US Department of Commerce - Patent and Trademark Office

Future Strategies in Anticounterfeiting and Antipiracy

Premier League Submission

August 2023

Introduction

The Football Association Premier League Limited ("**Premier League**") welcomes the opportunity to assist the United States Patent and Trademark Office (**"USPTO"**) with its consultation on Future Strategies in Anticounterfeiting and Antipiracy.

The Premier League is the organising body of the top-level competition for football clubs in England and Wales and is authorised by its twenty member Clubs to license broadcasters throughout the world to provide audio-visual coverage of the 380 matches that are played in the competition during each season (the **"Matches"**). The Premier League is broadcast to almost 900 million households around the world (including through NBC Sports, the Premier League's authorised broadcaster in the United States) and a high proportion of the Premier League's revenue is generated from the sale of exclusive audio-visual broadcasting rights to the Matches. The United States is a key market for the Premier League, as demonstrated by the recent opening of the Premier League's New York office[1] and the Summer Series of Premier League matches in July 2023, featuring six Clubs with fixtures across the United States[2].

Abuse of the Premier League's intellectual property **("IP")** occurs in many forms, including through piracy and counterfeiting. However, due to the scale of infringement (as detailed further below), the Premier League has focused this submission on the infringement of its copyright over the internet through digital piracy. During the course of the 2022/23 Season alone the Premier League detected almost 700,000 infringing live streams and removed over 850,000 unauthorized clips of Matches available online around the world. The scale of this infringement threatens the Premier League's revenue and therefore its ability to continue investing in, and contributing to, the quality of the competition, the sport more generally, community projects and the wider global economy.

The Premier League has committed to investing £1.6 billion in community and wider football initiatives between the 2022/23 and 2024/25 Seasons and since 2007 has reached 45 markets through its community work, training over 36,000 adults and benefitting almost 2 million young people. In the United States, this has included running Premier League Primary Stars USA, a digital learning programme for elementary schools that has been active across 679 schools in 7 states with approximately 75,000 students involved.
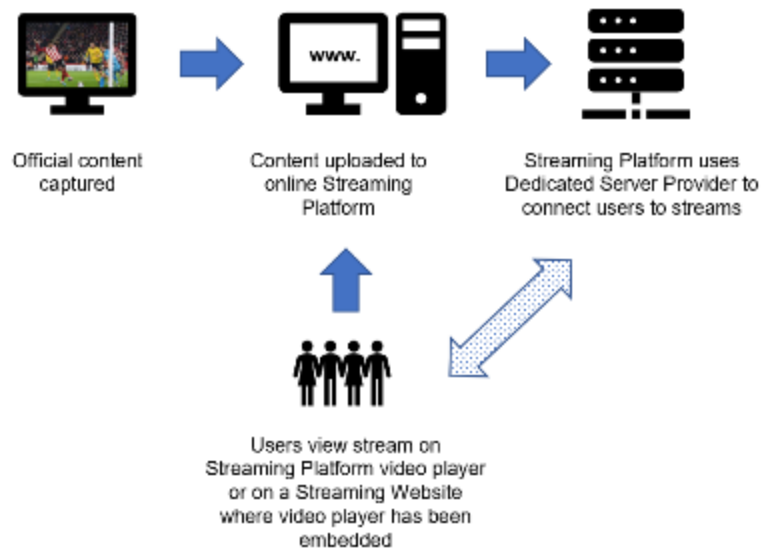
Online copyright infringement of live sport

Infringement of the Premier League's copyright has evolved over many years. The current ecosystem for unauthorised online live streaming of Matches can most simply be broken down into: (a) "Open Web Piracy" - where infringing streams of Matches are openly available for free over the internet, although generally at reduced quality; and (b) "Closed Network Piracy" - where infringing streams of Matches are made available by sophisticated operators, at a generally higher quality, to individuals that have purchased the necessary subscriptions from them, either as a one-off fee or a regular subscription.

