

Copyright Bill (Amendment No.5), 5778-2017



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Rights and Interests



- Enforcement of copyright
- Freedom of expression
- Access to information and culture
- Access to the courts
- Right to anonymity
- IP right holders, users, intermediaries, public interest

Main Points of the Bill



- Secondary infringement of the right of making available
- Blocking orders (“Restricting access orders”)
- Disclosure of the identity of an Internet user
- Criminalization of an unauthorized broadcasting and making available of a work

Blocking Orders



- Framework and discretion of the court
- Definitions
 - ~~Internet Location~~ Content Location
 - Internet Access Provider

Blocking Orders



- **Threshold conditions**
 - Court orders – no voluntary blocking
 - Copyright owner or exclusive licensee
 - Infringing content
 - ✦ Direct Infringement (broadcasting, making available)
 - ✦ Secondary Infringement
 - ✦ Contributory Infringement
 - The website shows primarily infringing content
 - Permitted uses

Blocking Orders



- **Considerations**
 - Severity of the alleged infringement
 - Necessity of the order to prevent infringement
 - Efficacy of alternative remedies
 - Possible impact on access to legitimate websites
 - Internet users' privacy considerations
 - Public interest
- **Added by the Parliament: Removal of content from server instead of blocking order, when possible**

Blocking Orders



- **The order**
 - Proportionality
 - Scope
 - Duration
 - Reasonable measures in the circumstances
- **Procedural aspects**
 - Parties
 - Notices
 - Reconsideration of the order
 - ~~Costs borne by the petitioner~~

Disclosure of the Identity of an Internet User



- Currently: no jurisdiction
- Respondent to action includes intermediaries
- The inquiry is made by the court
- *Prima facie* infringement
- The motion for disclosure is not vexatious
- Two scenarios:
 - The identity is revealed (by high probability), or
 - Not enough details to identify the user

Disclosure of the Identity of an Internet User



- The identity is revealed:
 - Court discretion to allow anonymous response, on certain conditions, e.g:
 - ✦ User's right to be heard
 - ✦ Possibility of interfering in the process
 - ✦ Any miscarriage of justice
 - Conditions to disclosing the identity to the claimant:
 - ✦ Prima facie evidence of an infringement
 - ✦ Likelihood of success

Disclosure of the Identity of an Internet User



- Not enough details to identify the user:
 - Appointing additional experts, or
 - Disclosing the information gathered by the court to the claimant, if:
 - ✦ The information is needed for further investigation by the claimant
 - ✦ Proportionate detriment to the privacy of any person
 - ✦ Considering the severity of the infringement and the claimant's rights
 - ✦ Prima facie evidence of an infringement, Likelihood of success

Thank you



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Intellectual
Property
Office

UK experiences in working with intermediaries to tackle IPR infringement

Elizabeth Jones
UK Intellectual Property Office

The UK Intellectual Property Office

An Executive Agency under the Department for Business, Energy and Industrial Strategy

Key functions:

- IP policy
- Educating businesses and consumers about IP rights and responsibilities
- **Supporting IP enforcement (but not an enforcement agency)**
- Granting UK patents, trade marks and design rights



Protecting creativity, supporting innovation: IP enforcement 2020



- Launched in May 2016
- Sets out how UK government will make effective, proportionate and accessible enforcement of IPRs a priority to 2020
- Core strategic ambitions are to ensure that
 - UK businesses, including small businesses, are more confident in operating internationally as a result of better IP protection globally
 - Rights owners and rights users have access to proportionate and effective mechanisms to resolve disputes and tackle IP infringement
 - Consumers and users are educated to the benefits of respecting IP rights, and do so



Search and Copyright code of practice

- Agreed in February 2017
- Sets targets to encourage demotion of copyright infringing websites from front page of search results
- Metrics agreed use DMCA copyright infringement notices
- Whitelist process agreed to exclude legitimate sites that could be caught
- Parties exchange confidential information to understand how users are searching for content
- Not legally binding, no sanctions for non-compliance
- But has been a success



Domain Registrars and the advertising industry

Police IP Crime Unit (PIPCU):

- *Operation Creative*
 - Partnership between PIPCU and the advertising and creative industries
 - Tackles advertising on copyright infringing websites through the Infringing Website List (IWL)
 - Between January 2016 and January 2017 64% decrease in advertising from UK's top ad spending companies on infringing websites
- *Operation Ashiko*
 - Partnership between PIPCU and Nominet (.uk domain registry)
 - Targets the sale of counterfeit goods online
 - Between November 2016 and October 2017 more than 13,000 websites taken down



