



Illicit IPTV Streaming Devices – Call for Views

Premier League Submission

Introduction

The Football Association Premier League Limited (the “**Premier League**”) is the governing body of the top level competition for football clubs in England and Wales, which is currently known as the Premier League (the “**Competition**”). The Premier League is owned by the 20 constituent member clubs of the Competition from time to time (the “**Clubs**”), who each hold one share in the Premier League.

The Premier League welcomes the Intellectual Property Office’s (IPO) call for views on illicit IPTV streaming devices (“**ISDs**”), which delivers on the government’s commitments in the IP Enforcement Strategy published by the IPO in May 2016.¹ We are very keen to share our views, experiences and suggestions for improvement in this area. The Premier League has and continues to adopt a broad range of enforcement measures, both criminal and civil, to combat the piracy of its content through ISDs (and otherwise), as most recently evidenced by the granting of an injunction by the High Court requiring ISPs to block access to servers being used to stream Premier League matches without authorisation.² Whilst these actions have been successful, they are not completely effective in tackling piracy. Ultimately a multi-pronged approach of enforcement powers, adequate and sustainable funding for enforcement bodies (such as the Police Intellectual Property Crime Unit (PIPCU)), voluntary cooperation with intermediaries and educational messaging is necessary to have a greater impact on what is a rapidly growing method of infringement.

We eagerly anticipate the outcomes of the consultation and hope to see tangible results that provide content owners with the necessary tools to tackle the issue.

Scale of the Problem

Q.1: 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.

The Premier League is authorised by the Clubs to license broadcasters throughout the world to provide and offer audio-visual coverage of the 380 matches that are played in the Competition during the course of each season (the “**Matches**”). A high proportion of the revenue generated by the Premier League derives from the sale of audio-visual rights. This revenue has been, and remains, vital to the quality of the Competition and the Premier League’s success.

The Premier League owns copyright in the audio-visual coverage of the Matches, including the following copyright works: (a) films of the footage of the Matches; (b) artistic works in the form of various Premier League logos and on-screen graphics, which are featured in all broadcasts of the Matches; and (c) musical works, such as the Premier League’s anthem, that are incorporated into all broadcasts of the Matches. The Premier League grants exclusive licences to its broadcasters around the world to use such copyright.

The Premier League has long experienced infringement of its copyright through the creation and communication to the public of unauthorised live streams and recorded clips of broadcasts of Matches on the internet. This has manifested itself in many ways over the years including the showing of unauthorised broadcasts of Matches to members of the public in commercial premises and the unauthorised use of satellite equipment and cards to receive broadcasts from the Premier League’s licensees. However, a new and significant threat to the Premier League’s intellectual property rights has emerged in the last few years in the form of ISDs. There are various types of ISDs available, some of which provide access to unauthorised content through a network of data centres and servers and others through downloadable apps and add-ons. The effect of them however is identical – they are ultimately configured to display online streams of premium content, including live broadcasts of Matches, from a variety of sources when connected to a television. The introduction of ISDs into the UK has caused a seismic shift in the way that unauthorised content is consumed and perceived by end

¹ Protecting creativity, supporting innovation: IP enforcement 2020, 10 May 2016

² FAPL v BT [2017] EWHC 480 CH

users. There has been an undoubted movement from web-based consumption in favour of viewing through apps and devices.

ISDs have become seen by a disconcerting amount of the general public as a legitimate alternative viewing experience to an authorised subscription, due to a range of factors including the following:

- (1) The devices are very easy to use, often sold as “plug and play”, and direct the user to the content without he or she having to spend any time searching for it;
- (2) The streams delivered through the devices tend to be of excellent quality;
- (3) The boxes are very professionally marketed, packaged and sold on well-known online platforms such as Amazon and eBay, thereby adding a perceived legitimacy to them;
- (4) Although some apps and add-ons used to access unauthorised content through ISDs do push through advertisements, the viewing experience is generally much cleaner and can be ad-free in comparison to viewing on a “traditional” pirate website;
- (5) The risks of a malware attack, whilst present, are not currently at the same levels as those on pirate websites;
- (6) Unlike viewing on a laptop or PC in a bedroom, ISDs shift piracy into the living room and allow whole families to watch together, becoming a direct replacement and rival to legitimate broadcasters.

As a result of the above, ISDs are seen as cheap, reliable, excellent quality devices which offer more content than any of our authorised licensees could rival, whilst facing none of the licensing restrictions faced by a legitimate broadcaster. The demand for such devices and the ease with which sellers are able to set themselves up as alternatives to legitimate broadcasters has led to the emergence of a very high number of infringers.

The most popular and well-known ISDs are pre-installed with “Kodi” (formerly X-Box Media Centre) software, which is free to download and commonly used in conjunction with downloaded add-ons to access premium content without authorisation. A study by Redburn (Europe) Limited in December 2016³ found that devices installed with Kodi are now in 10-15% of UK homes. The popularity is further evident from an analysis of global traffic to Kodi.tv (the primary but not only site used to download Kodi software), which at 14 March 2017 was 15.1 million average monthly visits.

