

The IPO's Enforcement Strategy

The work of the IPO means that the UK is at the cutting edge of IP and copyright enforcement and we encourage the Minister to support a Strategy from 2021 that will maintain this position.

The need for investment in enforcement has been heightened by the Coronavirus Pandemic. Our members, across all creative sectors from e-books to online photo libraries and performances, are reporting an increase in online infringement of their rights. Multiple sector-specific studies also demonstrate a sharp increase in online infringement since the start of the Pandemic, with one study by FACTUK suggesting that infringement of film and television has almost trebled.¹

Police Intellectual Property Crime Unit (PIPCU)

The BCC's members consider the PIPCU as an effective enforcement mechanism. We urge the Government to continue funding and promoting the PIPCU beyond the current Strategy.

The Intellectual Property Enterprise Court (IPEC)

The digital age has created a situation in which a large proportion of unlawful online activity infringes the rights of an individual creator and rights holder. Despite the work of the IPEC, the cost and amount of time required to pursue these infringements is prohibitive for many SMEs and sole traders. This places redress for individual infringements beyond the reach of many creators. For example, BAPLA, a member of the BCC which represents 120,000 professional photographers, videographers and illustrators, found that 93% of its members experience copyright infringement online, but less than 46% are successful in pursuing such infringements in practice. This results in 25% of licensing revenue each year (on average) being lost to online infringements of images.²

Access to justice is as important as creating the legislative framework. BCC members would be well-placed to help the IPEC understand and address practical barriers that arise throughout the claims process. For example, clearer guidance on the process; a coherent understanding of the value attributed to creative works and the level of claimable compensation; and injunctive relief available.

In addition to practical barriers, there is often a significant time lag between the submission of a claim and the judgement, particularly if the case is complex. This delay has been exacerbated during the Pandemic as a result of the closure of the small claims track. This is problematic for our members who have noted a drop in successful claims payments, sometimes by as much as 30%. Even more concerning, our members have noted an uptick in serial infringements by organisations that know that the IPEC's small claims track is not

¹ <https://www.fact-uk.org.uk/illegal-film-streaming-links-nearly-treble-during-lockdown-period/>

² BAPLA Research Into Online Copyright Infringement – Assessing the Value Gap
<https://bapla.org.uk/bapla-releases-its-first-online-copyright-infringement-report/>

operating and therefore the rights holders cannot seek redress. We recommend that the Enforcement Strategy includes investment in IPEC's capacity to deal with both complex and small claims in a timely manner to ensure that it is an effective enforcement mechanism.

Section 97A of the Copyright, Design and Patents Act

Section 97A of the Copyright, Design and Patents Act (s97A CDPA) has proved invaluable in enabling right holders to block websites that are linking to and promoting infringing materials. However, the BCC is concerned about the consistency in the level of protection afforded globally. There is an important role for the Government in promoting the UK's approach as an example of good practice. This is particularly pertinent given the ongoing Free Trade Agreements.

It would therefore be helpful if the Strategy addressed how the IPO will reconcile platform liabilities and UK debate linked to the proposed Online Harms White Paper against the backdrop of US developments flagged by the recent US Copyright Office Report which reviewed application of Section 512,³ the recent EU Copyright Directive (in particular Article 17) and updates now proposed to EU legislation in the context of proposals for a Digital Services Act.

BCC members also noted that the injunctive relief mechanism supported by s97A CDPA, whilst effective, is expensive for right holders to pursue meaning use of this mechanism is prohibited.

Artists' Resale Rights

The BCC is concerned that some galleries and auction houses are failing to comply with the Artists' Resale Right Regulations.⁴ Tackling this should be given greater priority in the pending Enforcement Strategy. Royalties paid through the Artists' Resale Right are an essential source of income for visual artists and ensure that they receive a fair share of the ongoing value of their work.

Review of the Copyright Tribunal

The consultation "Review of the Copyright Tribunal" contained draft legislation to make the Copyright Tribunal more accessible for consumers. However, it is not currently open to individual rightsholders who may wish to challenge licensing terms provided by Collective Management Organisations. The IPO's own recommendations for reforming the Tribunal, which would address this and were supported by the majority of stakeholders, should be completed as soon as possible.

Online harms

The Enforcement Strategy must address ongoing challenges from online infringement. The rise in online infringement is undermining content creators' ability to earn a viable living and in turn the ability of the creative industries to thrive. This is already having economic consequences across the creative sector and therefore on the UK's economy. There is also a risk that, without action, it will have a detrimental impact of the UK's reputation as a cultural hub.

³ <https://www.copyright.gov/policy/section512/section-512-full-report.pdf>

⁴ SI 2006 No 346 and amended by SI 2011 No 2873

Harm caused by illegal economic activities, including online infringement, affects individual consumers as well as businesses. Yet, economic harms are excluded from the list of online harms in the proposed general powers of Ofcom when it becomes the “Online Harms Reduction Regulator”.⁵

However, the Online Harms White Paper does address a legislative framework that could link to the economic harms caused by abuse of copyright and other intellectual property. Therefore, the BCC recommends that the IPO’s Strategy makes clear how economic online harms are to be covered within UK legislation against the backdrop of the new regulatory powers being vested in Ofcom.

The Regulator should have measures at its disposal such as fines, imposition of senior management liabilities, as well as supporting measures for blocking of non-compliant services to facilitate enforcement.

⁵ https://publications.parliament.uk/pa/bills/lbill/58-01/022/5801022_en_1.html