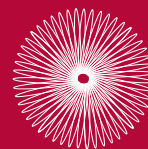


IP Update

Summer 2011



ALLIANCE
AGAINST IP THEFT



Alliance shapes IP Review

The much anticipated review into Intellectual Property and Growth was published in May.

The Report makes ten recommendations across the intellectual property framework, a number of which have the potential to impact Alliance members. Most notably, Hargreaves reached a different conclusion to that of Andrew Gowers, whose 2006 Review decided that the current IP framework was 'fit for purpose'. Hargreaves, in 2011, disagrees, answering the question, 'Could it be true that laws designed more than three centuries ago with the express purpose of creating economic incentives for innovation by protecting creators' rights are today obstructing innovation and economic growth?' with a simple, 'Yes'.

This very stark conclusion might suggest that the report recommended wholesale change of the IP framework, but in reality this was not the case. Hargreaves didn't propose moving to a US-style fair use approach to replace the UK's fair dealing system as some had feared and many of his suggestions have merit. The challenge will be to assess whether change can be implemented in a way that provides the opportunity for further growth rather than

create unforeseen, and undesirable, consequences.

The Alliance's evidence-laden response outlined how the current framework has delivered innovation and growth for new and existing businesses alike. As the Government looks to respond to the report, we will ensure we remain similarly evidence-heavy.

It is in all our interests to see an IP framework which enables businesses, new and old, to thrive and consumers take full advantage of developing technology. We recognise that some change will be required and embrace those discussions. The Review's publication, rather than signalling the end to discussions around IP policy, was in actual fact the firing of the starting gun. The Alliance is now engaging with the Government and others to shape any proposed reform to ensure our IP framework continues to underpin our economy, industries and jobs and, perhaps most importantly, is enforced.

There is a series of recommendations in the report that are helpful and we look forward to working with the Government and the IPO to

see them delivered and implemented effectively, namely:

- ▶ The appreciation of IP's importance and its contribution to economic growth is welcome, however it is disappointing that the evidence we submitted has in some cases been dismissed when industry sectors have used recognised methodologies to collect and analyse that evidence on which our arguments are based.
- ▶ The long-awaited recognition the Report gives to design is very welcome, as is the plan for enhanced assistance to enable small businesses better to protect their rights and investment.
- ▶ We also welcome the acknowledgement that IP theft online goes much further than digital copyright infringement, with the sale of counterfeit goods online becoming an increasing problem for business, law enforcement and consumers. Again, however, the Report belittles the scale of the problem. We will be pressing the Government to explain what kind of evidence base they need and to reemphasise the robustness of our methodologies.

Alliance holds successful IP conference



For a full report of the conference see back page.

Alliance comes of age!

The Alliance is delighted to welcome two new full members in 2011, bringing our total membership to 21!

ACID (Anti-Copying in Design) and the Publishers Association have both joined the UK's leading cross-industry pressure group campaigning to ensure IP is valued and IP rights are able to be protected and enforced.

They join PRS for Music who became part of the Alliance in June 2010 in order to work more closely with industry partners on policy development related to enforcement activities.



IP Update catches up with the Sherlock Holmes-reading, Judas Priest-listening, Godfather-watching new chair of the All Party IP Group, John Whittingdale MP



John Whittingdale OBE, MP

Entering Parliament in 1992 as the MP for South Colchester and Maldon (now simply Maldon), John has been a constant and consistent supporter and friend, albeit critical one when needed, to the many industries which depend on IP. This interest has been clearly enhanced by the roles John has taken on throughout his parliamentary career. Starting off as a special adviser, grappling with issues such as the blank VHS tape levy, in what was then the DTI, John's time in Parliament has included a stint as the Shadow Secretary of State for Culture, Media and Sport and, since 2005, Chair of the Culture, Media and Sport Select Committee. These roles have put him at the forefront of developments in IP policy. John even promoted an Alliance-initiated Private Members Bill in 2005 to stop counterfeit goods being sold at markets. While ultimately unsuccessful, this Bill was instrumental in keeping this important issue at the forefront of the Government of the day's mind.

