office, December 2008, available at: <http://www.homeoffice.gov.uk/rds/pdfs08/horr10c.pdf>

12 Information is only available for the combined effect of counterfeit and stolen goods.

13 Counterfeiting, a Global Spread, a Global Threat, United Nations Interregional Crime and Justice Research Institute (UNICRI), January 2008, available at: <http://counterfeiting.unicri.it/report2008.php>



The Center for Economics and Business Research estimates this at €8,042 million across Europe. The same report quotes an estimate from the World Intellectual Property Organization (WIPO) that annual lost revenue due to the inability of governments to tax counterfeit products could be €3,731 million in the toy and sports clothing sector, €1,554 million in the pharmaceutical sector, €7,581 million in the clothing and footwear sector and €3,017 in the perfume and cosmetics sector across EU member states. UNICRI estimates the lost tax revenue at \$3 billion per year for the Chinese government and \$2.4 billion for the UK.

Loss on this scale is clearly significant in its own right. In times of financial crisis, though, the damage done to industry and employers in many sectors by these losses is much more difficult to absorb, and may threaten businesses' survival.

Physical Harm

Any product which may involve a health and safety risk must be checked rigorously before it is released to consumers. Legitimate manufacturers and suppliers ensure the safety standards of all products such as personal hygiene products, electrical goods and medicines are the highest possible, and there are legal sanctions in place to ensure the standard of such goods. However, counterfeit goods are very rarely safety checked and have been known to pose a significant health and safety risk.

Personal care products

Personal care and hygiene products can cause huge safety risks if they are not manufactured to an exacting standard. There have been cases in the last year of counterfeit toothbrushes, cosmetics and condoms which were substandard, either falling short of safety requirements or containing toxic ingredients. In some cases, these goods had infiltrated legitimate supply chains, resulting in consumers being led to believe that they were buying genuine goods, and hence being oblivious to the possible dangers to their health.

In March 2008 a raid in Tottenham uncovered counterfeit versions of a reputable brand of condoms. The safety standard of these goods was unknown. In July counterfeit toothbrushes were removed from reputable retailers after reports of bristles becoming dislodged and stuck in a user's throat¹⁴.


In December 2008 thousands of tubes of suspected counterfeit Colgate toothpaste were removed from high street chains in the UK. Although there were not thought to be any health risks associated with the counterfeit goods in this particular case, a previous batch of counterfeit toothpastes in America had to be removed from sale after they were found to contain diethylene glycol, an ingredient in antifreeze.

Consumables: food, drink and tobacco

Any counterfeit consumable products could pose a risk to consumer health. A notable problem is with the sale of counterfeit alcohol. Counterfeit vodka found on sale in 31 shops in Hertfordshire in February 2008 was found to contain 10 times the amount of methanol to real vodka. Methanol acts as a poison if taken in excess and can cause nausea, vomiting, drowsiness and dizziness, difficulty breathing and blurred vision which may result in blindness.



14 Source: Health Canada



In July 2008 two people in Surrey who consumed the same brand of counterfeit vodka were hospitalised after suffering the adverse effects of methanol poisoning. The problem is worse still in other countries. In 2006, the Federation Council, the upper house of parliament in Russia, said that 42,000 people died from drinking alcohol containing poisonous ingredients¹⁵.

The figure includes unlabelled vodka and other cheap sources of spirits, much of the vodka that contributes to the high rate of casualties and fatalities is counterfeit. Reports in Russia said that counterfeit vodka often contains brake fluid, anti-corrosion solution, window-cleaning fluid, lighter fluid, de-icer, antiseptics, and cheap aftershave.

A further problem in the UK is counterfeit tobacco. The cheap cigarette market in the UK used to consist of illegally imported cigarettes. However, it is being increasingly flooded by counterfeit tobacco products.

Counterfeit cigarettes have previously been found to contain sawdust, tobacco beetles and rat droppings. Tests¹⁶ on counterfeit cigarettes have shown they can contain up to 160% more tar, 80% more nicotine, 133% more carbon monoxide, and five times the level of cadmium (a carcinogen linked to lung, kidney and digestive tract damage).

Electricals

Faulty electrical goods can pose a risk of electrical shocks and burns, and may even result in death. Alan Birks, president of BEAMA installation, explained in a BEAMA press release in August 2008 there is a serious problem with counterfeit electrical goods in the UK. He said:

“We have tested fuses with no sand filling or fuse elements; we have seen miniature circuit-breakers with no overcurrent protection. These devices are intended to protect the public but if they are exposed to a short-circuit current they could explode, causing injury, fire or even death. Another problem is the use of unsuitable molding materials that will not withstand the stress of short-circuit currents.”

Such poor quality manufacture clearly poses a serious safety risk for consumers.

¹⁵ Source: <http://www.independent.co.uk/news/world/europe/russia-declares-an-emergency-as-deaths-from-fake-vodka-soar-422184.html>

¹⁶ HM Treasury and HM Customs Report Counterfeit Cigarettes 2004, HM Treasury and Customs, 2004

Counterfeit goods have been associated with electrical faults and several high profile cases have brought this to prominence. The case of a young boy who died in December 2006 in Thailand after using a faulty charger purchased on holiday acts as a sobering reminder of the dangers of counterfeit goods. His mother subsequently called for changes to the law that will improve consumer safety when using electrical goods by introducing a scheme of random sampling and testing programme for products and placing the onus of responsibility on online auction sites for goods sold by them. In June 2008 the Trading Standards Institute (TSI) awarded her a TSI Hero Award in recognition of this work.

Buckinghamshire Trading Standards officers launched a campaign last year sampling and testing electrical chargers, and found that only the genuine branded chargers tested passed safety checks, while the others posed a serious risk of electrocution or burns.

Phil Buckle, Chief Executive of the Electrical Safety Council, said:

“Counterfeit and substandard electrical products risk lives and if no action is taken to combat the problem it's only a matter of time before we see further tragedies occur as more and more of these dangerous products find their way into UK homes”.

Case Study – counterfeit electrical goods

On 16 July 2008 trading standards officers in Essex seized counterfeit ghd-branded hair straighteners on sale at a car boot sale in Marks Tey. The counterfeit straighteners were on sale for £35, while the originals retail at £90 - £110. The goods could have given users electric shocks and burns.

Case Study – USA recall

In July 2008 in America, around 371,000 counterfeit circuit breakers were recalled. The items could fail to trip when overloaded and posed a threat of fire to users.



Pharmaceuticals



An emerging threat in terms of physical harm is counterfeit drugs and pharmaceutical products. Counterfeit drugs pose huge risks to consumer health. The 2008 report 'The Counterfeiting Superhighway' describes the different features which can make counterfeit medicines so harmful and states:

“because counterfeit medicines are frequently substandard, poor quality copies of original products, they can be very dangerous. Due to their altered chemical composition, they may contain too little or too much active ingredient, as well as other, non-standard chemicals.”

Further factors which increase the dangers of counterfeit medicines are that they are frequently incorrectly packaged and labelled and do not contain the correct patient advice. They are often made in unhygienic and unregulated workshops in the developing world. When they are transported, and especially if they are smuggled between borders, they are rarely conveyed at the correct temperatures and with the correct conditions to protect the medicines, and may consequently be in a very poor condition.

The situation with counterfeit medicines is much worse in developing countries than in Europe. It is estimated that in some developing countries over 30 per cent of all medicines sold are counterfeit¹⁷. In developing countries, the drugs counterfeited are often those used to treat very serious diseases, such as malaria, tuberculosis, HIV and AIDS.

¹⁷ Counterfeit Drugs Kill, information brochure published by the International Medical Products Anti-Counterfeiting Taskforce (IPMACT) and the World Health Organisation, updated version published May 2008, available at: <http://www.who.int/impact/FinalBrochureWHA2008a.pdf>

Case Study – research into medicines

In February 2008 a2mediagroup.com reported on research led by Dr Paul Newton of Oxford's Centre for Tropical Medicine which tested counterfeit anti-malaria drugs. The drugs were found to contain a negligible amount of the active ingredient artesunate, which would be insufficient to prevent malaria. In addition, the very small amount of artesunate, which was present to cheat screening tests, could have helped the malaria parasite develop immunity to genuine doses of the drug.


Working with INTERPOL the scientists managed to trace the counterfeit drugs to Yunnan province in China. Chinese authorities used this information to find and arrest an individual who is believed to have traded 240,000 blister packs of the drug, affecting a potential 250,000 individuals.

In the UK and Europe, the scale of the problem of counterfeit drugs is smaller. The UK is not typically a manufacturer of counterfeit medicine; however the UK is a transit point and end user market. Legitimate medical supply chains have so far proved much harder for counterfeiters to infiltrate. There have been 10 recalls of counterfeit medicines in the UK in the past five years, which had reached pharmacy and patient level. A further four cases were discovered at wholesale level and seized before they reached the market. One batch found was about to be used in a clinical trial.

In 2007 during one case 32,000 packs of counterfeit medicine reached pharmacy and patient levels. This case is still under investigation by the MHRA and has led to a number of arrests and a further 40,000 packs being seized. Counterfeit medicine found in the UK regulated supply chain is frequently designed to deceive pharmacists and patients that it is genuine. Often only laboratory analysis reveals the counterfeit product. No fatalities have been attributed to counterfeit medicine in the UK, although numerous fatalities have occurred around the world.

Historically, the majority of counterfeit medicines traded are so-called 'lifestyle' drugs. These are medicines used to treat conditions that people may typically not feel comfortable discussing with a doctor or pharmacist, and include drugs to treat erectile dysfunction or hair loss, and drugs to aid weight loss.

A public consultation from the Enterprise and Industry Directorate-General at the European Commission in March 2008 identified an increasing trend for counterfeit medicines in the EU to include life-saving medicines,



such as those used to treat cancer and heart disease. The consultation also highlighted concerns that this trend could increase further in future.

While the infiltration of legitimate and trusted supply chains is a severe threat posed by counterfeit pharmaceuticals, the most common method of supply is via private transactions direct to consumers over the internet. Some counterfeit drugs are traded by SPAM e-mail. Over 100 billion spam e-mails are sent per day and statistics reported by the BBC¹⁸ suggest that 80-85% of all e-mails sent are SPAM. Thus, even though only a tiny percentage of people reply to SPAM messages, the potential for criminal scams, including the sale of counterfeit drugs, is enormous.

The most common method of selling counterfeit drugs to the UK market is via online pharmacies. Many online pharmacies offer a legitimate service for people who find it more convenient to have prescription drugs delivered to them than to visit a high street pharmacy. However, numerous online pharmacies do not have a registered pharmacist, provide prescription medicines without a doctor's prescription and provide substandard or counterfeit medicines.

'The Counterfeiting Superhighway'¹⁹ reports on a survey carried out into drugs bought from online pharmacies. They purchased samples of drugs for conditions including neurological disorders, cardiovascular disease, mental health, obesity and erectile dysfunction from more than 100 online pharmacies.

All of the sites identified delivered the drugs without requiring a prescription, which is both illegal and a threat to health. The samples were examined by an expert panel of drugs manufacturers, pharmacists, security specialists, police and representatives of European patients' associations, and then sent for laboratory analysis. Although the panel of experts were able to identify correctly the counterfeit drugs in many cases from a visual examination of the drugs and packaging, they stated that consumers who were unfamiliar with the genuine medicine packs could not be expected to notice anything amiss in the majority of cases.

One product which was considered genuine by the expert panel was shown upon laboratory analysis to be a counterfeit. In total 62% of the sample products were found to be counterfeit, substandard or unapproved generic medicines²⁰. Of the 38% that were found to be genuine

branded medicines, 16% had been illegally imported and 33% had no patient information leaflet.

Following the survey further research was conducted into online pharmacies and found that of those it sampled, 84.5% did not physically exist, 93.8% did not have a named, verifiable pharmacist, and while 20% had a pharmacy approval stamp, 86% of these were fake.

The report recommends that consumers take considerable care when purchasing any medicines from online pharmacies. It advises them to check the registration status of the pharmacist, look for the name and physical address of the pharmacy operating the website, and avoid pharmacies that do not request a prescription for prescription-only medicines or which offer bulk discounts or sample packs.

The evidence from many sectors point to the very high price consumers and society must pay if they purchase counterfeit and pirated goods. In times of economic instability the loss of revenue to business and the deficit in tax caused by the trade in these goods poses a greater threat than ever. The health and safety risks are also very serious and demonstrate that counterfeit and pirated goods are a major threat to modern society.

In order to combat the instances of counterfeit medicines, the UK regulator, the Medicines and Healthcare Products Regulatory Agency (MHRA) has developed and implemented a comprehensive Anti-counterfeiting strategy. The strategy was launched by Minister for Public Health, Dawn Primarolo at an international conference in London hosted by MHRA in November 2007.

The strategy has resulted in the implementation of a number of measures to combat counterfeit medicines and medical devices reaching patients through both the regulated and unregulated supply chains. This is being achieved through a sustained programme of communication, collaboration and regulation.

The strategy is available to view on the MHRA website: <http://www.mhra.gov.uk/Safetyinformation/Generalsafetyinformationandadvice/Adviceandinformationforconsumers/Counterfeitmedicinesanddevices/index.htm>

The collaboration strand of the strategy focuses on international and domestic liaison with industry, regulators and law enforcement. Formal meetings between MHRA and key stakeholders take place regularly, where information concerning incidents and seizures of counterfeit medicines is shared.

18 Source: <http://news.bbc.co.uk/2/hi/technology/7380788.stm>

19 Ibid. 18

20 Only combined figures for counterfeit, substandard and unapproved generic medicines are available.



E Links to organised and associated crime

Introduction

One very serious threat that is posed by IP crime is the link to other types of criminality, and in particular, the connection with organised crime. Intellectual property criminals use sophisticated networks in the production, distribution and sale of counterfeit and pirated goods. Information gained throughout 2008 has again provided evidence of this.

Organised crime is defined by the Organisation for Economic Cooperation and Development (OECD) in its report on the economic impact of counterfeiting and piracy²¹ as “a group of three or more persons who work together over a period of time to commit one or more serious crimes in order to obtain a financial or other material benefit.”

Research has shown that many criminals are using profits generated by IP crime to fund other serious criminal activities. IP crime can generate very high profits, generally estimated to be higher than profits generated through the trade in illegal drugs. This potential, combined with the comparatively low risk posed to criminals by enforcement and legal sanctions, has made IP crime a very attractive way for criminals to fund their activities.

The international dimension

The OECD’s report estimates the scale of counterfeiting and piracy in 2005 and, as well as other areas, the link between IP crime and organised crime. Over a third of those who responded to the OECD economic survey indicated or suspected a link.

The main reason cited in the report for the involvement of organised criminals is that in most economies the profits are high and the risk of prosecution are low, as are sentences and fines.

The report outlines the broad range of sectors that are affected and the types of groups involved:

“ The groups involved are based in many areas of the world and include Asian ‘triads’ (which are involved in heroin trafficking, prostitution, gambling, extortion, money laundering and alien smuggling) as well as mafias based in Europe and the Americas” (OECD, 2005a and Bolz, 1992)

As can be seen the audio-visual sector has proven popular with IP criminals. The report claims that pirated CDs and DVDs are one of the ‘favourite targets’ of crime groups as the profit margins are large.

In this sector IP crime has also been linked with people smuggling. Chinese nationals are smuggled into Europe and are forced to distribute pirated products to pay for their passage.

In February 2004, in a story that was widely reported by the UK media, 21 Chinese illegal immigrants died while picking cockles at Morecambe Bay near Lancaster. During a search of their homes, police found more than 4,000 counterfeit DVDs as well as computers containing counterfeit material. Two men were charged with offences relating to the manslaughter of the cockle pickers, assisting and facilitating illegal immigration and trade mark offences.

The story of illegal immigrants being forced into IP crime gangs is one that spans the globe and respondents noted that organised criminals are evident in Canada, the UK, the US, Latin America and China.

