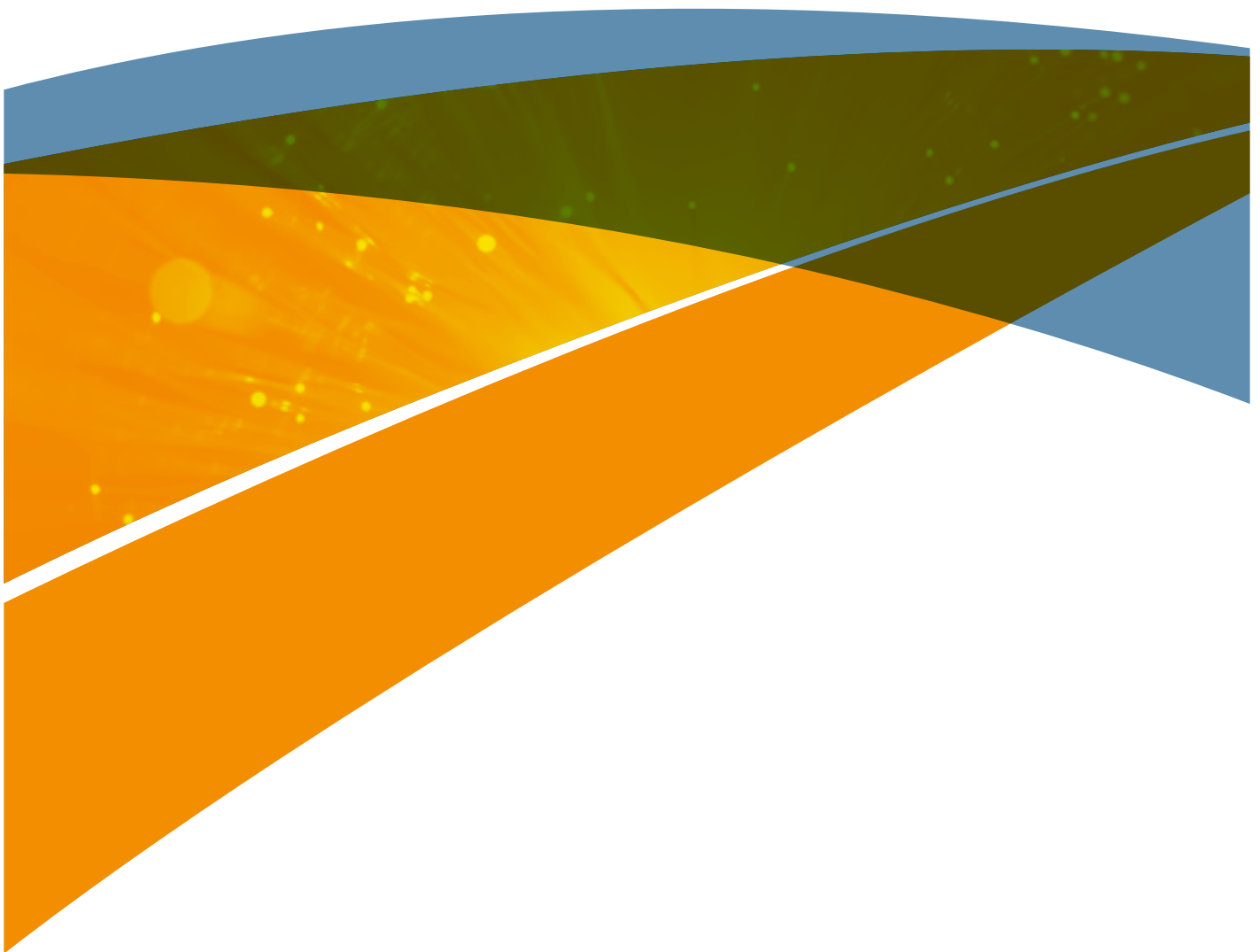




Intellectual
Property
Office

Illicit IPTV Streaming Devices – Call for Views



Background

Internet Protocol television (IPTV) boxes (also known as set-top boxes, Android TV boxes or Kodi boxes) are small plug and play media servers, originally designed to allow consumers to stream legitimate content (locally stored or legal online content). Despite the legitimate use of this equipment, software is widely available (illicit Kodi extensions being the best known) which connect the boxes to illegal content through streaming websites, file lockers and BitTorrent trackers.

