

Advisory Committee on Enforcement

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WORK UNDER WAY IN THE UK INTELLECTUAL PROPERTY OFFICE (IPO), AND
WORK BY THE STRATEGIC ADVISORY BOARD FOR INTELLECTUAL PROPERTY
POLICY (SABIP)

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1. In August 2010, following the dissolution of the Strategic Advisory Board for Intellectual Property Policy (SABIP), the UK Intellectual Property Office (IPO) announced a program to build economic research and evidence for Intellectual Property (IP) policy. This brought together work under way in the IPO, and work by SABIP.
2. The results of this work are becoming available to policymakers and the public via the Research page on the IPO web-site <http://www.ipo.gov.uk/pro-ipresearch.htm>.
3. The Hargreaves Review of Intellectual Property and Growth <http://www.ipo.gov.uk/ipreview.htm>, which reported in March 2011, recommended that Government should ensure that the development of the IP system is driven as far as possible by objective evidence; and that policy should balance measurable economic objectives against social goals and potential benefits for rights holders against impacts on consumers and other interests. These concerns will be of particular importance in assessing future claims to extend rights or in determining desirable limits to rights.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO

4. Fundamentally, the Government agrees with not only the Review's headline conclusion but also with its underlying critique: too many past decisions on IP have been supported by poor evidence, or indeed poorly supported by evidence. This is as true at an international level as well as domestically. Government is of course always seeking to base decisions on good evidence and the challenges involved in doing so are by no means confined to IP policy, or to the UK.

5. The Review identifies two particular difficulties in the IP field: a near-total lack of high-quality evidence on some issues and an overabundance of effective lobbying. To deal with the first issue, the IPO's economics, research and evidence team are building capacity and developing a strong network of partners nationally and internationally. However, the fundamental issue is that key data is held by business and other organizations. IPO will continue to work with those organizations to help them offer good quality evidence; our challenge to them is to do so.

6. To deal with the second concern, the Government will in future give limited weight in IP policy-making to evidence that is not sufficiently open and transparent in its approach and methodology, and we will make it clear where we are taking this view. The IPO is planning to issue guidance on what constitutes open and transparent evidence, in line with professional practice. The Government is conscious that smaller businesses and organizations face particular challenges in assembling evidence and will assess their contributions sympathetically, with the same emphasis on transparency and openness.

7. While working hard to improve the quality of evidence available, the Government recognizes that perfect evidence is an ideal. As the Review recognizes in its discussion of IP enforcement, it is sometimes necessary to "guess and get on with it" where the alternative is inaction in the face of poor information. We are determined to have an IP system that is the best possible incentive for UK growth, and we want to make rapid progress towards it, informed by emerging evidence.

8. It is also important to stress that while the Government's focus is firmly on economic growth, issues of fairness and social impact are also important in the context of IP rights. The Government will consider these impacts together with economic considerations in making domestic policy on IP and in seeking a well functioning international framework, in line with good evidence.

9. The work of SABIP, on the attitudes and behaviours of consumers in the digital age, is an example of how a more cross disciplinary approach to creating an evidence base may reap benefits for the development of long term and constructive policy, regulation and targeted action.

ATTITUDES AND BEHAVIOURS OF CONSUMERS IN THE DIGITAL AGE

10. The digital economy is of growing importance to the UK and elsewhere. Businesses and public sector bodies are digitising their products and services with new business models developing apace. In many sectors, the costs of entry are low and new platforms and services can generate good revenues, although the risks inherent to new business models can be high. Digital technologies provide an opportunity for many, but the threat of piracy may adversely impact on the remuneration of creators. Micropayments, while providing useful revenues for Apps', eBooks' and mobile content rights holders, may also lead to lower overall revenues. The ease of making and access to digital content is being exploited by amateur and professional users creating and sharing their own digital material.

11. Because of this paradigm shift in the way content is used and consumed, SABIP prioritised consumer attitudes and behaviours as a separate work stream, following publication of the “Strategic Priorities for Copyright¹” in March 2009. This work has resulted in two separate literature reviews:

- ‘Copycats? Digital consumers in the online age’²; and
- ‘Changing attitudes and behaviours in the ‘non-internet’ digital world and their implications for intellectual property’³.

