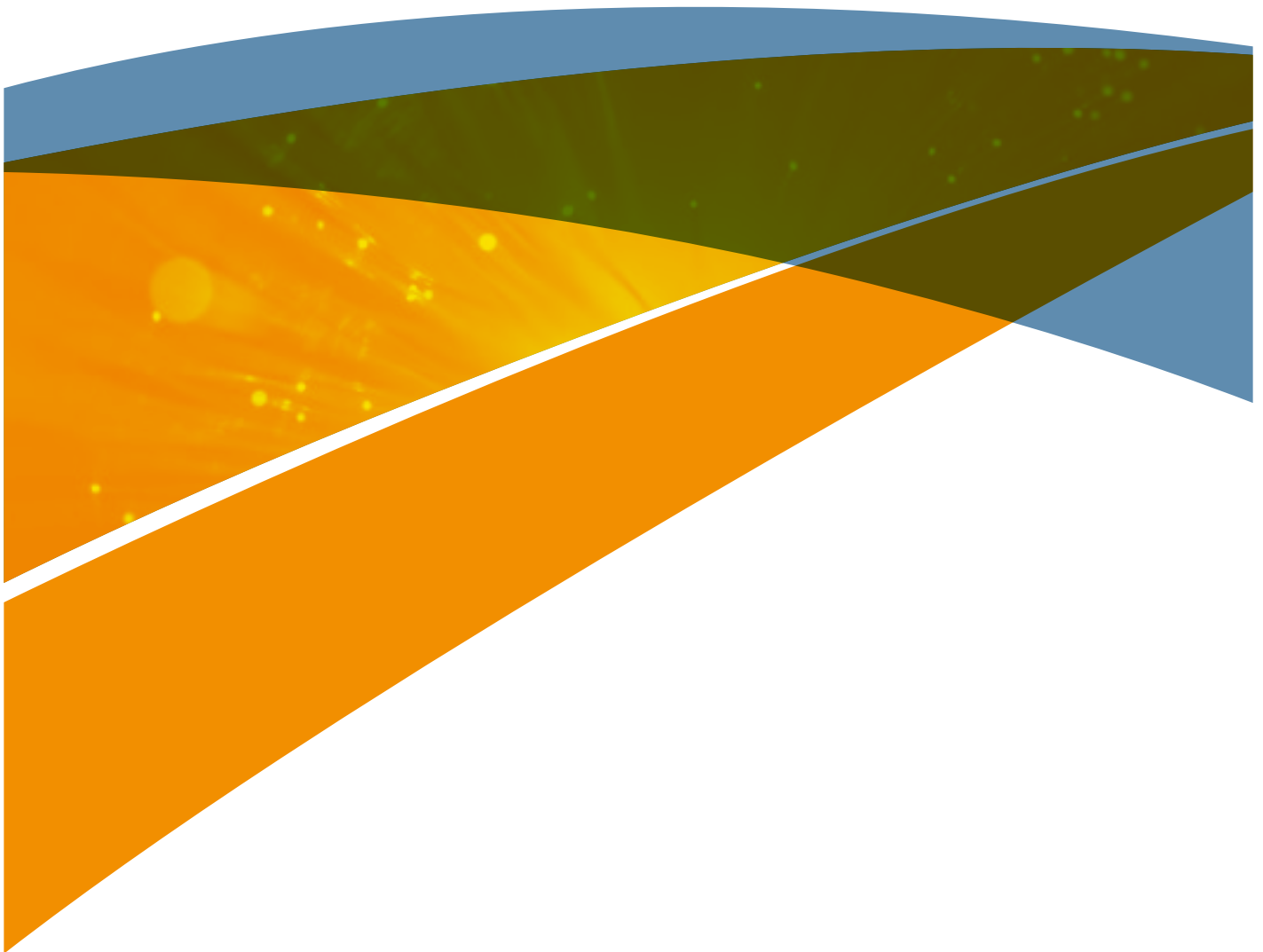




Intellectual
Property
Office

UK Government response to the call for views regarding illicit IPTV streaming devices.





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Executive summary

This document is the UK Government's response to the call for views on the use of illicit Internet Protocol Television (IPTV) streaming devices, henceforth referred to as illicit streaming devices or ISDs.

Responses were received from around 30 organisations (see Annex A). Some responses have been marked as confidential and these are not listed in the annex.