Other international organisations have also reported on the link with organised criminality. In France the Union des Fabricants (UNIFAB) published an assessment which referred to the prevalence of organised crime both in the clothing and footwear sector as well as the audio-visual. The International Anti-Counterfeiting Coalition (IACC) produced a White Paper in 2005 entitled ‘The Negative Consequences of International Intellectual Property Theft’ which, amongst other types of harm, looked at the links to organised crime and terrorist organisations.

21 The Economic Impact of Counterfeiting and Piracy, OECD, June 2008

Group	Activity
Asian Triads	Sale of pirated DVDs in London
Irish groups	Children’s toys, batteries, power tools and veterinary drugs in N. Ireland
Israeli group with Russian origins	Sale of counterfeit products in Japan
Italian and Eastern European gangs	Importation of pirated CDs into Italy
Russian mafia	Sales of pirated CDs in London

Source: The Economic Impact of Counterfeiting and Piracy, OECD, June 2008

Film piracy and organised crime

A report entitled 'Film Piracy, Organized Crime and Terrorism'²² states that there is compelling evidence of a broad and continuing connection between film piracy and organised crime. The report was based on more than 2,000 pages of primary source materials and 120 interviews with law enforcement and intelligence agents in 20 countries.

The research identified 17 organisations which were involved in film piracy. 14 of these were also involved in counterfeiting. The researchers then identified serious crimes that the group were also associated with, including people smuggling, prostitution and weapon trafficking. The following chart shows the results reported in that survey:

Organised-crime group	Base Location	Film Piracy	Counterfeiting	Racketeering	Human Smuggling	Money Laundering / Illegal Money Transfer Service	Illegal gambling	Loan-Sharking	Narcotics trafficking	Prostitution	Weapon Trafficking	Contract Killing	Document Forgery Services
Big Circle Boys	Canada	x		x	x	x	x	x	x	x	x	x	x
Yi Ging	USA	x		x		x	x	x	x				x
Jah Organisation	USA	x	x			x							x
Cockle-picker gangmaster	England	x	x		x								
Lotus Trading Company	England	x	x		x								
Madrid Human smuggling ring	Spain	x			x								x
Camorra Mafia	Italy	x	x	x	x	x	x	x	x	x	x	x	x
Wo Shing Wo triad	Hong Kong	x	x	x	x	x	x	x	x	x	x	x	x
San Yee On triad	Hong Kong	x	x	x	x	x	x	x	x	x	x	x	x
Ang Bin Hoey triad	Malaysia	x	x	x	x	x	x	x	x	x	x	x	x
Barakat network	Paraguay	x	x	x		x	x		x		x		x
PIRA/RIRA	N. Ireland	x	x	x					x		x		
UDA/UFF/UVF	N. Ireland	x	x	x					x		x		
D-Company	Pakistan	x	x	x		x			x		x	x	
Tarantsev / Orehovsko-Medvedkovsky	Russia	x	x			x						x	
Los Ambulantes / Tepito	Mexico	x	x	x	x	x			x	x	x		x
Yamaguchi-gumi/Yakuzu	Japan	x	x	x	x	x	x	x	x	x	x	x	x

Source: Film Piracy, Organized crime to Terrorism, RAND, 2009

Businesses and crime – the wider picture

A Home Office report published in December 2008²³ focussed on business views and experiences of organised crime in three high crime areas in the UK. Interviews with owners or managers of 420 businesses were held as well as collecting police intelligence and information from local community contacts. Fieldwork was conducted between November 2006 and January 2007. All this information was used to give an assessment of the impact of both organised and non-organised business crime.

²² Film Piracy, Organized Crime and Terrorism, RAND, 2009

²³ Business Views of Organised Crime, Home Office, December 2008



The three areas chosen had mainly Turkish/Kurdish/Cypriot, South Asian and white working class populations respectively. The research revealed that businesses in these three high crime neighbourhoods suffered high rates of crime. Many were repeatedly victimised. In addition, local businesses were frequently invited to collude in crime: 44% of businesses were offered counterfeit goods over the last 12 months and 33% were offered stolen goods, though it is not clear how many businesses had accepted such offers.

The survey also showed that 31% of those offered counterfeit or stolen goods thought that there was an association with organised crime. 20% felt that the local supply of stolen and counterfeit goods had an adverse effect on their trade.

The report concludes that:

“The widespread and low risk use of businesses in these areas as outlets for attempting to dispose of illicit goods may indicate a potential starting point for the collection of intelligence and the disruption of the crime, some of which is undoubtedly organised.”

Case Study – benefit fraud

In March 2008 a man was sentenced at Mold Crown Court to 32 months imprisonment for making and selling counterfeit games and DVDs and 16 months for benefit fraud. This followed an investigation by Wirral Trading Standards and the Department of Work and Pensions.

Extensive surveillance was carried out at Coed Mawr Market in Flintshire where the man ran a stall selling DVDs. Coordinated raids then took place across North Wales, Cheshire and Wirral in 2006, the purpose of which was to disrupt the supply of counterfeit goods and detect organised benefit fraud. The man's house was targeted during these raids. Equipment to produce illegal discs and a large quantity of counterfeit goods were seized.

A financial investigation was also carried out and as a result a £190,000 confiscation order was awarded against the man. Failure to pay this within the six month specified period would result in a further three years in prison.

Case Study – people smuggling

In November 2007 a BBC investigative team reported that DVDs sold at a market in Kent were helping fund illegal immigration and people smuggling. The BBC said that counterfeit DVDs were sold at the weekly carboot fair in Kent by more than 30 traders who did not pay pitch fees and who resisted attempts by the organisers to evict them.

The BBC investigators reported that they found widespread breaches of immigration law as well as links to high profile alleged IP criminals. According to the reporter, one illegal immigrant who was found working for the gang, and who had already been prosecuted for three counterfeiting offences, said that he owed a Chinese human trafficking gang £5,000 and that he was selling the DVDs to fund his repayments to it.

Case Study – drugs manufacture

In December 2008, the media reported on the case of a man who ran a large scale operation producing counterfeit alcohol from a factory in Oldham. He used expertise acquired while working as a chemist for a pharmaceutical company to manufacture vodka and whisky. He then produced labels and packaging that replicated major alcohol brands.

He sold the products to contacts and they are thought to have been sold on at carboot sales, market stalls, shops, off licences, bars and clubs. The alcohol was transported by lorries containing 1,500 crates of 12 one-litre bottles. The crates of vodka were sold for around £20, approximately 80% cheaper than the genuine high street versions. Customs officials estimate that he benefitted by £10,122,993.70 from the fake vodka distillery in Oldham alone. He owned two houses and drove a £50,000 A4 Audi sports car and a £120,000 Lamborghini.

He was caught when police and customs officials discovered a factory he also ran in Ashton-under-Lyne that was producing the Class A drug LSD. He was given a nine-year sentence for the offences relating to the counterfeit alcohol, and five years for the manufacture of LSD. At a Proceeds of Crime hearing, he was ordered to pay back £312,000 or face a further 6 months imprisonment.



Chapter 2 Responding to the challenges

A Coordinated activity

Introduction

Past experience has shown that effective cooperation between rights holders, government and different enforcement agencies is crucial to success in tackling IP crime. From the operational level, and the cooperation of different agencies in specific enforcement operations, to the strategic priority-setting for long-term direction, it is only through the sharing of expertise and knowledge that IP crime can be successfully tackled.

It is now common practice for enforcement actions to include representatives from local police and trading standards, as well as rights holders. Increasingly, enforcement actions are also including other government agencies dealing with areas such as vehicle tax evasion and benefit fraud. This combined approach ensures that criminal activity at venues such as markets is confronted and broken up, and wider criminal problems are tackled at the same time.

At the strategic level, several groups have been set up to discuss broad issues, identifying future threats and ways to tackle them.

IP Crime Group and subgroups

The IP Crime Group, which was created in 2004 as a result of the IP Crime Strategy, brought together all the key players in order to set priorities and coordinate activity. The current group brings together representatives from government, industry and enforcement agencies and is chaired by Giles York, Deputy Chief Constable of Sussex Police and the Association of Chief Police Officers (ACPO) lead for IP.

The aim of the group is to discuss cross-cutting policy issues, raise awareness of IP crime and identify and disseminate best practice. The current IP Crime Group also encompasses several subgroups which lead in specific areas, including awareness raising and best practice. By bringing together specialists from a range of areas and experiences, the groups are able to make significant gains in tackling the root causes of IP crime.

The current IP Crime Group's role is well illustrated by the work undertaken in the last year by one subgroup on IP crime in the workplace. It commissioned research, which was published on 17 December 2008²⁴.

The research identified that many businesses do not take measures to protect their own intellectual property and do not fulfil duties to protect others' intellectual property within their workplace. 40% of businesses surveyed took no practical action such as trade mark registration or employee training to ensure their and others' IP is protected; a third of businesses surveyed were not aware whether goods sold on their premises by external traders were legitimate or not; and over a quarter of respondents did not make staff aware that they must not download illegal content at work.

The results showed a clear lack of understanding of IP by many businesses and identified the need to raise awareness among employers about many aspects of IP rights, protection and crime. In 2009-2010 the IP Crime Group is investigating the best way to take the key messages to businesses most effectively.

SOCA and programme 17

The Serious Organised Crime Agency (SOCA) leads on the UK Serious Organised Crime Control Strategy. Its work in this area follows the programmes set out under the UK Control Strategy for Organised Crime. This strategy is made up of a number of linked programmes of activity which are aligned with the threats identified by SOCA in their annual UK Threat Assessment Report. Each of the programmes has a separate area of serious crime to examine and has its own action plan and governance arrangement with the various bodies involved. Programme 17 looks at threats to the UK from three areas: identity theft, counterfeit currency and IP crime.

The Strategic Board of Programme 17 is made up of senior representatives from trading standards, police, industry sectors, including optical digital media, the ACG, the Alliance Against IP Theft and government bodies, such as the Local Authorities Coordinators of Regulatory Services (LACORS), the Intellectual Property Office, HMRC, the Bank of England, the Royal Mint and the Crown Prosecution Service. The group works on identifying long term strategic enforcement opportunities in order to tackle counterfeiting of monies and goods as well as copyright piracy at a national and international level.

²⁴ The Hidden Marketplace Protecting Intellectual Property in the Workplace, Patricia Lennon, December 2008, available at: <http://www.ipo.gov.uk/report-workplaceresearch.pdf>



LACORS and trading standards

LACORS is the local government central body responsible for supporting and coordinating local authority regulation in the UK. Working with national partners they produce a National Control Strategy and Delivery Plan which identifies priorities for trading standards services, in various areas including IP crime. It is developed in line with the National Intelligence Model by their top level strategic tasking and coordination group.

LACORS' current national control strategy covers the period from October 2008 - March 2010. The strategy is informed by an annual threat assessment produced by various government departments, including the Office of Fair Trading, the Intellectual Property Office, the Food Standards Agency, the National Weights and Measures Laboratory, Animal Health and the Department of Health.

The assessment identifies relevant UK-wide threats facing UK consumers and the strategy sets priorities for prevention, intelligence and enforcement. The Control Strategy and Delivery Plan helps to coordinate the work of trading standards throughout the UK, and provides guidance on suitable enforcement activities at a local level too.

National fraud strategy

On 19 March 2009, the first National Fraud Strategy²⁵ was launched by the Attorney General, Baroness Scotland QC. The strategy aims to tackle all types of fraud by strengthening the counter-fraud community's response and by providing help, protection and support to individuals and businesses. The strategy was developed by the National Fraud Strategic Authority (NFSA), an executive agency of the Attorney General's office which was set up in October 2008.

The strategy brings together over 25 key private and public sector organisations. It intends to tackle fraud through a number of measures. It sets out to improve the building and sharing of knowledge about fraud, with the City of London Police establishing a new National Fraud Reporting Centre and National Fraud Intelligence Bureau.

²⁵ The National Fraud Strategy, a new approach to combating fraud, National Fraud Strategic Authority, March 2009, available at: http://www.attorneygeneral.gov.uk/attachments/NFSA_STRATEGY_AW_Web.pdf



Coordinated working

TS Authority	Partner organisations																		
	Police	BPI	FACT	ELSPA	Other TS Authorities	Rights Holders	FAST	HMRC	PRS for Music	IFSP	Home Office	ACG	UK Immigration Service	Benefit fraud	DWP	UKBA	DVLA	REACT	VOSA
Angus	•	•																	
Bexley	•																		
Birmingham	•	•				•			•										
Blaenau Gwent	•	•	•	•	•		•												
Bournemouth					•														
Bridgend	•	•				•	•	•											
Buckinghamshire	•		•			•													
Caerphilly	•																		
Carmarthenshire	•	•	•				•				•	•							
Cornwall	•		•				•	•							•	•			
Coventry	•						•							•					
East Sussex	•				•														
Essex	•		•				•								•				
Greenwich	•		•																
Hampshire	•															•			
Hertfordshire	•								•				•		•				•
Isle of Wight	•	•	•																
Islington	•																		
Kent	•					•	•												
Lambeth	•						•								•		•		
Merthyr Tydfil	•																		
Milton Keynes	•		•	•															
Moray					•														
Neath Port Talbot	•																		
Norfolk	•	•				•	•						•						
North Lanarkshire	•		•									•							
North Yorkshire	•		•	•	•	•		•											
Perth & Kinross	•				•		•											•	
Poole	•		•			•							•						
Rhondda Cynon Taff	•	•	•	•	•		•						•	•	•	•			
Richmond		•	•																
St Helens	•		•	•		•													
Sandwell	•		•										•						
Slough	•					•													
South Ayrshire	•		•	•		•													
South Lanarkshire																			
Stoke-on-Trent	•																		
Swindon	•																		
Torbay	•				•	•		•											
Torfaen	•	•	•	•	•	•													
Vale of Glamorgan	•																		
Warrington & Halton	•														•				
West Dunbartonshire	•	•	•	•															
West Yorkshire	•	•	•				•	•											
Worcestershire	•		•	•	•	•													

Note: Certain trading standards authorities also reported forming partnerships with other groups including community wardens, the Assets Recovery Agency, the Fire Service, safety test houses, the British Board of Film Classification, Environmental Health, the Food Standards Agency and media groups.



The strategy's objective is to tackle the most serious and harmful fraud threats, such as identify and mass marketing fraud. It seeks to disrupt and punish more fraudsters while improving support to their victims, by working with the Association of Chief Police Officers and Victim Support, and introducing plea negotiations and extending Crown Courts' powers in fraud cases. It is also designed to improve the nation's long-term capability to prevent fraud, by better coordinating fraud public awareness activity and building strong, supportive partnerships among the counter-fraud community.

While the strategy is designed to tackle a wide range of fraudulent activities, it does give a particular mention of IP crime and states that it will seek to build the policing response in this area.

Coordination of operations

Information provided to the Intellectual Property Office by trading standards authorities²⁶ highlighted the level of coordination between different agencies in 2008. The results in the table opposite demonstrate how widespread the practice of cooperating with many different bodies has become and the very extent of the practice demonstrates the level of success it is felt to have by officers on the ground.

In the financial year April 2007 – March 2008, trading standards authorities throughout the UK were given additional funding to combat copyright offences under Section 107 of the Copyright, Designs and Patents Act 1988. Surveys carried out by the Intellectual Property Office and LACORS²⁷ on how the money was spent were received from 105 authorities.

There were examples from several authorities of good practice in terms of coordinated working initiatives. Six authorities had, between them, contributed £78,000 to regional initiatives with other trading standards authority areas, including Hampshire, who contributed £10,000 to a regional IP crime initiative.

Many worked together with police forces, other government departments and private industry bodies to investigate and prosecute IP crimes. Cumbria Trading Standards executed a large operation at a car boot sale in Penrith, where 60 trading standards officers from neighbouring authorities throughout that region,

police officers and 10 representatives from brands were involved in the exercise. The result was the seizure or voluntary surrender of over 8,000 counterfeit items from 15 stalls.