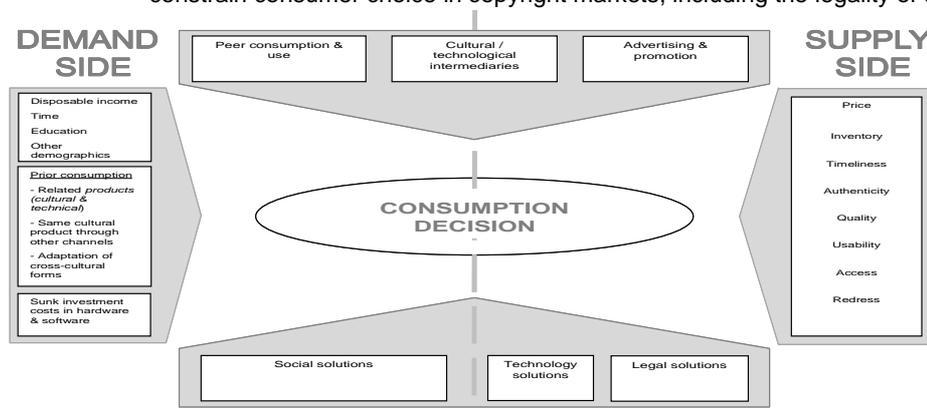
12. The key findings were:

- The scale of sharing is huge and growing;
- People are indifferent and/or confused about the possibility of infringement and about possible victims;
- People are making, sharing and consuming content in new ways - wanting faster, easier access at a time to suit them;
- These activities, creating new relationships between individuals and industry, have implications for the UK’s cultural economy and rate of innovation;
- A better, evidence-based understanding of consumer attitudes and behaviours is essential if industry is to develop new business models and government is to formulate effective policy; and
- The research to-date has been inadequate – overly focused on students and small cohorts, using non-comparable methodologies, and often lacking in transparency.

13. The two reports confirm the view that enforcement alone will not solve the problems of on-line infringement. A comprehensive approach based on a greater understanding of people’s attitudes and behaviours is required. This will enable policy-makers to devise effective laws and effective enforcement whilst feeding into other aspects of copyright policy, such as user-friendly licenses that are seen to be fair and reasonable, awareness-raising and education programs for users in all demographics. They would also inform the testing of more attractive legitimate business models. To this extent, a fuller understanding of attitudes and behaviours is the foundation upon which good business and good policy are built.

14. SABIP therefore proposes a new framework for looking at the consumption decisions made by consumers.

Figure 1. An integrated framework for understanding the factors that enable or constrain consumer choice in copyright markets, including the legality of choice



¹ <http://www.sabip.org.uk/copyright-100309.pdf>

² <http://www.sabip.org.uk/home/research/research-digitalage/research-digitalage-copycats.htm>

³ <http://www.sabip.org.uk/sabip-noninternet.pdf>

CURRENT LANDSCAPE

15. Under the Digital Economy Act Ofcom is required to make “...an assessment of the current level of subscribers’ use of internet access services to infringe copyright.” The Digital Economy Act requires them to make these assessments in quarterly reports.

16. Ofcom also has a duty to describe and assess the steps taken by copyright owners “to inform, and change the attitude of, members of the public in relation to the infringement of copyright” and “to enable subscribers to obtain lawful access to copyright works”. These descriptions and assessments must be made in annual reports.

17. Ofcom’s first report under the Digital Economy Act isn’t expected until 2013. However, the recent Hargreaves Review of Intellectual Property and Growth recommended that Ofcom begins to establish benchmarks and data on trends in online copyright infringement forthwith, and the Government has accepted this recommendation. The IPO and Ofcom are currently working together to achieve this.

18. Further details of the Digital Economy Act and Ofcom’s responsibilities are available at: http://www.opsi.gov.uk/acts/acts2010/ukpga_20100024_en_1

19. The right regulatory conditions are needed to allow innovation to flourish. As in other areas of regulation, this is best achieved by policy-makers and industry working together. There is continual tension between industry’s basic need for certainty and stability and the unavoidable volatility of digital media in terms of both business innovation and consumer attitudes and behaviour. Furthermore, SABIP believes that it is difficult to formulate an effective copyright regime unless policy-makers and business truly understand the consumer’s attitudes and behaviour.