Kodi is not the only software used by ISD sellers to provide unauthorised access to streams of subscription content. The ease with which sellers are able to set themselves up as de facto broadcasters has led to an exponential rise in the number of websites offering such services. By way of example, as of July 2016 the Premier League had seen an 87% increase in the number of sites offering IPTV and OTT services (the predominant means of broadcast delivery utilised by the ISDs) in the previous 12 months.

In conjunction with the substantial increase in ISD sellers, there has been a clear shift in consumption habits of pirated content. This is borne out by a study conducted by The Industry Trust for IP⁴ in October 2016 and updated in December 2016 (the “**Industry Trust Study**”) which estimated that 19% of adults in the UK have used ISDs to access infringing content (nearly half of whom began doing so in the last 12 months), including 47% of 16-17 year-olds, 20% of 11-15 year-olds and perhaps most concerningly just over half of the parents surveyed. Whilst these statistics apply to a range of premium content, more than one in ten of those surveyed admitted to engaging in ISD infringement to watch live sports more than once a week.

³ Piracy Explosion, 19 December 2016

⁴ IPTV Piracy: A study on set-top-box and stick infringement for the industry

These figures clearly point to a perceived legitimacy in using such devices, something that must be tackled if content owners are to have a meaningful impact in combatting the mass piracy of their content. This perception is not helped by the availability of ISDs on legitimate platforms such as Amazon and eBay. The Industry Trust Study reported that 13,815 listings were found for IPTV devices (both “vanilla” and “fully loaded”) across 51 marketplaces and relating to more than 4 million devices. This apparent uncertainty over the legality of such devices is heightened by recent articles in the mainstream press, including a piece in the Guardian on 26 October 2016 entitled ‘Even my 78-year old father streams – why football fans are switching off’⁵ and more recently in the Daily Telegraph on 17 January 2017 with a piece entitled ‘Why illegal streaming will burst football’s TV bubble’⁶. It is therefore crucial that it is made abundantly clear, through appropriate legislation and public messaging, that ISDs are unlawful and a form of mass piracy.

As stated above, a large part of the Premier League’s revenue is reliant on the sale of audio-visual rights. It is this revenue that allows the Premier League to invest in and contribute to the following:

- (a) ensuring that the most competitive and compelling football matches are played as part of the Competition, in vibrant stadiums full of committed and engaged fans;
- (b) community projects and initiatives at a local and global level. By way of example, the Premier League has committed to spending £100 million a year on community funding and charitable projects between 2016 and 2019. The Premier League, through the Football Foundation, has already invested over £200 million into the development of new and refurbished community sports facilities, particularly focussed in deprived or disadvantaged areas;
- (c) all levels of the football pyramid, whether professional or amateur. In 2016/17 for example, the Premier League will contribute £315.6 million to lower levels of the game, including clubs in the English Football League and non-league clubs;
- (d) the wider economy. In June 2015, an economic analysis commissioned by the Premier League and carried out by Ernst & Young LLP⁷ found that the Premier League and its Clubs supported over 100,000 full-time equivalent jobs in the UK in 2013/14 and had a total economic impact of £6.24 billion in that same period.

This investment is dependent on income generated from the Premier League’s commercial deals, the vast majority of which is derived from the sale of exclusive rights within its broadcasting deals. If this exclusivity is undermined by illegal streaming, whether through ISDs or otherwise, to the point that our broadcast licensees can no longer maintain subscription levels, then it follows that the Premier League’s revenue is significantly at risk. This in turn threatens the Premier League’s ability to make the investments outlined at (a) – (d) above.

Case history

Q.2: 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.***

⁵ <https://www.theguardian.com/football/2016/oct/26/football-fans-stream-sky-bt-sport-live-viewers>

⁶ <http://www.telegraph.co.uk/football/2017/01/16/illegal-streaming-will-burst-premier-leagues-tv-bubble/>

⁷ The economic impact of the Premier League, 18 November 2015

Please indicate the legal basis used for these prosecutions.

The Premier League has been very active in pursuing criminal investigations against suppliers of unauthorised broadcasting systems for a number of years, spanning the development in technology from so-called card sharing and control word sharing networks (for examples please see *R v Hopkins and Passlow* (2015); and *R v Helidon Vuciterni* (2013)) to the current use of ISDs. As the Premier League does not have in-house investigative resources, cases are typically referred to FACT (of which the Premier League is a member) for investigation and onward referral to law enforcement. To give an idea of the scale of activity in this area, the Premier League currently has 40 cases with FACT, 26 of which have been referred on to law enforcement authorities in the UK. Below are some recent examples of prosecutions secured under the categories identified above. It is however the Premier League's view that a far greater number of successful prosecutions are needed if content owners are to prevent further growth of the problem.

(a) Import of ISDs

The Premier League is not aware of any successful prosecutions for the import of ISDs. It is possible to use the devices themselves for legitimate purposes and the Premier League's investigations suggest that the devices are often purchased from manufacturers without any content loaded on to them. It is therefore very difficult to attach liability to the manufacturer or importer of the device. It is only when the devices are modified to allow access to content that they become illegal.

