



ALLIANCE AGAINST INTELLECTUAL PROPERTY THEFT

RESPONSE TO  
'THE LAW ON DAMAGES' CONSULTATION

**July 2007**

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## 1. INTRODUCTION

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The Alliance welcomes the opportunity to respond to the Department of Constitutional Affairs (now Ministry of Justice) Consultation on the Law on Damages. Damages awards are a key component in every rights holder's fight against counterfeiting, piracy and other forms of infringement. It is the Alliance's view that the current legal framework for the award of such damages is outdated and does not meet the needs of the UK's 21<sup>st</sup> century creative economy.

The Gowers Review was instigated with a view to ensuring that the UK's "intellectual property law framework" – the mix of substantive, procedural and practical laws and policies that touch on intellectual property – is "fit for purpose" for the needs of the creative economy in the digital age. As discussed in the recent Gowers Review, and in the Culture, Media and Sport Committee Report, business models and technologies for distributing, licensing and protecting copyright-based material have radically changed in response to the ever greater digital distribution of creative materials - often referred to as the "digital revolution". The digital revolution has brought incredible benefits to consumers of creative content – including music, audiovisual and software - worldwide. Consumers can access, use and enjoy a huge library of creative content at a time, and in a manner, that they choose.

Unfortunately, the digital revolution has also resulted in an environment within which the unlawful copying, use and distribution of creative materials has increased to unprecedented levels. According to the recent report from the Culture, Media and Sport Select Committee, "*The scale of piracy is so vast that there is a danger of becoming inured to such activity and treating it as routine*"<sup>1</sup>.

Similarly, the trade in branded goods on the internet now offers unparalleled consumer choice and new sales outlets. However, it has also created the greatest challenge yet for trade mark holders. The Office of Fair Trading's market study of Internet Shopping scrutinised auction sites and recently concluded that further investigation is required in addressing the problem of counterfeits<sup>2</sup>.

This revolution has caused, and continues to cause, huge financial losses for rights holders, and acts as a ball and chain on the development of the creative and industrial economies. In this context, traditional damages calculations have become problematic, and in certain instances, irrelevant, and conspire to both encourage infringement and deter rights owners from enforcing their rights.

Much, if not all, of the substantive and common law that concerns the award of damages predates the development of the modern, digital based creative economy, and, as a result,

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<sup>1</sup> Culture, Media and Sport Committee *New Media and the Creative Industries* Fourth Report of Session 2006-07 p43

<sup>2</sup> [http://www.offt.gov.uk/advice\\_and\\_resources/resource\\_base/market-studies/internet](http://www.offt.gov.uk/advice_and_resources/resource_base/market-studies/internet)

anomalies, deficiencies and inequities have become increasingly apparent, particularly for copyright interests.

This consultation provides the ideal springboard for these problems to be fixed, and thereby ensure that the objectives of the Gowers Review are realised.

**In summary, the Alliance makes the following requests to government in response to the Consultation Paper:**

- \* **To recognise that civil actions can play a valuable role in regulating conduct which is against the public interest.**
- \* **To acknowledge that the current out-of-date damages regime fails to discourage counterfeiting and piracy or to protect the UK's vital creative economy.**
- \* **To follow the lead of Canada, the US and other countries in introducing "statutory" or pre-established damages, to allow courts to award damages based on a straightforward monetary scale or a multiple of the legitimate retail price.**
- \* **In addition, to follow the example of Ireland and amend section 97 of the Copyright, Designs and Patents Act 1988 explicitly to provide that the court may award exemplary or aggravated damages or both.**
- \* **To make similar provision for cases of wilful trade mark infringement.**

## **2. INTERNATIONAL OBLIGATIONS**

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The WTO Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPS") requires that members provide enforcement procedures that "permit effective action" against infringement of intellectual property rights covered by the agreement, including "*remedies which constitute a deterrent to further infringements*"<sup>3</sup>. The EU Directive on the enforcement of intellectual property rights (2004/48/EC) (the "Enforcement Directive") echoes the TRIPS obligation. To satisfy the obligations imposed by TRIPS and Community law, many EU Member States have adopted strong rules on damages for intellectual property infringements. In Ireland, for example, aggravated and exemplary damages are available. In other markets, including Austria, the Czech Republic, Greece, Poland and Romania, rights holders can recover multiple damages. Lithuania provides for a form of statutory damages. Unfortunately, these remedies are not available in the UK.