And when asked to recount his funniest political moment it is an IP memory which comes immediately to mind. "A few years ago I was fortunate enough to go on an early morning raid on a car boot sale in Boreham with Essex Trading Standards and Essex Police. While a serious criminal offence had been committed, it was rather comical to see the police having to fend off punters who were trying to grab the counterfeit DVDs and CDs they wanted, pretty much out of the evidence bags!"

John's passion, therefore, for businesses which rely on intellectual property is clearly evident as is his belief in the role that Parliament can play in seeing this IP protected.

"Parliament has an important role in ensuring that the framework of law is fit for the digital age and takes into account technology and the way in which people store and use content. While the Internet was once not mentioned, it is now at the forefront of the opportunities and challenges faced by businesses and consumers. Filesharing was inconceivable at one stage, for example, and therefore it is right that Parliament keeps the law under review and alert to any changes which may be needed.

"This is why the work undertaken by the Alliance and its members in communicating the contribution they make to the UK, our economy and jobs is so important. The Alliance has played a key part in delivering a noticeable change in the level of awareness amongst MPs of intellectual property and its importance as a key public policy issue. The last and current Government have both definitely taken this on board.

"This is why the work undertaken by the Alliance and its members... is so important."

"It is also why I was delighted to take over the chairmanship of the All Party IP Group. The Group plays a useful role in making sure MPs have regular contact with industry figures, and is important in getting across the message that different industries are underpinned by similar policy issues and concerns. The vital contribution IP makes to the UK economy is highlighted by the sheer quality and breadth of the industries represented in the room at IP Group meetings as well as the turn out we see from Parliamentarians from across the political spectrum."

However, John is realistic about how far changes in the law can assist IP-rich industries in stopping counterfeiting and piracy. When asked what he sees as the biggest challenges facing Alliance members' industries he believes that while Parliament spends lots of time debating how to stop piracy, be it sending letters and blocking access to certain sites, the biggest challenge we face is more prosaic that that. "What is industry's biggest challenge? Reversing the attitude of a generation who believe they can access work, particularly digital content, for nothing. Parliament won't beat piracy through the implementation of technical measures alone. Real success will only come via changing people's behaviour -

persuading them to pay for things they have got into the habit of getting for free!"

"Industry's biggest challenge? Reversing the attitude of a generation who believe they can access work for nothing."

Perhaps surprisingly, for a well known eurosceptic, John accepts that some of the solution to IP theft in the UK will require action at an EU level and through WIPO. "No doubt the EU will over-complicate its response but whether it is servers based outside the UK's jurisdiction or counterfeits being imported from China it is clear that international law will play an increasingly important role in tackling the problem of IP theft at its root. However, it is encouraging to see that as the Chinese economy grows, and becomes more dependent on its own creative industries, those same industries are starting to increase the pressure for action from within China."

John's enjoyment at being an MP is clearly still evident after nearly twenty years. Even though he is no longer hanging out in Downing Street (he was Margaret Thatcher's political secretary for five years and at her right hand in Downing Street for three) the sheer variety of the job is more than enough to keep him going. "It is truly a fascinating and varied job. A typical day for me can start off in the constituency talking to a local school about a problem that they have, then down to Westminster for a briefing on Libya followed by a debate on the future of energy policy, finishing off with a meeting and discussion on IP rights. It is never, ever boring and I retain the same enthusiasm and excitement for the job as I did on day one. Every day there is a sense, sometimes in the smallest of ways, of making a difference".



John hosting last year's Alliance summer reception

“Consumer Policy proposals should not be a test of virility”

Andy Foster, Operations Director at the Trading Standards Institute, looks ahead to one of the most important consumer policy consultations in a generation.



June 2011 saw the publication of the long awaited consultation on changes to the way in which consumer policy is delivered throughout the UK.

