

**AGENDA MANAGEMENT SHEET**

**Name of Committee**                      **Community Protection Overview and Scrutiny Committee**

**Date of Committee**                      **27<sup>th</sup> March 2007**

**Report Title**                              **The Intellectual Property Enforcement Policy for Trading Standards.**

**Summary**                                      To consider a policy for the delivery of Intellectual Property Enforcement work by Warwickshire Trading Standards Service.

**For further information please contact:**                      Mark Ryder, Head of Trading Standards  
Tel: 01926 414020

**Would the recommended decision be contrary to the Budget and Policy Framework? [please identify relevant plan/budget provision]**                      No

**Background papers**                              Papers available but please note that they are large documents:  
  
Counter Offensive An IP Crime Strategy  
Gowers Review of Intellectual Property 12/06  
National Intellectual Property Enforcement Report 2005  
Equality Impact Assessment

**CONSULTATION ALREADY UNDERTAKEN:-**                      Details to be specified

- Other Committees
- Local Member(s)
- Other Elected Members                       Councillor R Chattaway, Councillor J Wells, Councillor M Doody, Councillor D Shilton, Councillor B Kirton
- Lead Cabinet Member
- Cabinet Member                       Councillor R Hobbs

- |                          |                                     |  |
|--------------------------|-------------------------------------|--|
| Chief Executive          | <input type="checkbox"/>            |  |
| Legal                    | <input checked="" type="checkbox"/> | Jane Pollard, Alison Hallworth, Ian Marriott     |
| Finance                  | <input checked="" type="checkbox"/> | Philip Lumley-Holmes, Financial Services Manager |
| Other Chief Officers     | <input type="checkbox"/>            |  |
| District Councils        | <input type="checkbox"/>            |  |
| Health Authority         | <input type="checkbox"/>            |  |
| Police                   | <input type="checkbox"/>            |  |
| Other Bodies/Individuals | <input type="checkbox"/>            |  |

**FINAL DECISION YES**

**SUGGESTED NEXT STEPS:**

Details to be specified

- |   |                                     |
|---|-------------------------------------|
| Further consideration by this Committee | <input type="checkbox"/>            |
| To Council                              | <input type="checkbox"/>            |
| To Cabinet                              | <input checked="" type="checkbox"/> |
| To an O & S Committee                   | <input type="checkbox"/>            |
| To an Area Committee                    | <input type="checkbox"/>            |
| Further Consultation                    | <input type="checkbox"/>            |

Community Protection Overview and Scrutiny Committee –  
27<sup>th</sup> March 2007

The Intellectual Property Enforcement Policy for Trading  
Standards

Report of the Strategic Director of Adult, Health &  
Community Services

**Recommendation**

That the Community Protection Overview and Scrutiny Committee comment on the proposed Intellectual Property Enforcement Policy.

**1. Background**

The Trading Standards service is a key player in the enforcement of legislation that is designed to combat infringements of Intellectual Property (IP) Rights. Intellectual Property crime is not new but has become big business. Ideas are expensive to create but cheap to copy.

In the last few years there has been increasing attention on this growing criminal activity with the recognition that a corresponding shift in co-ordination, education and sharing of intelligence is required to match the challenge.

**2. Definitions & Legislation**

**2.1 Definitions**

Counterfeiting is wilful trade-mark infringement. This is generally copying brand name products such as designer clothing, perfumes etc.

Piracy is wilful copyright infringement. This is generally the illicit copying of recorded music, film and software.

**2.2 Legislation**

Trade Marks Act 1994 this contains a duty for Trading Standards to enforce and has associated powers. An example of a breach is the use of the registered 'Disney' trademark on an unauthorised copy of a video/DVD.

### Copyright, Designs and Patents Act 1988<sup>4</sup>

Section 165 of the Criminal Justice and Public Order Act 1994 made provisions for the amendment of the Copyright Designs and Patents Act such that local weights and measures authorities in England and Wales would have a duty to enforce Sections 107 and 198 of the Copyright Designs and Patents Act. It also provided authorities with powers taken from the Trade Descriptions Act to enable them to undertake this duty. These duties/powers come into effect on 6/4/07.

