

IP Enforcement Measures, Especially Anti-Piracy Measures in the Digital Environment

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Digital technology has fundamentally changed the way we live, search, shop and communicate:

- **It has freed up our time from manual tasks.**
- **It enables us to keep in touch globally and to be informed on a scale never experienced in history.**
- **But carries risks for us in multiple ways – e.g., Bad Actors use technology to flood the platforms and online markets with pirated content.**
- **Distribution methods have changed radically as compared with when the TRIPS Agreement was negotiated.**

Enforcement challenges:

- Intangible material plus borderless Internet has resulted in the volume and speed of copying.
- Seizures and customs checks no longer relevant.
- Anonymity exacerbates “whack-a-mole” problem.
- Volume and velocity of online counterfeit sales make online listings very time sensitive.
- Pirates use multiple websites in different countries.
- Balancing fundamental rights and copyright.
- No international mechanism for sharing information by law enforcement on online identities.
- Possible uniform approach via global guidelines.

Challenge of Digital Technology

In the digital environment, pirates keep a much lower profile making it harder to identify them.

The cost of litigation is prohibitively expensive:

- England and Wales £200,000 - £1 million
- France €200,000 - €800,000
- Germany €400,000
- Netherlands €200,000

The Response

IP rights holders use the courts in different ways:

- To obtain disclosure of documents or information about suspected infringements under Art. 8 of the Enforcement Directive or *Norwich Pharmacal* orders.
- Search orders and the like.
- Freezing injunctions.
- Blocking orders.
- Cross-border injunctions.

The Response

- Small claims track of the Intellectual Property Enterprise Court in England and Wales and the proposed Copyright Claims Board in the USA.
- Internet courts such as those in Hangzhou, Beijing and Guangzhou.

IP rights owners are relying increasingly on technical and administrative measures.

“To regulate, or not to regulate: that is the question”

“TO BE OR NOT TO BE”

William Shakespeare—*Hamlet* (III,i)

To be, or not to be: that is the question:
Whether 'tis nobler in the mind to suffer
The slings and arrows of outrageous fortune,
Or to take arms against a sea of troubles,
And by opposing end them. To die: to sleep;
No more; and by a sleep to say we end
The heart-ache, and the thousand natural shocks
That flesh is heir to, 'tis a consummation
Devoutly to be wish'd. To die, to sleep;
To sleep: perchance to dream: ay, there's the rub;
For in that sleep of death what dreams may come,
When we have shuffled off this mortal coil,
Must give us pause: there's the respect
That makes calamity of so long life;
For who would bear the whips and scorns of time,
The oppressor's wrong, the proud man's contumely,

EU Directive on Copyright in the Digital Single Market



PRESIDENTIAL MEMORANDA

Memorandum on Combating Trafficking in Counterfeit and Pirated Goods

— ECONOMY & JOBS | Issued on: April 3, 2019



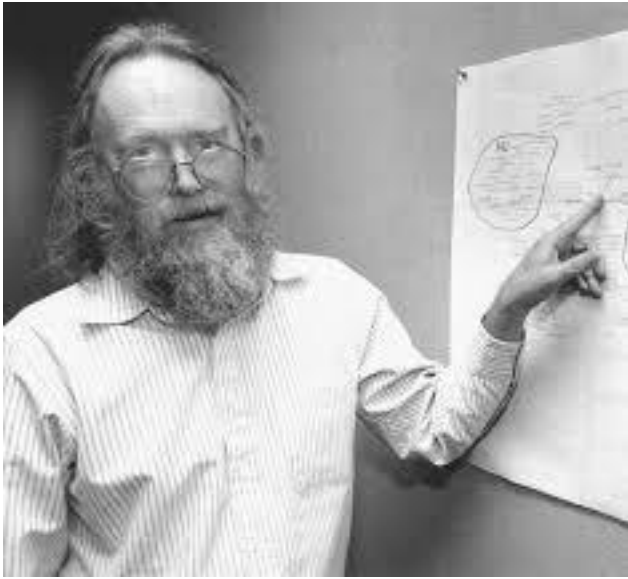
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UK Internet Safety Report





Jon Postel



Vint Cerf



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“On the Internet, nobody knows you’re a dog.”

The Future of Anti-Piracy Measures



Digital Tools



Digital Tools





CITY OF LONDON
POLICE



Police Intellectual Property Crime Unit



Operation Creative and the Infringing Website List (IWL)



Operation Creative and the Infringing Website List (IWL)

Operation Creative is a ground-breaking initiative designed to disrupt and prevent websites from providing unauthorised access to copyrighted content, led by the Police Intellectual Property Crime Unit (PIPCU) in partnership with the creative and advertising industries.

It is a unique partnership between the City of London Police and the UK advertising industry (represented by the Internet Advertising Bureau UK (IAB UK), the Incorporated Society of British Advertisers (ISBA) and the Institute of Practitioners in Advertising (IPA)) and rights holders (represented by FACT (Federation Against Copyright Theft), BPI (British Phonographic Industry), IFPI (International Federation of the Phonographic Industry), PRS for Music, The Publishers Association and UKIE (The UK Interactive Entertainment Association)).

As part of Operation Creative, rights holders in the creative industries identify and report copyright infringing websites to PIPCU, providing a detailed package of evidence indicating how the site is involved in illegal copyright infringement. Officers from PIPCU then evaluate the websites and verify whether they are infringing copyright. At the first instance of a website being confirmed as providing copyright infringing content, the site owner is contacted by officers at PIPCU and offered the opportunity to engage with the police, to correct their behaviour and to begin to operate legitimately.

If a website fails to comply and engage with the police, then a variety of other tactical options may be used including; contacting the domain registrar to seek suspension of the site, advert replacement and disrupting advertising revenue through the use of an **Infringing Website List (IWL)**.

The IWL, the first of its kind to be developed, is an online portal containing an up-to-date list of copyright infringing sites, identified and evidenced by the creative industries and verified by the City of London Police unit. It is available to the partners of Operation Creative and those involved in the sale and trading of digital advertising. The aim of the IWL is that advertisers, agencies and other intermediaries can voluntarily decide to cease advert placement on these illegal websites which in turn disrupts the sites advertising revenue.

The study explores the different digital tools and administrative measures used:

- **Site blocking**
- **Notice and takedown/notice and staydown**
- **Filtering and monitoring**
- **Bad Actor listings**
- **“Follow-the-money” principle**
- **Codes of conduct and voluntary guidelines**
- **Digital authentication tools such as Blockchain.**

Digital Due Process



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Hon. Edwin J. Peterson





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UK Code of Practice for Consumer
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