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<sup>3</sup> WTO Agreement on Trade Related Aspects of Intellectual Property Rights Article 41(1)

### **3. CIVIL REMEDIES: PAST AND PRESENT**

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In the last 10 years, the role of civil proceedings has been radically altered. Conduct which in the 1980s would have been addressed, if at all, by criminal action is now the subject of specifically tailored civil sanctions, such as Anti-Social Behaviour Orders. At the same time, in EC legislation and in international agreements, the need for civil measures to have a deterrent, rather than a purely compensatory, effect has repeatedly been recognised. In short, the view that civil proceedings cannot be used for regulatory purposes has become outmoded.

The Alliance therefore welcomes the government's recognition that "tort law has a regulatory effect on people's behaviour" and that "[d]amages are a way to ensure that a negligent person pays the full costs generated by his or her unlawful act"<sup>4</sup>. Civil remedies, including damages, should be used not only to achieve compensation for injured parties, but also to deter future illegal acts.

The huge growth of digital piracy has compounded the burdens that the current system places upon IP rights holders. A simplistically compensatory approach to damages has the effect of preventing full compensation, as the steps taken to limit the award to pure compensation inevitably ensure that costs of the illegal conduct remain with the injured party. Such an approach provides an incentive to infringement and so also fails to achieve the regulatory objective of the civil justice system that is now recognised.

Current problems with the damages regime in relation to cases involving infringement of intellectual property rights can be traced back to the previous occasion when changes were made to rectify problems with the regime.

Prior to the 1988 Copyright, Designs and Patents Act (CPDA), a remedy of conversion damages existed in copyright law. This allowed the sale of an infringing article to be considered as the sale of an article that belonged to the rights owner – in effect stating that the article had been stolen. This traditional position recognised the principle that the intellectual property comprised by the carrier, be it book, disc or tape, was the property of the rights holder. This measure of damages was abolished by the 1988 Act, which nonetheless retained the possibility of an award of additional damages. Additional damages have sometimes proved a valuable tool in cases of flagrant infringement, but there are differing opinions about their scope which, currently at least, limit their effectiveness or predictability.

The Alliance does not agree with the assertion made in the consultation document that SI 2006/1028, implemented in order to give effect to the Article 13 of the Enforcement Directive and its requirement for member states to have 'effective, proportionate and dissuasive' civil remedies, fully addresses this requirement. In effect, the SI leaves the courts free to continue to apply their existing approach. Among other things, the SI requires that courts consider both profits lost and 'unfair profits' in awarding damages. These are already covered by s. 97 CDPA – and, as explained further below, a subsequent

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<sup>4</sup> 'The Law on Damages' Consultation Paper CP 9/07 pp8-9

licence purchase, for example, may be deemed adequate to compensate for lost profits. This leaves the rights holder with the ability to recover ‘unfair profits’ – but proving such profits can be exceedingly difficult in many cases, especially where the ‘profit’ is a saved cost.

The SI also contemplates, as an alternative, an award grounded on the basis of royalties that would have been due had the defendant obtained a licence. This is likewise inadequate. Under the language of the SI, the damages awarded could be a small fraction of the licence fee; moreover, where the infringer purchases a licence subsequent to the infringement, there is nothing to suggest that further damages would be available. The SI also says that such awards should be made ‘where appropriate’—it is not, unfortunately, at all clear whether it will be ‘appropriate’ to make such an award if the infringer has acquired a licence post infringement.