Copyright is an automatic right that exists as soon as something that can be protected is "fixed" in some way. An example of an infringing item is an unauthorised copy of a computer programme.

### Trade Descriptions Act 1968

Most Trade Mark infringements will give rise to offences under this Act. An example of this is an unauthorised copy of a music CD because where a Trade Mark has been applied to goods without the proprietor's consent a false Trade Description has also been applied to those goods.

## 3. Local Environment

We know, from complaints received, that in Warwickshire there is trading activity that infringes the intellectual property rights of others. Within the County there are: -

- 8 regular markets with trading patterns ranging from weekly to just Bank Holiday trading
- Approx total number of stalls is 3,500
- Goods offered include cigarettes, clothing, perfumes, sportswear, CD's, DVD's & software

For some years, following guidance from Members, Warwickshire has not categorised Intellectual Property crime as high priority vis a vis Doorstep crime and tackling rogue trading, which are areas that target the most vulnerable members of our community.

### This new policy is a significant change for three reasons

1. From April 1<sup>st</sup> 07 we will have a dedicated new financial resource from a Government grant following the Gowers review. The sum available to Warwickshire is £39, 686. This additional support will allow us to increase our activity of working with event organisers to avoid problems arising. Prioritisation will be based on several factors including the size of the problem, the effect on the local trading environment & numbers of complaints received.
2. The use of appropriate enforcement methods to secure compliance of stallholders and event organisers and based on current good practice.
3. We will make greater use of regional resources at our disposal

- INTEL UNIT to help identify persistent offenders and those worthy of our greatest attention
- SCAMBUSTERS to help us deliver enforcement sanctions against those trading across Local Authority borders.

### 3.1 Complaints

We do not receive a lot of complaints from members of the public about the availability of infringing goods but this is common for this area of work. Often the public do not perceive this as crime and are unlikely to report it.

There is a demand from legitimate businesses that manufacture or trade in Warwickshire for more enforcement work and an increase in publicity about our activities as a deterrent to potential infringing traders. The unfair competition by those who offer infringing goods, who are likely to be working in the 'shadow economy', is a threat to the livelihoods of legitimate traders.

There is also a demand from those who represent Trade Mark holders for us to increase our enforcement activity.

We welcome the opportunity to do this but, unfortunately, resources do not permit the service to react to every complaint and enquiry we receive so we need to be clear as to how we identify cases for further work. An agreed policy would provide guidance to officers to help them in their work and a clear stance for the businesses & consumers who transact in Warwickshire. Most importantly the policy would ensure we achieve the balance between proactive & reactive enforcement in the face of more demand than we have resources to fulfil. The policy would also ensure that we maintain an equitable and consistent approach in prioritising the service delivery dependent on available resources.

### 3.2 Multi agency operations

We have participated in recent multi-agency operations, usually organised by Warwickshire Police, working with the following agencies – HM Revenue and Customs; Dept of Work and Pensions; Immigration & Vehicle & Operator Services Agency. These operations are an efficient use of our resources and effective as all the agencies work together and share information.

Attendance at the most recent multi agency event led to the seizure of the following goods (enquiries ongoing)

- Perfume 177 bottles, 18 different brands. Estimated high street value if genuine £6,195.
- Clothing 1569 items (tracksuits, sweatshirts, t shirts, jackets and jumpers). Estimated value if genuine £78,450
- Trainers 792 pairs. Estimated value if genuine £55,440.

## 4. Regional Environment

Intellectual Property crime is emerging as a priority area for Trading Standards services both regionally and nationally.

2 relevant documents are available on request

1. CEnTSA intelligence report (Regional)
2. Office of Fair Trading (OFT) report (National).

### 4.1 Central England Trading Standards Authorities (CEnTSA)

Warwickshire is a partner in this regional group that covers the West Midlands Government region. Through the sharing and exchange of information within this regional group and between CEnTSA and other regional groups e.g. our neighbours in the East of England group, we know that the same people are trading at several similar events. Ideally the whole region would work to a similar policy to avoid a situation where there is a 'sink' authority.