Configuring IPTV boxes in this way allows the consumer to easily access subscription TV, sports and films for the one-off price of a box (usually £40-50). It is claimed that the ease of use of these boxes, the wide range of illicit content available and the fact they are freely available from a number of well-known online retailers as well as physical stores, has led to a sharp rise in their use by consumers.

Broadcasters and content owners have voiced concerns that, although a range of existing legislation applies to the sale and use of these devices (as well as the provision of illicit content streams), the legal framework does not provide sufficient tools to tackle this growing threat.

The government is keen to understand where further action might be necessary to address this problem and is therefore seeking views from those with knowledge and experience in dealing with IPTV boxes. **Please send your views to: enforcement@ipo.gov.uk by 7 April 2017.**

Who is this Call for Views aimed at?

This Call for Views is aimed primarily at those with experience of investigating and prosecuting offences relating to illicit streaming devices, but we are keen to hear from anyone with relevant information to share. We would kindly request that submissions be supported by evidence wherever possible.¹

As well as exploring whether there is any need for legislative change, we also intend to update guidance for investigators working in this area.

Existing offences and previous convictions

Although the applicable law will vary from case to case, there are a wide range of provisions which may be applicable to the sale, advertising, supply or use of set-top boxes for illicit streaming. These include the following:

Copyright, Designs and Patent Act 1988

- s297 - fraudulent reception of transmissions
- s297A - unauthorised decoders
- s296ZB - devices and services designed to circumvent technological measures

Fraud Act 2006

- s6 - possession of articles for use in fraud
- s7 - making or supplying articles for use in frauds

- s11 - obtaining services dishonestly

Conspiracy to defraud (common law)

Inchoate offences: encouraging or assisting crime. An inchoate offence is a crime involving preparing for or seeking to commit another crime and therefore may involve any of the above, coupled with:

- Sections 44-46 of the Serious Crime Act 2007

Other provisions

- Sections 328-329 of the Proceeds of Crime Act 2002

The Crown Prosecution Service (CPS) and Police Intellectual Property Crime Unit (PIPCU) had a recent conviction in the case of R v Rosero using s44(1) of the Serious Crime Act 2007. The charge was worded as follows:

“[A]n act capable of encouraging the commission of an offence by placing for sale on an eBay account with the user name XXXXX an IPTV receiver with the description XXXXXX intending to encourage or assist in the commission of an offence contrary to section 11 of the Fraud Act 2006, namely, dishonestly and knowingly obtaining services from SKY without the authority of SKY and without paying the required subscription fee to SKY”.

The Premier League had a recent conviction in the case of R v William O’Leary and Terence O’Reilly under conspiracy to defraud (common law) against two people who supplied devices to pubs and individuals which facilitated piracy. The charges were worded as follows:

Count 1

“WILLIAM O’LEARY and TERENCE O’REILLY on divers days between the 17th day of March 2011 and the 3rd day of December 2013 conspired together and with KASPER PEDERSEN and persons known and unknown to defraud the broadcasters of pay-tv services, the Premier League, Football Association and such other persons as have an interest in the content of pay-tv by supplying devices and services that facilitated the viewing of pay-tv without appropriate payment to said broadcasters.”

Count 2

“TERENCE O’REILLY on divers days between the 4th day of December 2013 and the 17th day of January 2014 conspired together with KASPER PEDERSEN and persons known and unknown to defraud the broadcasters of pay-tv services, the Premier League, Football Association and such other persons as have an interest in the content of pay-tv by supplying devices and services that facilitated the viewing of pay-tv without appropriate payment to said broadcasters.”

The case of R v Anton Benjamin Vickerman is an example of a conviction under conspiracy to defraud for provision of illicit content streams without involvement in the provision of IPTV boxes. The charges were worded as follows:

Count 1

“ANTON BENJAMIN VICKERMAN and KELLY ANN VICKERMAN on divers days between the 13th day of February 2007 and the 18th day of August 2008, conspired together and with Brendan DeBeasi, persons known as Flippy, Huy, Totz, Thea, Raider, Michelle, Lucky, Marat and Ahmed Saber and Mattio and persons unknown to defraud such persons as have an interest in films be facilitating the infringement of copyright in films by operating the website surfthechannel.com”

Count 2

“ANTON BENJAMIN VICKERMAN and KELLY ANN VICKERMAN on divers days between the 19th day of August 2008 and the 9th day of November 2009, conspired together and with persons known as Flippy, Huy, Totz, Thea, Raider, Michelle, Lucky, Marat and Ahmed Saber and Mattio and persons unknown to defraud such persons as have an interest in films be facilitating the infringement of copyright in films by operating the website surfthechannel.com”

More information regarding the use of conspiracy to defraud is contained in the Annex below.

