



Increase in penalties for online theft

The unauthorised distribution of content, be it music, film, computer software and games software, publications or sports broadcasts, is against the law. In many ways, buying content online should be viewed as traditional shopping; just as someone would walk into a shop and buy a CD or book, similar payment needs to be made for material downloaded from a website. This is crucial in order for creators and rights holders to be assured of remuneration for their work and investment. Most people agree that it is a crime to help oneself to the property of another without payment or permission, and accessing content online must be viewed in the same way. This is a crucial principle if we are to ensure the creative industries' survival as we go further into the digital age.

Criminal sanctions should not therefore differentiate between whether the offence is taking place in an online or physical environment; online copyright theft should not be viewed as a lesser crime than copyright theft in the physical world. Intellectual property and creative content is still being stolen, funding criminal activity and causing economic harm whichever format is being used.

The following example clarifies this point:

Scenario 1

A person has a 'business' making and distributing for sale physical copies of pirated DVDs, CDs, software, books etc. He has a website whereby copies can be ordered and purchased online. These pirated copies are then posted to the buyer.

Scenario 2

A person has a 'business' providing access to pirated films, television programmes, music, software, books, sports event etc. All this material is held on a server to which people pay to access and then download or stream copyright-protected material.

There is clearly no difference in the crime being committed. Both sellers are selling pirated material. However, because in Scenario 2 no physical product is being produced the seller could only expect, if caught, to face a maximum penalty of two years in prison and £5000 fine. Seller 1, however, could expect a maximum penalty of ten years in prison and an unlimited fine. This seriously reduces the ability of the courts to deal effectively with persistent and flagrant offenders who increasingly operate in the online world.

It is important to stress here that this necessary amendment relates only to criminal offences which already exist. No-one is proposing introducing new offences in this area; there simply need to be comparable penalties for comparable offences. To be clear, we are not talking about criminalising teenagers in their bedrooms. This proposal would deal with criminals that are, as the Act states, "communicating a copyright protected work to the public in the course of a business or doing it on such a scale as to affect prejudicially the owner of the copyright."

In 2004 Parliament rightly voted to increase the maximum penalties for copyright infringement from two years to ten years, bringing copyright and trade mark legislation into line as the different levels of penalties were being exploited by criminals and damaging UK businesses. Indeed, reassurance was even given in the House of Commons that such a move would not lead to a proliferation of new offences, given that the copyright offences already existed. All the measure sought to do was to address an anomaly criminals were exploiting and align the penalties with similar comparable offences.

The fact that different penalties exist for online and physical infringement, as the above example demonstrates, is an equally bizarre anomaly. We are, therefore, unsure as to why the government continues to delay to rectifying this anomaly (Recommendation 36 from the Gowers Review) and ask the Conservative Task Force to give it due consideration.