

ALLIANCE

FOR INTELLECTUAL PROPERTY

Industrial Strategy: Intellectual Property Call for Views

November 2017

About the Alliance

Established in 1998, the Alliance for Intellectual Property is a UK-based coalition of over 20 organisations with an interest in ensuring intellectual property rights receive the protection they need and deserve. Our members include representatives of the audio visual, toy, music, games, business software, sports, brands, publishing, retailing and design industries.

The Alliance's overriding objective is to ensure that intellectual property ('IP') rights are valued in the UK and that a robust, efficient legislative and regulatory regime exists, which enables these rights to be properly protected.

Members work at a national and local level with law enforcement bodies to reduce the harm caused by intellectual property crime in local communities and ensure legitimate businesses and traders are able to operate fairly.

We also work closely with a range of agencies to raise awareness of the harm caused by IP theft. We are participants in the IP Crime Group, which facilitates cross departmental dialogue and joint working amongst the relevant enforcement bodies and organisations.

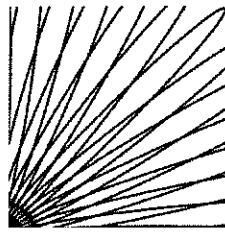
The Alliance is also proactive in supporting the promotion of IP through educational and consumer awareness initiatives and encouraging the development of IP training for businesses and individuals seeking to develop and produce goods, services and content. Alliance members have created various initiatives to support this strategy.

IP and the Industrial Strategy

The Alliance has previously supported measures proposed within the Industrial Strategy Green Paper in relation to IP, particularly promoting its importance in how institutions commercialise their IP; by placing IPO representatives in the Northern Powerhouse and Midlands Engine and in how IP can be used in innovative public procurement.

We have supported bodies such as the Creative Industries Council in fostering the creation and development of IP in that sector and, whilst copyright is clearly very important in any creative industries sector agreement, we reiterate our belief that IP should be a standing feature of all sector agreements and every sector agreement should look at how IP is promoted and protected.

We note that income generation from IP rights allows SMEs in particular to finance investment in new and emerging technologies and software to expand their markets, whether B2B or B2C. Protecting IP rights is therefore fundamental to any strategy that seeks to foster innovation and creativity.



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What can we do to encourage innovation through collaboration through targeted non-regulatory interventions?

Enforcement

It is impossible to talk about the creating and developing IP without stating the absolute need for creators to be able to protect and enforce their rights and for public bodies to uphold the law.

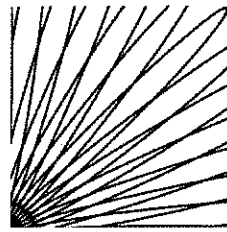
Trading Standards

Enforcement of rights in the UK relies heavily on Trading Standards officers across the country. Many of these teams, however, have faced significant reductions in their funding and IP protection has significantly suffered as a result. The 2016 National Audit Office report¹ expresses concerns over the lack of resource and the workload expected of Trading Standards officers, with over half of equivalent full time staff lost since 2009 and 263 different pieces of legislation needing to be enforced. This is particularly relevant in view of the Government's plan to create a Northern Powerhouse. Areas such as Cheetham Hill in Manchester have become notorious markets for counterfeit goods and whilst we appreciate that action has been taken in this area, it is disreputably damaging the region due to the massive amounts of fake goods still for sale. Areas such as this not only impact on consumers and businesses at a local level, but threatening both groups at a national level too. Local police forces also largely struggle to take on cases involving IP crime and the National Crime Agency does not focus on it specifically. Additionally, the UK's borders are already allowing in vast quantities of counterfeit goods, with seizure levels considerably lower than our EU counterparts relative to our size and economy. It is estimated that 10-12% of toys in the UK are counterfeits, which will not have been made to the same high safety standards as the originals and are being put into the hands of children². Our anxiety has further grown this year as China takes its overall 'One Belt, One Road (OBOR)' strategy, from concept to reality. In short, the pan-Eurasia rail system has already been introduced. This will help China reduce its growing manufacturing, logistics and export costs, by shrinking transport times to Europe from 45 days to, around, 10 days. In January, this year, a train left Zhejiang province on Sunday 1st January and took two-and-a-half weeks to get to London, arriving on 18th January, carrying 34 containers of small commodities such as clothing, fabric and bags destined for the UK. It had travelled through Kazakhstan, Russia, Belarus, Poland, Germany, Belgium and France on the way. As we