A simplified illustration of how both these forms of online piracy work are below:
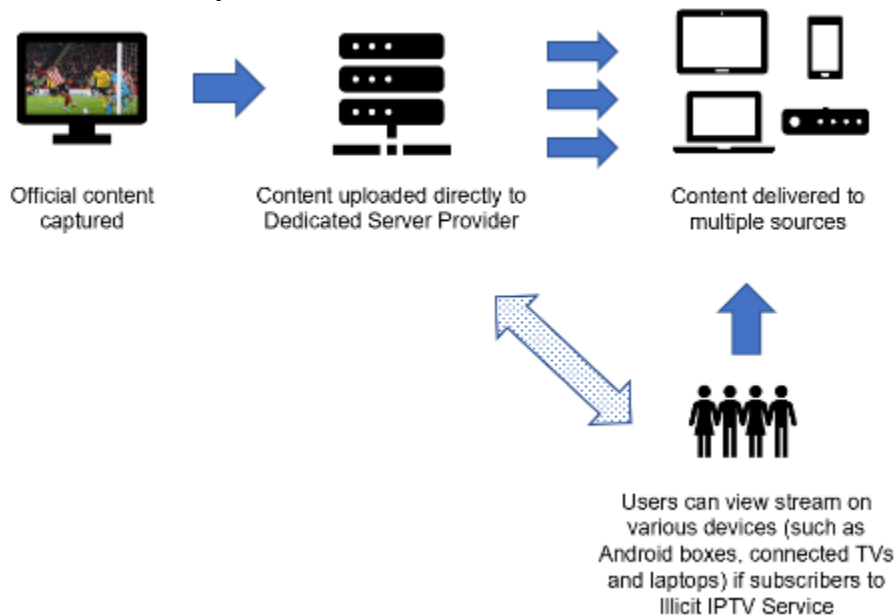
Figure 1: Open Web Piracy

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[1]https://www.premierleague.com/news/3599181.
[2] https://www.premierleague.com/SummerSeries

Official content captured → Content uploaded to online Streaming Platform → Streaming Platform uses Dedicated Server Provider to connect users to streams

Users view stream on Streaming Platform video player or on a Streaming Website where video player has been embedded

Open Web Piracy involves a pirate operator capturing an official broadcast signal (through various means, such as using a HDMI splitter connecting a legitimate set-top-box to a computer) and then uploading the content to a Streaming Platform. The Streaming Platform software creates a hyperlink to the content that may be played within the Streaming Platform and/or extracted and shared for viewing elsewhere on the internet, often on Streaming Websites (also known as linking or referring websites, that are generally free to access and which aggregate URLs from a range of Streaming Platforms and provide hyperlinks to live streams). However, as illustrated by the diagram above, users are unable to connect to streams made available through Streaming Platforms and Streaming Websites without the use of a Dedicated Server Provider (sometimes referred to as a Hosting Provider) to deliver the streams. Without them, users would still be able to access Streaming Platforms and Streaming Websites but would not be able to view the audio-visual content on them.

Figure 2: Closed Network Piracy

Official content captured → Content uploaded directly to Dedicated Server Provider → Content delivered to multiple sources

Users can view stream on various devices (such as Android boxes, connected TVs and laptops) if subscribers to Illicit IPTV Service

Closed Network Piracy also requires a pirate operator to initially access an official broadcast signal. However, in this more sophisticated form of piracy, the operator uploads the content straight on to a streaming server (without the need for a Streaming Platform) and makes the content directly available to certain users. This is generally how Illicit Internet Protocol Television

("**IPTV**") Services operate; in return for a one-off, monthly or annual fee, they provide access to an Electronic Program Guide ("**EPG**"), typically though illicit streaming devices such as an Android box, containing hundreds or even thousands of channels of premium content. This is termed a "Closed Network" because the content is only available to users who have paid the pirate operators the relevant subscription. However, just as with Open Web Piracy, the process cannot work without the use of a Dedicated Server Provider to enable those users to connect to the audio-visual content. The EPG would remain accessible, but no content would be played when a relevant channel was selected.

Questions

1. **Please identify current anticounterfeiting and antipiracy strategies and any trends you see in how often these practices are guiding the public's plans for addressing these issues in the future.**

The Premier League has over many years developed a comprehensive and varied antipiracy programme, continually adapting it to address the constant evolution in pirate technology and techniques. In simple terms, the Premier League's general strategy can be summarised through the following four areas:

- **Technological Measures:** The Premier League works closely with its broadcast partners to adopt measures to make it as difficult as possible for pirates to access and distribute official broadcast signals and, as further detailed in response to Question 10, deploys world-leading technology to identify and verify (via digital fingerprinting) any infringing live streams that make it online.

