

# Crime stoppers

PAIL Solicitors' **Peter Adediran** examines the UK's new IP Crime Unit, but questions if it will really deter infringers

# POLICE

**A**ccording to a press release on the 28 June 2013, the UK Intellectual Property Office (UKIPO) will provide £2.5m in funding over two years to the City of London Police, in order to establish and run a new IP Crime Unit that is being set up to tackle online piracy and other forms of intellectual property crime, such as counterfeit goods. It is anticipated that the unit will be up and running in September 2013.

Apparently, the unit will be the first of its kind in the world, the idea being to position the UK as setting the international benchmark for intellectual property enforcement.

The press release states that the purpose of the unit is "safeguarding jobs and protecting people's personal and computer safety by ensuring they are not exposed to counterfeit good and unauthorised copyrighted content".

## The criticism of the unit

Several articles, consumed solely with the issue of unauthorised copyright content, have already been written about the new unit. Many articles criticise the unit as being no more than the stooge of the copyright industry. One blogger even likened the unit to the East German Stasi. Perhaps the comparison is due to the lack of transparency in exactly how the unit will operate in practice.

The unit has the power to seize assets and shut down websites found to be hosting unauthorised copyright material. The pledge simply to work with online advertisers, payment service providers and overseas

authorities to "disrupt" the revenue streams of websites identified as hosting unauthorised copyright material, appears to raise issues of Article 8's (European Convention of Human Rights) right to privacy and due process, including proportionality.

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These articles posit the argument that copyright industry representatives, like the International Federation of the Phonographic Industry Reports (IFPI), disingenuously portray unauthorised copyright content as an existential threat to the entertainment that which must be brought under control at all

costs. In fact, the real objective is to deploy legal and technological measures to control the behaviour of consumers (Patry, 2009).

## What about counterfeit trading?

According to the World Customs Organization, counterfeit products destined for 140 countries were detected in 2008. It is difficult to find comprehensive data, but the International Chamber of Commerce has long estimated that counterfeiting accounts for a whopping 5-7% of world trade, worth an estimated \$US 600b a year. In 2007, the Organisation for Economic Co-Operation and Development estimated the figure at 2% of the world trade in goods, or \$US176b.

Electronic goods and pharmaceutical goods are among the most commonly encountered counterfeited products. However, the single most commonly counterfeited class of goods are clothing, accessories and shoes. Counterfeiting has been a major criminal issue long before the commercial use of the internet.

## What was the status prior to the internet?

The copyright industry has seen transformational technologies before. The introduction of the cassette tapes in 1962 and video cassette recorders in 1970s, saw an important change in the way media was stored, distributed and accessed. From the seventies until the nineties, cassette or video tapes became increasingly popular formats on which to buy music and films. The new

technology offered portability but also an increase in piracy and a perceived existential threat to the entire entertainment industry. In the early 1980's, the British Phonographic Institute launched an anti-copyright infringement campaign under the slogan 'Home Taping Is Killing Music' (Geoghegan, 2007). The popularity and law breaking of using cassette tapes caused panic in the music industry. Copyright owners were worried about increased loss of control over music content through music piracy. In 1977, the Whitford Committee reviewed the Copyright Act 1956 and found that it did not address the perceived threat from cassette tapes, (Bently and Sherman 2009). After the cassette tapes, came the compact disc (CD). By 1982, Sony with Philips launched the CD. It took over from cassette tapes very quickly. The CD offered many benefits over cassettes. One of the most notable benefits was its usable shelf life - far longer than tape. By 1986, sales of CD players would eclipse record players, and two years later, CD sales outpaced records (Ed Oswald, 2007). Cassette tapes led to the end of the dominance of the radio and phonograph. CDs led to the end of the dominance of cassette tapes. Now digital media files are leading to the end of CDs.

### Why is there a need for the IP Crime Unit now?

Why is there a need for a specialist unit today when there wasn't a need for it 10 years ago? The answer can be found in a number of facts and statistics.

- The introduction of the internet and digital media files has stimulated a digital revolution. The internet has transformed the entire media ecosystem and is leading to the destruction of the entire existing way of creating, accessing, distributing, collaborating and sharing media. A piece of media can be copied to an extremely high quality, and distributed almost instantaneously globally. Millions of unauthorised copies can be made available in just moments. Further, with some of the file-sharing technologies available, there is virtually no trace of the origins of the copying.
- An estimated 7m people a month visit sites hosting content in violation of copyright laws in the UK.
- According to the Creative Coalition's TERA Report (2010), a quarter of a million jobs could be at risk in the UK by 2015 if digitally pirated music, films and software are allowed to proliferate unchecked.
- According to the commissioner of the City of London Police, Adrian Leppard, "Intellectual property crime is costing the UK economy

hundreds of millions of pounds each year."

- *The Hargreaves report* and subsequent *Hooper report*, recommended an overhaul of copyright laws, which could add up to £7.9bn to the UK economy. The unit is part of the governments' response to these reports.
- One of the aims of the unit is to support the UK creative industry and safeguard jobs, in the sense that it serves as a preventative mechanism and aims to ensure that the money made from illegitimate and unauthorised people/parties, will remain with the creators.
- Illegal sites are being under reported due to personal gain. For instance, advertisers would know that such sites get millions of visits and would want to continue advertising for their own financial benefit. Users would not report sites as they are benefiting from free music and other media. Even emerging artists whose mix tapes and tracks may be made public on these sites, may see such sites as a distribution and marketing platform for their music in the short-term.

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### The two conflicting arguments

So in summary, the two arguments are:

#### Copyright industry argument

The existence of unauthorised copyright content and counterfeit trafficking is the result of inadequate law enforcement measures. Further, these intellectual property crimes are wiping out the livelihoods of the entire UK entertainment industry as we know it today and seriously degrading the quality of UK entertainment generally. Accordingly, serious further measures need to be taken such as a new IP Crime Unit, dedicated solely to policing unauthorised copyright content and counterfeiting. Additionally, there is evidence

to suggest that where a more forceful and less tolerant approach has been (such as an IP Crime Unit) taken, far more effective results have been achieved. The situation where locker sites have been shut down has had a domino effect on other websites. For instance, following the *Megaupload* case, there was a significant drop in users of cyberlocker technology as a result. In the advent of the *Megaupload* shut down, other similar websites discontinued: Filesonic disabled sharing functionality and went from almost half a million file-sharers in January 2012, to 216,000 the following month, to just 100,000 in May 2012. By September 2012, the site was down for good. This is the copyright industry's argument.

#### The opposition argument

The illegal use of copyrighted works existed prior to the internet. It may have increased exponentially because of the internet, but the proportion of consumers that engage in accessing and copying unauthorised content irrespective of the internet may not necessarily have increased. There is no evidence that those consumers engaging in online piracy would purchase entertainment media legally with or without the internet. Even if more consumers now engage in accessing and copying unauthorised content, that would not have but for the internet, then this proportion of consumers are rapidly decreasing. Additionally, it is arguable that increasing the policing of unauthorised content will not necessarily be successful, since organised criminals will simply adapt. The technology involved is too difficult to police efficiently. It is therefore simply not in the public interest to spend tax payers money for a new specialist IP Crime Unit.

#### Comment

Whichever argument you prefer, there is no doubt that we are in the process of a complete transformation of the existing copyright ecosystem. Nobody really knows what the new copyright ecosystem will look like, let alone how best to protect it.

#### Author



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