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Illicit IPTV Streaming Devices – Call for Views

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/594048/illicit-IPTV-streaming-devices-call-for-views.pdf

Introduction

The Educational Recording Agency (ERA) represents both broadcasters and other rights owners for the purposes of operating its copyright licensing scheme.

As such, the ability of its members to work with enforcement authorities pursuant to the existing offences (referred to as applicable law under the Call for Views¹), remains an important part of preventing intellectual property crime.

Technological changes are a constant reality for the industry. It is therefore vital that the legal framework for disruption of intellectual property crime remains relevant and efficient.

Can improvements be made?

The recent judgement in the High Court (The Football Association Premier League Ltd -v- British Telecommunications Plc (and Others) [2017] EWHC 480 (Ch)) <http://www.bailii.org/ew/cases/EWHC/Ch/2017/480.html> highlights why options available in different cases may be either ineffective or incomplete.

Extract from Judgement – “*Alternative measures*”

57. FAPL contends that the available alternative measures are either ineffective or incomplete in addressing this problem. This contention is supported by the following points,

¹ Copyright, Designs and Patents Act 1988 s 297, s 297A and s 296ZB.

Fraud Act 2006 s6, s7 and s11.

Conspiracy to defraud (common law)

Inchoate offences linked to application of ss 44-46 Serious Crime Act 2007 and ss 328-329 Proceeds of Crime Act 2002.

58. So far as takedown notices to streaming server operators and hosting providers are concerned, FAPL and its licensees have made extensive efforts to contact server operators and (where this fails) their hosts. While some of these notices are complied with promptly, many are not, either during a game or at all.
59. Almost all hosting providers used by streaming server operators are located offshore, and accounts are often registered anonymously, which makes it impossible or impracticable to pursue the primary wrongdoer. A substantial number of hosting providers refuse to take action based on notices sent on behalf of FAPL, and as discussed above it is to these providers that streaming server operators increasingly turn. Even if takedown notices are not completely ignored by a hosting provider, in many cases they will not be acted on quickly enough to be meaningful.
60. Takedown notices have also been sent to marketplace operators (such as eBay and Amazon) requesting removal of listings which advertise set-top boxes which are configured to access infringing material. However, sellers are becoming more sophisticated in how they market these products, making them harder to detect, and marketplaces often fail to remove listings when asked.
61. Licensees can sometimes identify the customer from which an infringing stream originates. If it is possible to identify that customer, their account may be terminated and legal action pursued. However, this takes time and will not usually be effective to interrupt a stream mid-way through a match.
62. Criminal prosecutions have been pursued against sellers of set-top boxes which are configured to access infringing material. However, it is often difficult to identify the individual who is responsible for an infringement, and the police are unwilling or unable to pursue every possible prosecution.
63. Having regard to the foregoing, I conclude that FAPL does not have available to it alternative measures to combat the infringements of its copyrights of which it complains which are as effective as the Order but less onerous".

Are there specific areas where you believe the current legal framework does not provide the necessary tools to investigate and prosecute the use of illicit IPTV streaming devices?

Whilst there have been a very small number of cases taken relying upon s 296ZB CDPA (<http://www.itv.com/news/tyne-tees/2017-03-06/hartlepool-man-pleads-guilty-to-selling-fully-loaded-illegal-tv-boxes/>) the existing legislation is not specific in being applicable to the devices now being used.

Therefore, consideration of ways in which current provisions applicable to "decoders" might be developed to encompass more clearly "the devices" which are being used as illicit IPTV streaming devices should be given.


Another example arises from Trading Standards not having the powers of search and seizure under the Fraud Act. This acts as a disincentive to the commencement of investigations in some areas.

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

The work of the IP Crime Group and the IPO in facilitating the exchange of information between enforcement agencies is important and welcome.

The mapping exercise to collate advice and information and guidance on legislative options for action, which is being undertaken by the IPO (including CPS), is important and should be taken forward.

It is important the options for different approaches towards different types of IP crime are clear and understood by enforcement agencies. If one route is complex or beyond the jurisdiction of one body, this should not prevent alternatives being investigated and pursued by others.


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Educational Recording Agency
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