Over half of the responses were supportive of making a change to the current legislative framework. It is argued that changes are required to provide the necessary tools to take action against those who sell and distribute illicit streaming devices or produce apps that facilitate access to infringing material.

Other responses however disagree and argue that the current framework is already flexible enough to deal with the threat posed by illicit devices and apps as evidenced by the successful use of a wide range of offences to prosecute offenders.

The Government would like to thank all those who responded to this call for views.

Next steps

Given the polarised opinions received in response to this Call for Views, the Government sought independent legal advice regarding a range of potential amendments to legislation in this area. Counsel advised that in their view the existing legislative framework is sufficient to capture the supply and use of ISDs. In particular, section 11 of the Fraud Act 2006 and section 44 of the Serious Crime Act 2007 in combination cover the criminality that arises in relation to ISDs, and these Acts also provide sufficient sentencing powers for those offences.

Counsel further commented that the number of successful prosecutions to date supports the view that the existing legal framework is sufficient at this time.

Following this advice, and in light of the successful prosecutions subsequently secured through the Courts, the Government is not proposing to make legislative changes at this time.

The Government does however continue to believe that the infringement of IP rights through illicit TV streaming is a significant and pressing threat in the UK. In light of this we have continued to push forward with a range of work to tackle this criminality.

To date we have:

- Delivered a public education campaign in conjunction with Crimestoppers and industry stakeholders to highlight the risks associated with watching content using ISDs and infringing software, and the importance of tackling the organised criminal networks behind much of this activity. The IPO is now working with a range of industry partners to deliver a nationwide follow on campaign with Crimestoppers, also aimed at raising awareness and shifting attitudes to illicit streaming. It is anticipated that this will be a long-term partnership as the campaign evolves.
- Encouraged the expansion of voluntary approaches to reduce the ability of sellers of ISDs to use online marketplaces and worked with online intermediaries to remove links to infringing apps and plugins. This work is supported by the Creative Industries Sector Deal roundtables, which are looking at action to tackle copyright infringement online more broadly.

- Supported a range of operational activity to investigate and take action against significant sellers of ISD boxes.
- Worked with overseas governments and international agencies with the aim of developing a consistent global approach to tackling the harm caused to the creative industries by the increased use of ISDs.
- Worked with investigators and enforcement agencies, to help them understand the threat from illicit streaming and the range of applicable law they can rely on when pursuing cases. The IPO published guidance which was launched at the June 2017 Chartered Trading Standards Institute Conference in Harrogate.

In addition to this ongoing work, we plan to:

- As outlined in the Creative Industries Sector Deal, we will consider the evidence for and potential impact of administrative site blocking (as opposed to requiring a High Court injunction in every case), as well as identifying the mechanisms through which administrative site blocking could be introduced.
- Work to identify disruptions that may be applied at other points in the supply chain, for example App developers, and further develop our understanding of the effect of new generation smart TVs on how this infringement occurs.
- Undertake research into consumer attitudes/motivations towards use of ISDs in order to develop more effective strategies for reducing levels of use.
- Deliver up to date training to Trading Standards officers via the established IP in Practice courses.
- The Police Intellectual Property Crime Unit (PIPCU) will continue to prioritise resources in this area, taking appropriate action against those traders who seek to encourage copyright infringement through the sale of IPTV boxes.

Background

Illicit streaming devices (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 set-top 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). The sharp rise in the usage of these ISDs can be attributed to a combination of factors. The most important seem to be their ease of use, the wide range of illicit content available in one place without the need for multiple subscriptions, and the fact they are freely available from a number of well-known online retailers as well as physical stores.

A number of 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 appear to provide effective remedies to combat their widespread use.

The government launched this call for views to gather evidence to help in targeting further interventions, and to assess the case for possible legal changes.

Government response by theme

Scale of the problem

Stakeholder views

Most responses to the call for views mention how difficult it is to quantify the scale of harm caused by the prevalence of ISDs. It is claimed that these devices have made copyright-infringing content more accessible by allowing it to be viewed via a television set in the main room of the house. It is argued that this has led to a fall in subscription revenue which harms investment in new programming.

Some responses speculate that infringing material has been sourced to provide a service to 'ex pat' communities so they can view programmes from 'home'. The use of these services has now entered the mainstream and can undermine the legitimate subscription TV services which provide the same content lawfully, making them financially unviable.