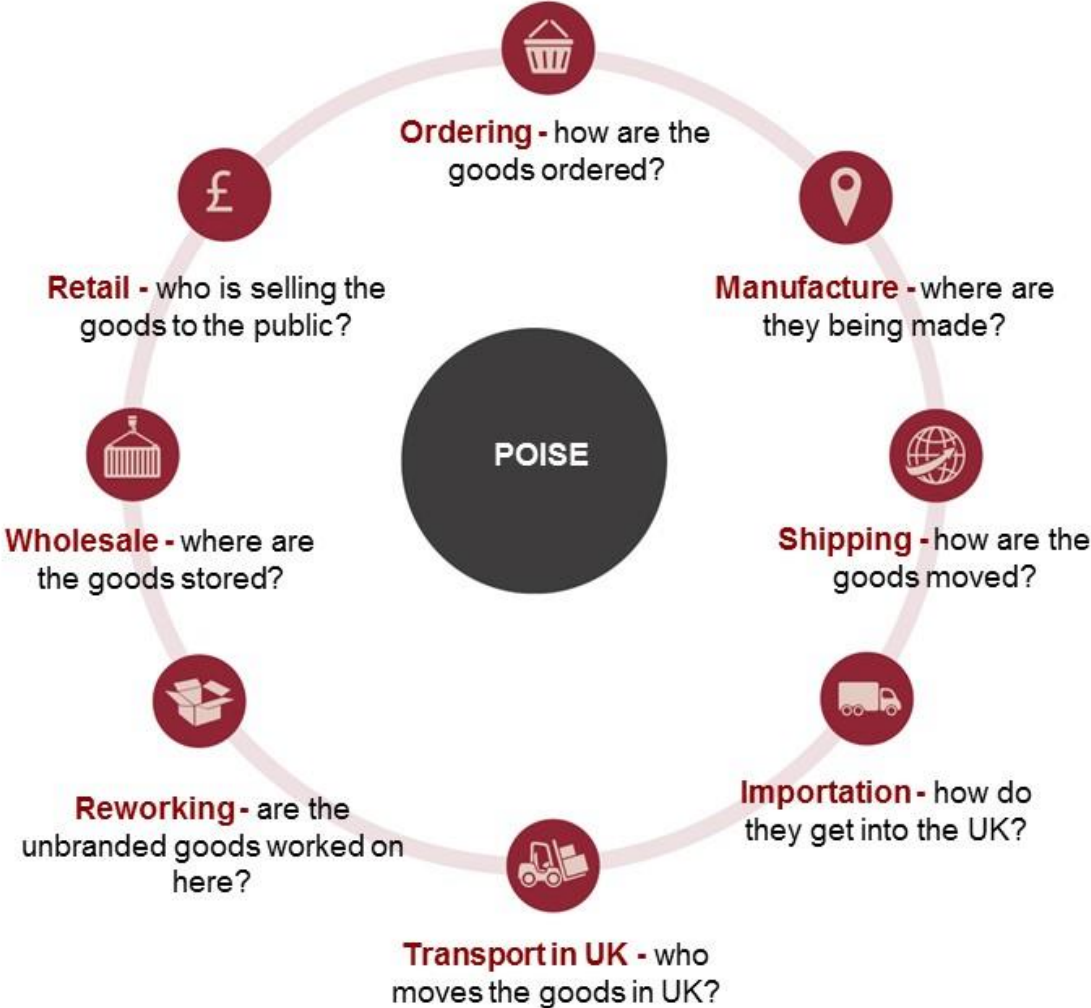
Ecommerce platforms

- UK IPO, through its Intelligence Hub, works with ecommerce platforms to tackle the sale of counterfeit goods
 - Example: *2016 UEFA European Championship finals in France*
 - Request from French Customs authorities
 - Initial IPO research found approximately 30,000 counterfeit football shirts available in UK on variety of online platforms
 - Intelligence Hub (working jointly with eBay and sports brands) created report to identify manufacturers and online traders in the UK selling the goods
 - Resulted in take down of over 40 eBay accounts and seizure of almost 1,000 fake football shirts
 - Has helped establish a more formal process for engagement with ecommerce platforms
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Ecommerce platforms

- UK government also supports agreements between various sectors of industry
 - Example: *Alibaba Group and China-Britain Business Council Strategic Cooperation Agreement*
 - Signed in 2017, aims to strengthen the protection of IPR on ecommerce platforms in China
 - Supports brands in areas such as notice and takedown, pre-emptive measures to stop infringing content, and criminal enforcement offline
 - Builds on previous successful agreement signed in 2014
 - Key success under 2014 agreement was dismantling of criminal network producing counterfeit engine lubricants. Led to confiscation and destruction of 50,000 barrels of fake lubricants, arrests and criminal prosecutions
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Opportunities for intervention – ‘Poise’



Conclusion

- Our experience has taught us that there is no ‘one size fits all’ – we need to adapt to specific circumstances
- It can take a long time to make progress, and perseverance is needed
- Part of a wider framework of measures including evidence gathering and awareness raising, as well as criminal, civil and voluntary measures to tackle IPR infringement



Thank you!