At the heart of these proposals will be the migration of advocacy functions from Consumer Focus to Citizens Advice along with 'Consumer Direct' and campaigning functions from the OFT. This has the potential to have a major impact on IP protection considering the increasing responsibilities that are likely to be given trading standards. The 'national trading standards conversation' is about the plan to move responsibility for almost all enforcement functions from the OFT to Trading Standards.

The proposals are certainly 'courageous' as far as civil service terminology is concerned but whilst many of my trading standards colleagues will be beating their chests at the critics who say the profession is not up to the job, we must ensure the challenge laid down by Government is not treated as a test of virility but one that actually delivers a stronger infrastructure for the consumers and businesses of tomorrow and doesn't have a negative impact on the important functions already carried out by trading standards, including those relating to IP.

It is only to be expected that some will question the ability of local government to shoulder the burden of national responsibilities at a time when local trading standards are being subjected to some barbaric budget cuts and that thought will be at the forefront of the minds of Ministers and other interested parties as the proposals become reality.

But we should look beyond structures and take a more holistic view. Key to the new model is its relationship with the proposed Competition and Markets Authority, interestingly the consultation of which will have probably closed before the public can actually see the proposals for consumer policy. We will never know whether this is by design or mistake but how consumer policy enforcement interacts with structural market failure is absolutely fundamental to its success.

The Chief Executive of the OFT, John Fingleton, estimates that his organisation handles up to £10m of risk at any one point in time and how trading standards manage that level of risk will be a huge challenge that needs creative, innovative solutions along with strong local authority leaders.

“The proposals that will be put before us shortly give us the opportunity to create a more equitable, inclusive consumer protection system that ensures every consumer matters and will stand the test of time for 40 years or more.”

So rather than TSI and our members getting caught in the inevitable 'firefight' arising from the passage of the Public Bodies Bill, we should all be taking a step back to ensure we are building an infrastructure that has inherent strength for the future because millions of consumers and UK businesses, including those that rely on strong IP enforcement, are relying on us not to let them down.

New faces at the IPO

▶▶ Over the past few months there have been some significant changes to policy personnel within the Copyright and IP Enforcement Directorate at the Intellectual Property Office. The management team of Ed Quilty, Steve Rowan and Nick Munn remain in place but with a new group of enforcement team leaders.

Daphne Hyman, a solicitor who trained and practised for 6 years in a major City law firm and worked as International Counsel for MCPS-PRS Alliance, replaces Dave Evans as Head of Legal Frameworks. Daphne joins the IPO from the Treasury Solicitor's Department and previously worked at the OFT and as an

adviser at the Department for Culture, Media and Sport.

Dave Lowe joins from South Wales Police as the new Head of the Intelligence Hub. Dave brings 30 years experience of policing, finishing his time as Head of Economic Crime in South Wales Police where he had responsibility for Serious Fraud and Proceeds of Crime. He was seconded to the National Criminal Intelligence Service (a forerunner of SOCA) where he was head of Specialist Crime which included developing agency capability in dealing with IP crime.

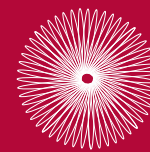
With Lisa Vango soon to depart, a search is on for a new Head of Crime Reduction. Adam Williams remains the point of contact for international issues.

The Alliance looks forward to working with the new and old faces alike to ensure that the IP framework remains robust and IP enforcement effective.



**INTELLECTUAL
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IP Update



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View from the Chair

“IP - The Keystone to Economic Success”



Lavinia Carey

consumers, all vital questions as our industries strive to grow, employ more people and continue to protect consumers from the harmful effects of IP theft.

Vince Cable stated that the Government’s aim was not to “sacrifice creative industries in favour of Google”, a reference to Google’s call for a fair-use system to be introduced into UK IP policy. The ensuing debate between our 130-strong audience and IPO officials showed the complexity of intervening in the UK’s IP regime in which huge technological advance has been accommodated under existing IP laws.

