



Intellectual Property Office
Illicit IPTV Streaming Devices – Call for Views
13th April 2017

Dear Sir / Madam

NETSA is a partnership body which brings together the twelve Local Authority Trading Standards Services (LATSS's) in the North East of England, in order to enhance services and contribute to meeting local, regional and national priorities. As part of its governance arrangements NETSA oversees the work of the North East Regional Investigations Team – one of 8 regional teams across the UK funded through National Trading Standards.

NETSA thanks you for the opportunity to give our views on the above particularly in relation to the supply and use of IPTV streaming devices obtaining access to the Intellectual Property content of the English Premier League.

As a background to the following comments you should be aware that FACT have described the North East as a major area of supply of such devices which is having a major impact on its partners.

[Redacted signature]

[Redacted name]

Regional enforcement Manager
North East Regional Investigations Team

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

The North East Regional Investigations Team has operations pending in:

- Northumberland
 - sale of IPTV devices, and provision of streaming content, to the public and larger (apparent) resellers around the UK
 - sale from "high street" premises and across dedicated website
 - Pending decision on legal action – proposed offending under CDPA s296ZB, Fraud, Money Laundering.

- South Tyneside
 - sale of IPTV (and decoder) devices to the public and resellers around the UK
 - sale through dedicated website
 - Awaiting service of summons / laying of informations - proposed offending under CDPA s296ZB, Fraud, Money Laundering.
- Gateshead
 - sale of IPTV (and decoder) devices to the public and resellers around the UK
 - sale through EBay account
 - Pending decision on legal action / awaiting service so summons / laying of informations - proposed offending under CDPA s297A, Fraud, Money Laundering.
- Stockton-on-Tees
 - sale of IPTV devices to the public across Teesside and wider region / UK
 - sale through "high street" premises, dedicated website and Facebook links
 - also sales to and through "franchised" resellers under the main parties trading name in relation to further high street premises in Durham, West Yorkshire, Middlesbrough, Stockton (with proposed sellers in Redcar and Liverpool at time warrants executed against company).
 - trial date end of July 2017 - Money Laundering.
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- Middlesbrough
 - sale of IPTV devices to public across Teesside
 - sale from within "high street" premises (indoor market in town centre) and across Facebook as franchisee / reseller of boxes from Stockton supplier (above).
 - following enforcement action at both his premises and his Stockton supplier, business set up again in Middlesbrough sourcing products from other suppliers.
 - trial date September 2017 (previously May 2017) - CDPA s296ZB.
- Middlesbrough (now FACT led)
 - sale of IPTV boxes, and provision of streaming content, to pub trade predominantly in the North East (but some in North Yorkshire and east Lancashire)
 - sales via face to face contact
 - PAPH – Newcastle Crown Court 11.05.17 – Conspiracy to Defraud (common law) and Money Laundering.
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The Regional Investigations Team also partnered Hartlepool Trading Standards in the recent prosecution of Malcolm Mayes which received widespread publicity:

- sale of IPTV devices to pubs / clubs across UK
- sale through website, face to face contacts and adverts placed in trade magazines
- CDPA s296ZB – Fraud and Money Laundering dropped following guilty pleas to Copyright, agreement to pay full costs and POCA.

The Regional Investigations Team initially received information on IPTV supply in May 2013. At this time it appears supply was predominantly internet based either through dedicated websites, where suppliers also provided their own streaming services, or sites such as Amazon / Ebay, where devices were sold with third party "add-ons." In early 2014 referrals to the team started to include suppliers who appeared to be "legitimising" the sale of such

devices by opening "high street" premises across the region; through which they blatantly advertised the availability of "free" English Premier League content – those supplying the public also provided Movie and TV box set content.

It is known that there are at least three other investigations ongoing / pending court action at a local level across the 12 North East authorities – 2 pending a decision on court action with Redcar and Cleveland Trading Standards and a further one being driven through the North East Regional Special Operations Unit (NERSOU) – a regional Police service operated through Northumbria, Durham and Cleveland constabularies. Another case has recently been prosecuted through Durham Trading Standards but one taken forward initially by Gateshead Trading Standards resulted in no formal action after concerns were raised through the Authority's Legal Team over the validity of using the S296ZB Copyright offence on the facts at hand.