There are several cases in the pipeline that may test the applicability of other provisions. One trial is due to take place in May 2017 under s296ZB of the Copyright, Designs and Patent Act 1988 (devices and services designed to circumvent technological measures) and there are a number of cases still being investigated. We are however very interested to hear of further specific instances where these provisions have been found useful (including examples of successful prosecutions) or where they have been considered unusable, whether due to scope, complexity or other issues. The questions below have been designed with this in mind.

Scale of the problem

Q1: Please provide evidence of the scale of the problem of illicit IPTV streaming devices and the economic harm it is causing to broadcasters and content owners.

Case history

Q2: Please provide examples of cases that you are aware of (with references where possible) where prosecution in the UK has been successful for the:

- a. Import;
- b. Offer;
- c. Sale; or
- d. Use of set-top boxes for illicit streaming.

Please indicate the legal basis used for these prosecutions.

Q3: Please provide examples of cases you are aware of where prosecution of ostensibly valid cases was not pursued under the above provisions. Please indicate why these cases were not taken forward.

Efficacy of existing legal framework

Q4: Are there specific areas where you believe the current legal framework does not provide the necessary tools to investigate and prosecute this issue? If so, please provide as much detail as you can on how you think the current provisions could be amended and how these amendments would address the perceived gap.

Q5: Is there any UK case law which you believe limits the applicability of the statutory offences listed above?

Difficulties in evidence gathering

Q6: Are there any issues around evidence gathering for these existing offences? This could arise conceivably from the need for digital forensic capability, or the often dispersed nature of the illicit streaming infrastructure.

International considerations

Q7: Please provide examples of where this issue has been raised with law enforcement agencies or government officials/ministers in other countries.

Q8: Please provide examples of where there is an international element to the supply and support of this activity in the UK, and give your views on how this dimension of the problem could be addressed in terms of:

- a. *The supply of illegal boxes;*
- b. *Websites hosting illegal content; and*
- c. *Other illicit streaming services.*

Q9: Are there examples of enforcement powers in other countries that have been introduced to deal with these issues? Please provide examples of approaches you are aware of in other countries and any evidence you have of their success.

Other barriers to prosecution (resource, jurisdiction)

Q10: Are there any other barriers to the successful investigation and prosecution of these issues?

Q11: Do enforcement agencies have the powers required to investigate this activity? Given the split in offences between IP legislation and other provisions such as the Fraud Act, are warrants readily available to those investigating?

Q12: Are there specific areas where further guidance (from IPO and/or CPS) would be beneficial in the investigation and/or prosecution of this activity?

Other suggestions comments

Q13: Are there any non-legislative approaches that you think could help with the situation? Please provide examples.

Q14: Do you have any other suggestions or experience relevant to this exercise?

Annex – existing offences

Copyright Designs and Patent Act 1988

Offence of fraudulently receiving programmes

Section	Description
297 (1)	A person who dishonestly receives a programme included in a broadcasting service provided from a place in the United Kingdom with intent to avoid payment of any charge applicable to the reception of the programme commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
297 (2)	Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly. In relation to a body corporate whose affairs are managed by its members “director” means a member of the body corporate.

Unauthorised decoders

Section	Description
297A (1)	A person commits an offence if he— a. makes, imports, distributes, sells or lets for hire or offers or exposes for sale or hire any unauthorised decoder; b. has in his possession for commercial purposes any unauthorised decoder; c. installs, maintains or replaces for commercial purposes any unauthorised decoder; or d. advertises any unauthorised decoder for sale or hire or otherwise promotes any unauthorised decoder by means of commercial communications.
297A (2)	A person guilty of an offence under subsection (1) is liable— a. on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both; b. on conviction on indictment, to imprisonment for a term not exceeding ten years, or to a fine, or to both.
297A (3)	It is a defence to any prosecution for an offence under this section for the defendant to prove that he did not know, and had no reasonable ground for believing, that the decoder was an unauthorised decoder.