As well as looking to address the sale of ISDs, it is argued that consideration should be given as to how to combat the apps and plugins that have been developed to provide unlawful access to copyright protected material.

Finally, some responses have pointed out that there have been a limited number of referrals to law enforcement regarding the sale of ISDs, but where these have been made investigations have taken place. One response argued that ISDs have offered an affordable way for consumers to access content.

Government response

At the moment it is difficult to fully evaluate the scale of usage of ISDs, as there are very few studies that have specifically focused on the issue. It is however encouraging to see that a number of studies are now being carried out in this area, for example by the Industry Trust. The first wave of their study on ISD piracy in 2016 found 19% of adults admitting to engaging in the activity, with some evidence that this figure is rising over time. The Government added test questions on the use of ISDs to the 2016 and 2017 versions of its annual online copyright infringement (OCI) tracker survey carried out by Kantar Media. It has also committed to incorporating further questions into future waves that will provide more detail on specific usage and allow comparison with other methods of infringement.

These studies and others also in the pipeline should help to develop the evidence base and to track any changes in the use of these devices by members of the public. This will in turn help to inform and evaluate future interventions by stakeholders and Government to reduce harm in this area.

These studies have also provided a baseline to measure the effectiveness of the public education campaign conducted in conjunction with Crimestoppers and industry stakeholders. The campaign provides information about the risks of using ISDs and infringing apps and plugins. It also highlights the importance of tackling the organised criminal gangs that are behind much of this activity and makes the public aware of how to report information via Crimestoppers about people distributing ISDs.

Difficulties in evidence gathering

Stakeholder views

One of the major difficulties in gathering evidence highlighted in the responses was the requirement for digital forensic capability. This capability is required to determine what software is loaded onto the box and identify its origin.

Other considerations included the difficulty in identifying the producers of infringing apps and plugins who often hide behind privacy services and use aliases, and the lack of enforcement powers available to Trading Standards under the offences contained in the Fraud Act. It was also suggested that the new restrictions on the use of police bail could result in bail restrictions being lifted from suspects before investigations have been completed.

Government response

The Government will work with enforcement agencies to determine the level of digital forensic capability currently available and how it could be most effectively deployed to help investigations progress as quickly as possible. We will also work with law enforcement agencies and stakeholders to examine how the developers of infringing apps and plugins can be identified.

Finally we will work with the police and Trading Standards to examine how the concerns raised by stakeholders regarding enforcement powers and the new bail rules can be addressed.

Efficacy of existing legal framework

Stakeholder views

The majority of responses call for changes to be made to the existing legal framework to make it more effective in combating the perceived risks posed by ISDs. It is also suggested in some responses that any changes should also look to address the proliferation of apps and plugins that point users of legitimate boxes to infringing material. There was however also a counter view that the legal framework was already flexible enough to deal with these prosecutions.

There were further concerns raised that any proposed changes should not unduly target individual consumers or businesses who make unwitting use of such devices. It was noted that there need to be safeguards to ensure the legal framework remains balanced.

Some stakeholders provided comments on the judgment in [Stichting Brein v Wullems t/a filmspeler C-527/15](#) issued by the Court of Justice for the European Union (CJEU). They welcomed the clarification provided by the judgment that a seller who provides a multimedia player pre-loaded with infringing add-ons is breaking the law. In effect, the provision of hyperlinks to websites where copyright protected works are freely accessible to the public without the consent of the right holders is a breach of the communication to the public right. This potentially allows for prosecutions to be brought against these sellers under section 107(2A) of the CDPA.

However, stakeholders were of the view that that the judgment does not address the complex ecosystem underpinning the offence.

Case history

Stakeholder views

The current legal framework appears to offer a certain degree of flexibility in dealing with those selling and using ISDs. The responses also indicate that a variety of provisions from the legal framework have been used. There is some concern that in the majority of cases defendants have pleaded guilty to the charges brought. Certain respondents argue this means the provisions in the Copyright Designs and Patents Act (CDPA) are still 'untested', however the contrary view may be that these defendants felt the law was sufficiently clear that they stood little chance of mounting a successful defence. Some responses also highlighted instances of cases which were not taken forward to prosecution when in their view they could have been.

