

**Effective IP Enforcement and  
Consumer Protection:**  
*The United Kingdom Experience*

**Peter Astley** MBE  
Head of Public Protection  
Warrington Borough Council

# Scale of the IPC Problem in the UK

- IPC costs UK economy over £9 billion p.a.
- Dangerous or poor quality goods are often supplied
- Large scale production overseas - production in UK mainly small scale 'cottage industry'.
- Fake goods are available through a variety of locations and networks.
- Strong links between IPC and organised crime.
- Expanding international markets potential expanding problems (EU expansion).
- Perception issues.

# EU Framework

## **Aim:**

‘A Single Market for Intellectual Property Rights boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe’

## **Legal Framework:**

- Copy Right directive 2001/29/EC
- Trade Marks Directive 2008/95/EC
- Enforcement Directive 2004/48/EC

# Background to UK IPC Laws

- **Civil and criminal sanctions contained within:**
  - Trade Marks Act.
  - Copyright Designs and Patents Act.
  - Consumer Protection Regulations.
- **Powers (criminal):**
  - Entry.
  - Seizure.
  - Forfeiture.
- **Penalties.**

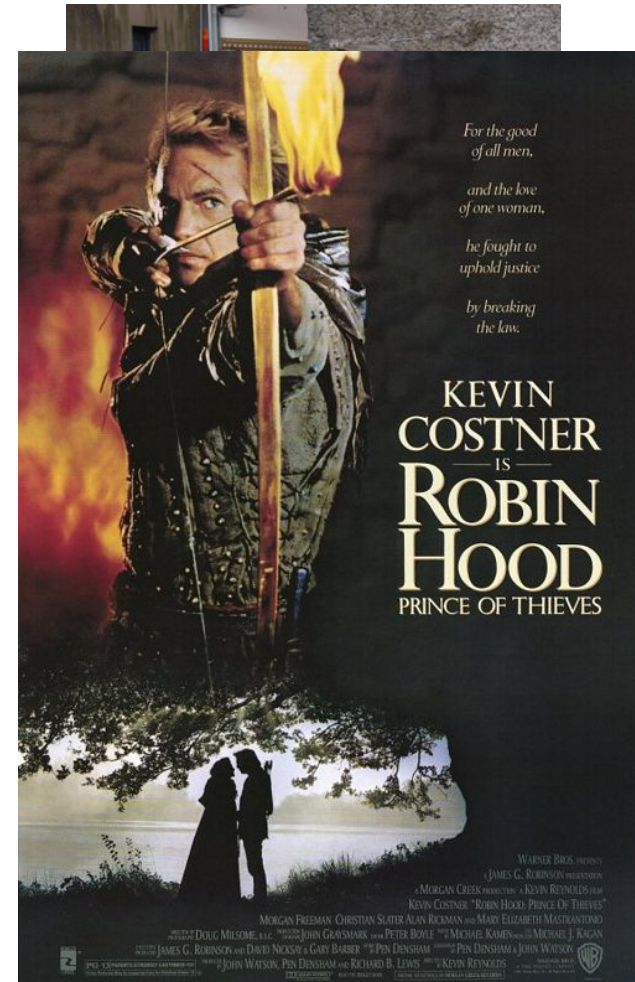
# IPC Bodies in the UK

- **Trading Standards are lead IPR enforcement agency** (municipal government function: many public protection functions & priorities):
  - IPC market surveillance role (level 1 criminality).
  - Local co-ordination role bringing together other enforcers to develop multi-agency solutions.
- **Police:**
  - Limited IPC role but are doing more!
- **Customs** (UK Border Agency & HMRC).
- **Others:**
  - Brands and Rights Holders.
  - Assets Recovery Agency (ARA).
  - Serious Organised Crime Agency (SOCA).

# understanding the problem

# Current IPC Issues in the UK

- **Marketplaces are changing - challenging traditional market surveillance methods!:**
  - Shift over last 20 years from mainly 'trade' violations to criminal enterprises involved in IPC!
  - 'Displacement'.
  - Workplaces, bars etc.
  - Informal markets, 'mixing & matching'.
  - Rise in internet based trade.
- **Public perception:**
  - IPC is a 'Robin Hood' crime!



# IPC: *Scale, Nature & Trends in the UK*

- **Goods which affect public health:**

- Tobacco:

- High taxation in UK = high demand for counterfeits.
- Counterfeiters target children.
- £2 billion per year lost in taxes.

- Alcohol:

- Increasing number of cases, including wine, vodka and beer.
- Market worth estimated at \$300m per annum, mainly manufactured in eastern Europe (but some local production).
- Costs the UK economy £1 billion per year in lost taxes.





