

**Lord Triesman's Speech for the Social Market Foundation/Alliance
Against IP Theft event:
27 November 2007**

Intellectual Property Rights and Consumer Rights

Thank you for inviting me to speak at this event. I am delighted to be here and to set the context for what I'm sure will be a fascinating morning. The subject being discussed today – intellectual property rights and consumer rights - couldn't be more appropriate. Stories relating to intellectual property rights appear almost daily in the news, and often in the context of controversy: an important means of protecting creators is in danger of becoming a source of apparent frustration for many consumers in the digital age.

We all know the rationale for the development of intellectual property rights – the recognition that creators and inventors need to be able to protect their ideas to enable them to make a return on their creative and financial investment. IPRs do this by offering a degree of control over inventions, creative works, or indications of origin. And society can benefit by ultimately being able to access the manifestation of whatever new and creative ideas are developed.

Has that rationale changed because of the incredible opportunities now offered by digital communication? This was the very question Andrew Gowers was asked to look at when he carried out his review of the IP framework. He confirmed that IP still provides appropriate incentives to encourage innovation and creativity. He concluded that the IP framework was performing broadly satisfactorily in the new digital environment. He also made recommendations to ensure that the appropriate balance between protection of right holders and access for users is maintained. But the essential point was that the framework is appropriate and sound. I also believe it is flexible enough to deal with current and future developments, but I must stress that I am not complacent: as the Minister for Intellectual Property I am committed to ensuring the IP framework remains relevant, and to keeping it under review.

If the current framework is still relevant, what is it that has changed? I believe it is the expectation of those who use and want access to creative and innovative products. Social and technological change has created a consumer community that expects immediate, open and – more controversially - often free access to goods and services. We've seen that from the way that content sharing websites for example have sprung up. The new digital environments have opened up a world of opportunities not only for businesses, but also for consumers. They want to communicate widely with each other and to share not only their experiences, but their favourite songs, films and games - and the digital world gives them that facility.

Technological developments

This kind of, usually illegal, consumer sharing – which fails to acknowledge the creators input - has proved not only alarming but also highly damaging to

right holders: Gowers quoted a figure of £414million pounds in sales lost to the music industry in a single year. Whilst right holders want their works and inventions to have the widest possible audience, they have to be able to choose for themselves how to enable that access, to ensure that they meet the costs of bringing such things to the public. Not surprisingly, they have tried to protect their interests. Some of their reactions to the 'sharing culture' are difficult for consumers to understand, or to accept, and this has created a certain tension between right holders and consumers.

Digital Rights Management systems are a case in point. As Gowers recognised, DRMs can be legitimately employed. As well as providing obvious protection from copying, they also provide a valid way for businesses to offer consumers differing levels of access to their products. For example, film downloads can take a variety of forms from 'free shorts' to 'pay per view' to full price purchase of the whole film. Such a variety of digital offerings also helps negate the argument that if consumers want digital access and can't get it legally, they'll try and get the film somewhere else. At the same time of course, those using DRMs to provide any copyright-protected work, must ensure that the product is robust, enables proper fair dealing and doesn't break the equipment it's played on.

New business models

This business/consumer tension has had a positive effect. It has created new responses to consumers concerns and demands: in certain cases, businesses have chosen to look again at DRMs and whether they really are appropriate for their business. EMI for example has launched DRM-free products in the form of premium downloads. It recognises that there is a consumer demand for high quality digital music for use on a variety of equipment both at home and on the move.

The EMI example also helps address another problem as far as consumers are concerned: namely that some systems are incompatible with each other. This lack of interoperability can be deeply frustrating. What do you do if, having legitimately built up a collection of music, you cannot then transfer it from your old system to your new one? Not an easy question to answer. It may be by being more open and upfront with consumers about what they're buying, or it may be by developing new business models. But in our fast-moving world, I do not believe it is appropriate for Government to consider regulating – we do not want to stifle innovation by setting hard and fast rules which quickly become obsolete. So business itself needs to take action to address these concerns. EMI has chosen one particular route. Others, particularly music groups, are experimenting with free offerings – last year there was much interest in the way the Arctic Monkeys promoted their music. This year Radiohead have asked their fans to decide how much to pay for their most recent album. Whilst this seems a high risk strategy to many, it is up to individual creators and businesses to decide which business models are appropriate for their works and innovations – and the public should respect that.

[The ability to transfer works from one platform to another was an issue Gowers took a great interest in. His report recommended changing the law to allow 'format shifting', so that CD collections could legally be transferred to MP3 players or computers. This is obviously of great relevance to users, many of whom are unaware that their current copying activities infringe copyright. It is also a matter of concern to right holders, who fear their business models will be undermined. We will shortly be consulting on this and other Gowers copyright recommendations, and obviously urge all stakeholders to make their voices heard in the debate which will surely follow. In the context of this event, this recommendation raises an interesting point: there are some people who believe that such a change to the law will provide the consumer with a 'right' to copy a DVD for example – but that is not the case. Any change in the law will merely provide an exception from infringement for certain limited acts, and will not override any terms and conditions which the consumer agrees to when he or she buys a DVD in the first place.]