Government response

The current legal framework appears to offer a certain degree of flexibility in dealing with those selling ISDs. These include offences contained in the CDPA 1988, the Fraud Act 2006, inchoate offences contained in the Serious Crime Act 2007 and the common law offence of conspiracy to defraud under which investigations or prosecutions can be taken forward at present.

The judgment by the CJEU is positive as it enables sellers of ISDs with infringing add-ons preinstalled to be pursued using the specific IP offence, infringement of the right of communication to the public (section 107(2A) of the CDPA) for which the maximum sentence available is ten years imprisonment. Inchoate offences could also be used to target those who assist in the preparation of these devices.

Given the polarised opinions received in response to this Call for Views, the Government sought independent legal advice regarding a range of potential amendments to legislation in this area. Counsel advised that in their view the existing legislative framework is sufficient to capture the supply and use of ISDs. In particular, section 11 of the Fraud Act 2006 and section 44 of the Serious Crime Act 2007 in combination cover the criminality that arises in relation to ISDs, and these Acts also provide sufficient sentencing powers for those offences.

Counsel further commented that the number of successful prosecutions to date supports the view that the existing legal framework is sufficient at this time.

Following this advice, and in light of the successful prosecutions subsequently secured through the Courts, the Government is not proposing to make legislative changes at this time.

International considerations

Stakeholder views

A number of responses mention discussions with enforcement agencies or government agency officials in China, Singapore, Hong Kong, Australia, Canada, the European Union, USA and Canada. Many responses highlight the perceived inadequacy of existing laws or gaps in the enforcement framework which exist internationally and can prevent enforcement action. They also strongly support increased international co-operation.

Some responses mention that the majority of ISDs are manufactured abroad, with China, Russia and Turkey being mentioned as the main manufacturing markets. These responses suggest the most effective ways to combat the problem of ISDs are

effective action at the border, enforcement action against sellers and working with online marketplaces to remove listings.

The majority of responses claim that most websites hosting illegal content and most illicit streaming services are based overseas. While website blocking orders can be used to prevent users accessing this content, it is often difficult to obtain the identities of the owners from service providers or domain registrars based overseas. This can hinder other effective enforcement action.

The responses also highlight the areas where the UK has taken the lead in IP enforcement, for example the creation of PIPCU and the use of website blocking orders, and urge the UK Government to take the lead in this new area. The responses also mention the use of an interlocutory injunction which Canadian broadcasters have obtained from the Canadian Federal Court to prevent the sale of infringing ISDs by companies or individuals mentioned in the court action until the case is decided. Finally an example was given of the form of administrative enforcement used in China and Vietnam, where complaints are made to a governmental administrative body which then investigates the complaints and takes action where necessary; for example the seizure of infringing goods or the issuing of fines. Any action taken in these systems can apparently be appealed to the relevant court.

Government response

We have taken the lead through our relationship with the European Trade Body, the Audio Visual Anti-Piracy Alliance (AAPA), to raise these issues with colleagues in Europol, Interpol and the European Union Intellectual Property Office (EUIPO). Whilst the UK is the first jurisdiction to have secured criminal convictions for the knowing supply of ISDs, there are ongoing operations in some other member states. The UK has also used its experience and knowledge to assist Hong Kong authorities in successfully prosecuting traders in wholesale quantities of devices intended to be used to illegally access copyright protected material.

The Government also has close ties with a number of foreign governments and has a network of IP attachés in key global markets. The attaché network is essential in helping to identify the key players that may be able to help in reducing the production and export of illicit devices and preventing the development of infringing apps or streaming services. For example, we have built substantial ties with the Government of China, and Ros Lynch, the IPO's Director of Copyright and Enforcement, visited recently for bilateral talks as part of our ongoing engagement with the authorities in China. Our engagement has yielded significant results including the commitment by Alibaba (China's largest online marketplace) to work with right holders to remove counterfeit products and infringing links from their platform and provide greater protection for publishers. The latest visit provided an opportunity to cement these achievements and to look at new opportunities for bilateral cooperation.

We also work closely with the US on approaches to tackling IP infringement. For example we had useful exchanges with the former US IP Enforcement Coordinator (IPEC) on best practice models for voluntary agreements, as well as sharing best practice on governance for IP enforcement initiatives. We have also benefitted from discussing our approach to specific issues, including ISDs, with US officials. We are currently developing specific work in this area with the current US administration.