(b) Offer of ISDs

On 6 March 2017, Malcolm Mayes pleaded guilty at Teeside Crown Court to two offences under s.296ZB of the Copyright Designs and Patents Act 1988 ("**CDPA**") for the sale and advertisement of pre-configured MAG250 ISDs over an 18-month period⁸. Mr Mayes was given a ten-month suspended custodial sentence, ordered to pay £170,000 in costs and a Proceeds of Crime Order was made against him for a further £80,000.

The case was led by Hartlepool Trading Standards following a referral by the Premier League and FACT. Although this was a successful prosecution under s.296ZB, the Defendant pleaded guilty to the offence and it therefore remains unclear whether a criminal court would have convicted the accused under this provision.

(c) Sale of ISDs

On 1 December 2016, Terence O'Reilly and William O'Leary were found guilty of a conspiracy to defraud at Nottingham Crown Court following a private criminal prosecution brought by the Premier League⁹. Mr O'Reilly pleaded not guilty to two counts of conspiracy to defraud and was sentenced to four years in custody. He had been involved through various businesses in (i) the retail supply of pre-configured MAG250 ISDs to pubs, clubs, other commercial premises and the general public; (ii) the wholesale supply of pre-configured MAG250s to other retailers, including Mr O'Leary; (iii) the management and provision of subscriptions for the ISDs he was supplying through (i) and (ii) above; and (iv) an insurance service for commercial premises that used ISDs supplied directly by him or through one of his other resellers. Mr O'Leary, who pleaded guilty to one count of conspiracy to defraud and received a 24-month suspended sentence, was involved in the sale of MAG 250 ISDs provided to him by Mr O'Reilly through a business called satellite4pubs.

The legal basis for the prosecution was the common law offence of conspiracy to defraud, as defined in *Scott v Metropolitan Police Commissioner* [1975] A.C. 819. This requires two or more persons to dishonestly agree to put at risk the financial interests of others. In this case, the accused clearly conspired with one another, amongst others, and placed at risk the financial interests of content

⁸ *R v Malcolm Mayes and Mandy Mayes* (2017)

⁹ *R v William O'Leary and Terence O'Reilly* (2016)

owners such as the Premier League, broadcasters such as Sky Sports and BT Sport, and indeed many others with a vested interest in subscription based television.

Although a successful prosecution, the Premier League had to rely on a common law offence as a result of inadequacies in the legislative framework (for further details, please see the response to Question 4 below) and it took just under 3 years from the execution of warrants to the ultimate convictions¹⁰.

(d) Use of ISDs

The Premier League has taken legal action against hundreds of commercial premises that have been found using ISDs to stream broadcasts of Premier League matches without an appropriate subscription. These however have been based on civil infringement for unauthorised communication to the public contrary to s.20 CDPA.

Q.3: 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.

The Premier League is not aware of cases which whilst ostensibly valid have not been pursued in any manner under the above provisions. However, there have been numerous cases (including the example under Question 2(c)) where the Premier League has elected not to pursue charges under one or more of the above provisions, due to challenges in establishing them to the criminal standard of proof. It is also telling that the prosecutions of ISD sellers to date have been based on different offences.

Furthermore, we are aware of a number of cases that law enforcement agencies have been reluctant to investigate due to what they have perceived to be a complex legislative framework and technical matrix. Whilst this has been helped by educational seminars and workshops that we have carried out around the country with FACT, it remains the case that investigations into ISD-related activity are generally viewed as complex and challenging.

Efficacy of existing legal framework

Q.4: 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.

In the Premier League's view the current copyright legislative framework is outdated and does not provide content owners with the necessary tools to investigate and prosecute this issue. The current provisions available for content owners to combat IPTV-related crime under the CDPA, s.297 (fraudulent reception of transmissions), s.297A (unauthorised decoders), s.296ZB (devices and services designed to circumvent technological means), were drafted with a focus on technological means that are now largely obsolete, such as so-called control word and card sharing. These provisions are each considered in turn, along with a suggestion for how a simple legislative amendment to the CDPA could bring the copyright framework in line with the technology and software now being deployed by those pirating content and as far as possible future-proof it.

s.297 makes it an offence to dishonestly receive 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. Given the offence is summary only and carries no custodial sentence, this is not an appropriate offence with which to pursue those selling ISDs.

s.297A provides for an offence punishable on indictment with a maximum sentence of ten years' imprisonment to offer, advertise or otherwise deal in 'unauthorised decoders'. These are defined under

¹⁰ Mr O'Leary was arrested on 3 December 2013 and Mr O'Reilly on 3 January 2014

s.297A(4) as 'apparatus designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded'. This therefore requires the devices in question to actively decrypt an encrypted broadcast without payment of the appropriate fee. However, the ISDs arguably do not play such a role but are instead designed to restream already decrypted broadcasts in an unauthorised manner. It is therefore disproportionately and unnecessarily challenging for a content owner to prove that the ISDs have been designed or adapted to decrypt content. S.297A as currently drafted thus fails to adequately address the issue of ISDs, but as outlined below needs only relatively minor amendments to bring it into line with current technology.