Section	Description
297A (4)	<p>In this section—</p> <p>“apparatus” includes any device, component or electronic data (including software);</p> <p>“conditional access technology” means any technical measure or arrangement whereby access to encrypted transmissions in an intelligible form is made conditional on prior individual authorisation;</p> <p>“decoder” means any apparatus which is designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded;</p> <p>“encrypted” includes subjected to scrambling or the operation of cryptographic envelopes, electronic locks, passwords or any other analogous application;</p> <p>“transmission” means—</p> <ol style="list-style-type: none"> a. any programme included in a broadcasting service which is provided from a place in the United Kingdom or any other member State; or b. an information society service (within the meaning of Directive 98/34/EC of the European Parliament and of the Council of 22nd June 1998, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20th July 1998) which is provided from a place in the United Kingdom or any other member State; and <p>“unauthorised”, in relation to a decoder, means that the decoder is designed or adapted to enable an encrypted transmission, or any service of which it forms part, to be accessed in an intelligible form without payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for accessing the transmission or service (whether by the circumvention of any conditional access technology related to the transmission or service or by any other means).</p>

Devices and services designed to circumvent technological measures

296ZB (1)	<p>A person commits an offence if he—</p> <ul style="list-style-type: none"> a. manufactures for sale or hire, or b. imports otherwise than for his private and domestic use, or c. in the course of a business— <ul style="list-style-type: none"> i. sells or lets for hire, or ii. offers or exposes for sale or hire, or iii. advertises for sale or hire, or iv. possesses, or v. distributes, or d. distributes otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner, <p>any device, product or component which is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures.</p>
296ZB (2)	<p>A person commits an offence if he provides, promotes, advertises or markets—</p> <ul style="list-style-type: none"> a. in the course of a business, or b. otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner, <p>a service the purpose of which is to enable or facilitate the circumvention of effective technological measures.</p>
296ZB (3)	<p>Subsections (1) and (2) do not make unlawful anything done by, or on behalf of, law enforcement agencies or any of the intelligence services—</p> <ul style="list-style-type: none"> a. in the interests of national security; or b. for the purpose of the prevention or detection of crime, the investigation of an offence, or the conduct of a prosecution, <p>and in this subsection “ intelligence services ” has the meaning given in section 81 of the Regulation of Investigatory Powers Act 2000.</p>
296ZB (4)	<p>A person guilty of an offence under subsection (1) or (2) is liable—</p> <ul style="list-style-type: none"> a. on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum, or both; b. on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.

Section	Description
296ZB (5)	<p>It is a defence to any prosecution for an offence under this section for the defendant to prove that he did not know, and had no reasonable ground for believing, that—</p> <p>a. the device, product or component; or</p> <p>b. the service,</p> <p>enabled or facilitated the circumvention of effective technological measures.</p>

Fraud offences

Fraud Act 2006

Possession etc. of articles for use in frauds

Section	Description
6 (1)	A person is guilty of an offence if he has in his possession or under his control any article for use in the course of or in connection with any fraud.
6 (2)	<p>A person guilty of an offence under this section is liable—</p> <p>a. on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);</p> <p>b. on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or to both).</p>
6 (3)	Subsection (2)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

Making or supplying articles for use in frauds

Section	Description
7 (1)	<p>A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article—</p> <p>a. knowing that it is designed or adapted for use in the course of or in connection with fraud, or</p> <p>b. intending it to be used to commit, or assist in the commission of, fraud.</p>

Section	Description
7 (2)	A person guilty of an offence under this section is liable— a. on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both); b. on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).
7 (3)	Subsection (2)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months

Obtaining services dishonestly

Section	Description
11 (1)	A person is guilty of an offence under this section if he obtains services for himself or another— a. by a dishonest act, and b. in breach of subsection (2).
11 (2)	A person obtains services in breach of this subsection if— a. they are made available on the basis that payment has been, is being or will be made for or in respect of them, b. he obtains them without any payment having been made for or in respect of them or without payment having been made in full, and c. when he obtains them, he knows— i. that they are being made available on the basis described in paragraph (a), or ii. that they might be, but intends that payment will not be made, or will not be made in full.
11 (3)	A person guilty of an offence under this section is liable— a. on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both); b. on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or to both).
11 (4)	Subsection (3)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

Conspiracy to defraud (common law offence)

The crime of conspiracy to defraud is sometimes summarised as an agreement between two or more persons, dishonestly, to prejudice the rights of another.