Case Study – Fake Free London

A commitment made in the 'Creative Britain - New Talents for the New Economy' paper was for the Intellectual Property Office to pilot a 'Fake Free London' campaign on IP enforcement.

Building on the work of the UK Film Council and other rights holders, Fake Free London would bring the rights holders, creative industries, the Government and enforcement agencies together to maximise resources to make London free from counterfeit goods in the run up to the 2012 Olympics. Findings from the pilot could provide a model for a much wider roll-out across London and in other cities. This industry initiative required extensive work and cooperation from all parties involved.

In November 2008 the pilot project delivered two weeks of enforcement across the three London Boroughs of Brent & Harrow, Lewisham and Tower Hamlets. Cooperation between many different organisations including the Motion Pictures Association, the UK Film Council, the Federation against Copyright Theft (FACT), London Councils, London Trading Standards Authorities (LoTSA) and the Metropolitan Police resulted in 82 raids, 39 arrests and the seizure of 90,250 DVDs along with a number of pornographic DVD's, credit cards and a computer.

David Lammy MP, Minister of State for Intellectual Property and Higher Education said:

"Legislation alone will not combat counterfeiting and piracy. Good law is good but enforced law is better. The Fake Free London campaign sends a clear message that we are all serious about tackling this problem. This partnership will ensure that consumers, legitimate businesses and their employees are protected from those that choose to break the law."

Other bodies have formed partnerships and worked in cooperation with a wide range of enforcement and brand holding bodies. The Premier League established a central anti-counterfeiting programme two years ago to coordinate and carry out anti-counterfeiting operations on behalf of its member clubs.

²⁶ Unpublished research conducted by the Intellectual Property Office in December 2008

²⁷ Unpublished research conducted by the Intellectual Property Office and LACORS in 2008



Since its creation, the programme has worked with 56 trading standards authorities, and five police forces, including the Metropolitan Police and the Greater Manchester Police. Over 2,000 law enforcement personnel are signed up to the designated, secure website, which contains details of registered trade marks, as well as examples of counterfeit merchandise.

Case study – Coordinated working at sports events

In the 2008-09 football season, the Premier League's IP Crime Unit carried out a match day assessment at the Sunderland vs. Wigan Athletic game at the Stadium of Light.

Through surveillance the unit managed to identify a number of individuals, selling counterfeit pin badges and scarves around the ground. As a result of this, officers from Sunderland Trading Standards visited the stadium on two separate occasions and made a considerable number of seizures of a cross section of the Premier League clubs from three individuals.

The first of these cases was heard in court on 8 May 2009. The defendant pleaded guilty to eight trade mark offences and was subsequently fined £1,151 and ordered to pay £519 in costs. In addition, a forfeiture of 3,066 badges and 22 scarves was made. Two more individuals are due to appear in court in respect of similar offences.

Case Study – Medi-Fake

Counterfeit medicines have been identified as a very worrying and growing threat. From October to December 2008, an operation called MEDI-FAKE took place targeting customs control on illegal medicines entering the European Union (EU).

Customs experts and pharmaceutical specialists identified key risk indicators and high risk pharmaceuticals to the target of reinforced controls. The EU Commission compiled this information into a common risk profile for counterfeit medicines and disseminated it to customs officials in all 27 member states.

In a two month period, more than 34 million tablets were seized, including fake antibiotics, anti-cancer, anti-malaria and anti-cholesterol medicines, painkillers and erectile dysfunction medication.

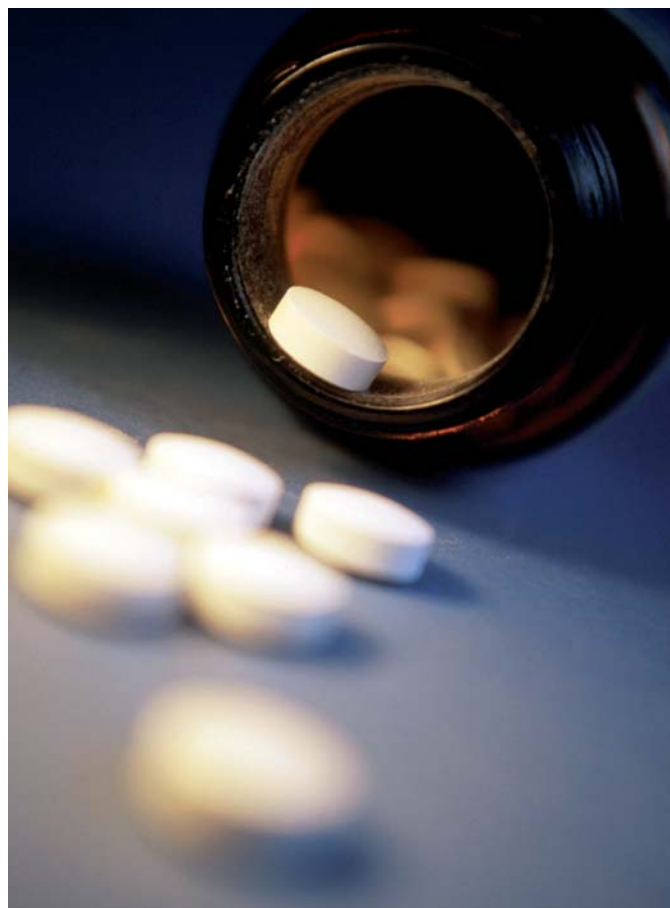
Especially large seizure figures were recorded by Belgium, France, the UK and Spain. Brussels Airport

reported the biggest seizure of illegal medicines in Europe to date when 2,200,000 counterfeit tablets were seized, of which 1,600,000 were pain killers and 600,000 were anti-malaria tablets. Customs officers at Le Havre also made an especially large seizure when they stopped a consignment of 400,000 counterfeit medicine tablets and 11 million pseudophedrine pills, a dangerous and known drug precursor.

The Commission emphasised how crucial the cooperation of industry with enforcers was. László Kovács, Commissioner for Taxation and Customs, said:

“This success shows the value of customs controls, thereby better protecting citizens and legitimate businesses from new and increasing security and safety threats. Cooperation between customs and legitimate business proved vital.”

It is hoped that the operation will pave the way for similar actions in the future, in relation to medicines and in other specialised areas where technical knowledge from industry and enforcement experts is required.





B Raising awareness

Introduction

Awareness raising is a key tool in the fight against IP crime. Over the last year considerable work has been done by the Intellectual Property Office and many other organisations to promote IP rights and raise awareness of the harms associated with IP crime.

Many different consumer groups have been targeted by different campaigns in order to communicate the true picture of IP crime. Work has also been done in schools in order to foster a strong sense of the importance of IP with the next generation of users and creators.

Intellectual Property Office

The Intellectual Property Office plays a central role in promoting the importance of IP within educational establishments and businesses in the UK.

It is vital to invest in the next generation of innovators and entrepreneurs. IP is key to protecting this innovation and creativity and it is vital for the next generation to understand the value of IP and to respect the IP rights of others. Therefore the Intellectual Property Office is supporting teachers and encouraging innovation among students.

The successful Cracking Ideas project is the biggest government backed project of its kind and uses a combination of specific lesson plans, teaching resources and a dedicated web site www.crackingideas.com, to encourage innovation at Key Stage Two pupils as part of the National Curriculum.

A competition within the project, organised by the Intellectual Property Office, encourages pupils to design an environmentally friendly appliance that could be used in Wallace and Gromit's house. Regional winners were identified and the national winner of the 2008 Cracking Ideas competition were nine and ten year old pupils in Lancaster who invented the device call 'Charlie the Chair Stacker' to make stacking chairs easier.

The Intellectual Property Office has also initiated two major projects aimed at older schoolchildren. The Intellectual Property Office, Aardman Animations, SGA Productions and the Science Museum have developed a new exhibition entitled 'Wallace & Gromit present A World of Cracking Ideas'.

The exhibition is designed to inspire a new generation of innovators in the UK and beyond. One of the primary objectives for the exhibition is to encourage positive respect for IP. The exhibition was launched 26 March 2009 and received significant press coverage. It officially opened to the public on Saturday 28 March 2009. Attendance at the exhibition has been excellent; visitor figures were 50,000 for the first seven weeks which was the best launch of an exhibition at the Science Museum in nine years.

The Intellectual Property Office, in cooperation with Young Enterprise, launched an IP competition for Company Programme Students aimed to inspire young people to identify and protect their own creativity and also to ensure they have not used the IP belonging to someone else. Young Enterprise reached more than 350,000 young people a year through the involvement and gained the support of 3,500 UK businesses. The Company Programme sees students aged 15 to 19 set up and run their own company over a year, and involves electing a board of directors from their peers, raising capital, marketing and financing a product or service of their own choice.

Industry projects

The last year has seen several successful initiatives undertaken by industry to raise awareness and share knowledge and experience within the enforcement and rights' holders' community. Two major conferences held within Bournemouth in 2008 brought together Government including the Intellectual Property Office, industry and enforcement agencies.

Awareness stands from different industry representatives at the Trading Standards Institute (TSI) Conference helped to extend trading standards officers' understanding of IP crime, provided advice on identifying the counterfeit products, and offered further resources to support their investigations and the usage of key legislation such as the Proceeds of Crime Act 2002.

The Local Government Association Conference brought to the attention of local councillors the health dangers as well as the social and economic impact IP crime has on their constituents and authority.

Regular Anti-Counterfeiting Group (ACG) roadshows have been held throughout the UK to raise awareness within the law enforcement community of how to identify counterfeit products from their brand members, to help to update delegates on latest developments in brand protection and enforcement issues, and for valuable

networking amongst the various agencies and brand owners. The two-way process provides support and increases understanding of how industry can help in investigations, for example through witness statements and court presence.

The roadshows enable those attending to share knowledge and raise awareness of IP crime and of new and ongoing initiatives. Additionally, the ACG held a special seminar at its September roadshow about working with trading standards, and regular training days are organised with customs at Heathrow and elsewhere.

2008 saw many high profile awareness campaigns which sought to bring the prevalence and risks of IP crime to consumers' attention.

Case Study – Pfizer and MHRA campaign

The Medicines and Healthcare Products Regulatory Agency (MHRA) joined forces with Pfizer this year to produce a joint cinema advertising campaign. The advert warns of the dangers of buying prescription only medicines from the internet without a prescription. Supported by various national patients' associations, this hard-hitting advert showed a man coughing up a dead rat after taking a pill purchased on the internet.

Pfizer approached MHRA in November 2008 after conducting a survey, the 'Cracking Counterfeit Report', which revealed that one in ten men buy prescription only medicines without a prescription, thus exposing themselves to buying counterfeit or substandard medicines.

The MHRA agreed to participate on the basis of their Anti-Counterfeiting Strategy. One of the three strands of this strategy is communication, which targets education and awareness raising among three stakeholder groups: patients/consumers, healthcare professionals and industry/trade.

The advert aimed to shock people into thinking and talking about the dangers of purchasing medicines from the internet which in the past have included counterfeits containing rat poison. This campaign will help to educate consumers to make an informed choice prior to purchasing medicines online. The organisations involved hope that consumer behaviour will be sufficiently influenced to affect the demand for such products, which will in turn lead to a decrease in the supply of counterfeit medicines.



Launched on 13 January 2009 at the Curzon Theatre London by Dr Mark Porter of GMTV and Mick Deats, Enforcement Group Manager at MHRA, the 15 classified advert has since been shown before films in 2,651 screens nationally from 16 January to 5 March 2009; with 75% of the audience being adults. The advert can also be seen on YouTube and the website www.realdanger.co.uk created by Pfizer.

This initiative has already resulted in an increase in the use of the MHRA's counterfeiting hotline, with call rates increasing from 0-2 calls a week to up to 14 calls a week, all of which are potential leads to combat counterfeiting operations.



Awareness campaigns flourished in the run-up to World Anti-Counterfeiting Day on 17 June 2008. North Lanarkshire Council held a month long event targeting local businesses, market stalls and consumers. Businesses received posters highlighting trading standards contact details for staff to approach with any information on illegal or suspicious activities. Information packs and posters were hand-delivered to licensed premises with a letter and a summary of the law relating to copyright theft and its relevance to their premises and customers.

The audiovisual industry continues its work to educate the public about the true costs of counterfeit and pirated copies. The series of adverts warning people against film piracy with the campaign message 'you wouldn't steal a car ... piracy is theft' was very successful in 2004 and Industry Trust for IP Awareness research showed that it changed attitudes towards piracy. As the market developed, so did the Trust's communications strategy in 2007.

The educational work of the audiovisual sector targets the different user groups with tailored campaigns according to the behaviour and attitudes of different audiences. For example, school-age children have been using classroom materials supplied by Film Education to help teachers discuss copyright in engaging ways and stimulating participation through the means of competitions; outside school a popular social network has been created, 'Screenthing', hosted by the website 'Piczo' to draw 10-15 year olds into an online debate about copyright; television, cinema and radio has been used successfully to reach mass audiences; and people employed in the production of film and television content have been explaining through PR how copyright theft affects their ability to earn a living.

The Industry Trust for IP Awareness launched the second phase of its behavioural change campaign using social stigma through 'Knock-Off Nigel'. The campaign moved the message of the first phase launched in July 2007 from physical copies to illegal downloading in their anti-copyright theft message.

Building on previous advertising campaigns, such as in the workplace and within a pub environment, the new television adverts bring the audience into the office environment showing 'Knock-Off Nigel' being berated by singing colleagues for his antisocial behaviour, which includes pinching their food from the company fridge, stealing money from office whip-rounds and downloading knock-off films on his laptop.

The humorous approach is designed to create peer pressure by aligning copyright theft with other anti-social behaviour as the most effective way to achieve public buy-in. In 2007, the strategy succeeded in doubling the number of consumers that regard copyright theft as "cheapskate" or "downmarket" from 22% prior to the new campaign to 57% after it, according to an independent tracking study by NOP. Two thirds of consumers (67%) now regard copyright theft as "nothing to be proud of", compared to 22% prior to the new campaign²⁸.

The Industry Trust also launched a new, hard hitting series of posters themed around organised crime to support enforcement work by trading standards. The poster highlights the fact there is often an unseen hand behind the trade in knock-off DVDs.

The message to consumers is to think carefully if you are offered pirated DVDs about who might really be pulling the strings, as purchasing these items could fund a criminal network and/or other serious crimes. The reverse sides of the posters feature recent prosecutions to remind people that copyright theft is a criminal offence and that the penalties can be high, including custodial sentences, fines and, increasingly, seizure of assets.

In spring 2009 the Industry Trust launched a new cinema campaign, 'You make the Movies,' to raise the profile of its work to promote respect for creativity. These trailers thank audiences for supporting filmmakers and enabling further investment in film production and sustaining employment in the industry.

It is recognised that, by acknowledging and showing appreciation to those who pay for legitimate consumption of audiovisual content, more sympathy for can be generated for measures to protect jobs and production in the future. The campaign consists of three trailers which pay homage to iconic moments from *Lord of the Rings*, the *Life of Brian* and *Jaws*.

There are positive signs that many consumers are remaining loyal to film companies through difficult times. However the level of loss due to IP crime continues to rise and seriously threatens future film production, so this is seen by industry as a necessary support to its increased investment in physical and on-line enforcement, as well as in legitimate digital services and part of a multi-layered approach to combat this threat.

²⁸ Research carried out by NOP in May 2007 and December 2007, based on 1,993 UK adults aged over 16



Crimestoppers have joined together with local police forces in a joint campaign targeting people living lavish lifestyles on the proceeds of crime and money laundering. The campaign called 'Too Much Bling, Give Us a Ring' urges people to report their suspicions about apparently wealthy people with no legitimate income. These individuals who live far in excess of their income due to their criminal activities are often responsible for undermining community values. This campaign is an excellent example of partnership working between local police forces and Crimestoppers.