- **Disruption:** The nature of live sport means that time is of the essence for the removal of illegal streams from the internet. Every minute that an infringing stream is online represents a significant threat to sports rights owners' economic interests. The Premier League therefore places a huge emphasis on disrupting infringing streams during Matches, including through notice and takedown measures under the Digital Millennium Copyright Act (**"DMCA"**) regime. It also includes working with social media companies (such as Meta) and search engines (such as Google), to improve their copyright protection policies, prevent infringing content being uploaded and immediately remove illegal streams found on them.

- **Legal Actions:** The Premier League pursues a range of legal actions around the world, from blocking injunctions (that for example helped the Premier League block or remove over 600,000 illegal live streams in the UK during Season 2022/23), to so-called "Knock & Talk" actions, and to deterrent criminal prosecutions that bring criminals (like those involved in the recent Flawless prosecution[3]) to justice and demonstrate to pirate suppliers and users that piracy is illegal and treated very seriously by the police and courts.

- **Education:** This involves engaging with lawmakers around the world to try and ensure that developments in pirate technology do not out-pace the law and that sufficient tools are in place to allow legitimate rights owners to protect their rights (recent legislative updates in Singapore[4] and Malaysia[5] are good examples of this), as well as consumer-facing initiatives to raise awareness of the threats and dangers associated with piracy, such as the 'Boot Out Piracy' campaign around Asia Pacific[6].

The above is a deliberately simplified and general summary of the Premier League's global antipiracy strategy. It is important however to recognise that each country has its own piracy issues and enforcement framework, so the Premier League works closely with its broadcast partners (including NBC Sports in the United States) to tailor the strategy to make it as impactful as possible in each country.

2. Please identify the types of harms you have observed from sales of counterfeited and pirated goods.

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[3] https://www.premierleague.com/news/3497694
[4] https://www.straitstimes.com/singapore/politics/selling-set-top-boxes-offering-pirated-streamed-shows-to-be-made-illegal-in
[5] https://piracymonitor.org/malaysia-updated-copyright-law-could-mean-20-years-prison-for-piracy/
[6] https://www.premierleague.com/news/2348525

As noted in the introduction, a high proportion of the Premier League's revenue is generated from the sale of exclusive audio-visual broadcasting rights. This revenue allows the Premier League to invest in the competition, provide financial support to the wider game and to support good causes and community initiatives around the world. This is all predicated on the Premier League, and its broadcast partners such as NBC Sports, being able to market and sell exclusive rights. Pirate operators, who in contrast seek to exploit the popularity of sports events (as well as the movie and TV industry) and the huge investment that goes into producing broadcasts of them, without contributing to the development and advancement of sport or communities, pose a significant potential harm to this model.

There are of course other, more direct and malicious harms that consumers might suffer as a result of piracy:

Viruses and malware

- Illegal streaming, download websites and apps can spread malicious software that infects users' devices or networks, putting personal information at risk. The Premier League has commissioned several pieces of research into the prevalence of these risks for consumers around the world. For example, in Singapore 50% of the most popular pirate sites for watching Premier League content carry risky adverts that contain malware, fraud, adult or gambling content. The equivalent numbers in Thailand and Vietnam rise to 71% and 75%[7] respectively.

- The various types of malware found on pirate services include: adware which can lure users to dangerous websites; spyware, which spies on user activity; ransomware, which can lock devices until a ransom is paid; and Trojans, which can grant access to a user's device. In his research paper entitled 'Time to Compromise'[8] Professor Paul Watters, a leading cybersecurity consultant and researcher and Adjunct Professor at La Trobe University, Australia, found that on average when downloading apps that enable pirate content to be viewed, consumers had a 57% chance of downloading malware, and the average time for a device to become compromised was 43 seconds.

ID theft, scams and fraud

- Services are often not what they seem. Customers often sign up to services, and part with money, only to find what they've been promised doesn't actually exist.

- Once the criminals who run these services have contact and payment details (for those that choose to pay for illegal content) they may pass them on to other criminal organisations for use in other phishing and fraud scams. A recent Digital Citizens Alliance report found that 72% of those who used a credit card to sign up for a piracy service reported fraud.[9]

Inappropriate content

- Whilst pirate services may often look innocent, they usually come with no parental controls, and so there is a very real risk that children will be exposed to age inappropriate content, such as pornographic material.