s.296ZB provides for an offence punishable on indictment with a maximum sentence of two years' imprisonment to offer, advertise or otherwise deal in a device which is 'primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of technical measures'. This therefore requires the content owner to establish that the device in question plays an active role in the circumvention of the technical measures that are commonly adopted by subscription television providers. However, for the same reasons as identified above, it is challenging for a content owner to prove that the ISDs carry out the functions required by s.296ZB. Whilst the Premier League would argue that the offence should apply to those dealing in ISDs, it is arguable, unclear and adds an unnecessary level of complexity to any prosecution. This is a particularly unattractive provision to rely upon given that the offence currently carries a maximum sentence of two years' imprisonment, which is especially low when applied to sellers who have supplied hundreds or thousands of customers and made vast amounts of revenue by so doing (although the Premier League notes proposals for this maximum sentence to be extended to 10 years under the Digital Economy Bill).

Whilst other provisions are potentially available when prosecuting the sale, advertising or supply of ISDs, including under the Fraud Act 2006 (the "**Fraud Act**") and the common law, they are often only applicable to a specific factual matrix and require proof of dishonesty. Sections 6 and 7 of the Fraud Act only allow for an offence where at least one of three means of committing fraud may be established – fraud by false representation, fraud by failing to disclose information and fraud by abuse of position. Of those three, only fraud by false representation is ever likely to apply to those dealing in ISDs and establishing this poses significant challenges given that the purchasers of the devices are often fully aware that the devices provide content without an appropriate fee being paid to the broadcaster or content owner and that it is unlikely an ISD supplier would have represented to the content owner or broadcaster that it has a right to provide access to their content. Similarly, section 11 of the Fraud Act (obtaining services dishonestly) is likely to be engaged in circumstances whereby the supplier of the ISD is also the person supplying the underlying content accessed through the device, which in the Premier League's experience is relatively rare. Furthermore, in all of these provisions there is a requirement to establish dishonesty on the part of the accused, an element not required for many of the offences under the CDPA. Any case involving the need to demonstrate dishonesty adds a level of uncertainty and must be argued on its facts in front of a jury, something that is of course not helped by the generally increasing perception of legitimacy attached to ISDs.

In the Premier League's view, the only offence which can currently be used effectively and widely to prosecute those dealing in ISDs is the common law offence of conspiracy to defraud. However, this too has its limitations as: (a) dishonesty must be established; (b) it would not apply to a sole trader, as there would be no conspiracy; (c) it is triable on indictment only and therefore its application towards the growing number of lower scale suppliers is questionable; (d) its use was discouraged by the Attorney General in Guidelines issued in January 2007¹¹; (e) it is an offence which the Crown Prosecution Service can be reluctant to deploy, as they are required to maintain a record of their decision on every occasion where the offence is selected; and (f) it is an offence that many Trading Standards authorities are unable to prosecute due to their authority being limited in many cases to the conduct of proceedings relating to specific statutory offences. In any event, even in circumstances where it is applicable (such as the case detailed under Question 2(c) above), it should not be the only offence upon which content owners can rely.

The Premier League would therefore strongly recommend a proposed minor amendment to s.297A CDPA to address the shortfalls in the current legislative framework. The proposed wording below

¹¹ <https://www.gov.uk/guidance/use-of-the-common-law-offence-of-conspiracy-to-defraud--6>

would enable ISDs to be captured within this section of the legislation, both now and in the foreseeable future, and would ensure that it continues to address trade in 'unauthorised decoders'. The suggested amended version of s.297A CDPA would read as follows (amendments in red):

S297A Unauthorised **devices**,

- (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 **device**,
 - (b) has in his possession for commercial purposes any unauthorised **device**;
 - (c) installs, maintains or replaces for commercial purposes any unauthorised **device**; or
 - (d) advertises any unauthorised **device** for sale or hire or otherwise promotes any unauthorised **device** by means of commercial communications.
- (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.
- (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 **device** was an **unauthorised device**.
- (4) In this section—

"**device**" includes any **equipment**, component or electronic data (including software);

"transmission" means any programme included in a **broadcast which attracts protections as a copyright work under Part 1 of the Act and in respect of which access is made conditional on prior authorisation**,

"unauthorised" in relation to a **device**, means that the **device** is designed or adapted to enable a transmission, or any service of which it forms part, to be accessed in an intelligible form (**whether on its own or with any other device**) 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.

Q.5: Is there any UK case law which you believe limits the applicability of the statutory offences listed above?

The Premier League is not aware of any such UK case law. However, as detailed in response to Question 4 above, concerns over the drafting of certain statutory offences has reduced their applicability in some factual situations and in turn discouraged the Premier League and law enforcement authorities from pursuing charges under those provisions.

Difficulties in evidence gathering

Q.6: 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.