Innovative low-cost campaigns to raise awareness of IP crime to the consumer especially engaging with the younger generation have been popular, as seen with the Anti-Counterfeiting Group's SnideUK Ltd campaign. SnideUK Ltd is the corporate identity assumed by a fictitious sinister criminal gang which is responsible for many of the counterfeit products being sold in Britain today, through supplying and running many market stalls within the UK.

SnideUK Ltd was launched in Manchester on World Anti-Counterfeiting Day on 17 June, and included a staged visit by local community officers to a SnideUK Ltd market stall, manned by Snide's Mickey Nomark, to

publicise the campaign. The company's website and blog for SnideUK Ltd received nearly 8,000 hits in the first two months. The site can be seen at www.snideuk.org and users can register to receive e-mail alerts when a new blog or story is added. The site is constantly being updated to keep interest alive. Spoof in-house training and marketing videos have been created of SnideUK Ltd's boardroom meetings, available on YouTube.

Significant work has been done over the last year into producing carefully targeted awareness campaigns and identifying best practice in communicating messages. It is hoped that continuing work on this front will enable the public to become fully informed of the issues involved in counterfeiting and piracy. The aim is to ensure that consumers are empowered to make buying decisions based on a full grasp of all of the facts involved, which will in turn reduce the demand for illegal goods.



C Identify & disseminate best practice

Intellectual Property Office's Intelligence Hub

A key output of the Intellectual Property Office is the work of its intelligence hub. The hub was set up in January 2008 and is responsible for coordinating enforcement activities. It is made up of eight specially trained staff who are qualified in intelligence gathering, financial and internet investigations and analytical accreditations. It is a central repository for information relating to IP crime and houses and runs the national Intellectual Property Intelligence Database (IPID).

Intelligence is fed in to the hub by enforcement authorities and relevant industry bodies. Enquiries can be sent in by enforcement authorities and any industry body who have signed a memorandum of understanding with the office. Relevant intelligence is then shared with them to assist investigations into IP crime when appropriate.

The intelligence hub has expanded greatly in size in order to keep up with the growing amount of intelligence shared and received by the unit. The following chart shows how dramatically the amount of intelligence received by the hub has increased in 2009 compared with the monthly average for 2008.

Intellectual Property Office and IP Crime Group

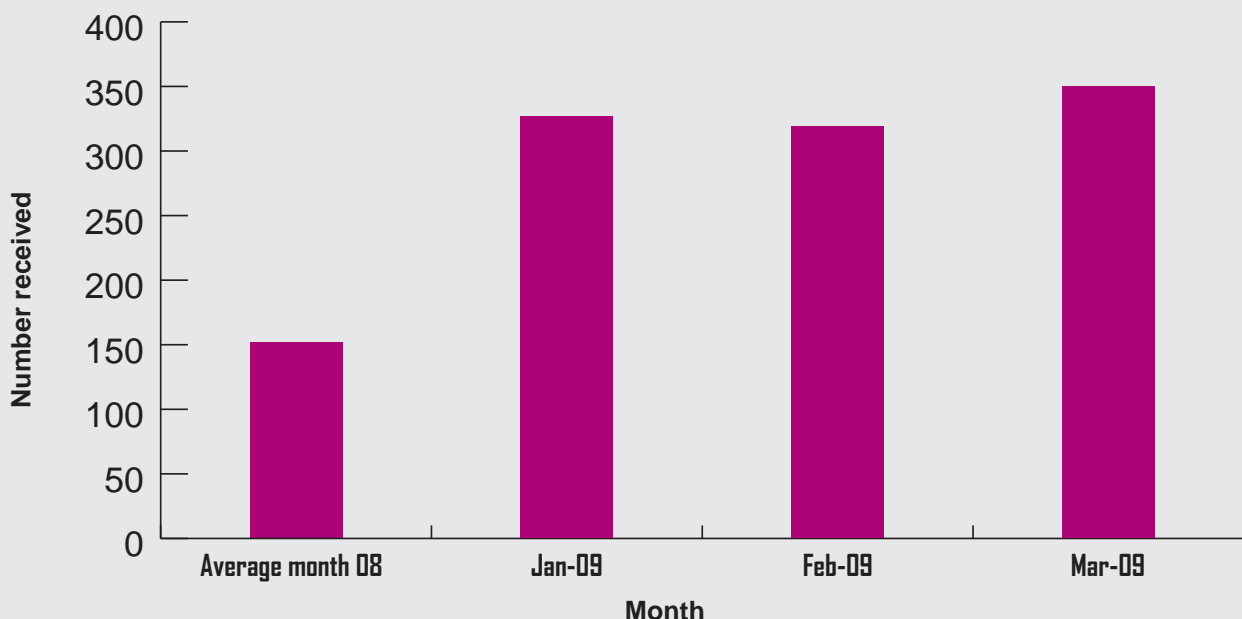
A key role of the IP Crime Group is to identify and disseminate best practice both within industry and among enforcement agencies. It is not always possible to highlight success in this area due to the confidential nature of some of the work, but this chapter gives an indicator of what can be achieved when lessons learnt are available to those involved in similar activities.


In 2008 the IP Crime Group looked into the role of the supply chain in small to medium sized businesses and considered the threats to its integrity. The work culminated in the publication in January 2008 of the Supply Chain Toolkit, which highlights the dangers of counterfeit goods entering supply chains and gave businesses advice on how to protect themselves. The Toolkit is a clear example of the work in identifying and disseminating best practice which can be achieved when many experienced agencies are brought together.

The IP Crime Group also undertook work into the Proceeds of Crime Act (PoCA). The Act was passed in 2002 and provides enforcers with an effective tool to target high level IP criminals²⁹. Since the legislation is very recent and is only just becoming widely used in relation to IP crime, the group was formed to consider ways of widening awareness of the Act and the powers it created.

²⁹ More information on PoCA is available in Chapter 2E

Intelligence received by the intelligence hub





The group has done significant work in sharing best practice and discussing ways of implementing the Act. After considerable discussion with representatives from the different enforcing bodies, the group decided a further valuable output would be to create a leaflet explaining the act in accessible terminology and setting out some of the powers it has created.

At the time of going to print, the leaflet was being published and has two sides: one aimed at market stall owners and the other at the public. It is hoped that the leaflet will encourage members of the public and those who run markets to report any suspicious traders to the authorities, and will clarify the law to those involved in running markets.

A document launched by the Intellectual Property Office in August 2008 entitled 'How licensing intellectual property can help your business'³⁰ offers advice to businesses on a wide range of IP licensing issues, including advice on how to approach and conduct a productive IP licensing deal.

The publication gives advice to those who invent a product on how to exploit their invention, and to manufacturers and designers who configure or refine a product's appearance, and to the producers of packaging and marketing literature and materials. It shows businesses how they can use the licensing system to gain benefits, financial or otherwise, by allowing others to use their intellectual property. It also explains to those who wish to use another's company or individual's intellectual property how they can come to a licensing agreement to do so and avoid infringing the IP rights of others.

Enforcement

In the dissemination and enacting of best practice, enforcement bodies have a key role to play. The last year has seen several trading standards authorities address the issue of counterfeit and pirated goods sold at markets through a combination of punitive and preventative measures.

Some authorities have succeeded in putting in place codes of practice, agreed with market organisers and landowners. Enforcement officers have secured the cooperation of organisers and landowners in return for support in policing the markets and advice on how to overcome any problems. These gains represent

significant steps forward, and it is hoped that the implementation of similar schemes on a national basis can be investigated in the future.

Case Study – Lincolnshire Trading Standards' markets code of practice

In the last year, Lincolnshire Trading Standards services conducted a major project to combat IP crime. They undertook 170 IP enforcement visits and accompanied neighbouring authorities on their operations, resulting in the seizure of 115,000 items. Nine offenders were prosecuted, two were cautioned and a further 26 were given warnings.

Their work centred on an initiative to free markets and car boot sales in the area from counterfeit and other illegal goods, such as stolen goods, dangerous products or age-restricted goods. Markets in the area had suffered from severe problems with counterfeit and other illegal goods in the past.

Trading standards officers from the county had teamed up with local police officers to tackle the different types of goods. A code of practice was drawn up to regulate activity at the market and 90% of markets and carboot sale organisers in the area have now signed up to it.

The Code of Practice asks organisers to inform trading standards of up-coming events, endeavour to prevent the sale of illegal goods by excluding sellers of such items, and ensure that all staff are aware of the Code. In addition they supply explanatory leaflets to all traders and to the public upon request, and report the details of any sellers of illegal goods to trading standards. Trading standards officers provide regular attendance to police the markets and enforce the Code of Practice and give assistance and advice to organisers in identifying illegal goods and dealing with sellers.

As a result of the work of Lincolnshire Trading Standards at markets over the last year, many markets in the area have been freed of problems with counterfeit goods. Trading standards officers from the area reported that two notorious problem markets, Hemswell and Eastgate, were substantially cleared of counterfeit goods for the first time in 10 years.

³⁰ How licensing intellectual property can help your business, Intellectual Property Office, July 2008, available at <http://www.ipso.gov.uk/licensingbooklet.pdf>



Other authorities have reported success with similar schemes. Lambeth Trading Standards authority reported in a survey conducted in December 2008 by the Intellectual Property Office³¹ that it runs a similar scheme where any market which is repeatedly found to have stalls selling IP infringing goods has its licence revoked.

The authority reports that the scheme has had more success than seizures ever did in the past and is promoted heavily by trading standards officers, who ensure they are always available to help market organisers with stall inspections and offer advice.

Thus, by gaining the support of market organisers, trading standards can have a significant impact on the trade in fake goods at markets.

Another key area where enforcers must combine resources and demonstrate best practice is at major events. Trading standards and police enforcers must respond to the needs in their individual areas. Music events and concerts often pose a significant risk in IP infringement and make large demands on resources.

In 2007-2008, local authorities through the UK were given additional funding to combat copyright offences under Section 107 of the Copyright, Designs and Patents Act 1988. A survey was carried out by the Intellectual Property Office and LACORS³² on how the money was spent. Responses were received from 105 authorities.

Many of the authorities had used the money to fund overtime and weekend working at high risk events. Greenwich Trading Standards launched a large scale enforcement operation at the O2 arena in the initial period after its opening. For several months they carried out surveillance and inspections at high risk events during the evening and night, requiring a large amount of out-of-hours working.

Leicestershire performed work at the 'Download' music festival, and Isle of Wight patrolled and carried out seizures at the Isle of Wight Festival and another festival held in the area, 'Bestival'. Milton Keynes has developed and implemented an intelligence and enforcement strategy in partnership with an official merchandising company to tackle IP problems at the 'National Bowl' (a large outdoor concerts and events venue).

31 Unpublished research conducted by the Intellectual Property Office in December 2008

32 Unpublished research conducted by the Intellectual Property Office and LACORS in 2008

Case Study - Clotheshow Live working in partnership with Solihull Trading Standards

The fashion and beauty exhibition Clotheshow Live had its 20th anniversary in 2008. Since 1989 it has been held at Birmingham National Exhibition Centre and it is organised and presented by Haymarket Media Group. The show has grown over the years to become the largest fashion and beauty event in the world. In 2008 it attracted 185,000 fashion fans.

The visitors watched one of the fashion shows and spent the remainder of their day among the 500 exhibition stands. The goods ranged from original couture designers to high street names, belly bars to coloured contact lenses. It is estimated that the amount spent over the six days of the show in 2008 was in excess of £18 million.

With 500 exhibitors selling high fashion goods in such a lively and crowded environment the potential for non-compliance is a significant concern. Following some IP related problems identified by Solihull Trading Standards (Solihull TSS) in 2003, Haymarket Media Group decided to employ a trading standards manager, who would work with Solihull TSS to ensure that the goods sold at the show complied with essential consumer protection legislation and in terms of IP, create a 'clean' show.



Haymarket Media Group took a proactive approach to ensuring compliance. Following discussions with Solihull TSS, a term was introduced into the exhibitors' contracts to secure cooperation. Consequently if any exhibitor was considered to be displaying non-compliant goods, in the opinion of the organisers, the trading



standards manager or Solihull TSS, they could be asked to remove them from sale. If the exhibitor was un-cooperative, they would be required to leave the show and forfeit the considerable exhibition stand costs. Although the term was not invoked, its presence was designed to prevent arguments between the exhibitor and the organisers and to allow swift resolution of potential problems, underpinning the overall atmosphere of vigilance and compliance.

The event's success rests on the spending confidence of the 185,000 visitors. A pattern of partnership working between Haymarket Media Group and trading standards officers was developed in 2004 and has been built on since then. Prior to the show discussions took place between Solihull TSS and the show's trading standards manager. Solihull TSS indicated their plans for attending the show and the requirements they have of the organisers.

Upon arrival at the show Solihull TSS are briefed by the trading standards manager about any changes to the lay-out of the show and any new areas of the exhibition. High-risk areas are discussed, agreed and targeted. This cooperation is essential to ensure that trading standards officers' time is used most efficiently since moving around over 500 exhibitions stands amongst thousands of visitors needs to be as structured as possible.

Close liaison between Solihull TSS, the trading standards manager and the on-site Security Team, was necessary to ensure any seizure or surrender of goods from a stand could be executed in the safest way for all, and especially the visitors. Any seizure or surrender needs to take place without creating a sideshow for the visitors or too much disruption to the flow of people, especially if the stand is on a thoroughfare near a theatre that is about to empty. To date no strong or aggressive protest has ever been made by an exhibitor but the Security Team is on hand to deal with this if necessary. Both Solihull TSS and the organisers are keenly aware of the impact on the other exhibitors of low-key seizures of goods at the show.

This enforcement activity maintains the atmosphere of compliance amongst the exhibitors. It is acknowledged that without the vigilance of the Haymarket Media Group and Solihull TSS the show could be used as a marketplace for counterfeit and pirated goods. Therefore trading standards officers maintained a high level of visibility throughout the event.



Occasionally representatives of IP rights holders attend the show to check for misuse of their brand. They work in partnership with Solihull TSS and the organisers and are offered any facilities they need during their visit to the show. It is a measure of the success of the preventative measures taken by Solihull TSS and Haymarket Media Group that the need for these visits has decreased each year.

Through partnership working the improving reputation of the show has spread among exhibitors, potential exhibitors and the enforcement community. The show has succeeded in reducing IP related problems each year, so that visitors can be confident of the quality of the goods on sale and more high profile exhibitors are keen to attend the show.



Case Study - Joint operation between brand owners, UK Border Agency and Trading Standards at Coventry

In five months in 2008, 70,000 pairs of counterfeit Nike and Adidas branded trainers, 20,000 pairs of UGG branded boots and 13,000 ghd branded hair straighteners, all made from potentially dangerous materials, were seized by UK Border Agency officers at the country's largest post parcel depot based in Coventry.

Officers worked closely with key manufacturers to identify the problem of illegally produced imitation products which are being mass produced in China and imported into the UK. The operation saw officers work around the clock to disrupt and detain the goods before they could be sold to unsuspecting members of the public.

Chris Bagley, Detection Manager for UK Border Agency said:

“Many people are tempted to buy these cheap copies without realising the impact of doing so. The gangs who are involved in importing these counterfeit goods are only interested in making a quick profit which is often ploughed straight back into other criminal activities such as drug smuggling.”

He added:

“We will continue to disrupt this illegal trade and work with key partners to bring those responsible before the courts. Many people enjoy finding a bargain, but counterfeit goods which end up in markets and discount stores are just the tip of the criminal iceberg. Quite simply, if it appears too good to be true, it is.”

The goods seized have been destroyed. The materials they are made of cannot be recycled nor can the goods be redistributed to developing countries for health and safety reasons because of the toxins they may contain.