The SI needs to be supplemented with amendments to the relevant legislation (CDPA, Trade Marks Act), explicitly widening the powers of the courts to award remedies that are, in the words of the Directive, “effective, proportionate and dissuasive”.

#### **4. WHY REFORM IS NEEDED**

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Deterrent damages for infringement are necessary to create an environment in which creative industries can flourish.

Infringement of intellectual property is a highly lucrative activity and hugely damaging to the businesses or individuals whose intellectual property is being infringed. Research conducted by the audio-visual sector estimates that 29% of the British population watch illicit films and TV content and the annual criminal gain from video and film piracy is £169 million<sup>5</sup>, while for music piracy it is between £87 and £99 million annually<sup>6</sup>. The corresponding losses to these respective industries are £459 million for audio-visual and over £500m annually for music. The UK software sector is similarly affected with current estimates suggesting that over 1 in 4 copies (27%) of software in use in the UK is pirated, resulting in a loss to industry of over £800 million annually. Research conducted by Alliance member, the Business Software Alliance (BSA), suggests that a 10 point drop in the UK piracy rate would add nearly £10 billion to the UK economy and create over 30,000 new jobs.<sup>7</sup> A recent consumer survey for the Alliance in the clothing and footwear sector revealed that over £3 billion is put into the pockets of criminals each year in the UK alone.<sup>8</sup>

To enable industry to address this problem, UK law needs to provide for the making of civil damages awards that serve as a visible deterrent to the many thousands of infringers that otherwise breach copyright and trade mark laws with apparent impunity.

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<sup>5</sup> Research conducted by IPSOS in November 2006 into Digital and Physical Piracy in Great Britain

<sup>6</sup> Research conducted by IPSOS in Q1 2006

<sup>7</sup> Business Software Alliance/IDC Global Software Piracy Study 2006

<sup>8</sup> Ledbury Research April 2007

### ***Technological changes***

Technological developments over previous years have dramatically changed the landscape in which infringement is possible. With business models and technologies changing the way in which content is distributed, the licensing and protection of such content has also changed. Previous methods of calculating damages have become outdated and problematical, particularly in cases of copyright infringement. This has resulted in some viewing the current regime as an incentive to infringe and a disincentive to enforce rights.

### ***End-user piracy***

A clear example of this can be seen in the issue of end-user piracy of business software applications, although the problems associated with this activity are equally applicable to any content that is made available on the basis of mass licensing (for example, music, audiovisual or text download). “End-user piracy” is a general term that describes the practice of installing and using copyright-protected software or the copying of books, journals or magazines without acquiring the appropriate licence. This constitutes copyright infringement – but the problem lies in the remedy available to the copyright owner. Damages in copyright infringement matters are generally awarded (as they are in other intellectual property matters) according to the principles outlined in the *General Tire* House of Lords case. This ruling allows for the rights holder to be put, by an award of damages, back in the position that it would have been in had the infringement not been committed. In cases of software infringement this could simply mean paying for the licence that should have been purchased in the first place – providing little or no deterrent.

Where content is distributed by the copyright owner via a distribution channel, the loss will be, at a minimum, its “distribution royalty” charged to its distributors. However, this sum is likely to be less than the licence fee that the unlicensed user should have paid – which means that, even after refusing to buy a licence, the damages that the user has to pay may be less than the licence fee it should have paid. Either way, current damages laws mean that there is simply no deterrent to end-user piracy, causing significant harm to the UK economy.

This illustrates how modern forms of digital content distribution mean a corresponding modern approach to damages is required. To put it bluntly, the game has changed and therefore the remedy needs also to change.

## **5. THE CASE FOR PRE-ESTABLISHED DAMAGES**

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The clearest fix for this problem would be the introduction of “statutory” or pre-established damages. If potential infringers were faced with the possibility of having to pay the full retail price of a legitimate article, or some multiple of that price, this would

have an important role to play in deterring infringement, as the economic incentive to infringe would be removed.