Robust views were expressed when panellists considered whether more freely available IP could be a way of reducing the criminality associated with IP theft. City of London Police’s Dt Inspector James Clancy, Andy Baker from SOCA and TSI Operations Director Andy Foster called for greater cooperation with rights-owner representatives and this was emphasised by Heather O’Malley from US Homeland Security Investigations, who cited examples from their “In Our Sites” campaign in dealing with online crime in partnership with ISPs. Ted Shapiro’s extensive knowledge of international IP regimes

as the MPA’s General Counsel in Brussels underlined the need for an international approach to address the growing problems of e-crime, but it was also clear from Links of London that brands and trade mark infringement is just as important an area for online enforcement as copyright material.

Discussion with Matthew Fell from the CBI, Will Page, PRS For Music’s economist, Mary Ellen Field from Brand Finance and BECTU’s Martin Spence highlighted the importance of defending industry and jobs, of protecting the public from fakes and the inevitable consequence of falling revenues available to reinvest and develop new goods and services. The Industry Trust’s “Moments worth paying for” cinema campaign was presented by Liz Bales as a model for building public awareness of the value of IP.

There was a clear consensus at the day’s end that there remains much to be done to ensure those industries that rely on IP can continue to grow and create more employment. The day was a very clear demonstration of the Alliance’s ability to broker high level exchanges of views and expertise in this field, a resource we will continue to deploy for the benefit of members.

The Government chose the Alliance’s IP Policy Conference to launch the findings of the Hargreaves Review of Innovation and Growth. This meant that not only was our programme opened by the BIS Secretary of State, the Rt Hon Dr Vince Cable MP, with a commentary on Hargreaves’ 10 main areas for recommendation, but also that we got a top line response from the shadow DCMS spokesman, Ivan Lewis MP. As chair of the conference, I was able to put a few questions to the expert panellists who were invited to discuss the impact of IP on the economy, on society and its importance to

Big name brands join Real Deal



With over 130 markets across 30 local authorities now ‘the real deal’ support for the Real Deal campaign is growing, with four new sponsors coming on board in 2011 – Manchester United FC, Louis Vitton, adidas and ghd. The owners of these high profile brands have joined forces with the campaign’s original sponsors to ensure the initiative continues to assist trading standards and market operators in their efforts to keep British markets and car boot sales free from fake goods.

The campaign also continues to receive valuable support from all the key organisations concerned with ensuring that markets are safe and fair places in which to shop and trade.

NEWS IN BRIEF

▶ Labour has launched a Creative Industries Policy Review amidst fears that the UK is at risk of losing its global competitive advantage. Ivan Lewis commented: “Our return to Government will depend on whether we can persuade people we have positive ideas and a compelling vision for the future of the country. We must be ambitious for our creative industries, not managing decline but ensuring Britain can play to our strengths in this new global digital age”.

Commenting on the success of the campaign, Ron Gainsford, Chief Executive of the Trading Standards Institute, said: “In this Big Society era it is timely that more and more businesses are supporting the Real Deal – a highly visible and well promoted charter which protects consumers at the frontline of their bargain hunting”.

The Alliance continues to work with the National Markets Group to promote the campaign and see the Real Deal campaign instilled as a truly national initiative.

For more information about the Real Deal, its sponsors and partners, visit www.realdealmarkets.co.uk



Alliance DG Susie Winter explains the Real Deal campaign to Communities Secretary Eric Pickles MP

▶ A report into the losses due to cyber crime has been published estimating the cost to the UK to be £27 billion per annum. According to the study, although cyber crime has a considerable impact on citizens and the Government, the main loser – at a total estimated cost of £21 billion – is UK business, which suffers from high level of IP theft and industrial espionage.

▶ With the number of websites selling counterfeit and potentially dangerous goods or services,

illegally offering access, or facilitating access, to digital content growing, Nominet has established an issues group to consider how best they can work with enforcement bodies to help stop criminal activity online. Areas being discussed include whether Nominet needs to have a formal Abuse Policy, against what offences Nominet should be required to take action, whether a court order is required before action is taken and whether others, apart from the police, should be able to make take-down requests. The Alliance is feeding comments in to this Group.