Consumer choice has increased dramatically in the digital age, as business recognises the potential it has to offer: But whilst 'digital' means wider consumer choice, the growth of the internet and the emergence of new platforms for viewing broadcast materials have also created new challenges. As I have shown, businesses are working in a variety of ways to adapt to those challenges, but ultimately, if users fail to respect those rights, and fail to acknowledge their own responsibilities to act legally, then other ways need to be found. In many cases that will require us all to work together.

Illegal activity and the consumer

One area in which we are already doing so is in IP Crime - not necessarily top of the consumers' list of major threats to society. But the impact can be significant: for example, the damage done to the very industries that bring to them the products and services they want; the potential linkages to other serious organised crime; and perhaps on a more personal basis, the often dubious quality and, on occasion, dangerous nature of counterfeit goods. To help prevent IP crime the UK's National IP Crime Strategy brings together government, enforcement agencies and rights holders to build expertise, improve awareness and share intelligence. IP crime is now clearly recognised as a priority issue for all enforcement agencies. For example, as recommended by Gowers, trading standards officers now have greater enforcement powers, together with increased funding. Training and advice from the UK-IPO to enforcement and criminal justice agencies, such as the Crown Prosecution Service enables them to appreciate the importance of IP crime, and progress cases effectively.

Of course right holders from all the affected areas, including music, film, games and sport, also have an important role to play in tackling IP crime. Working independently or jointly with others they gather intelligence and progress prosecutions. They can also help prevent IP crime - and the potentially equally damaging infringing activities of thousands of individuals -

through digital rights management and other technological and business solutions.

What solutions are used in any particular case will depend on the site and the type of consumer activity associated with it. YouTube for example has taken out a licence in the UK to ensure that its users can continue to incorporate any of the 10 million copyrighted British songs into the videos they create and post on the site. Others, such as Microsoft and Walt Disney, have agreed in principle to use technology to prevent illegal content from being uploaded in the first place. Both this kind of technological filtering and licensing have their place. I would simply urge businesses to be careful not to alienate the very consumers that they want to interact with, and make sure that any exceptions which permit legal use are respected. Engaging in conversations with consumer groups about the problems and how to overcome them could prove mutually beneficial.

Working with others – particularly when you start from opposing points of view – presents certain challenges, but can be a very useful way to manage differences and seek solutions to particular problems. Illegal file sharing is a major problem for rights holder, for example, and I am pleased that they are working with internet service providers on a pilot scheme to help tackle this issue. I firmly believe that an industry agreement will provide the most flexible approach, but I and my colleague, Stephen Timms, have made it clear that we can't wait forever. We are already starting to explore legislative solutions, so that we can step in and take action if necessary. We hope that whatever solution we end up with will also provide the clarity that consumers need to enable them to understand what they need to do and the consequences of failing to do it.

Consumers and awareness raising

It's clear that IP crime and piracy are enormous challenges which need to be tackled. And as I've said there are ways that those challenges can be – and are being – met. But we must not concentrate so hard on illegal activity that we forget to look at the whole picture. There are plenty of consumers out there who appreciate the work, time and effort that goes into the creativity they enjoy – worldwide, online music sales doubled to around \$2billion in 2006, with single track downloads up an estimated 89%. Businesses have to be careful to adapt their business models to enable consumers to enjoy the opportunities arising from the digital environment – and communication is key. Consumers need to know what they are buying and what they can do with what they've bought. I think it is important that they also need to understand why certain restrictions apply.

Raising awareness of IP, how it works and why it exists, is another enormous challenge and another area in which we all need to work together. Many digital users are young people who have grown up expecting free access, so it will be no mean feat to encourage respect for IP. The UK-IPO has been working with various partners, including Wallace and Gromit creators Aardman Animations, on a number of projects such as 'Cracking Ideas' and Think Kit, aimed respectively at primary and secondary school students. I

know too that groups within industry, such as British Music Rights, are also working successfully to introduce awareness raising activities into the classroom. Such work is a vital. But we shouldn't forget that this also needs to be tackled from a wider perspective. The CREATE group, which includes a broad range of industry stakeholders, is working to ensure that consistent messages are shared and widely disseminated. This is a most useful initiative, and I would encourage industry to follow this example to work together to ensure appropriate messages are targeted at all the appropriate audiences. The Government is of course happy to share platforms and help underline the importance of these messages.

The examples I've mentioned are all very useful initiatives which I hope we can build on for the future. I don't underestimate the difficulties of this particular challenge, but I believe together we can make a difference.

Conclusion

As I hope I have shown, there is a balance to be struck between IP protection and consumer access. The opportunities offered by the digital age have thrown a spotlight on where that balance should lie but the fundamentals remain the same. Most people appreciate that those who create and invent should be rewarded for their efforts. And we all want to be able to have access to those efforts. What we have to do is make sure that where rights exist, they can be enforced, and most importantly that they can be accessed in an appropriate way, by people who have a healthy respect for them.

These are extremely challenging tasks, particularly in the online environment. As I've said, meeting that challenge will require collaboration and concerted efforts. I am therefore pleased to announce today that I am setting up a stakeholder group to look specifically at the wide range of issues that online content and new media platforms raise. The group will be small enough to get the work done, but large enough to encompass a broad range of viewpoints. I do not doubt that I am setting myself and that group a significant challenge, but I look forward to working closely with you in what I hope will be a constructive dialogue.