¹ <https://www.nao.org.uk/press-release/protecting-consumers-from-scams-unfair-trading-and-unsafe-goods>

² <https://euipo.europa.eu/ohimportal/en/web/observatory/ipr-infringement-toys-and-games>

* This includes investment by Alliance members ACG, ACID, BPI, DACS, FDA, MPA, PPA, Premier League, Publishers Association and UKIE alongside investment by Sky and Nintendo. Additional enforcement is carried out by organisations within Alliance members' sectors for which data was not readily available.



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understand it there is no current customs plan to deal with what could be another super highway for fake goods.

We believe that the law should be enforced properly to protect businesses and consumers and to allow innovation and creativity to flourish. Government should support the ability for businesses of all sizes to enforce their IP rights.

PIPCU

Consumption of content from illegal digital and physical sources continues to inhibit the growth of IP-rich businesses that create goods and content. Alliance members and others invest more than £20 million annually* in protecting their content and commit to maintaining an appropriate level of investment, commensurate with the counterfeiting and piracy threat they are facing, to promote the growth of the legal market over the next five years, while asking Government to provide additional resources to PIPCU (an increase of £0.5m per annum), to allow for greater disruption of illegal activity and more enforcement action against organised criminal networks, and to confirm PIPCU's funding through to the end of the current Parliament.

Online IP theft

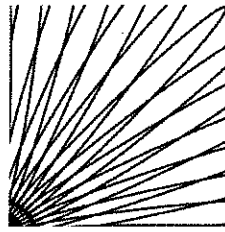
Building on the progress made with Search Engines, and noting the European Commission's Communication on Tackling Illegal Content Online and the Government's Internet Safety Strategy, Industry commits to assist Government in organising new Roundtables between rights holders and online intermediaries to reduce online infringement and incentives towards infringement, with a senior Government representative in the Chair.

The objective will be to deliver agreed Codes of Practice with (1) the online advertising industry; (2) social media and user upload platforms; and (3) online marketplaces by 31 December 2018, embodying new and effective cooperative measures that will significantly reduce online infringement in the UK. These measures should include proactive steps to detect and remove illegal content and counterfeit products, improving the effectiveness of notice and take down arrangements, reducing incentives for illegal sites to engage in infringement online, reducing the burdens on rights holders in relation to protecting their IP, and steps are taken to deter downstream infringement in order to reduce the risk of users becoming "accidental pirates".

Whilst we are hopeful that progress can be made on these issues we would ask Government to strengthen the UK IP framework to help reduce online infringement and protect consumers if agreement cannot be reached.

Parasitic packaging

A government review in 2006 found that brands in the UK are not well protected from misappropriation and looked to consumer protection law as the remedy. This has not worked,



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not for any failings in the law but because the Competition and Markets Authority and Trading Standards lack the resources to enforce.

The Alliance considers that affected companies should be able to challenge misleadingly similar packaging under civil law as this would strengthen consumer protection and fill the hole in brand protection, at no cost to the taxpayer.

Substitute selling

We call on the Government to tackle online substitute selling whereby consumers may believe they have purchased a specific branded product from a website but when it is delivered, it turns out to be a generic or imitation version, not the genuine item. This could be dealt with through the processes described above under *Online IP Theft*.

Designs

The Alliance supports the view that if criminal offences existed for the copying of unregistered designs, similar to those that already exist for copyright piracy and trade mark counterfeiting, it would be a compelling deterrent, and go some way to counter the estimated £165million per annum loss to the UK from design infringement. To address any concerns about creating a criminal offence, this would apply to clear-cut cases **beyond all reasonable doubt** of persistent, deliberate and wilful copying after a civil route has been exhausted.