Organised crime

The operators of pirate services are often involved in wider organised crime. The sentencing of five individuals involved in the Premier League's most recent private criminal prosecution

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[7] Research by intellectual property and data analytics company 'White Bullet Solutions' run in December 2022

[8] Watters, P. (2022). *Time to Compromise: How Cyber Criminals Use Ads to Compromise Devices Through Piracy Websites and Apps.* Asia Video Industry Association. https://avia.org/wp-content/uploads/2022/08/Time-to-Compromise_.pdf

[9] https://www.digitalcitizensalliance.org/news/press-releases-2023/piracy-subscription-services-drive-credit-card-fraud-and-other-harms-to-consumers-new-digital-citizens-alliance-investigation-and-survey-finds/

unequivocally demonstrates this link[10]. The investigation and prosecution identified clear evidence of money laundering, several offences relating to indecent child imagery and voyeurism (for which one of the Defendants has separately been convicted) and proof that another was hacking legitimate subscribers in order to source content (in the belief that any consequences would be felt by the legitimate subscribers).

3.   Please indicate how consumers are educated about the harms and dangers that may result from the use and sale of counterfeited or pirated products.

Educating consumers on the harms and dangers of piracy occurs through a variety of core messages (whether it be the illegality of pirating or supplying pirate content, the risks taken by consumers when using pirate content or the economic harms cause by piracy), methods and sources, including:

- Media reporting of successful legal actions. Raids conducted at the end of last year in Singapore are a good example of law enforcement using media coverage to send a strong message to the market about the legal risks associated with piracy[11]. Since the raids, and resultant widespread media coverage, the Premier League has not been able to find any physical shops selling illicit streaming devices offering its content in Singapore.

- Direct consumer campaigns aimed at highlighting the various risks of engaging with pirate content, such as the Premier League's Boot Out Piracy campaign which focuses on messaging around scams, malware and poor-quality content.

- Publications of studies and reports, such as those identified in the previous response, that contain empirical data on the harms and dangers of piracy. These are generally amplified by media reporting and consumer campaigns.

4.   Please describe current anticounterfeiting and antipiracy strategies that may be available, identifying which elements have proven successful and those that have not. Your answer should identify the targets of anticounterfeiting and antipiracy efforts, such as ecommerce platforms, physical markets, and social media.

In the Premier League's experience, any antipiracy strategy must be broad, comprehensive (incorporating many of the solutions detailed in response to Question 1) and tailored as far as possible to particular piracy issues in the relevant country. No one measure can be fully effective in isolation.

However, in addition to the strategies deployed by rights owners, the various intermediaries involved in the distribution of pirate content, as set out in Figures 1 and 2 above, must also play a critical role in preventing pirate content from appearing online. Whilst all online intermediaries should have a responsibility to ensure their services are not used to enable the provision of pirate content, there are two in particular that can play an especially material role in preventing and reducing piracy of live events: Dedicated Server Providers and Social Media Platforms.

Dedicated Server Providers, such as Squitter Networks (AS213371)[12], play a critical role in the delivery of infringing video content to end users. Any effective solution adopted by them would prevent streams being viewed across multiple forms of pirate consumption, including websites, apps and devices. Whilst the website, app or device would still be accessible, no infringing video could be played through it.

Social Media Platforms, such as Meta, have become a major source for the consumption, sharing and purchasing of pirate content. Given the volume of infringement on these platforms, and the

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[10] https://www.premierleague.com/news/3497694
[11]https://www.channelnewsasia.com/singapore/police-illegal-streaming-devices-sim-lim-set-top-boxes-pirate-bootleg-2993921
[12]https://apps.db.ripe.net/db-web-ui/query?searchtext=as213371

wealth of resources and technical solutions at their disposal, they have a particular responsibility to help rights owners protect their legitimate IP rights.

To date, many online intermediaries generate significant revenue from piracy whilst implementing policies and systems around protecting IP that are cumbersome, costly to rights owners, heavily manual, reactive, inconsistent and/or limited. The Premier League suggests that a significant impact could be had on piracy of all content through the implementation of the following tools and policies:

Automated Content Recognition ("ACR") systems and takedown tools

These systems can (i) prevent unauthorised streams being uploaded onto the internet and/or (ii) enable rights owners to utilise a live takedown tool to remove in real-time any content that has managed to defeat the process in (i).