In addition we will continue to look for opportunities to raise the issue in relevant international fora and seek to build a global approach to addressing the problem. This will include continuing to provide a programme of training and engagement for IP enforcement practitioners in key countries (e.g. police, Customs and Trading Standards or equivalent agencies) in conjunction with a network of UK experts in IP enforcement.

Other barriers to prosecution (resource, jurisdiction)

Stakeholder views

One of the major issues raised in the responses to the call for views was the pressure on resources available to the police and Trading Standards. This can lead to resources being focused on other high profile areas such as violent crime, car crime and dangerous goods. Some submissions mentioned that Trading Standards lack the legal authority to investigate some offences, which can make investigations complicated leading to an unwillingness to take them on.

The responses also mention the length of time taken to pursue litigation through the courts. Often it can take years to navigate the criminal justice process and this can put pressure on prosecutors when deciding whether or not to take on the case. In some responses a more streamlined approach is called for to enable quick decisions to be made about whether cases could be taken forward as private prosecutions.

The majority of submissions were supportive of guidance to assist enforcement agencies in understanding the technicalities behind ISD offences and how effective action can be taken in this area.

Government response

The Government is aware of stakeholder concerns about the pressure on the resources of law enforcement agencies when it comes to assisting in the investigation of offences regarding the sale of ISDs. We have a close partnership with Trading Standards and the Police Intellectual Property Crime Unit (PIPCU), and through the IPO's intelligence Hub we can assist in the analysis and coordination of information to help deliver important intelligence.

We have produced guidance for law enforcement agencies, in conjunction with the Crown Prosecution Service (CPS) and PIPCU. This guidance was launched at the Chartered Trading Standards Institute Conference in Harrogate and will assist enforcement agencies in carrying out investigations and gathering evidence, as well as building their understanding of the relevant law. We also held a seminar at the conference on illicit streaming devices, which was led by barrister, Ari Alibhai, who specialises in IP law.

In addition, we are working with the CPS to understand the processes involved in deciding when to take forward prosecutions and how information on charging decisions can be communicated as clearly and quickly as possible.

Other suggestions and comments

Stakeholder views

A number of responses advocate a wide-ranging approach to this issue encompassing public education campaigns, working with intermediaries to tackle the sale of illicit devices and working with international organisations to co-ordinate enforcement activities. The responses suggest that public education campaigns should focus on explaining clearly why using ISDs is potentially unsafe, unlawful and potentially damaging to investment in new TV content. The role of online marketplaces in the sale of the devices is highlighted and the responses suggest further bilateral discussions are required, focused on how to prevent these devices from being listed for sale. It is also suggested that a “follow the money” type approach be used to prevent payment reaching sellers. With regards to combatting illegal streams and apps it is suggested that a “stay down” system be considered to prevent infringing content from reappearing once it has been blocked.

Government response

The Government is taking forward a number of initiatives which are focused on addressing the growing use of ISDs, including public education campaigns, the use of voluntary initiatives to limit the sale of illicit devices and availability of infringing apps and plugins, and working with international partners.

Online marketplaces have responded to the issue positively, and we have been encouraged to see the main platforms publishing new policies to deal with vendors found to be selling devices aimed at infringing copyright. We agree however that there is further work to be done in this area and look forward to working further with the relevant platforms over the coming months.

Finally, the public education campaign delivered over the past few months in conjunction with industry and Crimestoppers is an important element of an educational outreach strategy that will continue to develop over the coming months. It is a priority to make clear information available to consumers about what constitutes lawful and unlawful activity in this area.

We look forward to working with all interested parties as we continue to make progress in tackling this issue.

Annex A: List of respondents

21st Century Fox

Alliance for Intellectual Property

Audiovisual Anti-Piracy Alliance

British Association for Screen Entertainment

British Copyright Council

British Screen Advisory Council

BT

Canadian Broadcasters and Distributors

CASBAA

Crown Prosecution Service

Devon and Cornwall Trading Standards Service

Educational Recording Agency

FACT

Fox Sports

Gareth Sellwood

Justfunx

Keith Valenza

Kryptowire

Motion Picture Association

NAGRA Group

North East Trading Standards Association

Premier League

SKY

Television Broadcasts Limited Hong Kong

Trading Standards North West

A number of confidential responses were also received.

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