Article 13(2) of the EC Enforcement Directive allows for this, giving Member States the ability to apply a system of pre-established, or “statutory,” damages. Such provisions (which either impose a fixed range per work or copy of work infringed, or multiple damages) are a familiar and effective remedy in infringement actions in the US, Canada and Israel. As mentioned above, Lithuania offers an example within the EU of the monetary range approach (Art. 79(6), Law on Copyright and Related Rights). Austria, the Czech Republic, Greece, Poland and Romania provide examples of multiplier approaches. Such provisions allow the courts to use their judgment to assess appropriate damages, unaffected by the evidential difficulties typically created by the pirate defendant.

Legislation should enable the judge to make an award within a specified monetary range, as in Canada and the US. Alternatively, the judge should be empowered to make an award based on the suggested retail price or domestic resale value of the legitimate product, subject to a maximum of three times such suggested price or value. The right holder should retain the option of proving his actual loss.

### *Safeguards*

This does not mean that damages sought would be unreasonable or have no basis in the facts of the case. The case for the awarding of damages beyond merely lost earnings can be clearly established by statute, made subject to a requirement that these must be awarded ‘having regard to all the circumstances of the case’, and be protected against unreasonable demands by not being automatic but remaining at the courts’ discretion ‘as the justice of the case may require’.

## **6. PRE-ESTABLISHED DAMAGES IN COUNTERFEITING CASES**

Statutory damages have been introduced in many countries to address the well-known difficulties of copyright owners in establishing damages. However, trade mark owners face exactly the same problems in cases concerning counterfeiters. This is due to the fact that relevant evidence of prior production or sales is routinely unavailable.

Article 61 of the TRIPs Agreement recognises that wilful trade mark infringement is a criminal offence that calls for deterrent measures. In cases where the rights holder needs to take civil measures, counterfeiters are unlikely to retain records of their transactions or to assist the court in proving the amount of the claimant’s losses. To address these realities, trade mark owners would welcome the amendment of trade mark law to allow courts to award significant statutory damages against such counterfeiters.

## **7. THE CASE FOR ‘EXEMPLARY DAMAGES’**

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In addition to statutory damages, it is also vital that exemplary damages are introduced. As outlined above, the current damages regime provides no deterrent to IP theft and makes little impact on the significant profits being made. The ability to use damages as a deterrent would be a valuable tool to those fighting this activity and assist creators and manufacturers in protecting their rights, particularly given the ease with which illegal copies can now be produced. The Irish government accepted this case by enacting s. 128(3) of the Irish Copyright and Related Rights Act 2000, which provides that the court “may award aggravated or exemplary damages or both aggravated and exemplary damages”.

The contents of the consultation regarding exemplary damages illustrate the confusion that has set in over what should be a straightforward issue. Exemplary damages should already be available under the wording of Section 97(2) CDPA, which is drafted in broad terms. There is a conflict between current common law, which seeks to circumscribe the extent to which exemplary damages are available in copyright cases, and Section 97(2), which should make them available in all “appropriate cases”. There is an opportunity here to remove this confusion, but the approach outlined in the consultation document would simply perpetuate it.

This is because the consultation document equates exemplary damages with punitive damages. Although this is a common usage, there is an important distinction between punitive damages and exemplary damages. Exemplary damages are awarded to make an example of the defendant – to deter future illegal conduct by him or anyone else.

The judges who sit in the civil courts are by and large the same individuals who sit in the Crown Court, trying criminal cases. Given that the procedures of the civil courts are as subject to the requirements of the Human Rights Act as those of the criminal courts, there should be no sense that the civil courts are in some way inferior to the criminal and that a power to award exemplary damages would be used otherwise than in accordance with justice and due process.

The Ministry of Justice should take the opportunity to fix this problem now. In addition to pre-established damages, exemplary damages should be made available in all “appropriate cases”. Regulation of future conduct, not punishment, is the objective.