Exact economic loss is not quantifiable at this stage but all sellers have made tens of thousands of pounds in their trade. This will have had a direct impact on the IP content holders in addition to those in the pub / club trade who obtain genuine feeds for their football.

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

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

Please indicate the legal basis for these prosecutions.

See Q1. Copyright was considered in all prosecutions but, depending on the facts, other areas of criminality have also been utilised as appropriate.

All involved import of goods from China with the adaptation of the IPTV boxes being carried out in the UK.

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

It is understood that the Gateshead case, referenced above, was not taken forward due to concerns about the wording of the Copyright Offence under s296ZB. It was not believed that the boxes circumvented effective technological measures. If further advice is required on this the matter was dealt with by Gateshead Trading Standards officer [REDACTED]
[REDACTED]

Similarly the matters being pursued by Redcar and Cleveland Trading Standards are being progressed under the Fraud Act – Principal Trading Standards Officer Julian Sorrel may advise [REDACTED] [REDACTED]

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

See Q6.

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

Not that we are aware of.

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

The main issue for Trading Standards is the lack of powers under Section 296ZB / Section 297A of the CDPA in regard to obtaining warrants. These restrict warrants to police constables. Whilst it would always be the case that Police partners are involved in warrant execution, this restriction means they must gain the warrants, execute them and seize items found in doing so.

Even the Police can be wary of such legislation, not being regular enforcers, and on one occasion they determined to obtain PACE warrants instead of those available through the CDPA. Again this is an avenue which is not available to Trading Standards.

In the North East we have been lucky to date in that the three Police forces covering the area have been amenable to obtaining warrants and securing evidence prior to handing the matter over in full to Trading Standards to progress. However, with increasingly limited resources this cannot be expected to continue and a change in the law in this area would allow Trading Standards to use these powers directly if it was deemed appropriate.

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

Not applicable

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

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

It would appear that the boxes are primarily sourced through China. Greater / tighter border controls and / or intelligence gathering is an area to consider in cutting off the supply of such devices. This would be out-with the scope of Trading Standards – unless there were safety concerns associated with the boxes too.

The Mayes case involved him trading from both the UK and his second home in Spain. However any jurisdictional problem this could have raised was quashed by the fact he supplied the test purchase via his address in the UK, had UK based business addresses, advertised in British based magazines to British customers and the monies for purchases initially went through his British bank accounts - before being transferred out of the country.

One business identified as operating its own streams, did so by utilising a supplier in the United States. The access to such streams and action against those outside of the United Kingdom jurisdiction is not an area Trading Standards would have the skill nor the resources to pursue and it is suggested that this is a question which others in the industry would be better answering.

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

Not that we are aware of.

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

The culture surrounding the purchase and use of both consumer and retail (pub / club) IPTV devices does affect the media reporting on the issues. At a local level it has been difficult to get the message out that using these devices is illegal. In fact even some of the newspapers reporting on the facts of cases have effectively muddled the waters due to their own apparent lack of understanding in the area. A quick review of "comments" from on-line news articles; predominantly shows responders believe Trading Standards / the Police should focus their work in other fields. This continued mis-reporting / majority view that individuals should be able to obtain IP content of the nature provided through IPTV devices for free is destabilising to those attempting to prevent their distribution and use. Further, there remains the potential that the cultural acceptance of these devices may have an effect on a Jury trying an IPTV case; with the likelihood that, dependent on where the matter is heard, a number of jurors may either have a device in their own home or visit a pub which uses one.

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

See Q6.

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

A detailed breakdown of the Section 296ZB offence, how it is made up and what evidence is required to prove its constituent parts, would be helpful to those prosecuting authorities which remain concerned that the offence does not cover the use of IPTV devices streaming services which have already been de-encrypted. Similarly one of the main "defences" put forward by offenders is that the box, as supplied, is not "primarily designed" to circumvent technological measures; albeit that the advertising surrounding sales is clearly aimed at promoting access to IP content at a significantly reduced or even free basis.

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

Not at this time.

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

Not at this time.