IP Education and Promotion

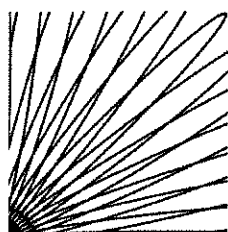
Respect for IP and an understanding of the value of IP is vital if the UK is to foster new IP creators from diverse backgrounds and across the nations and regions. Many Alliance members have created initiatives that promote an understanding of the importance of IP and the need to protect and respect it. Some of these programmes are collated at the Cracking Ideas³ web portal and we would encourage greater promotion of this to educators as well as across Government. The Get it Right from a Genuine Site⁴ campaign - which helps guide consumers towards legal forms of content, promotes the significance of copyright to the creation of content and showcases the careers and the roadmap to those careers in the industry, has shown success⁵ and needs continued commitments from Government to match those from industry in order to increase its impact.

The Alliance and its members help to train and educate SMEs on how to police their content and products online and investigate partnerships to assist in enforcement between small and large players. Industry will partner with Government to develop a package of resources and training for SMEs accessible via Companies House, HMRC, Intellectual Property Office and

³ <http://crackingideas.com>

⁴ <https://www.getitrightfromagenuinesite.org>

⁵ Amongst those exposed to the campaign, past month piracy rates have fallen by 18% (IPSOS-MORI independent polling)



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other agencies, building on the work already undertaken by the IPO and the Alliance. **We ask for Government to support, actively promote and acknowledge such initiatives to SMEs and provide platforms and venues for this activity to take place.**

The strategy as a whole also needs to look at the ecosystem that has supported the creative industries. The UK historical approach to education, access to the chance to engage with the creative industries from trying an instrument or learning how to draw to performing and acting in school productions feeds into the network of small venues that give people opportunities to watch, perform and enjoy creativity of all sorts are part of the UK success story.

Voluntary IP Register

The Alliance does not believe that the benefits of a public registry for copyright or designs protected by unregistered design rights will provide public benefits which would outweigh the detrimental effect that such a register may have on legitimate recognition and application of “works” in which International Conventions and Treaties recognise protection of rights.

The international recognition and application of rights to works is a vital part of application of copyright and unregistered designs in an increasingly globalised world.

In this context, the provisions of Articles 5.1 and 5.2 of the Berne Copyright Convention⁶ are good examples of the way in which the enjoyment of rights should not be subject to registration formality.

Differences for application of common law rules and droit d’auteur systems under national laws should also be considered when assessing the merits of “positioning” the status of any voluntary registration system for copyright within the United Kingdom.

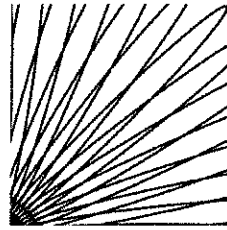
There may be concerns if any voluntary system for registration was perceived as affecting ownership of original works (rather than being a mechanism to assist in processes linked to litigation or to application of rights for the purposes of licensing or enforcement).

The Alliance strongly resists calls for the UK to extend registrations to copyright works or to unregistered design rights where it is felt an additional legal and administrative burden would be incurred, especially by individual creators and SMEs.

The Alliance is supportive of the application of digital identifiers and © or (P) or ® notices.

⁶ Berne Copyright Convention – Article 5.1 Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union, other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

5.2 The enjoyment and exercise of these rights shall not be subject to any formality: such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work.”



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However, there is a concern that a UK voluntary registration system may be used by initiated creators to gain advantage over creators who are less aware of the way in which copyright vests in original works.

Government should continue to invest in copyright education and awareness initiatives (linked with industry where appropriate) and further supporting investment in IP business audits helping companies (and in particular SMEs) better understand the value of the intellectual property owned by them.

Collective management organisations (CMOs) offer a service widely used for copyright that allows creators and IP owners to have their works licensed to third parties through blanket licenses. Members of a CMO declare the works that they have created and then allow them to be licensed by the CMO.

ACID provides a service (ACID Copyright & Design Databank) to its members where they can lodge documents and images of their 2D or 3D designs if they are relying on unregistered design rights (UDR) and/or copyright, or as an added safeguard for registered designs. This allows for an audit trail in the event of a dispute around ownership. Additionally, ACID offers a mediation service, Mediate to Resolve⁷, where members are involved in a dispute with another member can seek resolution without recourse to legal action.