### ***Criminal vs Civil***

One of the main arguments put forward in the consultation document against introducing exemplary damages in cases of IP infringement is that:

“The Government’s view is that...the function of exemplary damages is more appropriate to the criminal law – the aim of the civil law should be to provide compensation for loss, not to punish the defendant”.<sup>9</sup>

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<sup>9</sup> ‘The Law on Damages’ Consultation CP9/07 p8

And that:

“Their [exemplary damages] availability in civil proceedings blurs the distinction between the civil and criminal law”<sup>10</sup>.

The Alliance strongly disagrees with these assertions. As to the first, not all illegal action is criminal - and rightly so - but there are many forms of anti-social and economically damaging illegal behaviour which ought to be deterred and prevented, even if they are not crimes. As to the second, the Alliance would argue that not only does this ‘blurring’ already exist, but that it is not detrimental to the delivery of justice. Rather it is a pragmatic response to the limited availability of resources for public authorities and the excessive burdens that criminal procedure places on those responsible for regulating illegal behaviour in society.

Such an argument, as put forward in the consultation document, also misstates the issue. Both the common law and CDPA-based copyright judgements already award damages beyond mere compensation in certain cases in order to deter the illegal behaviour in question. In fact Section 97(2) of the CDPA allows additional damages to be assessed having regard to the ‘flagrancy of the infringement’. This is a clear indication of the law seeking to deter the illegal behaviour. However, as outlined earlier in this submission, this provision is not operating effectively and therefore needs reform.

The Government has in recent years greatly expanded the use of civil justice for exemplary ends. This process has been designed to achieve specific policy objectives, with the expressed desire of encouraging a change in behaviour to deter people from a particular course of action.

Civil measures are now regarded as an important element in the control of crime and anti-social conduct. The Assets Recovery Agency has powers to recover proceeds of crime by civil action, even against acquitted defendants. Unruly behaviour by council tenants is the subject of domestic eviction proceedings. Disorderly behaviour is controlled by Anti-Social Behaviour Orders. Civil penalties, rather than criminal fines, are used to deal with some regulatory offences, such as illegal parking in certain areas. Libel and personal injury damages are similarly dealt with in the civil arena. Civil proceedings play a role in societal regulation inconceivable when *Rookes v Barnard* was decided.

The Alliance supports the Government in making use of the civil justice route in these ways. It believes that this same route should be available to businesses in helping the Government achieve its policy objectives in fighting IP theft.

The Alliance, therefore, believes it is nonsensical for the consultation document to assert that exemplary damages have no role in the civil justice regime. We urge the Government to extend exemplary damages so that such a deterrent can be used against those that engage in IP theft.

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<sup>10</sup> Ibid p78

## **8. SUPPORT FROM GOVERNMENT AND PARLIAMENTARY BODIES**

The inadequacies of the current damages regime, and its inability to act as a deterrent, are well-acknowledged across parliamentary and governmental bodies. Below is merely a selection of those who support the call for the damages regime to be used as a deterrent in cases of IP infringement:

- ***The Gowers Report of 2006***

“Damage awards should act as a disincentive to infringement”

The Report recommended that the Department for Constitutional Affairs (as the Ministry of Justice then was) seek further evidence to “**ensure that an effective and dissuasive system of damages exists for civil IP cases and that it is operating effectively**”. The Review clearly recognised that a deterrent element needed to be introduced into the damages regime for IP infringement.

- **The Culture, Media and Sport Select Committee Report into New Media and the Creative Industries**

“The deterrent effect of the present law in this respect is near zero: it should be substantial, as are some of the illicit profits being made”

- **Law Commission Report into Aggravated, Exemplary and Restitutionary damages 1997**

“Substantial number of consultees considered that exemplary damages do or could have a useful role to play in filling these gaps. They fulfil a practical need. We agree.”

“Legislation on exemplary damages would have the effect of ‘clarifying’ the law”.