# IPC: Scale, Nature & Trends in the UK

- **Goods which affect public health:**
  - Pharmaceuticals:
    - Branded pharmaceuticals sold at markets etc.
    - Counterfeit prescription drugs (e.g. Tamiflu) being sold over internet.
    - Large numbers of 'lifestyle' pharmaceuticals sold via 'informal' markets (e.g. Viagra).
  - Basic consumer goods:
    - Increasing numbers of food scares (mainly specialist products at present).
    - Identified counterfeit toothpaste, fireworks, printer cartridges, electrical components and satellite decoder cards locally in last year!



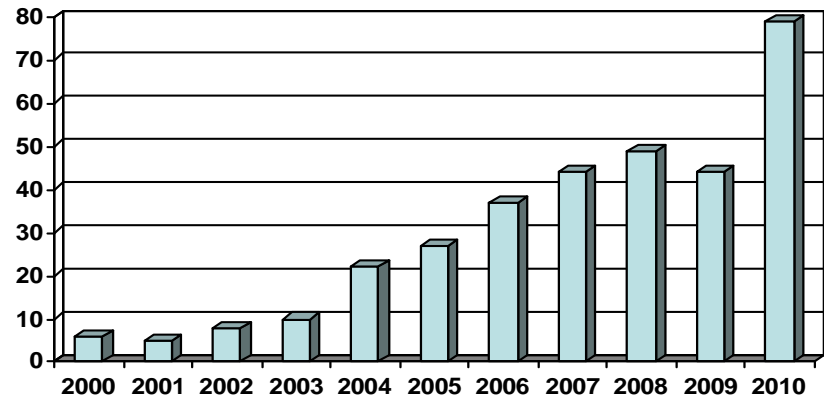
# IPC: Scale, Nature & Trends in the EU

- **Continued increase in numbers of cases but reduction in volume of goods seized:**

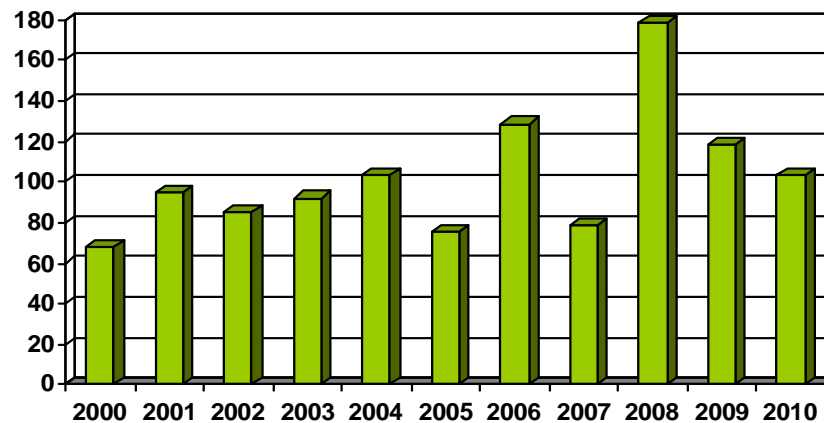
- 79,112 registered cases in 2010 (an increase of 82%) which is potentially linked to the internet trade.
- Reduction in volume of goods seized which indicates that consignments are being broken down?
- Top commodities seized: tobacco (33.5%), office stationary (8.4%), tags and labels (6.8%) and clothing (6.7%).
- Concerns about levels of goods which are a danger to public health such as medicines, toys (6.5%), foodstuffs and products for personal care.

- **Source:**

- China responsible for 85% of product by provenance.



Numbers of EU cases ('000's)



Numbers of articles (millions) seized in EU

# IPC: *Scale, Nature & Trends in the EU*

## Other issues:

- Clothing and accessories account for largest volume of cases (51%) but only (10%) of product.
- Increase seizures at air/post hubs (result of improved detection?).
- Increase in volume of cosmetics and personal care products being seized over last few years.
- Rise of the 'e'trepreneur'
- Tobacco:
  - tax losses = €460m.
  - Tobacco: 0.1% of cases but 33% of product.
  - Provenance: China (89%), Moldova (6%).