There are a number of issues surrounding evidence gathering for these offences. Firstly, it can be very difficult to identify and locate the persons responsible for the various infringing acts, as they often deliberately conceal their identities by using fake details, reverse proxy networks (such as Cloudflare) and privacy protection services (such as WhoisGuard) online, by passing assets through companies deliberately established offshore or by selling devices “door-to-door” and thereby limiting any paper trail of their activities. A good example of this is the developers of apps and add-ons that are downloaded onto the ISDs and used to access the infringing content – the majority of these are technically proficient and therefore able to use a matrix of pseudonyms and privacy services to mask their true identity and whereabouts. These methods are equally often deployed by providers of virtual private networks (“VPNs”) and DNS proxy services designed to circumvent technological measures implemented to prevent unauthorised access to content (such as geo-restricting content to certain territories). The Premier League acknowledges that VPNs and DNS proxy services may be used for entirely lawful purposes but is concerned by the increasing number of these providers that are marketing unauthorised access to Premier League content and ultimately facilitating infringement.

Similarly, several of those involved in the supply chain may be located anywhere in the world, making the cross-border sharing of intelligence extremely important. In the Premier League’s experience this does not regularly occur, thereby making it even more challenging to establish the workings of the entire supply chain and especially those at the top who are actually supplying the content to ISD resellers. Furthermore, evidential requirements can vary significantly between jurisdictions. Such cross-border issues are covered in more detail in response to Question 8 below.

Once targets have been identified, a test purchase and digital forensic investigations are required. The Premier League understands that many law enforcement agencies are concerned that they do not have the capability, resources or budget to carry out digital forensics. This has in turn led to them deciding not to pursue investigations in certain cases. The Premier League appreciates that resources are stretched and will continue to conduct forensic analysis privately where possible, however the current volume of infringers makes this impossible in every instance. Law enforcement agencies have raised similar concerns in relation to financial investigations to establish the scale of infringing operations. This is considered in further detail under Question 12 below.

International considerations

Q.7: Please provide examples of where this issue has been raised with law enforcement agencies or government officials/ministers in other countries.

The international nature of this problem is reflected by the various instances in which the Premier League has raised the issue either directly or indirectly to law enforcement agencies and government officials around the world. This includes discussions with and/or presentations to the following:

- The European Commission, including a detailed submission covering ISDs to the ‘Public consultation on the evaluation and modernisation of the legal framework for the enforcement of intellectual property rights: Rightholders’;
- Europol and Interpol officials;
- The Anti-Piracy Unit of the Spanish Police;
- United States Intellectual Property Enforcement Coordinator;
- National Copyright Administration of the People’s Republic of China;
- Hong Kong Customs Officers;
- The Chief of Police, Intellectual Property Office and government officials in India;
- The Ministry of Law in Singapore;
- The Ministry of Heritage in Canada;
- The Ministry of Culture and Communication in France;
- The Ministry of Cultural Heritage in Italy;

- The Ministry of Education, Sports, Science and Technology in Japan.

Q.8: 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:

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

Examples

The Premier League's investigations into ISD networks across the world has found that in the vast majority of cases there is a cross-border element to the network, involving many different parties – including manufacturers of ISDs, those initially capturing the content, wholesalers, resellers and end users. By way of example, it was clear from the evidence in the case of R v William O'Leary and Terence O'Reilly that the content provided through the subscriptions and ISDs offered by the Defendants was emanating from a data centre in Spain. The investigation into that content provider uncovered a footprint in Spain, Denmark and Bulgaria and resulted in the involvement of police forces from each jurisdiction and ultimately Europol. This demonstrates how an investigation into just two elements of an ISD network (in this case the party involved in capturing the content and one of its resellers) can involve four different territories. Another active investigation in which the Premier League is a criminal complainant involves a network spanning at least five different jurisdictions, including the UK.

The Premier League also monitors online sources every time a Match is being played to identify any websites, apps, add-ons or other online platforms being used to make Premier League content available without authorisation. Enforcement action is taken against all intermediaries involved in the unauthorised streaming, including the providers of dedicated streaming servers that enable end users to connect to and view infringing video content over the internet ("**Dedicated Server Providers**"). Whilst the provision of fake details and the use of privacy protection services often renders it extremely difficult to identify the operators of such services, in the Premier League's experience those that can be identified are rarely based in the UK. By way of example, the Premier League is involved in on-going civil litigation in the Netherlands against a Dedicated Server Provider that has been consistently used to deliver a high proportion of infringing streams of Matches. The Premier League has been awaiting judgment in that case for more than a year, during which time the Dedicated Server Provider has moved its registered office to outside of the EU and continues to be used in no lower proportion for infringing purposes.

Issues caused by the international dimension and means of addressing them

As discussed above, online platforms involved in making available streams of Premier League content without authorisation are usually operated anonymously. This anonymity is facilitated by intermediaries (including amongst others proxy server providers and online privacy service providers) based all around the world (including Panama and the United States) who often refuse to disclose the identity of their customers, despite in many cases having the relevant contact details through payments made to and received from their customers and suppliers. All entities involved in the supply of pirated content online, whether it be through the sale of ISDs, the provision of apps and add-ons or the operation of web-based streaming sites, should therefore be considered an intermediary and required to: (a) obtain full contact details of any new supplier or customer that they register; (b) refuse to register any new supplier or customer where they are unable to verify the true identity of the registrant; (c) provide the contact details in a timely manner to a content owner or law enforcement agency upon notification of an infringement by that supplier or customer; and (d) where possible suspend access to any services being provided to that infringing customer or supplier, pending the resolution of any dispute.