- **The Whitford Committee on whose recommendations reform of the 1956 Act was based**

“It is our view that the provisions for exemplary damages should if anything be strengthened and that the power of courts to award additional damages if there has been a flagrant infringement should not be fettered by any requirement that the plaintiff must show some particular benefit which has accrued to the defendant or that the plaintiff must satisfy the court that effective relief could not otherwise be available. In the case of flagrant infringement the court should be left with a complete discretion to make such award of damages as may seem appropriate to

the circumstances, so that the existence of this provision will act as a deterrent if the existing deterrent of conversion damages is removed.” (§ 704, Cmnd 6732, cited in *Redrow Homes Ltd v. Bett Brothers Plc* [1998] UKHL 2).

- **The UK Film Council Report ‘Film Theft in the UK 2004’**

“Exemplary damages are paid as a punitive measure rather than compensating for actual loss in cases where, simply put, there has been some form of malicious intent behind the actions. Given that much organised piracy is carried out with a clear intent to reap a reward from another’s loss, the extension of the principle would appear logical and persuasive. Such a move would act as a disincentive by considerably increasing the financial risk to organised pirates.”

## **9. CONCLUSION**

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The Alliance strongly recommends the introduction of pre-established and exemplary damages for cases of intellectual property infringement.

Current remedies offered under the existing damages regime are ineffective and do not address the changing nature of IP infringement. Replacing 'additional' damages with 'aggravated and restitutionary' damages in the Copyright, Design and Patents Act 1988 is not the solution, given its unstable position in the law. A solution offering rights holders the ability to seek damages which act as a deterrent is clearly needed in order to stem the growing problem of IP infringement in the UK and address the damaging, corrosive effect it is having on UK industry and the UK economy.

This is an opportunity for the UK to provide a leading example for civil recovery in cases of IP theft. The Gowers Review stated that “DCA should...ensure that an effective and *dissuasive* system of damages exists for civil IP cases and that it is operating effectively.<sup>11</sup>” [Emphasis added.] These findings were accepted in full by the Government and the Alliance believes can only be properly implemented with the introduction of statutory damages for both trade mark and copyright cases.

The fact that the system for damages awards in the context of the 21<sup>st</sup> century digital revolution is inadequate is not a problem of the Ministry of Justice’s making. The Alliance urges the Ministry of Justice to implement meaningful and lasting change to the IP damages laws, which in turn will have lasting and substantial benefits to the UK's creative and industrial economies.

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<sup>11</sup> Gowers Review of Intellectual Property p101

## 10. APPENDIX 1

### RESPONSES TO RELEVANT CONSULTATION QUESTIONS

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*Q32 Do you agree that there is no need for legislation in relation to the law on restitutionary damages?*

We do agree and believe this is best left to the courts.

*Q33 Do you agree that legislation to confirm that the purpose of aggravated damages is compensatory and not punitive is unnecessary?*

Yes. We agree with the consultation's conclusion that there is sufficient clarity in the law at present to make such a statutory move unnecessary.

*Q34 Do you agree that legislation is not needed to clarify the interface between aggravated damages and damages for mental distress?*

It is not correct to consider that the whole field of aggravated damages is subsumed by damages for mental distress. Damages for injury to moral rights, for example, must be capable of going beyond mere distress, to compensate damaged honour and reputation. However, to the extent Article 13 of the EC Enforcement Directive has been effectively implemented, the courts now have the power to award such damages and no further amendment is necessary.

*Q35 Do you agree that in the Copyright, Design and Patents Act 1988 and the Patents Act 1977 the term 'additional damages' should be replaced by 'aggravated and restitutionary damages'?*

We strongly disagree that the term 'additional damages' should be replaced by 'aggravated and restitutionary damage' in the CPDA 1988. Neither aggravated nor restitutionary damages would address the ongoing problem of the current failure to provide a disincentive to potential infringers. The function of aggravated damages, as outlined in the consultation document, is compensatory and we agree that legislation confirming this is unnecessary.