### 4.2 Regional Intelligence Unit

Warwickshire Trading Standards service is working towards intelligence-led enforcement using the principles of the National Intelligence Model (NIM). The NIM is beginning to be adopted by enforcement agencies throughout the UK. The model has three strands to it – prevention, intelligence gathering and enforcement. This shared resource based in Staffordshire will enable us to work in a more intelligence led, focussed way in the future.

#### Regional Scambusters Team

As mentioned above, this team, based in Solihull, can work with our own officers on enforcement activity against illegal trading activity within Warwickshire against those whose criminality extends beyond our borders.

## 5. National Environment

### 5.1 National IP Crime Strategy

1. In 2004 Lord Sainsbury of Turville launched this Strategy saying 'It is generally accepted that intellectual property crime, or counterfeiting and piracy as it is more widely known, has grown considerably over the last 10 years' 'More and more of the goods we take for granted ....in a modern economy have some form of creative content embodied in them' 'There are many people employed ...whose livelihoods can be put at risk if their products are copied illegitimately' 'Infringing others IP is not the victimless crime some would have us believe' <sup>2</sup>.

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<sup>2</sup> Counter Offensive An IP Crime Strategy

## 5.2 Annual Enforcement report 2005

Flowing from the National Intellectual Property Crime Strategy came the Annual Enforcement reports that summarised activity during the previous year. The 2005 report <sup>3</sup> highlights 'that in the past few years there has been a significant shift from traditional manufacturing towards knowledge economies based on creativity and innovation. This has placed more emphasis on the value of Intellectual Property rights. One consequence of this is that as crime follows the economy, and the knowledge based economy provides more opportunities than that is where the criminal elements have moved'

There is anecdotal evidence to suggest that there has been a shift towards Intellectual Property crime by those previously involved in drugs, and associated activities such as pornography, because there is a lower risk of detection and the penalties are not as severe.

## 5.3 Gowers Review of Intellectual Property December 2006

This recent report has many recommendations, which have been formally welcomed by the Government, but they can be summarised as

- Tackling Intellectual Property crime and ensuring that rights are well enforced.
- Reducing the costs & complexities of the system &
- Reforming copyright law

Recommendation 40 = Department of Trade and Industry (DTI) should consult on measures to tighten regulation of occasional sales and markets by 2007

Recommendation 42 = Give Trading Standards the power to enforce copyright infringement by enacting section 107A of the Copyright, Designs and Patents Act 1988.

The Government also endorses the full Gowers enforcement package to tackle Intellectual Property infringements and is providing Trading Standards with an additional £5million in 2007-8 in order to support the implementation of the new powers under the Copyright, Designs and Patents Act 1988.

The pro rata share of this money to Warwickshire Trading Standards Service is £39,686 for 07/08 and the service will use this to fund the enforcement activity outlined in this policy. Primarily to fund additional staff to work with local Market/event organisers to reduce the incidents of infringing goods being available within Warwickshire.

## 6. Intellectual Property Enforcement Policy

6.1 The proposed policy is attached as Appendix 1. The intention would be,

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<sup>3</sup> National Intellectual Property (IP) Enforcement Report 2005

subject to Member agreement, for the policy to be made public by means of the County Council website and other means and reviewed at least once every two years. Any significant changes to the policy would be subject to Member agreement.

The main features of the policy are:

- Define how the service will react to the receipt of complaints.
- Prescribe the limitations of the service primarily to those relating to safety matters
- Recognise that there are limited resources and that this area of work is competing against other priority areas such as doorstep crime etc./
- Allocate new resources, available following the Gowers review, to addressing Intellectual Property crime within Warwickshire. Prioritisation would be based on areas with the greatest consumer detriment and those having the greatest effect on the 'level playing field' with regard to local businesses. This part of the policy relies on receipt of "Gower's money" from HM Treasury.
- Use available regional resources; the Intel unit and Scambusters, to inform intelligence led proactive work within available resources and competing priorities.
- Preventative education, for businesses and consumers, will be used where appropriate.

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March 2007