



Department
for Culture
Media & Sport

Lord Ashton of Hyde
Parliamentary Under Secretary of State
4th Floor
100 Parliament Street
London SW1A 2BQ

020 7211 6000

www.gov.uk/dcms

CMS 299590/asg
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My Lords,

Digital Economy Bill: first day of Report

During the first day of Report on the Digital Economy Bill on 22 February 2017, Baroness Buscombe and I committed to write on a number of intellectual property matters.

Code of conduct for search engines

During the debate the House was informed that the text of a voluntary code of conduct for search engines has now been agreed, and all parties involved will be working towards its full implementation by the summer. Lord Stevenson asked if the government could circulate a copy of the code and, as Lady Buscombe explained, whilst we are not able to share the code in its entirety due to the sensitivity of numerical thresholds required for sites to be delisted, a redacted copy is annexed to this letter which clearly shows the significance of the joint agreement.

Counterfeit electrical appliances

Baroness Janke asked for further explanation of how the sale of counterfeit electrical appliances are being tackled as part of Operation Jasper, a multi-agency initiative to tackle the growing problem of counterfeits and piracy on social media. Targeting the sale of counterfeit electrical appliances is included in this operation and seizures of electrical goods have taken place in response to specific intelligence. For example, the Police Service of Northern Ireland seized thousands of items in December last year which included dangerous counterfeit electrical products. Detecting and disrupting IP criminals who deal in counterfeit electronics remains an important part of this operation.



E-books

In respect of the government amendment, on the lending of e-books by public libraries, Lord Maxton asked about the legislative competence of the Scottish Parliament on this matter. As Lady Buscombe explained to the House, the government would like the extension to the Public Lending Right to apply throughout the UK (as it does for lending of physical books). The subject matter of the Public Lending Right Act 1979 is reserved in respect of Scotland, is expressly excepted from the competence of the National Assembly for Wales, but is transferred to the Northern Ireland Assembly. The legislative consent of the Northern Ireland Assembly will be required to ensure that this measure can be extended to Northern Ireland. Officials are working with their counterparts in Northern Ireland to achieve this.

A copy of this letter will be placed in House Library.

Yours sincerely

Henry Ashton

Lord Ashton of Hyde
Parliamentary Under Secretary of State

Code of Practice on Search and Copyright

Introduction

1. With the increasing popularity of digital consumption of music, audio-visual works, e-books and other types of content, there is a need to work together to ensure that consumers are getting easy access to legal content and are not being inadvertently led to the infringing websites which proliferate online.
2. The Minister for Intellectual Property has chaired a series of roundtable meetings between representatives of the creative industries (BPI, Motion Picture Association and the Alliance for IP) and representatives of the leading UK search engines (Google, Bing and Yahoo!). These meetings were convened to discuss practical steps that could be taken by all parties on a voluntary basis to reduce the risk of consumers being led to copyright infringing material by means of search results. Together the group developed this Voluntary Code of Practice.
3. This Code of Practice is based on the acknowledgment that both rights holders and search engines can play a valuable role in helping consumers locate sources of legitimate content online.
4. Measures to reduce the prominence of identified infringing websites in search results can only be successful if search engines and rights holder work collaboratively and ensure that such measures do not disrupt the legitimate activity of users, or the availability of non-infringing material.
5. Rights holders can also influence search listings through a range of channels, including by reporting infringing content/ URLs through copyright infringement notices, and by means of influencing search ranking for those legitimate domains under their direct control through search engine optimisation.
6. The ambition is that consumers will be less likely to be led to copyright infringing websites in response to search queries.
7. Search engines can decrease the impact of search listings for copyright infringing websites by ensuring valid copyright infringement notices are acted upon promptly to remove identified infringing URLs from results. In tandem, search engines should expand efforts to more effectively use such notices to demote domains demonstrated to be dedicated to infringement, and work collaboratively with rights holders to consider other technically reasonable, scalable avenues empirically demonstrated to help materially reduce the appearance of illegitimate sites in the top search rankings.

Shared Objectives

8. All parties support the objective of removing links to infringing content from [REDACTED] search results returned to consumers in the UK in response to 'neutral' formulations of search query (exact search terms to be agreed) with the goal of presenting the consumer with links to legitimate sites. This includes search results presented to the user in the form of natural search results, sponsored or advertisement results or media player 'box' results.
9. The parties agree to the following metrics for assessing progress toward these objectives – initially to be measured against an agreed set of neutral queries¹. Selection of such search queries by the parties shall take into account data indicating the actual levels of usage of such search terms, as well as the harm that illegal access to content via specific queries can cause to creators, in particular for new releases.
10. A whitelist process² would need to be created to exclude legitimate sites that could be caught within this lower threshold. For an agreed sample of searches using neutral queries in conjunction with artist or content name, the aggregate results should be as follows;
 - [REDACTED]³⁴⁵
 - [REDACTED]
11. Performance in achieving the above metric should be considered in tandem with an objective assessment of the existence of legitimate websites (of rights holders or their partners, distributors or other authorized locations) that offer consumers access to legitimate content or information for the measured queries, and the efforts made by rights holders to take advantage of reasonable techniques such as search engine optimisation.
12. Search engines and rights holders will work in cooperation to take steps that will be effective in achieving the Shared Objectives, including the results set

¹ The parties commit to continued work together with the ambition that, in due course, the objective will also include more directed 'piracy seeking' search terms.