ACR systems exist and are already operated by the Premier League on a number of platforms. For example, the Premier League ingests its live feeds into YouTube's Content ID system and Facebook's Rights Manager systems. Whilst many infringing live streams are still able to defeat these ACR systems, during the 2022/23 Season they allowed the Premier League to block or remove over 250,000 live streams on social media platforms.

The Premier League regularly engages with platforms like Google, Meta, TikTok and Twitter (now 'X'), in particular pushing for improvements to their systems and tools. Although teams on these platforms engage, progress on key asks is often either slow or non-existent.

The Premier League understands that not all intermediaries are able to develop and provide ACR systems. In such cases, a live takedown tool, to be operated by the rightsowners, is a technologically simple and low-cost alternative. Such tools need to be easy to use, and a rebuttable presumption should be applied in favour of the rightsowner rather than the streamer.

At the very least, intermediaries should be required to remove infringing content that utilises their services upon receipt of a notification. There is currently, however, a lack of clarity around how quickly they should act. Under the Digital Millennium Copyright Act ("DMCA"), for example, intermediaries must act expeditiously[13], but the lack of a more specific timeframe is unhelpful for rights owners. This is particularly problematic when dealing with live content, where if removal only happens after the event has finished, then the vast majority of value has already been lost. The Premier League previously brought a case in the District Court of the Hague where it was ruled that such removal should happen within 30 minutes[14]. In reality, and as concluded by the court in that case, it is very easily possible for removals to be instantaneous using basic and uncostly tools. In order to work efficiently, any such takedown system should include:

- Standardised online forms

- An ability to make bulk notifications

- An obligation for a clear IP policy and T&Cs

- Failure to comply should result in strict liability for infringements.

Know your client ("KYC") policies

One of the major challenges in removing content from the internet is the difficulty in identifying and locating the various persons responsible for the provision of the content. The majority of pirates are technically proficient and understand how to hide their true identities online.

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[13] S512(c)(1)(C) Digital Millennium Copyright Act
[14] The Football Association Premier League Limited v Ecatel Ltd, C/09/485400/HA ZA 15-367

All intermediaries should therefore be under an obligation to provide verified identification of their customers. This would ideally cover:

i.   When an intermediary registers a new customer they should obtain and verify full contact details; and

ii.   When notified of infringing content by a rightsowner, the intermediary should be obliged to provide the infringing customer's information.

Where implemented properly, KYC obligations will have a deterrent effect on those intending to use the platform for unauthorised or illegal purposes. It would also allow rights owners to take swift action against anyone making pirate content available. Proper KYC checks also feed into more effective repeat infringer policies (see below) because they can prevent the same user spinning up further accounts once one is banned. The EU is introducing the concept of proper KYC checks in this context through the Digital Services Act[15].

Repeat infringer policies

Most intermediaries are inflexible and opaque as to their takedown processes. A good example of this is with repeat infringement. Many pirates use high tech systems to ensure their content comes back online very quickly after removal. To achieve 'notice-and-staydown' it is therefore essential that intermediaries effectively operate a clear and consistent repeat infringer policy. At a minimum, intermediaries should be required to suspend access to any services being provided to that infringing customer, pending the resolution of any dispute. Without a clear process it is impossible for rights owners to understand the effectiveness of counter-measures and makes scalable removal very difficult.

The above asks are not overly burdensome from either a financial or technical perspective, strike a balance between legitimate business interests and tackling theft of content, and are essential for protecting live sports. They are also proven to be effective – the implementation of this combination of solutions in 2019 by a Dedicated Server Provider based in Europe turned it from the Dedicated Server Provider responsible for the highest volume of infringing live streams of Matches (and various other live events) every season to one that is now rarely associated with pirate services.

Finally, it should be noted that the above requests are framed primarily around reducing the availability of infringing live video content. However, the same policies and tools are also applicable to preventing the sale of services or devices that provide access to pirate content on e-commerce platforms or social media platforms.

5.   Please identify the challenges you anticipate in the ongoing fight to prevent counterfeited and pirated goods from entering the stream of commerce and reaching the hands of consumers. Please add information on how those challenges might be addressed.