To date over 4000 mediations have taken place, with less than 30% requiring legal intervention in the form of letters before action or undertakings. Only four have ever reached a final Court hearing.

For an official registration body to have what would appear to be an unofficial and voluntary register could cause confusion in what registrants may think are registered rights with a UK authority, when they are not. To call a potential registry an "IP Register" is a name which infers official registration.

A number of Alliance members have supported and continue to support the Copyright Hub⁸ which seeks to develop processes to join up content online and allow creators to derive value from their output and we await further developments in this space.

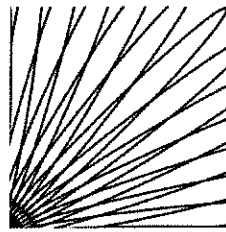
IP and Finance

Intellectual Property (IP) is now the most valuable asset class on the planet and yet the financing of IP based investments and its importance in the UK economy are not widely recognised or understood.

The relative value of intangible assets and intellectual property in a business means that the greater part of investment activity should now become focused on developing these assets. In 2014 intangible investment, which includes spending on R&D, software, and design, hit

⁷ <https://www.acid.uk.com/members-area/mediation/>

⁸ <http://www.copyrighthub.org>



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£133 billion – 9% higher than traditional “tangible” investment such as property, machinery and IT⁹. More than half of intangible investments were protected by IPRs.

Equity investors, from early stage funding to management buyout, have a good general appreciation of intellectual assets and regard them as a key consideration when evaluating prospective deals. However, most businesses, particularly SMEs, are predominantly reliant on bank lending or asset finance to raise capital yet knowledge-intensive industries struggle to obtain funding as they are unable to utilise the value of their rights in off-balance sheet IP and intangibles.

We await the development of further work by the IPO on IP valuation following the report in August 2017¹⁰.

Anti Copying in Design (ACID) makes the point that before IP valuation, in many SME cases, an Intellectual Property Strategy Review has value to establish what is already in place to then create recommendations for registration implementation prior to valuing and auditing. Only then can IP assets be realistically valued to provide a solid base for lending.

IP and Trade

The United Kingdom has one of the best developed and applied intellectual property regimes in the world. Creators and businesses have been able to use that framework to develop exciting and innovative products, designs and content using the latest technology and manufacturing techniques. The Taylor Wessing Global Intellectual Property Index (GIPI5) ranks the UK third globally, while the 2017 US Chamber of Commerce International IP Index ranks the UK in second. This current advantage must not be jeopardised as we seek to reposition our trading relationships in preparation for withdrawal from the European Union.

It is vital therefore that the protection and promotion of intellectual property (IP) is at the heart of trade policy, ensuring that everything we create in the UK has the potential to achieve its maximum value and that creators are properly rewarded. The opportunities provided in the coming months and years should be used not to threaten the UK’s world leading regime, but to raise the standards in the jurisdictions with which we negotiate. This will not only protect and promote British IP but provide opportunities for creators and rights holders worldwide to benefit socially, culturally and economically in a way the UK already has.

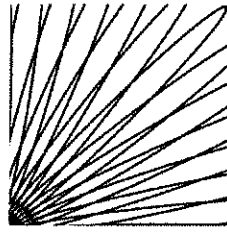
We call on Government to ensure that IP rights are protected in trade negotiations to the benefit of UK businesses and the economy.

Alliance Members

Anti-Copying in Design, Anti-Counterfeiting Group, Association of Authors’ Agents, British Association of Picture Libraries and Agencies, British Association for Screen Entertainment,

⁹ <https://www.gov.uk/government/news/uk-companies-invest-record-133bn-in-intangible-assets>

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/647086/IP-Valuation-Market.pdf



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British Brands Group, BPI, British Toy and Hobby Association, Copyright Licensing Agency, Design and Artists Copyright Society, Educational Recording Agency, Entertainment Retailers Association, Film Distributors Association, Motion Picture Association, Premier League, Professional Publishers Association, PRS for Music, Publishers Association, Publishers Licensing Services, UK Cinema Association, UK Interactive Entertainment, UK Music

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