Medicines

Key to operational success is collaborative working. The Medicines and Healthcare Products Regulatory Agency (MHRA) is a good example of a government agency forging close working relationships with law enforcement agencies and other regulatory bodies for joint working. As part of their anti-counterfeiting strategy, 24 hour anti-counterfeit hotlines have been launched and awareness programmes/advertising campaign for the public and healthcare professionals are underway.

Anti-counterfeit stakeholders groups have been established, including customs, police, regulators and industry. A watch list of counterfeit medicines has been circulated to customs, police and regulators and a market surveillance programme based on the watch list is underway. MHRA investigators have seized £6 million of counterfeit medicine since 2006 and have successfully conducted six prosecutions involving 12 defendants for distributing counterfeit medicines in the past 12 months with sentences ranging from six years' imprisonment to £1,000 fine. A further five cases are awaiting prosecution. Confiscation of assets proceedings are running concurrently.

MHRA routinely monitor the internet for websites offering to supply medicines to UK consumers. Internet Service Providers (ISPs), which are identified as hosting websites trading illegally, are contacted with a view to having the site withdrawn. Additionally, MHRA conduct 'Internet Days of Action', where operators of suspected websites across the UK are targeted, products seized, websites closed and individuals prosecuted. The last one took place on 12 November 2008 and involved simultaneous action in eight other countries.

Industry

Industry bodies recognise their role in disseminating best practice in order to safeguard products from counterfeiting and piracy. A crucial factor in protecting intellectual property is that manufacturers ensure that their goods are as difficult to copy as possible, for example by maintaining secure supply chains and using covert protection devices. They can also help enforcers protect their interests by disseminating advice to enforcers so that they know how to identify goods which are not genuine. Many industry sectors have taken significant steps in protecting their products and adapting to changing threats.



Case Study - ghd best practice

Among the manufacturers who have taken steps to protect their products against counterfeiting is ghd. ghd have recognised the danger posed to their customers by low quality imitation electrical hair styling products, and provide extensive advice to consumers on their website.

As well as providing general best practice advice on how to avoid counterfeit goods when purchasing ghd products on the internet and in person, the website allows consumers to enter the web address of any site offering ghd products for sale. ghd's website is then able to confirm whether the site is an approved stockist.

For those who have purchased ghd products, they are able to enter a 15 digit hologram code found on a sticker on the product at the ghd website. The number allows ghd to verify that the styler is genuine. If the product is counterfeit, ghd also provide advice on how consumers can go about seeking a refund and how they can report the incident to trading standards officers and ghd themselves.

As well as assisting consumers, ghd also work closely with relevant industry bodies. This includes intelligence sharing with HMRC, trading standards and the police. Their continued commitment to brand protection also means that they have set high service level standards, which range from provision of personnel for raids, 48 hour turnaround of Section 9 statements where possible and operational support.

The comprehensive advice and support provided by ghd is a good example of the way industry can lead the way in the fight against IP crime.

The UK Electronics Alliance (UKEA) developed a best practice Supply Chain Toolkit³³ in 2008, specifically designed for the electronics sector. The toolkit includes a step-by-step approach on action that should be taken if counterfeit items are found within the supply chain, as well as advice on how to strengthen and protect IP assets.

The UKEA Toolkit is filling the urgent need for a document of this type. According to research they conducted in July 2008, counterfeit electronic components are entering the UK market in huge numbers and cost the economy £1 billion per year.

³³ The Counterfeit Electronic Components Minefield, a guide to understanding and avoiding counterfeit components, Components Obsolescence Group International Ltd, 2008

Combined with the considerable safety risk posed by counterfeit electrical goods, this is clearly an area of great concern and the Toolkit will play an important role in disseminating best practice.

Case Study – www.findanyfilm.com

The website www.findanyfilm.com enables users to search for a film and find legitimate ways of seeing it, including cinema listings, retailers and authorised download sites. There are also links that take users straight to sites for cinema bookings and purchasing films.

With records for over 30,000 films at its launch and a database that is constantly being filled with more information, the site provides an excellent way for people to find legitimate ways to see films and to compare prices to find the best deals. It is hoped that the research will eliminate some of the motives often cited for illegally downloading films and help make films more accessible to people through legitimate channels.



D Sentencing outcomes

Introduction

The sentences available for IP crime offenders are significant and are capable of providing an effective deterrent for potential criminals. Under Section 92 of the Trade Marks Act 1994, for example, the maximum penalty when tried summarily is 6 months and or a fine and the maximum penalty on indictment is up to 10 years.

In the past though, sentencing offenders under the Copyright, Designs and Patent Act 1988 and the Trade Marks Act has posed some problems. There have been examples of inconsistency in how convicted IP offenders are sentenced. Although some sentences have reflected the severity of the crime and the harm done, some courts have been seen as lenient in how they treat offenders.

Significant work has been done to combat this problem though, including the provision of guidelines for Magistrates' Courts and training for prosecutors. In recent years the results have been shown in considerable sentences which send out a clear message to those committing IP crimes.

Sentencing guidelines

After significant work with the Sentencing Guidelines Council, for the first time the Council has provided advice specifically relating to trade mark offences. Their May 2008 edition of the Magistrates' Court Sentencing Guidelines³⁴, which took effect from August 2008, offers magistrates guidance on appropriate sentences for offenders under the Trade Marks Act. This will facilitate a consistent approach to how sentencing is applied.

These guidelines set out the minimum and maximum sentences legally permissible for particular offences, and give general guidance on an appropriate starting point for establishing a sentence. They also alert magistrates to factors which might make the crime more serious and which might therefore require a longer sentence. These factors include evidence of a high degree of professionalism in the operation, or the generation of a high profit, as well as activities which may put purchasers at risk of harm, such as the sale of counterfeit drugs. Mitigating factors which might lessen the sentence include mistakenness or ignorance about the provenance of the goods.

³⁴ Magistrates' Court Sentencing Guidelines, Sentencing Guidelines Council, May 2008

The inclusion of sentencing advice in this set of guidelines is a significant step forward in ensuring a consistent and effective deterrent. There is scoping work being undertaken to ascertain the feasibility of adding copyright offences to the sentencing guidelines.

Training the judiciary and prosecutors

The Gowers Review of Intellectual Property published in December 2006, advised in its Recommendation 44 that it may be necessary to evaluate the training need for judges and magistrates and their legal advisers.

In August 2008 Baroness Scotland (the Attorney General) announced the establishment of the Global Prosecutors' E-Crime Network (GPEN). GPEN was developed by the high-tech crime unit of the UK Crown Prosecution Service's (CPS) international division, in conjunction with the International Association of Prosecutors (IAP).

GPEN went live in January 2009 and includes a database of e-crime prosecutors, a forum for exchanging advice. It hosts e-crime material including a virtual training college and legal guidance. The advice offered covers a range of types of e-crime.

Work is currently being undertaken to put together advice on intellectual property e-crime to add to the resource. This website is a substantial step forward and will provide prosecutors in the UK and worldwide with access to detailed IP training for the first time.

Sentencing figures

Figures provided by the Ministry of Justice³⁵ show that the number of people sentenced under the criminal provisions of the Trade Marks Act and the Copyright, Designs and Patents Act has increased sharply in recent years.

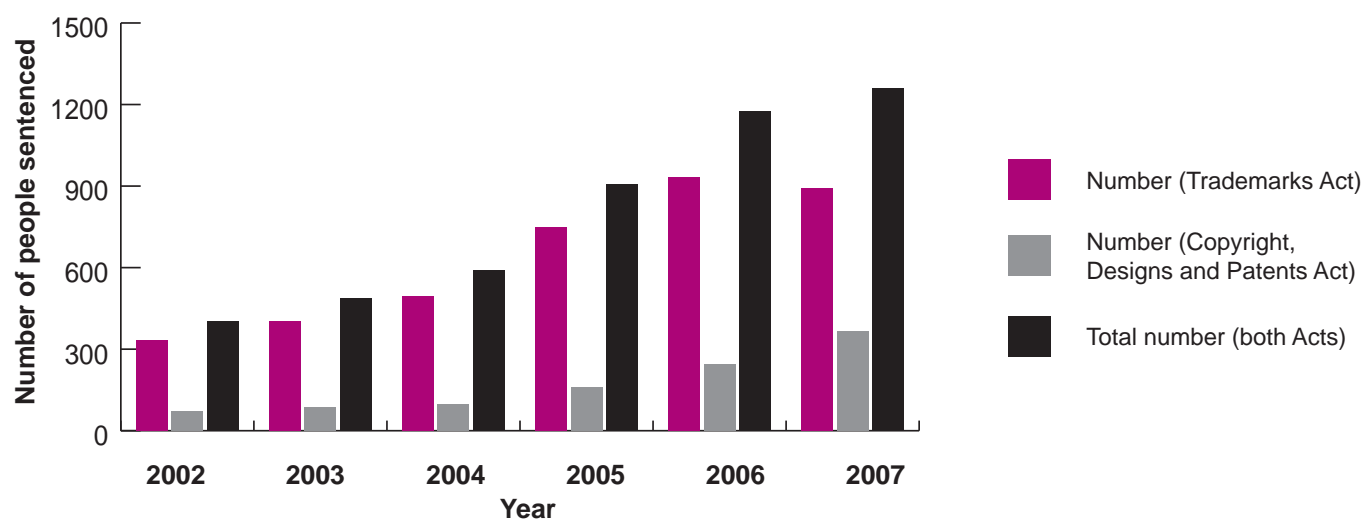
The following table shows the number of people sentenced under each Act between the years 2002 and 2007. Unfortunately figures from the Ministry of Justice are not yet available for 2008 although the Ministry intends to release these figures in November 2009.

³⁵ Source: Ministry of Justice, February 2009



Number of people sentenced

Year	2002	2003	2004	2005	2006	2007
Number (Trademarks Act)	331	404	493	748	932	893
Number (Copyright, Designs and Patents Act)	71	85	98	160	243	367
Total number (both Acts)	402	489	591	908	1175	1260



Over the same period, the severity of the sentence given has also increased. The following table shows the number of people dealt with by immediate custody over the same period.

Number of immediate custodial sentences imposed

Year	2002	2003	2004	2005	2006	2007
Number (Trademarks Act)	23	21	71	146	248	218
Number (Copyright, Designs and Patents Act)	2	1	18	39	58	50
Total number (both Acts)	25	22	89	185	306	268



Case Study – music pirate sentenced

In July 2008, one of Scotland's most prolific music pirates was jailed for more than three years. The 61 year old man was convicted of three offences by Dumbarton Sherriffs' Court and given three custodial sentences of 38 months to run concurrently.

The sentences were for the illegal distribution of music under the Copyright, Designs and Patents Act Section 1988 section 107(1)(d)(iv), for the distribution of music under the Trademarks Act 1994 Section 92(1)(c), and for the possession of computer equipment specifically designed or adapted for making copies of a trademark under the Trademarks Act 1994 Section 92 (3)(b).

Police raided the man's house in Helensburgh in August 2005. Officers found 12 computers, six laptops, 79 external hard drives and about 6,500 discs containing more than one million MP3 files and spent 11 hours removing evidence from the house. The level of data storage on the hard drives and discs was 4,388 gigabytes, an amount that is normally used to run large international companies.

The prosecution told Dumbarton Sheriff Court that as soon as officers entered the flat, they found MP3 discs in the hallway.

Investigators found a highly organised, well-resourced repository for the manufacturing of music. They believed that it was the largest-ever domestic counterfeiting factory found in the UK. The BPI claimed at the time that the man had supplied master discs to other major counterfeiters in Scotland.

Sheriff Bill Dunlop, sentencing, said:

"This was clearly a well organised and extensive operation and the damage to the general economy from this industry has been well established over the years."

Case Study – counterfeit goods offender sentenced

In November 2008, a 38 year old man was given a three year prison sentence after being charged with more than 50 trade mark offences at Wolverhampton Crown Court.

A major investigation by Wolverhampton Trading Standards, West Midlands Police and investigators from the Entertainment and Leisure Software Publishers Association (ELSPA) found that the man was running a major counterfeiting operation across the Midlands and North West England.

He was apprehended by officers at a computer fair at Wolverhampton Racecourse where he was selling fake discs from a stall. At the time 3,400 discs were seized along with copying equipment. A further 3000 discs and more copying equipment were found at his house, and 7,100 discs were seized at the home of his girlfriend.

It is estimated that the operation ran between February 2004 and January 2008 and that the man made more than £200,000 from it. He is also subject to a proceeds of crime investigation which is being conducted by Wolverhampton Trading Standards and West Midlands Police. His girlfriend was given a 12 month prison sentence, suspended for 18 months. Another accomplice, Greg Gartside from Lancashire, was given a community sentence order.

Sentencing, Judge Michael Challiner said:

"This sort of offence of economic crime causes a great deal of harm and is often perceived as victimless – but that perception has to be altered and courts must do all they can to achieve that end."



Case Study – counterfeit accessories offender sentenced

A man who was found guilty of possessing counterfeit designer and sports bags with a street value of more than £1 million for supply was jailed for three years on 6 October 2008 at Snaresbrook Crown Court. The man, who pleaded guilty to five counts contrary to the Trade Marks Act 1994, was an officer of a retail company now in liquidation.

A raid of the company's premises by trading standards officers resulted in the seizure of 16,974 bags. The goods or their packaging bore signs identical to or likely to be mistaken for registered trademarks of several luxury and sportswear brands. The man was sentenced to three years on the basis that he was the prime mover in a highly profitable commercial enterprise and that he knew the bags were counterfeit.

Case Study – severity of IP theft

In sentencing one person for possessing counterfeit DVDs and another for assisting an offender in July 2008, a judge at Durham Crown Court sent out a strong message on the significance of IP crime.

Judge Taylor said:

“This type of crime causes huge losses to people involved in the entertainment industry and to artists who are deprived of their royalties. Some people seem to think this type of offending is not serious, but it is.”

He sentenced the first offender, who had no previous convictions to an 18 month supervision order, but told the other, who had two previous convictions for possessing counterfeit DVDs that there was no alternative for him but an immediate term of imprisonment, and sentenced him to eight months' imprisonment.

E Usage of POCA

Introduction

The Proceeds of Crime Act 2002 (PoCA) gave enforcers greater powers than ever before to seize assets from those who are profiting from crime. Since IP crime has always been seen by organised criminals as generating high profits with very little risk of punishment, the Act has proved ideally suited to providing adequate sanctions for high level IP criminals.

Shortly after the Act was passed, Tony Blair, then Prime Minister, said the political mission statement was to

“...turn the tide against criminals ... we will deter people from crime by ensuring that criminals do not hang on to their unlawful gains. We will enhance confidence in the law by demonstrating that nobody is beyond its reach. We will make it easier for courts to recover the proceeds of crime from convicted criminals.

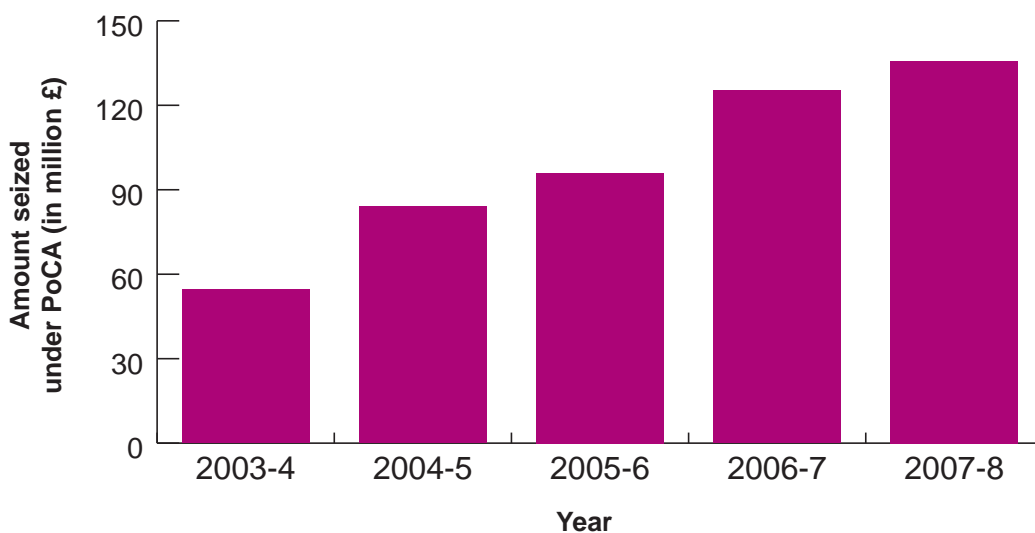
And we will return to society the assets that have been unlawfully taken.”³⁶

Prosecutions under the Act were initially slow to take off for IP criminals, and awareness of the Act was poor. Much work has been undertaken since then to raise awareness among law enforcement investigators and prosecutors and to provide practical advice to enforcers on how to take forward investigations.