So far as restitutionary damages are concerned, this is a controversial and unstable legal concept which covers the rare case where a gain has been acquired by the wrongdoer which, though not recoverable by the existing remedy of an account of profits, should nonetheless be taken from him and given to the injured party. Essentially created in *Attorney General v Blake* [1988] 1 All ER 833, an exceptional case, its contours are uncertain and its validity disputed (see, e.g., McGregor on Damages, Ed. 17, §12-001 –

12-006). In practice, it would either amount to the reintroduction of conversion damages (on the argument that all the proceeds of pirate sales belonged to the claimant) or apply only to rare cases analogous to *Attorney General v Blake*. Far from introducing clarity into the law, the proposed amendment would create uncertainty.

In addition, restitutionary damages ignore the often major economic benefits of infringers enjoyed through the making of savings. They would not be able to be applied in, for example, cases of non-payment of licence as this involves money saved through non-purchase of such licence as opposed to profits made. No deterrent element is present here at all in such restitutionary cases with an obvious incentive being available to the infringer to take the risk on the chance he can make a profit while being undetected.

Such an amendment would go totally against the findings of the Gowers Review which stated that “DCA should...ensure that an effective and *dissuasive* system of damages exists for civil IP cases and that it is operating effectively”. [Emphasis added.] These findings were accepted in full by the Government.

*Q36 What are your views on how the system of damages works in relation to:*

- a) Patents
- b) Designs
- c) Trade marks and passing off and
- d) Copyright and related rights

The Alliance Against IP Theft represents those with an interest in protecting and enforcing intellectual property rights – predominantly copyright and trade marks. Our comments are restricted to these areas.

As outlined in the submission above, the damages system is now wholly flawed in certain cases concerning infringement of copyright. The distribution, use and creation of copyright protected works now takes place in the “digital world” – but the solutions to those problems remain in the old, analogue world. Damages systems must be brought up to date to serve the needs of the creative economy – or that creative economy will stall in the face of global competition.

In relation to counterfeiting, the rapid increase of the problem in the last few years, from counterfeits of luxury brands to every category of consumer product<sup>12</sup> indicates in itself that stronger, more certain remedies are required. As professional counterfeiters’ ability to trade across borders increases with the growth of online sales, so the need becomes more pressing to have deterrent measures available against those offenders who can be brought before the courts.

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<sup>12</sup> EU Commission Taxation and Customs Union ‘*Summary of Community Customs Activities on Counterfeiting and Piracy 2006*’

## 11. APPENDIX 2

### ABOUT THE ALLIANCE

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Established in 1998, the Alliance Against Intellectual Property (IP) Theft is a UK-based coalition of 17 trade associations and enforcement organisations with an interest in ensuring intellectual property rights receive the protection they need and deserve. With a combined turnover of over £250 billion, our members include representatives of the film/TV and video, music, games and business software industries, branded manufactured goods, publishers, retailers and designers.

The Alliance is concerned with ensuring intellectual property rights are valued in the UK and that a robust, efficient legislative and regulatory regime exists, which enables these rights to be properly protected. Our Members work closely with trading standards and local police forces to reduce the harm caused by intellectual property crime in local communities and ensure legitimate businesses and traders are able to operate fairly.

We also work closely with the Department for Innovation, Universities and Skills (previously the Department of Trade and Industry) and the UK Intellectual Property Office (previously the Patent Office) to raise awareness of the harm caused by IP theft. We are also active supporters of, and participants in, the IP Crime Group, which facilitates cross departmental dialogue and joint working amongst the relevant enforcement bodies and organisations.

**This submission is endorsed by:**

Anti-Counterfeiting Group  
British Brands Group  
British Music Rights  
BPI (British Recorded Music Industry)  
British Video Association  
Business Software Alliance  
Cinema Exhibitors Association  
Copyright Licensing Agency  
Entertainment and Leisure Software Publishers Association  
Entertainment Retailers Association  
Federation Against Copyright Theft  
Federation Against Software Theft  
Film Distributors Association  
Publishers Licensing Society  
British Jewellery, Giftware & Finishing Federation  
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