Conspiracy to defraud is an indictable only offence.

The offence of conspiracy cannot exist without the agreement, consent or combination of two or more persons. The Attorney General has issued [guidance](#) to prosecuting authorities as to when it is appropriate to charge common law conspiracy to defraud instead of a substantive offence, contrary to the Fraud Act 2006, or to a statutory conspiracy to commit a substantive offence, contrary to section 1 of the 1977 Criminal Law Act.

The guidance highlights that in selecting charges in fraud cases, the prosecutor should first consider:

- Whether the behaviour could be prosecuted under statute - whether under the Fraud Act 2006 or another Act or as a statutory conspiracy; and
- Whether the available statutory charges adequately reflect the gravity of the offence

The guidance also provides that there may be cases where the interests of justice can only be served by presenting to a court an overall picture which cannot be achieved by charging a series of substantive offences or statutory conspiracies. Typically, such cases will involve some, but not necessarily all of the following:

- Evidence of several significant but different kinds of criminality;
- Several jurisdictions;
- Different types of victims, e.g. individuals, banks, website administrators, credit card companies; and
- Organised crime networks.

The proper presentation of such cases as statutory conspiracies could lead to:

- A large number of separate counts to reflect the different conspiracies;
- Severed trials for single or discrete groups of conspiracies;
- Evidence in one severed trial being deemed inadmissible in another.

The charges selected will therefore be very dependent on the facts in each case

Inchoate Offences

Serious Crime Act 2007

Intentionally encouraging or assisting an offence

Section	Description
44 (1)	A person commits an offence if— a. he does an act capable of encouraging or assisting the commission of an offence; and b. he intends to encourage or assist its commission.
44 (2)	But he is not to be taken to have intended to encourage or assist the commission of an offence merely because such encouragement or assistance was a foreseeable consequence of his act.

Encouraging or assisting an offence believing it will be committed

Section	Description
45	A person commits an offence if— a. he does an act capable of encouraging or assisting the commission of an offence; and b. he believes— i. that the offence will be committed; and ii. that his act will encourage or assist its commission.

Encouraging or assisting offences believing one or more will be committed

46 (1)	A person commits an offence if— a. he does an act capable of encouraging or assisting the commission of one or more of a number of offences; and b. he believes— i. that one or more of those offences will be committed (but has no belief as to which); and ii. that his act will encourage or assist the commission of one or more of them.
46 (2)	It is immaterial for the purposes of subsection (1)(b)(ii) whether the person has any belief as to which offence will be encouraged or assisted.

Section	Description
46 (3)	If a person is charged with an offence under subsection (1)— <ol style="list-style-type: none"> a. the indictment must specify the offences alleged to be the “number of offences” mentioned in paragraph (a) of that subsection; but b. nothing in paragraph (a) requires all the offences potentially comprised in that number to be specified.
46 (4)	In relation to an offence under this section, reference in this Part to the offences specified in the indictment is to the offences specified by virtue of subsection (3)(a).

Other offences

Proceeds of Crime Act 2002

Arrangements

Section	Description
328 (1)	A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.
328 (2)	But a person does not commit such an offence if— <ol style="list-style-type: none"> a. he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent; b. he intended to make such a disclosure but had a reasonable excuse for not doing so; c. the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct

Acquisition, use and possession

Section	Description
329 (1)	A person commits an offence if he— <ol style="list-style-type: none"> a. acquires criminal property; b. uses criminal property; c. has possession of criminal property.

Section	Description
329 (2)	<p>But a person does not commit such an offence if—</p> <ul style="list-style-type: none"> a. he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent; b. he intended to make such a disclosure but had a reasonable excuse for not doing so; c. he acquired or used or had possession of the property for adequate consideration; d. the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.
329 (3)	<p>For the purposes of this section—</p> <ul style="list-style-type: none"> a. a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; b. a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession; c. the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.

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