A number of the major obstacles to fighting piracy, and their potential solutions, have been explained in response to Question 4 above. There are, however, a number of additional challenges including:

-   Identifying and locating the entities responsible for the provision of infringing content. Such entities often conceal their identities by using fake details, reverse proxy networks (such as Cloudflare) and privacy protection services (such as WhoisGuard). They may also pass assets through companies deliberately established offshore or by selling devices door-to-door and thereby limiting any paper trail of their activities.

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[15] https://www.eu-digital-services-act.com/ (the Digital Services Act looks specifically at online marketplaces in this context, but there is no reason the same concept couldn't be applied to more intermediaries)

- The borderless nature of piracy. Those involved in the supply chain of pirate content may be located anywhere in the world, often across multiple jurisdictions. This makes it even more challenging to establish the workings of the entire supply chain (especially those at the top who are actually supplying the content) and adds a layer of delay and complexity to investigations.

- Competing demands on law enforcement resources and a general lack of dedicated funded units to investigate IP crime. In many investigations, rights owners require the assistance and additional powers of law enforcement bodies to confirm the identity and location of the operator(s), take steps to dismantle the piracy operation and seize crucial evidence for subsequent prosecutions. The Premier League will continue to carry out as much of the investigation as possible itself, work in partnership with law enforcement authorities and prosecute cases where appropriate, but well-resourced and trained law enforcement agencies have an essential role to play.

- Legal frameworks not equipping live rights owners with the enforcement tools required to protect their IP during live events. Further detail on this point is provided above and in response to Question 12 below.

6. What patterns and trends have you observed in counterfeiting and piracy during the COVID-19 pandemic? Do you anticipate that these patterns and trends will continue past the pandemic?

N/A

7. What patterns and trends have you observed in counterfeiting and piracy due to shifts in the economy? Do you anticipate that these patterns and trends will continue? And if so, what impact will they have on any current and future strategic plans to combat counterfeiting and piracy?

N/A

8. Please indicate whether any strategic plans to combat counterfeiting and piracy might include collaboration with private or public parties, and if a strategic plan is not collaborative, please explain why not. If a strategic plan does include collaboration, please describe the anticounterfeiting and antipiracy strategies employed in the collaboration.

As piracy affects the whole content industry, collaboration is clearly important and forms a part of the Premier League's antipiracy strategy.

Firstly, the Premier League works closely with its broadcast partners to understand issues, trends and possible measures in their local markets.

Secondly, the Premier League is an active member of various industry bodies where antipiracy issues, experiences and best practices are often discussed. These span across various categories including:

- **Sports:** e.g. Sports Rights Owners Coalition (SROC) [16]

- **Broadcasters:** e.g. Asia Video Industry Association (AVIA) [17]

[16] https://www.sroc.info/about/
[17] https://avia.org/

- **Industry-wide:** e.g. Coalition Against Piracy (CAP) [18], the Audiovisual Anti-Piracy Alliance (AAPA) [19], and the Coalition Against Online Video Piracy (CAOVP) [20]).

In addition to this, and where appropriate, the Premier League collaborates with other rights owners on specific actions. An example of this was the Premier League working with the Motion Picture Association's (MPA) [21] enforcement arm, the Alliance for Creativity and Entertainment (ACE) [22], to successfully shut down Mobdro, an infamous pirate app that made available a large catalogue of live TV and video on demand content from around the world [23].

Collaboration with governments and law enforcement authorities is also hugely important to ensure that a legislative framework exists and is used to enable the protection of legitimate IP rights. The Premier League often works closely with law enforcement around investigations into pirate operators and preparation for criminal raids against them. Recent raids in Malaysia [24] and Singapore [25] are good examples of this.

As detailed in response to Question 4, various intermediaries involved in the piracy ecosystem also have a key role to play and the Premier League accordingly puts significant resource into engaging with them where possible.

9. Are you considering new collaborative efforts to combat counterfeiting and piracy? What factors will affect your decision? How might those future collaborations be comprised?

The Premier League is always open to new collaborations. Any decision will be based on a methodical approach of assessing the piracy problem to be solved, and then working through the best available options for doing so.

However, not all piracy issues can be solved through collaboration. All industries (sports, movies, broadcasting) contain entities with different methods and priorities for tackling piracy. Therefore, although collaboration can be helpful, alignment can often be difficult when it comes to choosing targets and methods of enforcement, and can add natural delays to antipiracy initiatives.