The international dimension of pirate activity naturally requires a more harmonised approach to the problem. Currently the prioritisation, expertise, experience (for law enforcement agencies, prosecutors and judges), and evidential requirements for piracy-related crimes are not uniform in nature. There also needs to be a greater degree of harmonisation in the enforcement of such crimes, particularly within Europe. Pursuing an injunction or prosecution in national courts is a lengthy and costly process. Whilst accepting that national laws and sovereignty remain fundamental, a simplified procedure for the recognition of court orders and/or convictions secured in other jurisdictions under equivalent or similar laws could be introduced.

Clearly international law enforcement agencies such as Europol and Interpol take on an increasingly significant role in investigating and enforcing these cross-border crimes. The Premier League has had positive experiences when working in cases involving multi-jurisdictional forces co-ordinated by Europol. However, greater investment and training for such agencies is required, as is a more efficient process for the referral of multi-jurisdictional cases. The current system of referring intelligence and criminal complaints via Member States, which tend to have differing requirements, categorisation and prioritisation of IP related crimes, is a cumbersome process that adds unnecessary delays to an investigation. There therefore needs to be a clear process and protocol introduced for the direct referral of cases to both Europol and Interpol. Similarly, there should be clear mechanisms and protocols to facilitate the exchange of intelligence on all parties involved in the sale of ISDs between law enforcement authorities in various jurisdictions.

Q.9: 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.

The Premier League is not aware of any new powers that have been introduced in other countries to specifically address the issue of piracy and in particular ISDs. However, there are some other laws, powers and procedures that have assisted enforcement action in these jurisdictions that could be applied in the UK.

For example, in many Asian jurisdictions (such as China and Vietnam) there is an additional and alternative law enforcement route to civil and criminal actions. This process involves the filing of a complaint to a governmental administrative body (such as the Inspectorate of the Ministry of Information and Communications in Vietnam and local Intellectual Property Offices in China) who will investigate the complaint and where deemed appropriate conduct raids and issue sanctions, which typically consist of fines and the destruction or confiscation of infringing goods. Decisions may then be appealed to a competent court. The procedures are cost-effective and time-efficient, often completed within a few months of the complaint being filed. Whilst the sanctions are an inadequate deterrent for major operations making huge swathes of revenue from their activity, in the Premier League's view the introduction of such a process in the UK could greatly assist content owners in combatting the vast numbers of smaller scale suppliers that continue to emerge. Formal civil and criminal proceedings could of course then still continue to be used in cases involving more sophisticated operations, such as the one encountered in *R v William O'Leary and Terence O'Reilly*.

A further example is the use of interlocutory injunctions in Canada. On 1 June 2016 the Federal Court of Canada granted an interlocutory injunction to a group of Canadian telecommunication providers preventing the sale of ISDs in the territory, after agreeing that there was a strong argument that the sale and promotion of ISDs amounted to an infringement under the Copyright Act and the Radiocommunication Act.¹² Whilst interim injunctions are available in the UK and if granted can stand until trial, interlocutory injunctions are longer-term in nature and more flexible. This particular injunction for example allowed the Claimants to add further Defendants to the proceedings and the injunction as and when they were identified. It ultimately provided a means of addressing the inherent delays associated with taking legal action in the territory, a significant issue that also exists in the UK. Introducing a similar form of injunction in the UK would provide content owners with a meaningful and swift (albeit not final) remedy with which to react to the emergence of infringers on a mass scale.

¹² *Bell Canada et al. v. 1326030 Ontario Inc. et al*, 2016 FC 612

Finally, the Premier League is aware that it is possible in Hong Kong to pursue a seller of “vanilla” devices for the secondary offence of infringement regarding the supply of apparatus which enables the playing or showing of an infringing work under s.34 of the Hong Kong Copyright Ordinance (Cap. 528). Whilst there remains an evidential challenge in fixing requisite knowledge to the accused that the equipment is to be used for such purposes, it provides a potential remedy against importers of ISDs who have such knowledge.

Other barriers to prosecution (resource, jurisdiction)

Q.10: Are there any other barriers to the successful investigation and prosecution of these issues?

As stated above, the relative ease and low cost with which individuals and businesses are able to establish themselves as sellers of ISDs means that new suppliers can emerge quickly. Whilst the Premier League does and will continue to pursue litigation against suppliers of ISDs, it takes significant time and financial resources to find, investigate and take legal action against a single supplier. There therefore needs to be a more efficient process to allow content owners to tackle the high numbers of lower level operators that have emerged in this area and enforcement authorities such as PIPCU must be provided with sustainable funding to enable them to investigate these issues.

