

7<sup>th</sup> April 2017

Copyright & IP Enforcement Directorate  
IPO  
4 Abbey Orchard Street  
London SW1P 2HT

enforcement @ipo.gov.uk

Dear Sir/Madam,

### **Illicit IPTV Streaming Devices – call for views**

The British Copyright Council represents those who create, hold interests or manage rights in literary, dramatic, musical and artistic works, performances, films, sound recordings, broadcasts and other material in which there are rights of copyright and related rights.

Our members include professional associations, industry bodies and trade unions which together represent hundreds of thousands of authors, creators, performers, publishers and producers. These right holders include many individual freelancers, sole traders and SMEs as well as larger corporations within the creative and cultural industries. Our members also include collecting societies which represent right holders and which enable access to works of creativity. A list of our members can be found at <http://www.britishcopyright.org/bcc-members/member-list>.

The British Copyright Council represents a range of content owners who contribute to and who own underlying rights in broadcasts. While the BCC cannot contribute direct experience of investigating and prosecuting offences relating to illicit streaming devices, many members are involved in pursuing civil remedies and working with authorities to address relevant criminal offences.

It is the BCC's remit to support and comment on the proper enforcement of rights and it is for this reason that the BCC makes the following three points relevant to the efficacy of the existing legal framework.

#### **1. Potential for extending Civil Remedies**

The BCC suggests that it may be helpful for Government to extend current civil remedies to sit alongside criminal remedies. The BCC notes, however, that there may already be civil liability which is relevant to the way in which illicit devices support access to unlicensed or unauthorised works. This may depend on how the CJEU decides *Stichting Brein* (Case C-527/15) but the BCC suggests that further consideration of this point would be helpful should the Court follow the Advocate General's recommended response that:

*"The sale of a multimedia player of the kind at issue in the main proceedings, in which the seller has installed hyperlinks to websites that, without the authorisation of the copyright holder, offer unrestricted access to copyright-protected works, such as films, series and live programmes,*

*– constitutes "communication to the public" within the meaning of Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the*

*harmonisation of certain aspects of copyright and related rights in the information society; and*

*– cannot be covered by the exception laid down in Article 5(1) of Directive 2001/29, inasmuch as it does not fall within the definition of “lawful use” in subparagraph b) of that provision and, in any case, does not fulfil the conditions for application of Article 5(5) of that directive.”*

## **2. Amendment to criminal offence provisions**

CDPA s.2967A might be expanded to apply to unauthorised “devices” rather than just “decoders” and the definition of “device” should include “any equipment, component or electronic data (including software)”.

While there have been a very small number of cases taken relying upon s.296ZB CDPA, the existing legislation is not specific in being applicable to the devices now being used.

Therefore, consideration should be given to 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.

## **3. Fraud Act**

While recognising that Section 11 of the Fraud Act has been used successfully to prosecute the sale of such devices, the BCC understands that for some right holders it raises evidential burdens and increases costs and is a route unlikely to be suitable for those right holders who suffer as a result of relatively minor offences.

Concern also arises because Trading Standards do not have powers of search and seizure under the Fraud Act. This acts as a disincentive to the commencement of investigations in some areas and is an area which might sensibly be further addressed.

Please do not hesitate to contact me should you require any further information.

Yours faithfully,



Janet Ibbotson  
Chief Executive Officer