20. The process has several steps:

- Understanding the attitudes and behaviours of consumers;
- Developing sustainable business models and services;
- New licensing practices such as
 - Pan-European licensing
 - Simplified licensing
 - Collecting societies’ regulation and codes of practice;
- A coordinated programme of education, underpinned by awareness-raising in
 - Schools
 - Businesses
 - Public sector bodies;
- Practical enforcement
 - UK policies, notably on take-down, site-blocking and user restrictions
 - The Anti-Counterfeiting Trade Agreement.

21. Each element must be based on evidence of what people are thinking and what they are doing or wanting to do. This requires an understanding of issues which resist generalisations: the nature of authorship; the nature of property; the morality of theft; the balance between the unique object and the copy; the tension between the copying encouraged in school and the copying discouraged in later life; the tension between a creator’s desire for their work to be widely seen and another creator’s wish to restrict it.

22. This broader approach is now being adopted at a European-level, through the recommendations of the 'Gallo Report on IPR Enforcement in the Internal Market'⁴, which include the establishment of an 'observatory' to produce objective data on copyright infringement, public awareness campaigns and greater international coordination in dealing with copyright infringement. This does not however, include data on consumer attitudes and behaviours.

23. It is vital that Government and industry work closely together to meet the needs of the new digital economy so that a whole generation of creative innovation, cultural value and economic growth is not jeopardized. Once given up, the legal use of digital services may be hard to re-establish.

RECOMMENDATIONS

24. In light of the new framework SABIP recommends the following priority areas:

Policy Issue	Policy Challenge	Recommendation
Data should be analyzed within appropriate real-life contexts	<p>People's attitudes and behavior towards copying and sharing digital content are primarily analyzed in terms of deviant or criminal factors. However, it is clear that consumer behaviours may more likely reflect benign social factors within communities and peer groups and a desire for sharing.</p> <p>Ofcom has a duty to provide quarterly reports to the Secretary of State for BIS, estimating levels of unlawful file sharing and assessing the extent of legal action by copyright owners. Ofcom is also to report annually on a broader range of factors, including consumer education campaigns and the availability of attractive lawful alternative services.</p>	<p>For Government to adopt a new framework for analyzing the decision making process for how users consume digital content. This should include a consideration of:</p> <ul style="list-style-type: none"> Behavioral economics Evolutionary economics Scenario planning The gift economy Non-commercial licenses (e.g. General Public License, Creative Commons)
Data should be evidence-based and robust	<p>Most data on consumer trends and behaviours is commissioned by those who have a vested interest. There are few consensual intermediaries to collate and provide advice and data that would be acceptable to a broad stakeholder community.</p>	<p>Work with Ofcom on a feasibility study to establish a structure for collating and analyzing data on the attitudes and behaviors of consumers in the digital age.</p> <p>Insert appropriate questions into existing surveys such as the DCOMS 'Taking Part' survey and give more consideration to how best to influence the new reporting responsibilities of Ofcom.</p>

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<http://www.europarl.europa.eu/oeil/file.jsp?id=5817632>

	<p>There is little agreement about the scale of infringement and its economic impact, including any substitution effects. So while infringement takes place, its effects on consumer behaviour, social and economic, are unclear.</p> <p>This challenge was recognized by the 'Gallo Report' for the European Parliament on 'Enforcement of IPR in the Internal Market'</p>	<p>Possible link to European Observatory proposal adopted by European Parliament on 1 June 2010.</p>
Consumers	<p>Current copyright research focuses on the <i>consumer</i> but media regulatory bodies and copyright policy focus on the <i>public and public value</i></p>	<p>Closer alignment of copyright research with the needs of regulatory bodies</p>
Enforcement	<p>The Digital Economy Act (DEA) requires Ofcom to oversee a Code of Conduct and public interest in new enforcement procedures</p>	<p>Joint research with Ofcom</p>
Education and awareness: the consumer/user	<p>There is widespread ignorance/confusion about whether and when media content can be freely used; and, if not, the likely penalties.</p> <p>The two SABIP reports have highlighted the confusion and conflicting messages given out by the makers of hardware and the content providers. Users need to know what they can and cannot do with digital content.</p>	<p>Recommend the production of a 'Highway Code' for copyright, outlining the key facts in plain English.</p> <p>Recommend industry provide clear labeling on digital products for users</p>

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