² Any such process will need to include a mechanism for challenging entries which are not clearly legitimate websites.

³ Digital Millennium Copyright Act (DMCA) notices are a commonly used and understood method by which rights holders may notify online service providers about infringing content.

⁴ A site is considered to have received over [REDACTED] DMCA notices if the relevant search engine has received any number of individual notices which between them list [REDACTED] or more infringing URLs in aggregate. There is no fixed time period which is considered to constrain progress toward this total, but where such notices are considered historical and the nature of a site has changed so that it is no longer structurally infringing, it may be considered appropriate to dis-apply the amassed total.

⁵ All parties acknowledge that domains in receipt of less than [REDACTED] DMCA notices may also be considered infringing under copyright law, regardless of the fact that they are not relevant for the purpose of this metric

out in paragraph 10 by 1st June 2017. If this ambition is not met by 1st June 2017, the IPO will prepare a report to the Secretary of State, detailing the efforts made by all parties, and recommending further measures as required.

Techniques

13. Techniques considered by search engines to achieve the Shared Objective should continue to focus on automated demotion following the receipt of sufficient copyright infringement notices from rights holders. Search engines and rights holders should however also work to develop and apply additional techniques empirically demonstrated to be effective in achieving the shared objective.
14. Search engines and rights holders will exchange detailed information on a confidential basis in order to better understand how users are searching for content and to use copyright infringement notices more effectively to quickly demote domains demonstrated to be dedicated to infringement. This information exchange will not be expected to include commercially confidential information, and is without prejudice to the existing legal remedies available to either party.
15. All parties will work with the IPO to evaluate how frequently copyright infringing websites, subjected to demotion, change their top-level domain (TLD), but otherwise retain substantially the same identity. If this activity is sufficiently widespread as to justify it, search engines and rights holders should develop a process whereby rights holders can notify search engines of the occurrence so that, when verified, such domains can be appropriately demoted.
16. Search engines will work with rights holders to identify steps that can be taken to accelerate the demotion of domains dedicated to infringement, to reduce the time between the first identification of such domains and their demotion from top search results.
17. Rights holders and search engines will work together to refine existing techniques and processes for sharing information regarding (i) infringing websites, including encouraging the use of APIs and the most expedient formatting of infringement notices, and (ii) search optimisation techniques for legitimate sites that increase the likelihood that such sites are discoverable by search engines, so that rights holders (and their partners and other authorised content distributors) can improve the likelihood such sites will rank higher in results for well-meaning queries.

Autocomplete

18. All parties agree to work to prevent the generation of Autocomplete suggestions which lead consumers towards infringing websites. It is recognised that input from rights holders forms a key part of this work. As with the main Shared Objectives, it is agreed that work on Autocomplete should initially be focussed on the Autocomplete terms suggested to users who are entering neutral search terms⁶.

Advertising

19. Search engine providers will provide, or continue to provide, processes to promptly remove advertisements from specific advertisers (e.g. "sponsored links" appearing separately from, or artificially ranked higher in, the main search results) that link to infringing content, in response to notices from rights holders, and terminate advertisers that receive repeated notices of infringement.

Best practice sharing

20. All parties to this Code of Practice commit to ensure that progress or best practice in this area (to the extent that such information is non-confidential) is shared widely with smaller search engines and independent rights holders.

Monitoring and assessment

21. To ensure that the implementation of this Code of Practice is guided by objective data, IPO will arrange to provide quarterly cycles of research to assess progress toward meeting the Shared Objectives. As part of this research, an assessment will be made as to the extent to which implementation of this Code of Practice is improving the visibility of legitimate options for UK consumers to buy or stream content relative to that of illegal options, recognising that the site owners have a key role to play in this through search engine optimisation and other techniques.

22. This voluntary Code of Practice is not legally binding, and participation by a party is without prejudice to the parties' available rights and remedies under all applicable laws. No action undertaken in furtherance of these practices shall impute knowledge, create or impose liability, rights, obligations or waiver of any rights or obligations for any parties. This voluntary Code of Practice shall not replace, modify or interpret existing law or legal framework including without limitation defences or limitations on liability.

23. The Minister of State for Intellectual Property will oversee the implementation of this Code of Practice, supported by quarterly meetings of all parties, and

⁶ As for the main shared objective however, the parties agree to work to improve this process with the understanding that it should be applied to a wider range of search terms, including piracy seeking terms, in due course.

set requirements for reporting by search engines and rights holders on any matter herein, including in particular those matters where the Code of Practice calls for ongoing discussion and/or cooperation. The Minister shall review the effectiveness of the Code with the parties after one year, and ensure continuing progress towards achieving the Shared Objectives with regard to the considerations above in paragraph 9. This review will include an assessment of the continued appropriateness of the metric in paragraph 10, as well an assessment of the broader issues outlined in paragraph 11.

This Code of Practice has been agreed between the following parties;

Bing

BPI

Google

Motion Picture Association

The Alliance for Intellectual Property (on behalf of certain applicable members)

[17th February 2017]