One of the key barriers preventing content owners from effectively tackling the high volume of ISD suppliers is the time it takes to pursue litigation against a seller. In the Premier League’s experience, it can typically take a number of years to complete the criminal litigation process, as highlighted by the examples provided in response to Question 2 above. Whilst it is possible to privately prosecute sellers following a test purchase and the issuing of a summons, it is often necessary to involve police authorities due to a combination of (i) the need to seize evidence through the execution of search warrants and (ii) limits on the investigative powers available to Trading Standards authorities (please see the response to Question 11 below for further detail). Once a police authority has charged an accused with one or more offences, the CPS must be provided with the relevant evidence and the opportunity to prosecute the case. There is also however a general mindset amongst police authorities that the CPS must be consulted in all cases. Due to the volume of cases the CPS is required to consider and the resources at its disposal, this can add delays of up to several months to the prosecution of a case. It is therefore crucial that a more streamlined or fast-tracked process is established to enable the CPS to decide whether to (and then ultimately practically to) pursue a prosecution itself or allow a private party to do so. Once a decision has been made on the charges to be prosecuted, further delays are incurred within the Criminal Justice System that mean cases take a significant amount of time to be heard. It typically takes at least 12 months to be provided with a trial date upon issuing proceedings. In the case of *R v William O’Leary and Terence O’Reilly*, it took just under three years from the execution of warrants to the first day at trial. The equivalent timescale in the case of *R v Malcolm Mayes and Mandy Mayes* was over two years. In the Premier League’s experience the civil process can take an equally significant amount of time. For example after issuing proceedings against a supplier of ISDs in the High Court in December 2014, the earliest court date provided for trial was in January 2017.

The legal costs associated with both private criminal prosecutions and civil proceedings are also extremely high. Whilst the Premier League is prepared to continue funding legal actions, particularly against more sophisticated criminal networks, it is a heavy financial burden and is something that can prove a barrier for other content owners who are nevertheless also significantly affected by these issues.

Q.11: 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?

Whilst police enforcement agencies have the powers required to investigate this activity, local Trading Standards authorities generally do not. Although they are empowered under s.107A of the CDPA to enter and search premises and to seize and detain goods, this does not apply to the other offences under the CDPA, or any offences under the Fraud Act 2006, the Serious Crime Act 2007, the Proceeds of

Crime Act 2002 or the common law. As a result, Trading Standards authorities only have sufficient investigatory powers in relation to a specific copyright offence.

Q.12: Are there specific areas where further guidance (from IPO and/or CPS) would be beneficial in the investigation and/or prosecution of this activity?

Given some of the apparent uncertainty over the applicability of current CDPA provisions to the sale of ISDs, clarification from the IPO and/or CPS on this issue would be hugely beneficial to those investigating and prosecuting this activity. It would also of course provide clarity on the application of corresponding civil offences under the CDPA. Similarly, a clear statement from both the IPO and CPS outlining the severity with which they treat the activity of dealing with ISDs would also assist investigators when prioritising caseloads and allocating budget and resources.

S.107(1)(d)(iv) of the CDPA states that a person commits an offence who, without the licence of the copyright owner in the course of a business distributed an article which is, and which he knows or has reason to believe is, an infringing copy of a copyright work. We understand that there appears to be a general perception with this provision (evidenced through public discussions of it by ministers) that it only applies to the distribution of physical items that constitute a copy of a copyright work. For this reason, the Premier League has previously been reluctant to attempt to apply it to the distribution of ISDs. Therefore clear guidance from the IPO on the applicability of this offence to the sale of ISDs would be welcomed.

From the Premier League's experience, it is clear that ISD sellers often hold significant amounts of cash and other assets, some of which may be deliberately hidden off shore. This makes the investigation of financial assets in any case extremely important, as it plays a key role in establishing the scale of the alleged criminal activity and in identifying the entirety of the supply chain. As stated in the response to Question 6 above, the Premier League understands that many law enforcement agencies, particularly Trading Standards authorities, do not currently feel they have the capability, expertise or confidence to carry out such investigations in-house. This is an issue commonly raised by such authorities to FACT. Clear and digestible guidance on recommended methods and approaches for establishing (i) the scale of a criminal operation, (ii) the proceeds secured through such an operation and (iii) the required standard of financial evidence for prosecution would therefore be extremely beneficial.

Other suggestions, comments

Q.13: Are there any non-legislative approaches that you think could help with the situation? Please provide examples.

In the Premier League's view, there are several non-legislative approaches that the IPO could adopt to help address this problem. The response to this question focuses on three that are seen as particularly important.

Streamlined Process

Firstly, there needs to be a much more streamlined process for the investigation and prosecution of these cases. The piracy environment is such that technology can and does adapt and develop with great speed. This means that content owners require a swift process through which they can investigate and take legal action against those using such technology to infringe their rights. Currently, such a process does not exist. By the time a successful case is brought, whether criminal or civil, the methods by which pirate operators are providing unauthorised access to content have often changed, thereby significantly limiting the precedential impact of such cases. A clear, swift procedure needs to be established to allow novel ISD cases to be heard before the Courts. This would provide content owners, investigators, prosecutors, those involved in the supply of ISDs and ultimately end users with clarity on the application of the legislation to such activity and will allow justice to be brought against those that still choose to commit offences. It is also likely to lighten the burden for the court system as those accused are more pre-disposed to plead guilty in situations where prosecutions

have already successfully been obtained. This could of course run in conjunction with the administrative approach suggested in response to Question 9 above.