Recently, the Act has seen some significant confiscations from criminals operating at the top level of IP crime. According to Home Office figures, a total of £135.7 million was recovered in the financial year 2007-2008 for all crimes. Each year has increased steadily from the preceding year, as the following information demonstrates.

³⁶ Blackstone's Guide to the Proceeds of Crime Act, Second Edition, Edwards Rees and Richard Fisher, Oxford University Press, 2005

Year	Amount seized under PoCA (in million £)
2003-4	54.5
2004-5	84
2005-6	96
2006-7	125.36
2007-8	135.7



Source: Home Office



Engagement process – increasing PoCA take-up

In 2008 all parties have sought to increase use of PoCA by communicating its utility to the enforcement community. Part of the work of the Intellectual Property Office has been to raise awareness with enforcement bodies, local authority departments, industry stakeholders and other government agencies and to assist, when appropriate, with its use. This was advanced by the secondment of an Accredited Financial Investigator from South Wales Police.

Trading standards departments were identified as an important frontline enforcement arena which would directly benefit from using this piece of legislation. Therefore a programme was developed by the Intellectual Property Office. Trading standards departments received a 'Practical Awareness' presentation and in-house publications. This initiative is further supported by bringing together police financial investigators and trading standards officers within a given area to share expertise and coordinate activity.

The training programme aims to empower trading standards staff and managers with knowledge so that PoCA criteria can be readily identified, and so that the assistance of an accredited financial investigator can be employed. Printed material supporting the presentation and enhancing the use of PoCA is distributed to each presentation attendee by the financial investigator. This material gives staff discretionary PoCA knowledge and presents alternative courses of action with other complementary legislation to consider.

The programme also highlights the value of sharing the expertise of a financial investigator between different departments, such as Benefits, Housing and Environmental Health in order to maximise use of PoCA.

Partnership work – raising consumer awareness

The Intellectual Property Office engages with cross industry/enforcement forums to share best practice. A key element of this work has been to raise awareness of IP crime and the harms it can cause among consumers. The objective is to inform the consumer of the reality behind counterfeit and pirated products.

This knowledge enables consumers to make informed purchasing decisions. As discussed in earlier chapters, counterfeit and pirated products can cause economic damage and have been linked to organised crime as well as posing a threat of physical harm in some cases.

The traditional legal sanctions against IP crime have undoubtedly posed a degree of deterrence to many potential criminals. However they have not threatened to deprive serious organised crime groups of the considerable financial gains IP crime has brought them. PoCA ensures that financial gains from counterfeiting and piracy can be taken away from criminals.

The Trading Standards Institute (TSI) e-learning college and the Intellectual Property Office have engaged in a joint enterprise driving forward e-learning programmes. The programmes consist of case studies and scenarios complementing the Intellectual Property Office work on PoCA, thus raising PoCA awareness and promoting an understanding of its use to the wider trading standards community.

Example of PoCA in practice

The principle of using PoCA to recover criminal benefits from crime is generally understood. However, by considering the use of PoCA in investigations of many different kinds, investigators can maximise the amount of PoCA seizures made.

In one such case, trading standards officers in Wales received a complaint regarding an individual selling cigarettes from her doorstep to customers, including underage people. Although initial enquiries were fruitless, a second complaint was received 9 months later which developed into an underage test purchase operation.

Police and trading standards officers obtained a warrant to search the defendant's home. A seizure was made of 200 counterfeit cigarettes, empty cigarette cartons, 14 pouches of genuine non-duty paid Arabic rolling tobacco, a small trading list highlighting customers, £72 in loose change and £2,000 in cash.

The defendant was charged with offences relating to the sale of cigarettes to minors and trade mark offences. At a late stage the views of an outside financial investigator were sought. The defendant pleaded guilty at Crown Court and, on the advice of the financial investigator, the council prosecution sought a confiscation investigation under PoCA.

A financial examination of the court file succeeded in retrieving evidence for the court of relevant lifestyle circumstances of the defendant. The financial statement was accepted by the defence and prosecution as a fair assessment of the defendant's criminal benefit.



The statement effectively argued that the defendant had run a cottage industry and benefitted from her criminal conduct for a nine month period. The loose change, counterfeit and non-duty paid tobacco products, £2,000 in cash with the trading list and empty cartons were all integral elements which indicated criminal activity.

The defendant was ordered to pay just under £10,000 in confiscation with supporting equity being identified within her own home. The full amount was paid within three months.

The successes of PoCA

Trading standards and police teams are already recognising the potential of PoCA. By allowing councils to retain a proportion of assets seized, the Act does not require extra funds from councils in order to be implemented and can provide additional resources for use locally in combating anti-social behaviour. It also sends out a clear message that crime does not pay and helps to reduce the appeal of criminal role models.

Bryan Lewin, then Chairman of the Trading Standards Institute (TSI) speaking at the Local Government Association meeting in Bournemouth in July 2008 highlighted the work that had already been done using PoCA and drew attention to the extensive work of Northamptonshire County Council in the field. He said:

“I am delighted to be speaking at the LGA conference. I am hoping to highlight the work that has been carried out in Northamptonshire, as well as demonstrate to other local authorities that by using this legislation, they can benefit by acquiring much-needed additional revenue.

“It is important those involved in crime are deprived of the financial gains a criminal lifestyle offers. By using this legislation, local authorities can help reduce crime by stopping the criminals from profiting.”

Case Study – record confiscation order

In March 2008 a confiscation order under PoCA was made at Sheffield Crown Court against a trader of counterfeit designer goods for £2,744,985. At the time police from South Yorkshire’s economic crime unit reported that it was the biggest ever confiscation order in the country.

A woman, aged 44 from Sheffield, was given six months to make the payment or face 10 years’ imprisonment. She was the director of a Sheffield-based furniture import company.

Police, working with trading standards and customs officers, became suspicious when they noted large amounts of counterfeit goods being sold to buyers via internet auction site eBay. Their investigations led them to the woman’s buyer, a 27 year old man from Netherthorpe, who had sold £245,883 worth of goods via the internet in one year alone.

Officers followed the man and searched the company’s premises where they found fake branded goods including Nike, Dolce & Gabbana, Louis Vuitton, Levi, Armani, Paul & Shark, G-Star, and Evisu.

Detective Inspector Graham Wragg from South Yorkshire Police’s economic crime unit said that the woman was a member of an organised Chinese criminal gang operating in South Yorkshire. The group smuggled counterfeit goods into Britain from China. The man was jailed for two years and ordered to pay back £1 million. The woman was jailed for four and a half years as well as receiving the PoCA order for £2,744,985.

Case Study – PoCA confiscation

In May 2008, a former market trader from Bedford who sold counterfeit goods paid £585,422 under a PoCA confiscation order.

The man was ordered to make the payment by Luton Crown Court in May 2006, after hearing that he had made a financial gain of that amount from the sale of counterfeit clothing at Bedford Market. He was also sentenced to 100 hours of community service under the Trade Marks Act 1994 and Trade Descriptions Act 1968. However, when he failed to pay the confiscation order, he was sentenced to five years’ imprisonment. Following payment of the amount in full, he was released from prison.

The prosecution was made by the Assets Recovery Agency (now Serious and Organised Crime Agency) working closely with Bedfordshire County Council’s Trading Standards Service. The Trading Standards Department in Bedfordshire now have their own specialist Financial Investigations Unit to carry out work of this kind.

Annex 1 - Data, statistics and comments

Seizure figures from trading standards authorities

Data was received from 31 trading standards authorities relating to seizures of counterfeit and pirated goods and equipment for producing these goods. Of the 31 authorities, 20 were English, 4 were Scottish and 7 were Welsh.

Seizure table 1: goods seized (part A)

	Product seized											
	DVD/Software	CD	Tobacco products	Mobile Acc	Perfumes	Batteries	e Game	Condoms	Toothpaste	Vehicle accessories*	Video cassettes	Fireworks
Bexley	454	30										
Birmingham	31,940	2,403	3,291	1,241	45,000	3,179		120	9			
Bromley	760											
Buckinghamshire	1,513	887										
East Sussex	940						52					
Greenwich	100			21								
Isle of Wight		3										
Kent	7,961									1,310		
Norfolk	752	844										
North Yorkshire	1,135	100										
Poole	2,850											
Sandwell	39,000											
St Helens	168						72					
Slough	1,336										223	
Stoke on Trent												
Surrey			144									
Torbay	119	30										
Warwickshire	10,830	516					611					6
West Berkshire												
Wigan	1,123		204									
Angus Council	911	203					60					
Perth & Kinross			500									
South Lanarkshire	1,069	46	264				85					
West Lothian	200											
Blaenau Gwent	26	28										
Bridgend	1,038	100										
Merthyr Tydfil	1,692	169										
Neath Port Talbot												
Rhondda Cynon Taff												
Torfaen	265											
Vale of Glamorgan												
Totals	106,182	5,359	4,403	1,262	45,000	3,179	880	120	9	1,310	223	6

* Includes one satellite navigation unit

Seizure table 1: goods seized (part B, including totals for all goods seized)

Product seized													
	Trainers and footwear	Clothing**	Sunglasses	Watches	Hair stylers	Handbags	Accessories***	Jewellery	Ceramics and ornaments	Toys and stickers	Sports goods	Other****	Totals (includes figures for tables A and B)
Bexley								24					508
Birmingham	2	9,959**	105	11,335		28	5,105	786	3,871	6,372			124,746
Bromley		16						18			8		802
Buckinghamshire		50											2,450
East Sussex	16	406		16	92		89	233					1,844
Greenwich			2				202		1				326
Isle of Wight	1						23	18					45
Kent	5,949	16,400								1,328			32,948
Norfolk		98		362		28	3						2,087
North Yorkshire		46						3				1000+	2,284
Poole	10		43	13									2,916
Sandwell		300											39,300
St Helens	3	19											262
Slough								52					1,611
Stoke on Trent		558											558
Surrey		773*				22	1316***						2255
Torbay		1											150
Warwickshire	380	8,891*		26			241***						21,501
West Berkshire		26											26
Wigan													1,327
Angus Council													1,174
Perth & Kinross		61	29			1			3				594
South Lanarkshire	32	486**	18			3	49	4	4			3	2,063
West Lothian													200
Blaenau Gwent		237**											291
Bridgend	23	21				3		10		29			1,224
Merthyr Tydfil		106	10			37							2,014
Neath Port Talbot										106			106
Rhondda Cynon Taff		42											42
Torfaen													265
Vale of Glamorgan		14				5	24	31					74
Totals	6,416	38,510	207	11,752	92	127	7,052	1,179	3,879	7,835	8	1,003	245,993

** Clothing also includes trainers, footwear and accessories where no clear figure per item were given but only an overall figure for several items.

*** Accessories also includes purses, wallets, belts, and bags, sunglasses, jewellery, watches where no clear figure per item were given but only an overall figure for several items.

**** Other consists of seizures with no product details

Seizures table 2: production equipment and packaging seized

Production equipment and packaging seized								
	Computer Equipment	Black & White inlays	Pressing machines	Computer consumables	Recorders	Classification labels	Perfume packaging	Totals
Bexley								
Birmingham	23	2,500	3				45,000	47,526
Bromley								
Buckinghamshire								
East Sussex								
Greenwich								
Isle of Wight								
Kent	2							2
Norfolk								
North Yorkshire				800				800
Poole								
Sandwell								
St Helens								
Slough					7	1,000		1,007
Stoke on Trent								
Surrey								
Torbay								
Warwickshire	4,000							4,000
West Berkshire								
Wigan								
Angus Council	10							10
Perth & Kinross								
South Lanarkshire								
West Lothian								
Blaenau Gwent	3							3
Bridgend	5							5
Merthyr Tydfil								
Neath Port Talbot								
Rhondda Cynon Taff								
Torfaen								
Vale of Glamorgan								
Totals	4,043	2,500	3	800	7	1,000	45,000	53,353

Coordinated working

Trading standards authorities supplied information to the Intellectual Property Office showing which organisations they formed partnerships with in 2008 – 2009. The following table displays the results:

TS Authority	Partner organisations																			
	Police	BPI	FACT	ELSPA	Other TS Authorities	Rights Holders	FAST	HMRC	PRS for Music	IFSP	Home Office	ACG	UK Immigration Service	Benefit fraud	DWP	UKBA	DVLA	REACT	VOSA	
Angus	•	•																		
Bexley	•																			
Birmingham	•	•				•		•												
Blaenau Gwent	•	•	•	•	•		•													
Bournemouth					•															
Bridgend	•	•				•	•	•												
Buckinghamshire	•		•			•														
Caerphilly	•																			
Carmarthenshire	•	•	•				•				•	•								
Cornwall	•		•				•	•							•	•				
Coventry	•						•							•						
East Sussex	•				•															
Essex	•		•				•								•					
Greenwich	•		•																	
Hampshire	•															•				
Hertfordshire	•									•			•		•					•
Isle of Wight	•	•	•																	
Islington	•																			
Kent	•					•	•													
Lambeth	•						•								•		•			
Merthyr Tydfil	•																			
Milton Keynes	•		•	•																
Moray					•															
Neath Port Talbot	•																			
Norfolk	•	•				•	•						•							
North Lanarkshire	•		•									•								
North Yorkshire	•		•	•	•	•		•												
Perth & Kinross	•				•		•												•	
Poole	•		•			•							•							

Coordinated working (continued)

TS Authority	Partner organisations																		
	Police	BPI	FACT	ELSPA	Other TS Authorities	Rights Holders	FAST	HMRC	PRS for Music	IFSP	Home Office	ACG	UK Immigration Service	Benefit fraud	DWP	UKBA	DVLA	REACT	VOSA
Rhondda Cynon Taff	•	•	•	•	•		•							•	•	•	•		
Richmond		•	•																
St Helens	•		•	•		•													
Sandwell	•		•										•						
Slough	•					•													
South Ayrshire	•		•	•		•													
South Lanarkshire																			
Stoke-on-Trent	•																		
Swindon	•																		
Torbay	•				•	•	•												
Torfaen	•	•	•	•	•	•													
Vale of Glamorgan	•																		
Warrington & Halton	•						•							•					
West Dunbartonshire	•	•	•	•															
West Yorkshire	•	•	•				•	•											
Worcestershire	•		•	•	•	•													

Note: Certain trading standards authorities also reported forming partnerships with other groups including community wardens, the Assets Recovery Agency, the Fire Service, safety test houses, the British Board of Film Classification, Environmental Health, the Food Standards Agency and media groups.

