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New strategy paper on tackling IP infringement published by the UK IPO

Jonathan Clegg (Cleveland Scott York) · Wednesday, May 18th, 2016

The UK Intellectual Property Office recently published a paper setting out an updated strategy on IP enforcement issues up to 2020 (see <https://www.gov.uk/government/publications/protecting-creativity-supporting-innovation-ip-enforcement-2020>). Its scope is broad, encompassing illegal online content and counterfeiting activity in all its forms, and it also has a strong international component.

There are six main areas of focus. Two of these directly address IP infringement: first, seeking to reduce the scale and extent of online IP crime by developing “*clear, well-evidenced online interventions and sanctions*” to benefit consumers and deter criminals; and second, tackling counterfeiting operations through a range of measures including seeking new collaborations with enforcement partners. The other four sit behind these frontline objectives: strengthening the legal framework to facilitate easier access to justice, increasing education and awareness, making it safer for UK rights holders to trade internationally, and increasing the evidence base through more research and greater access to detailed data.

The publication of this paper is certainly welcome as it underlines a level of commitment by the UK IPO to intensify its activities in the IP enforcement area and to up the ante on behalf of UK businesses. The Office is well-positioned to develop partnerships with other agencies and commercial associations so that a more joined up strategy of tackling these issues can be developed. The landscape is increasingly complex, though, with online infringement and counterfeiting activities becoming ever more sophisticated and international in their nature.

Of course, it’s one thing to establish a clear set of aims, but another to meet them in a way which genuinely makes a difference. Taking counterfeiting as an example, the international nature of this makes it a tall order for many SMEs and even some larger companies to have a strategy in place that really gives them a chance of successfully tackling this in the attritional way that is often required.

For example, a rights holder needs its IP position to be secure in those countries where counterfeit goods are being manufactured so that it can attack them at source, rather than only in those countries where the goods finally appear. This points to developing an IP portfolio which extends to often far flung jurisdictions where the rights holder may never have traded or realistically intended to trade, and then having the resources and tenacity to invoke local laws in those jurisdictions.

The IPO's strategy refers to "investing resources in helping those countries identified as key sources of counterfeit goods improve their IP laws" (page 22). This is a key area, and is well exemplified by considering the role copyright plays in tackling counterfeiters. Generally, the primary IP right needed is a trade mark registration, but in the fairly common situation that a UK business has no such registration in the counterfeiter's home country, it may well be able to prove relevant copyright ownership in the UK. The extent to which this can then be relied upon in the other country varies considerably, and even if this is technically possible, it can be much more burdensome and therefore expensive to assert than trade mark rights. There is certainly scope for improving this but it won't happen overnight. The countries in question will need to be persuaded to streamline and improve their laws in this area, but this is certainly a goal worth pursuing.

There are a number of other issues raised in the strategy paper which are similar to this in their level of ambition and likely timeframe to fruition. The UK IPO's strategy is a welcome statement of intent with considerable potential benefits to the business community if it works, but it will be a long haul.

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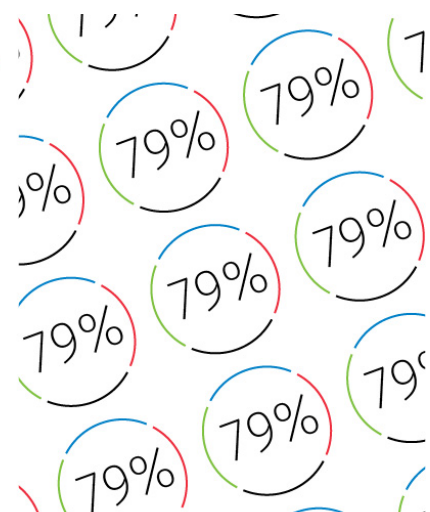
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