The eBay logo, with the letters 'e', 'b', 'a', and 'y' in red, blue, yellow, and green respectively, and the letter 'a' in white.

the solution

# National Enforcement Strategy

*Enforcement agencies take the lead in tackling IP crime on the ground. They must continue to work together to share intelligence and resources and must co-operate with each other (and industry) to tackle activities at local, regional and national levels to avoid unnecessary duplication of effort and a sharper focus on intelligence led enforcement.*

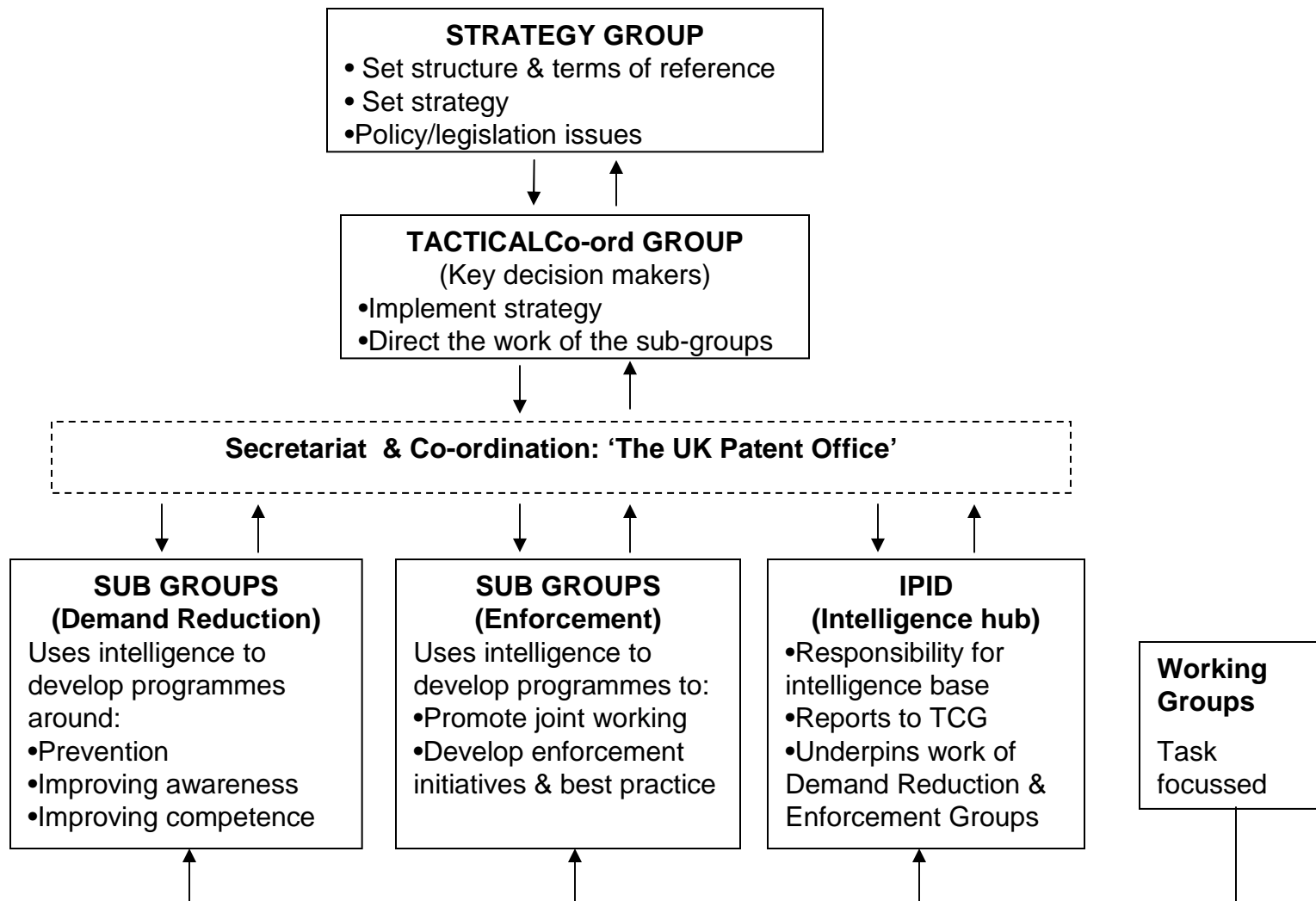
July 2011

# A National Strategic Approach in UK

## Key elements of UK National IPC Strategy:

- NCIS *Threat Assessment*: “Law enforcement in UK is generally at a local level and requires greater co-ordination. An intelligence led approach is essential”.
- UK IPO Intelligence Hub (*IPID*).
- Strategic Control Group.
- Produce *National Enforcement Report*.
- Set up IP Crime Groups which follow National Intelligence Model (NIM) focussing on; **Intelligence, Prevention and Enforcement**.
- Commissioning of research.