Public Messaging

A clear public statement on the illegality of selling, offering, using or otherwise dealing in ISDs would also have a significant impact. Firstly, it would help tackle the issues surrounding the perceived legitimacy of these devices, a consistent theme throughout this submission. This is particularly necessary with end users. One-third of those surveyed as part of the Industry Trust Study admitted to not knowing whether or not ISDs were legal and 48% said they believed they would be if purchased from a legitimate online retailer.

An unequivocal statement that these devices are unlawful and that anyone involved in their use could potentially face liability would have a huge influence on parents that are wilfully or otherwise allowing such devices to be used in their homes and help persuade the younger generation that continued use is at considerable risk. With the scale of use now identified, something needs to be done to make it clear to those consuming content through ISDs that doing so does not come without consequences. It is hoped that an unambiguous statement on the illegality of ISDs would go some way to addressing their perceived legitimacy. This is highlighted by the recent impact of a public awareness campaign initiated on 18 March 2017 (the first weekend of Premier League matches played following the granting of the blocking injunction referenced in the Introduction above) involving targeted adverts being placed on certain Google keyword searches, such as “Kodi football streaming”. These adverts ultimately clicked through to an educational page on the FACT website.¹³ Results showed a sixteen-fold increase in the number of views of that page during the weekend of the 18 and 19 March.

Such a statement would also provide clarity and confirmation to those investigating this activity that it is viewed by government as a significant crime that must be addressed. This would naturally carry greater weight than the similar messages already voiced by the content industry.

Intervention with Platforms

Finally, intervention and assistance with intermediaries that are knowingly making available software, platforms for purchase or download and/or instructional guidance that facilitate the supply of ISDs is necessary. The Premier League has already outlined these issues to the likes of Google, Facebook, Amazon, eBay and Alibaba. However, support from the IPO with attempts to lobby these platforms and government agencies in the territories from which they predominantly operate (particularly the United States and China) would undoubtedly lend weight to such discussions. The Industry Trust Study clearly concludes that Kodi is by far the most prominent method of obtaining unauthorised content through ISDs. Whilst Kodi is a legal open-source media software, its software has become viewed as a stable platform to view pirate content and subsequently has become synonymous with ISDs. This is evident from the thousands of listings on online marketplaces that use terms such as “Kodi fully loaded” to promote the sale of ISDs. Whilst the Kodi website claims not to endorse the watching or listening of illegal or pirated content, it should be required to explain what action it is actually taking to reduce the amount of illegal content that is accessed through its software.

Online marketplaces that regularly make available advertisements for ISDs should be required to review and where appropriate amend their policies. The Premier League has seen a significant reduction in the availability of ISDs across Amazon and eBay’s platforms since a recent change in their policies which now largely prevent listings for pre-configured devices being uploaded. Other online sales platforms and marketplaces should be required to take similarly proactive steps to address the issue and should not be allowed to benefit from the positive action carried out by others.

Equally, those platforms that are predominantly being used to promote or facilitate the supply of ISDs or other means of piracy should be required to address the issue. The Premier League regularly searches Facebook’s platform to identify posts, sponsored advertisements, pages and groups that encourage dealing in ISDs. However, the platform is difficult to crawl rendering it a significant

¹³ <https://www.fact-uk.org.uk/football-streaming/>

challenge to identify all such content. Whilst the Premier League appreciates that Facebook is a social media platform whose core business is not focussed on the sale of goods, it can and should be taking greater measures to address the use of its platform for infringing purposes by working with content owners to identify, remove and proactively prevent the posting of content that encourages infringement. Likewise, the Premier League has seen Google's businesses commonly used to facilitate pirate activity, including through search engine results (both for traditional web-based streaming sites and more recently ISDs) and instructional videos on YouTube which teach end users the methods for using ISDs to maximise access to content or for turning a "vanilla" box into an ISD. By way of example, the Industry Trust Study found that there had been a 143% increase in the use of "Kodi box" as a search term on Google in the UK between November 2015 and November 2016. As stated above, it is likely that the vast majority of such boxes enable access to unauthorised content. Google should therefore be required to de-list results for such terms, remove them from any suggested auto-completion of terms and do so in a timely manner. The Premier League notes the recent voluntary code signed by Google and Microsoft and will continue to send infringing URLs to these platforms. However, given the nature of piracy of live sport content, it is absolutely crucial that any action taken by the search engines is done so almost immediately and before the value of the content is significantly diminished.

Ultimately, any platform that is used to encourage or facilitate the piracy of premium content through web-based streaming or ISDs should be required to take measures to prevent such use, be transparent on what measures are being adopted and should make it clear to customers that such activity will not be tolerated on their platform.

Q.14: Do you have any other suggestions or experience relevant to this exercise?

The Premier League has nothing further to add to the points raised above.