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Stepping up industry-led efforts to reduce intellectual property infringements

Update from the European Commission

Advisory Committee on Enforcement

**Thirteenth session
Geneva, 4 September 2018**

High levels of counterfeiting

- **IP protection is key to foster innovation and growth**
 - IP-intensive sectors account for **42%** of EU GDP worth **€5.7 trillion**, generate **38%** of employment
- **But IPR infringements are on the rise**
 - **5%** of goods imported into the EU are counterfeit or pirated, corresponding to **€85 billion** in illegal trade
 - due to the presence of counterfeits, sales of the legitimate sectors are lowered by an average of **7.5%** across the EU in the selected IPR intensive industries - **€59 billion** losses on annual basis, loss of almost **435 000 jobs**

Counterfeiting negatively affects jobs & growth, creates safety & security issues – serious problem that requires attention of policy makers and enforcement authorities

Better enforcement of IPR

- **Need for a comprehensive approach**
 - robust legislation as a starting point
 - IPR Enforcement Directive
 - E-Commerce Directive
 - focus on commercial scale infringements ('follow the money')
 - enforcement as well as prevention
 - acting within Europe, at Europe's borders and at a global level (including in cooperation with WIPO)
- **Complementing legislation with voluntary measures**
 - development of voluntary agreements bringing together representatives of the industry
 - European Commission acts as facilitator, ensuring that the EU measures are complementing and stimulating national initiatives
- **Commitment confirmed in the latest Action Plan (Nov 2017)**

MoU on the sale of counterfeit goods via the internet

▪ Objectives

- establishing a **code of practice** in the fight against online sale of counterfeit goods
- enhancing **collaboration** among the stakeholders
- exchanging **experiences**, identifying **best practice** and disseminating it across the market

▪ Commitments

- notice and take-down procedures
- pro-active and preventive measures
- information sharing, transparent policies
- evaluation of key performance indicators (KPIs)

Stakeholders involved

- **23 Signatories**
 - **Right Owners** of products for which counterfeit versions are often sold online (Adidas, Chanel, Gant, Lacoste, Luxottica, Moncler, Nike, Procter & Gamble, Philip Morris, Philipp Plein, Zanellato)
 - **Internet Platforms** - online marketplaces (Alibaba, Allegro, Amazon, eBay, Priceminister Rakuten)
 - **Associations** (ACG, AIM, BASCAP, FESI, IVF, TIE, MPA)
- **Commission's role**
 - honest broker, facilitating discussions
 - **not** a signatory
- **EUIPO's role**
 - assistance with data collection, aggregation and analysis
 - **not** a signatory

MoU meetings



Achievements and challenges

- **Cooperation already brought positive results...**
 - useful forum which allows strengthening trust and cooperation between parties
 - detailed assessment of best practices and practical measures that successfully prevent the sale of counterfeits online
 - voluntary cooperation, in parallel with legislative and policy measures, significantly contributes to curbing online counterfeiting
- **... but further progress is needed:**
 - wider participation (e.g. social media, classified websites)
 - improved information exchange
 - further dissemination of best practice identified
 - focus on new technologies

MoU on online advertising and IPR

- Signed in June 2018 by 28 companies and associations
 - <https://www.youtube.com/watch?v=5-yXMWk3cW0>
- Brings together representatives of advertisers and advertising intermediaries, as well as other interested stakeholders



MoU on online advertising and IPR

▪ Objective

- to minimise the revenue which websites and mobile applications that infringe intellectual property rights on a commercial scale gain from online advertising

▪ Commitments

Limiting the placement of advertising on websites and mobile applications which have no substantial legitimate uses:

- when competent authorities find that they infringe copyright or disseminate counterfeit goods on a commercial scale;
- for which the advertisers have reasonably available evidence that they are infringing copyright or disseminating counterfeit products, on a commercial scale.

Next steps

- **Cooperation in a form of stakeholder dialogue**
 - four quarterly meetings
 - assessment period of one year
 - report on the MoU functioning
 - agreement open for new signatories

- **Evaluation of the work**
 - measuring the signatories' efforts under the MoU on the basis of annual reporting
 - monitoring the MoU's impact on the market



Thank you!

More information:

[MoU on the sale of counterfeit goods via the internet](#)

[MoU on online advertising and IPR](#)

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Intellectual property and fight against counterfeiting

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