10. Please identify effective technologies for use in the fight to prevent counterfeited and pirated goods from entering the stream of commerce and reaching the hands of consumers, such as counterfeited product identification devices or advanced algorithms to secure supply chains and identify counterfeited goods online. Please explain how any anticipated strategies will improve an overall anticounterfeiting and antipiracy strategy.

As highlighted throughout this submission, the Premier League invests heavily in a wide range of cutting-edge technology as part of its antipiracy strategy. This is necessary because the extremely high level of revenue that can be generated by pirate operators means they will often be using the latest technology in order to illegally supply unauthorised content. Technology is therefore pervasive across everything the Premier League does to combat piracy.

For example, the Premier League works with broadcasters to optimise their security and make it as difficult as possible for pirates to access Premier League feeds. It also deploys a digital fingerprinting system to detect and verify infringing content online across both open and closed network pirate services. This allows the Premier League to scan a huge number of different

[18] http://www.casbaa.com/about-us/cap/
[19] https://www.aapa.eu/services
[20] http://web.caovp.com/index.html
[21] https://www.motionpictures.org/
[22] https://www.alliance4creativity.com/
[23] https://www.premierleague.com/news/2024038
[24] https://www.thevibes.com/articles/news/74678/authorities-seize-rm400000-worth-of-android-boxes-in-johor-baru-raid
[25] https://www.channelnewsasia.com/singapore/police-illegal-streaming-devices-sim-lim-set-top-boxes-pirate-bootleg-2993921

platforms and quickly identify where pirated content is appearing. The ability to quickly and accurately find infringing content underpins several other antipiracy efforts. Live website blocking, for example, requires the real-time identification of infringing content so that ISPs can be notified, during the Match, of which IP addresses to block. This has to be done to an extremely high degree of accuracy to ensure there is no over blocking. The fingerprinting technology employed by the Premier League has a matching efficacy which creates only a 1 in 394 million chance of a false positive.

As noted in the answer to Question 4, there are many easily available and cost-effective technologies that the Premier League feels should be employed by online platforms and intermediaries, such as ACR systems, in order to prevent infringing content getting online, or to remove it immediately once detected.

11. Please describe how online enforcement activities intersect with trademark and copyright laws or procedures. Do online enforcement strategies include employing existing trademark laws to combat online counterfeiting? Do online enforcement strategies use existing copyright laws to combat online piracy? If so, please describe in detail those activities, and provide any suggestions for maximizing these practices.

Whether and how law enforcement activities intersect with trademark and copyright laws will very much depend on the jurisdiction in which enforcement is happening.

Fundamentally however, copyright provisions in legislation are key – by its very nature piracy involves mass copying and distribution of copyright works. The Premier League's preference is therefore to utilise, where possible, legislation that has been specifically designed to tackle piracy. Given the speed with which pirate technology evolves, such provisions need to be technology neutral and therefore future-proof as far as possible. Although not yet tested in court, the Premier League, for example, welcomed the recent changes to the Singapore Copyright Act, and in particular the provisions at Section 150[26], which introduce piracy-specific legislation.

It is also important to recognise that copyright infringement does not always capture the entire criminality of a pirate network and it is sometimes necessary to adopt a flexible approach. In the UK, for example, the Premier League actively pursues private criminal prosecutions against the operators of pirate services. The prosecutions against major operators tend to rely primarily on the common law offence of conspiracy to defraud as this encapsulates the sourcing of content, as well as its copying and distribution. Despite requiring a particular factual matrix in order to be proven (that the defendants have for example acted dishonestly) the common law offence of conspiracy to defraud has proven to be the most effective offence for prosecuting large-scale complex networks and encapsulating the breadth of criminality.

Similarly, in the Premier League's landmark case against a pirate IPTV service being operated from Thailand[27], as well as relying on charges for copyright infringement, the public prosecutor also relied on charges based on the interception of data, operating as an unlicensed business and operating an unlawful business.