# National IPC Strategy Structure



# National IPC Strategy

## **IP crime groups:**

- **Multi-agency team approach to:**
  - Enable higher level enforcement.
  - Task focussed.
  - Enable ‘expert’ guidance and assistance to enforcers.
  - Enable further development of education and awareness strategies.
  - Influence national policies and strategies (‘golden thread’ up and down).
  - Help deliver ‘effective enforcement.’
- **Groups are time bound and action focussed.**



# Regional IPC Strategy

## **Multi-agency team approach (level 2 crime):**

- ‘Award’ winning group brings together enforcers from across North West of England to implement National Strategies and co-ordinate regional activities.
- Group meets every 3 months and invites Brand Protection Managers to give input on developments.
- Key activities include:
  - Assessment of regional intelligence to identify major targets.
  - Planning of joint operations to maximise impact.
  - Current focus on outdoor markets, improving internet enforcement capacity and illicit tobacco.

# Trading Standards Enforcement

## **‘Intelligence-led’ approach:**

- Limited inspection mainly act on intelligence.
- Prioritise targets through ‘tasking and co-ordination’ approach.
- Liaise with brands and other law enforcers.
- Execute warrants, seize offending product, records computers etc, institute criminal proceedings in court, obtain forfeiture of goods and assets.
- Take alternative forms of action i.e. ‘Disruption’ - NB not all offenders end up in court!

# Prosecuting IP Offences

## **Trading Standards cases:**

- NB not all cases end up in court - use formal caution and alternative sanction!
- Cases are investigated and reported 'in-house'.
- Use 'fast-tracking' process where possible - Most cases result in 'guilty' pleas.
- Case bundle 'minimalist' for most cases - trial by sample!
- 'Higher-level' criminals - cases include 'financial assessment' for Proceeds of Crime action.
- Seek forfeiture and courts may impose conditions.

# Other Enforcement Approaches/Issues

## **Use of alternative and novel approaches:**

- Crime & Disorder legislation (injunctive process).
- Novel enforcement approaches (market disruption).
- Proceeds of Crime (POCA).
- Telephone hotlines and use informants.
- Developing procedures with IPR holders to ensure easy access to product identification information.
- Forensic support and financial analysis.

# Enforcement in Practice

## Tobacco control:

- Cigarettes and hand rolling tobacco smuggled and counterfeited on a huge scale across the world
- In the UK 50% of hand rolling tobacco is smuggled, 11% of cigarettes (HMRC figures)
- This includes counterfeit versions of popular brands



# A coordinated Approach

- Awareness raising with:
  - enforcers,
  - health professionals,
  - the public and elected members
- Intelligence gathering:
  - via Crimestoppers and Customs hotlines,
  - local authorities and Police Regional Intelligence Units
- Intelligence sharing between agencies, including formal pathways.
- Training for enforcers before joint actions.



# What we found

- Public perception can be shifted, tobacco related crime is seen as a threat to them and their children
- Tobacco related crime is well organised and profitable, including breaches of IP rights
- Different agencies need to be involved to deal with different parts of the supply chain
- Intelligence gathering and sharing is essential



# Examples of recent work

**Warehouse:** 12 million counterfeit 'Superkings' seized by Customs



**'Tab house':** Intelligence from the public linked to CCTV footage and covert surveillance leads to seizure of counterfeit 'Regal' from a domestic premises.





# future threats / issues and conclusions

# The shape of things to come!

- **Global expansion & changing markets:**
  - Global economies developing.
  - Wider range of products will be found.
  - Small scale importation (trading via internet) to increase.
  - Importation of ‘precursors’.
  - Reduction in enforcement capacity.
- **Meeting the challenges:**
  - Multi-agency intelligence led approaches including coordinated ‘inland’ market surveillance are vital (Remember **P<sup>3</sup>**)!
  - Proportionate criminal enforcement, is your legal system fit for purpose and deals with these issues as **crimes** rather than mere trade violations!

# Conclusions

- **Strengths of UK enforcement framework:**
  - Laws are pragmatic - alternative sanction works & no 'administrative' burden!
  - No 'mens-rea' element: burden of proof on defendant!
  - Forfeiture powers - no need for separate action.
  - Inference by sample & use of officers as 'experts'.
  - Proceeds of crime (£12M in 2006) - c.f. Penalties!
- **But!:**
  - Need to make sure properly resourced!

# Conclusions

## Strengths of UK enforcement framework:

- Novel and alternative approaches can work!
- Effective partnerships in place!
- **National strategy:**
  - Vital in helping all enforcement agencies, rights-holders and government to join up and work together, to develop intelligence led policies and strategies to tackle all levels of IPC.
- However, not sure we effectively resource IPC enforcement and effectively deal with organised crime!

# And finally.....

- Thanks for listening!
- Wish to know more?
- Any questions?
- Contact:
  - telephone: +44 7717 816724
  - email: [pastley@warrington.gov.uk](mailto:pastley@warrington.gov.uk)