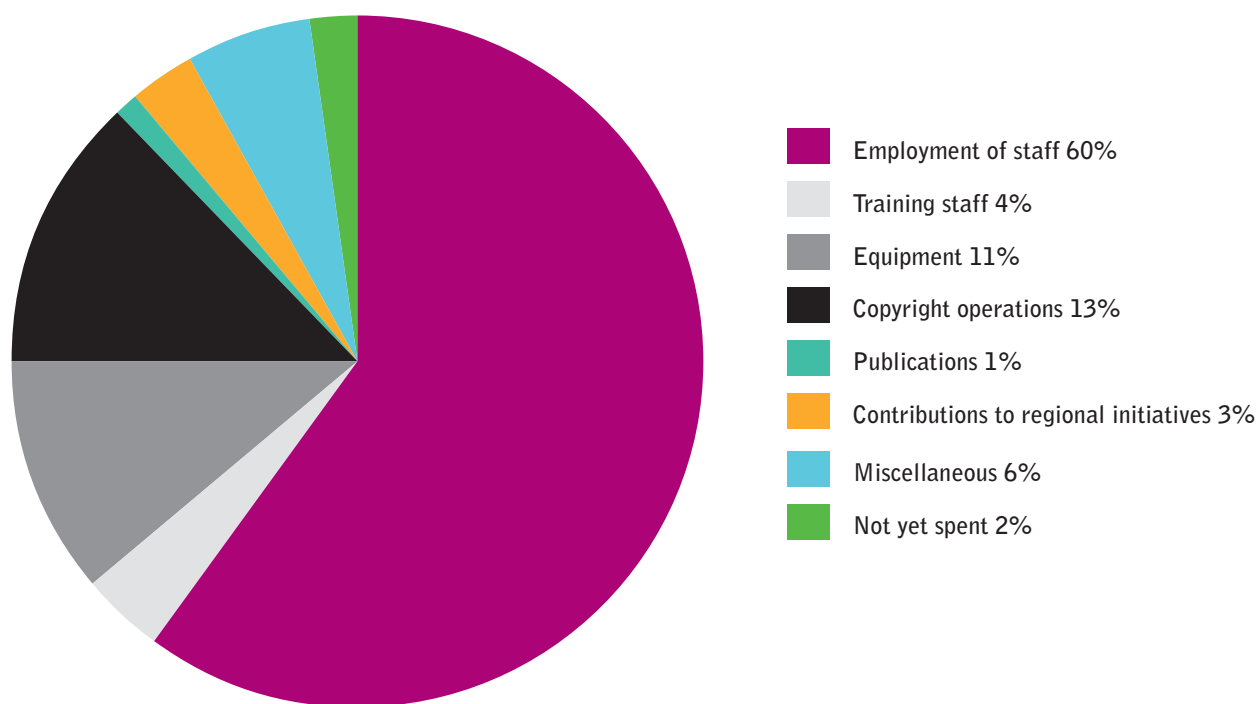
Copyright Designs and Patents Act 1988, Section 107 Funding

Part 1 – Funding received and areas of spending

In the financial year April 2007 to March 2008, trading standards authorities throughout the UK were given additional funding to combat copyright offences under Section 107 of the Copyright, Designs and Patents Act 1988. Surveys on how the money was spent were received from 105 authorities.

A total of £2,532,951.93 was received by 105 authorities. The average amount received was £24,123.35. The following chart demonstrates how the money was spent.

Areas of spending



The largest proportion (60%, £1,524,875.38) was spent on employment and staff costs. Of this, £726,452.37 was spent on wages (29% of the entire Section 107 funding), and £167,916 on overtime costs (7% of the entire Section 107 funding).

Over 10% of authorities spent money on staff overtime and weekend working. This was especially useful as activity to tackle key target areas took place out of normal working hours. For example, many stated that the money enabled them to carry out surveillance and raids at unlicensed premier league broadcasts in pubs and businesses or at car boot sales and weekend markets.

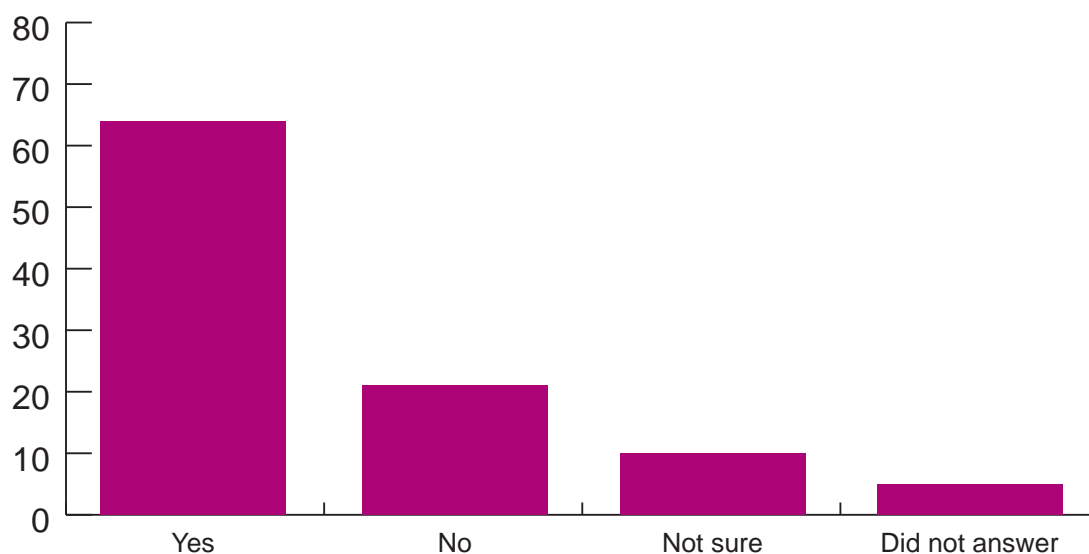
Several authorities, including the Vale of Glamorgan and Sandwell, said the funding had given them the opportunity to be proactive, not merely reactive, in IP protection. Cheshire said it could previously offer only a limited and reactive response to IP issues. Now it is proactive and comprehensive in both training of student police officers and monitoring car boot sales and other events.



Part 2 – Level of enforcement

The respondents were asked whether they thought there had been an increase in IP enforcement over the period that the new Section 107 funding had been made available. The graph below shows the results from the 100 respondents who had received funding.

Increase in IP enforcement?



Of the 100 authorities from whom responses were received and who had received funding, 64 said that there had been an increase in IP enforcement, 10 said they were not sure or it was not clear whether there had been an increase in enforcement, 21 said there had not been an increase in enforcement and 5 did not answer.

Of those that said that there had not been an increase, three said they anticipated an increase in enforcement in the future when the benefits of the funding filtered through; one said the effects of the money had not yet been felt; six commented that the amount was not enough to take on additional staff, contribute to a regional fund or initiate a similar large scale project; six did not offer a reason; three said the funding was used to offset other budget cuts; two said they had put their resources towards other areas.

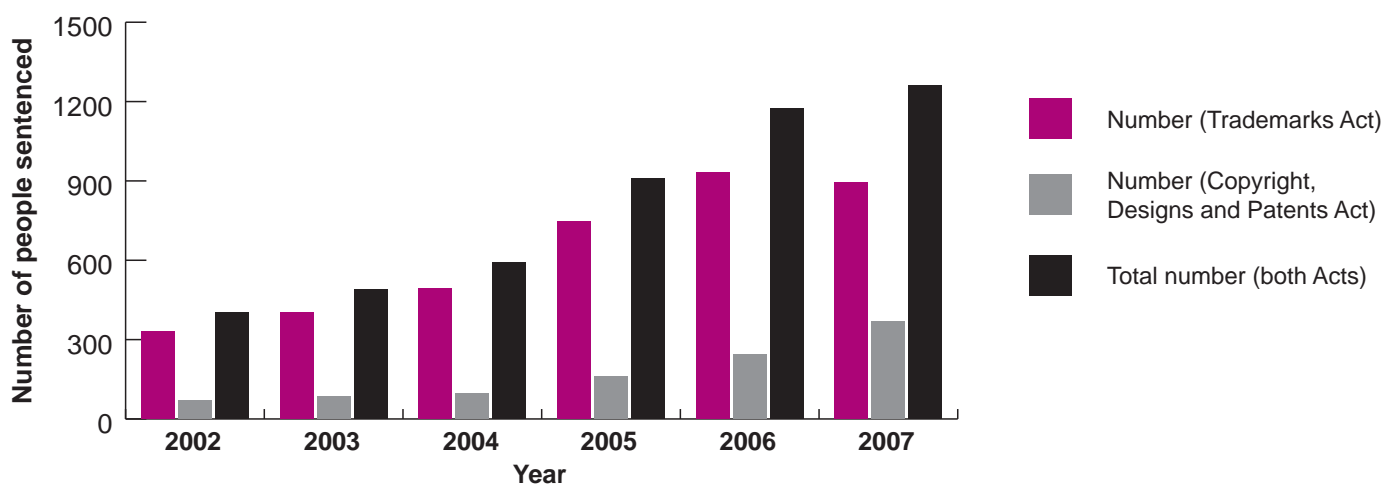
Sentencing statistics

Figures provided by the Ministry of Justice³⁷ show that the number of people sentenced under the Trade Marks Act and the Copyright, Designs and Patents Act has increased sharply in recent years.

The following table shows the number of people sentenced under each act between the years 2002 and 2007.

Number of people sentenced

Year	2002	2003	2004	2005	2006	2007
Number (Trademarks Act)	331	404	493	748	932	893
Number (Copyright, Designs and patents Act)	71	85	98	160	243	367
Total number (both Acts)	402	489	591	908	1175	1260



Over the same period, the severity of the sentence given has also increased. The table overleaf shows the number of people dealt with by immediate custody over the same period.

³⁷ Source: Ministry of Justice, February 2009

Number of immediate custodial sentences imposed

Year	2002	2003	2004	2005	2006	2007
Number (Trademarks Act)	23	21	71	146	248	218
Number (Copyright, Designs and Patents Act)	2	1	18	39	58	50
Total number (both Acts)	25	22	89	185	306	268

PoCA Seizure Statistics

The Proceeds of Crime Act (PoCA) is used to confiscate assets from criminals operating at the top level of crime, including IP crime. According to Home Office figures, a total of £135.7 million was recovered in the financial year 2007-8 from all crimes. Each year has increased steadily from the preceding year, as the following information demonstrates.

Year	Amount seized under PoCA (in million £)
2003-4	54.5
2004-5	84
2005-6	96
2006-7	125.36
2007-8	135.7



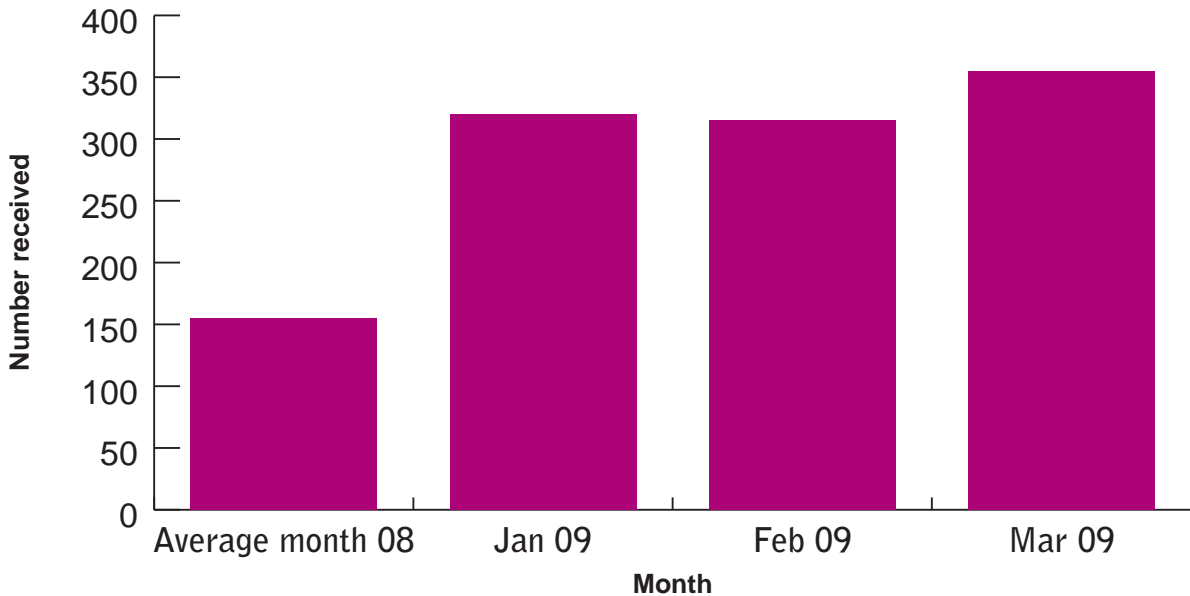
Source: Home Office



Intellectual Property Office

The Intellectual Property Office houses and runs the national Intellectual Property Intelligence Database (IPID). The database is managed by a unit of specially trained staff in the intelligence hub within the Intellectual Property Office. Intelligence is fed in by enforcement authorities and relevant industry bodies. Enquiries can be sent in by enforcement authorities and any industry body who have signed a memorandum of understanding with the office. Relevant intelligence is then shared with them to assist investigations into IP crime when appropriate.

The following chart shows how dramatically the amount of intelligence received by the hub has increased in 2009 compared with the monthly average for 2008.



Source: Intellectual Property Office Intelligence Hub





Annex 2 – IP Crime Data 2007

The last IP Crime Report was published in December 2007 which included IP Crime data from 2006. Previously, the reporting period was from January to December but it was found that many contributors would find it easier to report from March to April - following the financial year.

This interim report will cover IP crime data from 2007 as a result of the change in approach and will be included as an annex to the 2008/09 report.

The data contained in this report comes from a variety of sources, including Government, industry and enforcement agencies and the sources are referenced, where appropriate, in the report. The responsibility for the data remains with the respective originators and any questions concerning data collection or methodologies deployed should be directed to the originators.



The UK Perspective

This section includes market research carried out by IPSOS¹ on film piracy, IP crime seizure figures from industry and the Northern Ireland Organised Crime Task Force and Court statistics from England & Wales and Scotland.

Research

In November 2007 IPSOS published the fifth wave of their national survey on digital and physical video piracy in the UK². The main objectives are to assess the scale and impact of video piracy in the UK, and to get a better understanding of the motivations and behaviour of the people who engage in it.

The tables below show the average number of film titles which those surveyed said that they had viewed, possessed or used in each year and how the total number of titles pirated has changed from 2006 to 2007. Both tables show the average figure for the UK based on the results from the sample.

The survey looks at three types of piracy:

- Physical piracy: buying counterfeit or home copied DVDs
- Digital piracy: electronic distribution (downloading/streaming) from unofficial sources
- Secondary piracy: Borrowing or viewing an illegal copy – as opposed to making or buying one

Fieldwork took place in November 2007. The sample was consistent with earlier IPSOS studies with 2000 adults (aged 15 or above) interviewed as part of the IPSOS Capibus study. The sample is nationally and regionally representative and is matched to the previous fieldwork, ensuring direct comparability in the results.

¹<http://www.ipsos.com>

²IPSOS (November 2007) 'Digital & Physical Piracy in GB' Available at: http://www.ukfilmcouncil.org.uk/media/pdf/g/m/Ipsos_Piracy_UK_2007.pdf

The table below shows the average number of pirated film titles **possessed** or **used** by individuals. The average number of copies produced through burning has decreased whilst all other forms of piracy are on the increase.

	2006 (average number per person)	2007 (average number per person)	Difference (average number per person)
Counterfeit	9.3	11.0	+1.7
Purchased Home Copied	7.1	8.1	+1.0
Downloading	14.8	14.9	+0.1
Burning	6.3	4.9	-1.4
Borrowed	6.6	8.1	+1.5
Viewed (Pay per view)	6.8	12.4	+5.6
On Memory Card/ via e-mail	n/a	11.1	n/a
Via streaming (Watching via the internet)	n/a	15.6	n/a

The following table shows the total number of film titles pirated and the difference between 2006 and 2007. The estimated total number of counterfeit copies has increased by over 50%.