IP legislation is also highly relevant to implementing effective blocking regimes. The Premier League has extensive experience in obtaining and managing blocking orders in many jurisdictions around the world. These blocking initiatives can be extremely impactful in reducing consumption of pirate services (particularly of live content) and, in the Premier League's experience, are best achieved through succinct and non-prescriptive legislation (such as Section 97a of the Copyright, Designs and Patents Act) that allows, through careful oversight by the courts, the blocking regime to develop and adapt to evolving piracy trends. The approach taken in England and Wales has allowed the Premier League to react to the increasingly sophisticated circumvention methods developed by pirate operators and maintain the efficacy of its blocking efforts. By contrast, Singapore is an example of a judicial system which has implemented much

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[26] https://sso.agc.gov.sg/Acts-Supp/22-2021/Published/?ProvIds=P13-#pr150-
[27] https://www.premierleague.com/news/1507303

more prescriptive legislation[28], requiring onerous evidence to be obtained, and strict and lengthy timelines to be adhered to.

12. Please describe any fraudulent documentation or materials you have observed in the furtherance of online counterfeiting and piracy activity. For example, after reporting infringements to platforms, have you seen fraudulent materials attached to a counter-notification?

The Premier League regularly sees false declarations of copyright ownership attached to counter-notifications on social media platforms as well as websites and illicit streaming device sellers claiming that their products do not infringe and/or are authorised. 'Burner' accounts are also often used by pirates on social media. These accounts are created purely for the purpose of uploading infringing content anonymously, and often only for a short amount of time. They will contain little to no information about the operator and no other legitimate content. This issue could be solved by proper KYC checks as proposed above in response to Question 4.

The situation on false counter-notices is even evolving to the extent where operators are now submitting false reports impersonating the Premier League to try and impact competitors. This activity is underpinned by operators not being required to provide complete or accurate KYC information, which means they can act fraudulently with relative impunity.

The provision of fake details extends beyond pirate operators and to many intermediaries in the piracy ecosystem. For example, the Premier League regularly finds hosting providers and Dedicated Server Providers with fake company registration details. They will often use these fake details to obtain IP addresses from Regional Internet Registries and/or their members. This makes taking any sort of enforcement action against the intermediaries extremely difficult. A good example of this is the Dedicated Server Provider Host9x (AS210636). It has provided to RIPE[29] an incomplete physical address in Bulgaria, along with listing its country as Hong Kong on the RIPE database.

13. Please provide any data you have on counterfeiting and piracy, including any data showing how the activities may adversely or disproportionately affect certain industries or companies.

Please see the data provided in the Introduction and in response to Question 4.

14. Please share your thoughts on what more the USPTO or government and private parties can do to ensure entities, including under-resourced individuals and small businesses, can readily enforce their intellectual property rights against counterfeited or pirated goods. What other solutions have you seen or can you envision?

Legitimate rights owners require legal systems that enable impactful enforcement action against all parties involved in the piracy ecosystem. For live sports rights owners, such as the Premier League, it is critical that this includes the ability to take action during the live event. In the Premier League's experience, as outlined in this submission, such a framework can largely be achieved through the following key features:

i.   Clear and technology-neutral provisions under the copyright legislation that clearly establish civil and criminal liability for pirate operators, with sufficient sanctions to reflect the severity of infringement and act as a genuine deterrent;

ii.   A blocking regime which enables rights owners to block website and device-based piracy, and allows for swift and dynamic reaction to circumvention measures, without prejudicing those legitimately operating on the internet;

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[28] S325 Singapore Copyright Act 2021 (https://sso.agc.gov.sg/Act/CA2021)
[29] https://www.ripe.net/ Réseaux IP Européens Network Coordination Centre, the regional Internet registry for Europe, the Middle East and parts of Central Asia

iii.   Engaged and sufficiently resourced law enforcement authorities that are able and prepared to swiftly investigate, dismantle and seize necessary evidence to prosecute pirate services operating from within their jurisdiction; and

iv.   The ability to use the tools provided by the framework to bring and conclude enforcement actions before technology has developed and the piracy problem has evolved.

Conclusion

The Premier League greatly appreciates the proactive role the US Government takes when it comes to piracy. Consultations such as the United States Trade Representative's Special 301 Report or Review of Notorious Markets for Counterfeiting and Piracy have proven to be hugely useful tools when it comes to conversations with governments and law enforcement authorities around the world. In its responses to those consultations the Premier League sets out in more detail the particular platforms and marketplaces that are especially problematic from a digital piracy perspective.

The Premier League would be happy to provide more assistance or information on any of the topics covered within this submission.