	2006	2007	Difference
Counterfeit	32,550,000	49,500,000	+52%
Home Copied	10,650,000	12,150,000	+14%
Downloading	44,100,000	52,150,000	+18%
Borrowed/ Viewed	87,000,000	112,500,000	+29%
Total	174,300,000	226,300,300	+30%

Impact of Piracy: Film and TV series

Respondents who stated that they had been involved in the activities defined in the previous table were then shown a list of thirty current films and thirty TV series. Respondents were then asked whether they had seen any of the titles in the last 12 months. Those who had seen one or more titles (film and TV) were then asked about these titles in detail:

- When they viewed
- How they would have viewed if they had not seen an unofficial copy
- How likely they were to have viewed an official copy if not seen unofficially

It should be noted that the base figure (number of relevant respondents) was low in relation to TV series. The responses were then used to calculate the estimated loss to the industry based on the assumed price of the viewing method (detailed below).

The table below outlines the total financial impact of piracy in relation to film and TV series.

	Estimated Loss to Industry (£M)				
	Total 2006	Total 2007	Physical Piracy	Digital Piracy	Secondary Piracy
Cinema	102	88	36	7	45
DVD sales	300	258	48	77	133
Rental	28	58	14	2	42
Pay Per View	11	8	1.5*	1.5*	5
Official downloads	15	53	n/a	53	n/a
Live streaming	2	22	5	11	6
Total loss 2007	459	486	103	152	231

*Value as near an approximation as the source tabulation will allow

The table below outlines the assumptions used in calculating the losses in the previous table.

	2006	2007
Cinema ticket	£4.87 (Source UK Film Council)	£5.07
New Release DVD	£12.96 (Film), £21.25 (TV) (Source TNS)	£12.21 (Film), £21.11 (TV)(Source TNS)
Catalogue DVD	£7.29 (Film), £17.44 (TV) (Source TNS)	£6.46 (Film), £17.11 (TV) (Source TNS)
DVD Rental	£3.11 (Film/TV) (Source BVA)	£3.11 (Film/TV)
Pay Per View	£3.50 (Film) (estimate)	£2.00- £3.50 (used £3.00) (Film)
Download	£10- £17.99 (used £14) (Film) (estimate)	£9.99- £19.99 (used £14) (Film)
Live streaming	£5.00 (TV) (estimate)	£21.99 (TV)

Industry Figures

Anonymous Contributions

Two brand industry contributors have supplied anonymous statistical information for the calendar year 2007. These figures relate to seizures of counterfeit versions of their product by enforcers.

The figures in the first table relate to counterfeit product. The number of items seized is the number of units, for example number of actual razor blades (not packs), number of bottles, etc, and the value (£) is the price at which the goods are sold to the retailer. This is not the recommended retail price (RRP).

Contributor 1

Category	No. Of Items Seized	(£) Value
Razors & Blades	255,396	271,370.16
Batteries	259,776	203,979.40
Oral Care	9,684	9,684.00
Fine Fragrances	13,824	483,840.00
Hair Care	161	322.00
		969,195.56

The values for potential losses in the second table are calculated using the RRP of the genuine article.

Contributor 2

	Sweatshirts	T-Shirts	Shirts	Fleeces	Jackets	Jumpers	Polo Shirts
2007 Units	24,554	13,293	126	49	336	318	255
2006 Units	20,582	31,273	18	26	491	223	214
Total potential lost revenue 2007	£1,227,430	£265,860	£6,300	£4,165	£79,440	£15,980	£11,475
Total potential lost revenue 2006	£1,029,100	£625,460	£900	£2,210	£118,330	£11,290	£9,630

	Trousers	Boots	Baseball caps	Shorts	Socks	Labels	Shoes	Other
2007 Units	19,729	31,698	1	167	489	12,000	265	227
2006 Units	8,500	8,405	4,404	290	793	17,800	134	33
Total potential lost revenue 2007	£1,182,185	£3,770,280	£20	£4,175	£4,890	£60,000	£22,525	£11,350
Total potential lost revenue 2006	£509,810	£1,001,870	£110,100	£7,250	£7,930	£89,000	£11,390	£1,650

FACT Seizure Figures and Analysis

The Federation Against Copyright Theft (FACT) details figures for the number of pirated goods they seize each year. The figures below relate to the number of individual items seized.

	Number of units seized per year							
	2000	2001	2002	2003	2004	2005	2006	2007
VHS	98371	136871	83387	87462	11067	2520	2205	1106
DVD	9245	89723	337617	1618203	2391398	804162	142214	115021
DVD-R	0	0	93995	195256	538943	1273120	1404681	2707111
VCD	46658	87337	164499	126810	43874	743	1188	211
TOTAL	154274	313931	679498	2027731	2985282	2080545	1546895	2823449

Notes:

- DVD = discs manufactured using commercial plants
 DVD-R = discs burned using DVD burners or PCs
 VCD = video disc
 Total includes all seized product
- The totals from 2005 onwards are lower because of the reduced quantity of Customs seizures. This is due to the impact of the closure of large scale manufacturing plants in the Far East. The majority of product seized in the UK is now manufactured/produced in the UK.
- FACT is now working towards more intelligence based investigations rather than just targeting the low-end sellers. The aim is to disrupt the manufacture and supply and then look to seize criminals' assets.
- Criminals are now carrying less pirate 'stock' – street sellers carry on average 150-200 per person and market/ car boot sellers carry less to protect them should their stall get raided. They will re-supply over the course of a day or burn to order for later collection.

Source: FACT website

Available at: http://www.fact-uk.org.uk/site/media_centre/dvd_seiz_0405.htm

The Business Software Alliance

The Business Software Alliance (BSA) and International Data Corporation (IDC) published their fifth Annual Global Study of Software Piracy in May 2008.

The study shows that the amount of illegal or unlicensed software on PCs in the European Union (EU) fell by 1% this year to 35%. Losses to the industry as a result of software piracy in the EU topped \$12 billion (£6 billion).

The amount of illegal software in the UK shows a similar downward trend (falling from 27% to 26%) over the same period. This reduction follows a significant investment by the BSA in education and enforcement programmes over the last year in the UK. They embarked on dedicated regional programmes the first of which targeted Glasgow and its specific piracy problems.

The BSA reports that “The fact remains that an unacceptable level of UK organisations still flout software licensing regulations. By using software illegally, businesses are undermining the software industry- a massive revenue generator for the UK- and also putting themselves at risk of losing data and incurring both financial penalties and serious damage to reputation.”

European Union	Piracy Rates					Estimated Losses				
	2007	2006	2005	2004	2003	2007 (\$M)	2006 (\$M)	2005 (\$M)	2004 (\$M)	2003 (\$M)
Austria	25%	26%	26%	25%	27%	\$157	\$147	\$131	\$128	\$109
Belgium	25%	27%	28%	29%	29%	\$223	\$222	\$257	\$309	\$240
Bulgaria	68%	69%	71%	71%	71%	\$63	\$50	\$41	\$33	\$26
Cyprus	50%	52%	52%	53%	55%	\$14	\$12	\$13	\$9	\$8
Czech Republic	39%	39%	40%	41%	40%	\$161	\$147	\$121	\$132	\$106
Denmark	25%	25%	27%	27%	26%	\$193	\$183	\$199	\$226	\$165
Estonia	51%	52%	54%	55%	54%	\$20	\$16	\$18	\$17	\$14
Finland	25%	27%	26%	29%	31%	\$160	\$149	\$156	\$177	\$148
France	42%	45%	47%	45%	45%	\$2,601	\$2,676	\$3,191	\$2,928	\$2,311
Germany	27%	28%	27%	29%	30%	\$1,937	\$1,642	\$1,920	\$2,286	\$1,899
Greece	58%	61%	64%	62%	63%	\$198	\$165	\$157	\$106	\$87
Hungary	42%	42%	42%	44%	42%	\$125	\$111	\$106	\$126	\$96
Ireland	34%	36%	37%	38%	41%	\$106	\$92	\$93	\$89	\$71
Italy	49%	51%	53%	50%	49%	\$1,779	\$1,403	\$1,564	\$1,500	\$1,127
Latvia	56%	56%	57%	58%	57%	\$29	\$26	\$20	\$19	\$16
Lithuania	56%	57%	57%	58%	-	\$37	\$31	\$25	\$21	\$17
Luxembourg	21%	-	-	-	-	\$16	-	-	-	-
Malta	46%	45%	45%	47%	46%	\$7	\$7	\$5	\$3	\$2
Netherlands	28%	29%	30%	30%	33%	\$502	\$419	\$596	\$628	\$577
Poland	57%	57%	58%	59%	58%	\$580	\$484	\$388	\$379	\$301
Portugal	43%	43%	43%	40%	41%	\$167	\$140	\$104	\$82	\$66
Romania	68%	69%	72%	74%	73%	\$151	\$114	\$111	\$62	\$49
Slovakia	45%	45%	47%	48%	50%	\$54	\$47	\$44	\$48	\$40
Slovenia	48%	48%	50%	51%	52%	\$39	\$36	\$33	\$37	\$32
Spain	43%	46%	46%	43%	44%	\$903	\$865	\$765	\$634	\$512
Sweden	25%	26%	27%	26%	27%	\$324	\$313	\$340	\$304	\$241
United Kingdom	26%	27%	27%	27%	29%	\$1,837	\$1,670	\$1,802	\$1,963	\$1,601
EU	35%	36%	36%	35%	37%	\$12,383	\$11,003	\$12,048	\$12,151	\$9,786
Total World-wide	38%	35%	35%	35%	36%	\$47,809	\$39,698	\$34,482	\$32,778	\$28,803

Source: Fifth Annual BSA and IDC Global Software Piracy Study, May 2008

Available at: http://global.bsa.org/idcglobalstudy2007/studies/2007_global_piracy_study.pdf

The Government Enforcement Community

The Northern Ireland Organised Crime Task Force

The Northern Ireland Organised Crime Task Force published its eighth Annual Report and Threat Assessment in June 2008, where the main focus of activity is to confront organised crime networks, concentrating on serious illegal activities.

They embarked on a successful advertising campaign during Christmas 2007 which highlighted the link between buying fake goods and organised crime. The emphasis of the campaign was to demonstrate how funding criminal gangs through the purchase of counterfeit goods causes harm in communities.

The table below shows the quantity of goods seized and their estimated street value.

Police Service of Northern Ireland: Counterfeit Goods Seized in 2007		
Product	Quantity	Value
Film	58,344	£867,126
Music	33,559	£436,267
PS2/Xbox	7,312	£292,480
Cigarettes	587,460	£152,739.60
Hand Rolling Tobacco	737	£8,844
Clothes	15,352	£854,800
Trainers	1,466	£146,600
Washing Powder	28	£70
Perfumes/ Sunglasses	2,083	£208,300
Drink	132	£1,716
Computers	86	£73,100
Burners	187	£14,960
Batteries	53	£265
Watches	222	£22,200
Equipment	988	£903,200
Total Value of Goods Seized 2007		£3,982,667.60

Source: 2008 Annual Report and Threat Assessment, Organised Crime Task Force, June 2008
Available at: <http://www.octf.gov.uk/uploads/publications/27620%20FINAL.pdf>

Court IP Statistics on IP

Court actions

In September 2008 the Ministry of Justice published Judicial and Court statistics. The following table shows the number of intellectual property claims and proceedings issued by the Chancery Division (London) between 2003 and 2007.

Intellectual Property	Number of cases heard				
	2003	2004	2005	2006	2007
Confidential Information	81	5	11	3	21
Passing off and trade marks	212	66	105	50	118
Patents and registered designs ³	238	153	54	57	111
Copyright and design right ³	306	195	148	120	172

Available at: <http://www.justice.gov.uk/docs/judicial-court-stats-2007-full.pdf>

³These matters are dealt with in the Patents Court

Sentencing

The following information has been received from the Scottish Executive detailing the penalties handed down by courts in Scotland for the financial year 2006/07

The tables give comparison for the previous three financial years of the number of people sentenced and fined, the length of the sentence and the amount of the fine.

Persons given a custodial sentence for selected offences in Scottish courts

	2003-04			2004-05			2005-06			2006-07						
	N	Sentence in Days			N	Sentence in Days			N	Sentence in Days			N	Sentence in Days		
		Mean	Min	Max		Mean	Min	Max		Mean	Min	Max		Mean	Min	Max
a:Trademarks Act 1994 sect 92	-	-	-	-	2	289	122	456	7	300	28	731	12	194	61	456
b:Copyright Design and Patents Act 1988	1	365	365	365	2	259	152	365	-	-	-	-	-	-	-	-

Persons given a fine (£) for selected offences in Scottish courts

SCRO Charge	2002-03			2003-04			2004-05			2005-06			2006-07							
	N	Amount of Fine (£)			N	Amount of Fine (£)			N	Amount of Fine (£)			N	Amount of Fine (£)						
		Mean	Min	Max		Mean	Min	Max		Mean	Min	Max		Mean	Min	Max				
a:Trademarks Act 1994 sect 92	14	698	200	2,000	16	561	100	2,000	29	714	100	3,000	19	688	100	2,250	31	2,098	170	45,000
b:Copyright Design and Patents Act 1988	2	400	200	600	-	-	-	-	7	536	200	1,000	14	606	100	2,500	13	297	150	500

Key: SCRO = Scottish Criminal Records Office
N = Number of people sentenced / fined

Source: Ministry of Justice

The European Perspective

The European Commission

The European Commission Taxation and Customs Union published a report on 'Community Customs Activities on Counterfeit and Piracy, results at the European Border 2007' in May 2008 which detailed customs activity in relation to counterfeiting and piracy.

The report shows a decrease in the total number of articles seized from last year's figure of 128 million to 79 million this year. This is due to a growth in the number of seizures which involve small quantities of counterfeit and pirated articles. This may be due to the increase in internet sales and the fact that counterfeiters are taking fewer risks by sending smaller quantities per shipment. Goods that are transported via air/ express courier and mail transport represented almost 70% of customs interventions.

Cigarettes and clothing continue to represent a large proportion of seizures (35% and 22% respectively). The increase in products that pose a danger to consumers are highlighted in the report, notably medicines, electrical equipment and personal care products.

The amount of seizures is at their highest with an increase from 37,000 in 2006 to 43,000 in 2007 - representing a 17% growth.

Most sectors show substantial increases over 2006. In particular:

- Cosmetics and personal care- +264% (originating from Georgia and Turkey)
- Toys- +98%
- Medicines- +51%

China remains the main source of counterfeit goods with almost 60% of all articles seized coming from there.

Product Sector	Number of cases	% of total number of seizures	Number of articles	% of total number of seizures	2006-2007
1. Food stuffs, beverages	64	0.15%	1,924,896	2.43%	62%
2. Cosmetics, personal care products	1,504	3.44%	6,103,171	7.72%	264%
3. Clothing, accessories	26,670	61.07%	17,783,130	22.49%	24%
a) Sportswear	3,255	7.45%	1,441,502	1.82%	19%
b) Other clothing (ready to wear)	11,030	25.26%	5,025,682	6.36%	16%
c) Clothing accessories	6,547	14.99%	6,290,642	7.96%	29%
d) Shoes	5,837	13.37%	5,025,304	6.35%	
4. Electrical equipment	2,097	4.80%	3,648,348	4.61%	22%
5. Computer equipment	896	2.05%	246,236	0.31%	62%
6. CD, DVD, cassettes	2,502	5.73%	3,298,813	4.17%	-78%
7. Jewellery, watches	4,148	9.50%	1,787,016	2.26%	89%
8. Toys, games	744	1.70%	4,685,037	5.92%	98%
9. Other products	2,583	5.92%	8,357,699	10.57%	-37%
10. Cigarettes	418	0.96%	27,161,056	34.35%	-63%
11. Medicines	2,045	4.68%	4,081,056	5.16%	51%

Source: Report on Community Customs Activities on Counterfeit and Piracy, Results at the European Border- 2007, European Commission Taxation and Customs Union, 2008

Available at: http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics2007.pdf

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