



DLA PIPER INTERNATIONAL LLP

Global Media Sector Trends 2018



Seizing new commercial
opportunities and
tackling emerging
challenges



About the research

This report was produced in collaboration with The Lawyer Research Service, a division of The Lawyer. It is underpinned by a global survey, conducted in late 2017, of 246 in-house counsel and senior executives in the media and entertainment industry.

To supplement the survey, interviews were conducted with the following individuals:

Pascal Hetzscholdt

Director, Content Protection, Europe & Africa, 21st Century Fox

Malobika Banerji

Senior Legal Counsel, A+E Networks Asia

Laura Anil

Senior Legal Counsel for the APAC region, NBCUniversal International

Simon Bourn

Head of Litigation, Enforcement and Anti-Piracy, PRS for Music

Fabio Santoro

Marketing & Audiovisual Rights Director, Serie A

Matthew Hibbert

Head of Litigation, Sky

Kevin Smith

General Counsel, Sports Information Services

The breakdown of respondents per region was as follows:

UK	86
Europe	57
North America	54
Asia Pacific	49



EXECUTIVE SUMMARY

DLA Piper's new *Global Media Sector Trends 2018* report explores how new commercial opportunities are being created by disruption, specifically in relation to the rise of over-the-top (OTT) content, virtual/augmented reality (VR/AR) and the internet-of-things (IOT).

The rise of OTT content is most exciting for companies in this sector. Some 82% of respondents stated that monetising content through OTT is a major growth area for their business. In parallel, 25% of participants expect more than half of their views to be driven by OTT in 2018, more than double the 11% whose views are mainly driven by OTT today.

While there is much optimism about the potential for virtual reality and the internet-of-things, survey participants generally believe they will have to achieve greater scale before they become a significant source of revenue.

The report also explores how companies in the audio-visual sector are using technology

and legal tools to combat emerging sources of piracy across all forms of content.

According to the report, which is based on a global survey of over 200 in-house counsel and C-level executives, 94% of companies believe that the current law is inadequate to tackle the specific growing threat of IPTV or Kodi boxes as a source of infringement.

Use of illicit streaming devices has grown significantly in the last two years and, according to survey respondents, are now the second greatest source of piracy behind website internet streaming.

The survey also found that other types of content infringement are rapidly rising up the agenda for specific types of content. In the music industry, for example, stream ripping is increasingly posing a significant threat to license holders. At the same time the threat of file sharing sites is diminishing.

Despite frustrations with the regulatory environment, survey participants also pointed to recent significant successes

in tackling infringement. In the UK, for example, an ISP blocking order for Premier League content has resulted in over 5,000 illegal streams being shut down. Other notable achievements in the UK include successful recent prosecutions of retailers of illicit streaming devices.

Respondents, while encouraged by recent successes, believed that a wide range of additional measures are needed to combat the growing threat of illicit streaming devices. A quarter of survey respondents stated that more severe criminal sanctions would be most effective in preventing this type of infringement. A further 16% believe more blocks by ISPs against the domains or IP

addresses to which the boxes connect to access infringing content will be most effective, while 14% said more extensive civil sanctions would be most effective.

Finally, the report explores how the Brexit process is impacting the industry. Over two thirds (69%) of UK-based survey respondents stated that Brexit is impacting their business in some way. Survey participants are primarily concerned with how Brexit might affect UK copyright law and UK broadcasters' ability to sell to the EU.

We hope you enjoy reading this report. If you have any questions please don't hesitate to get in touch.

**Nick Fitzpatrick, Global Co-Chair Media, Sport & Entertainment sector,
DLA Piper, London**



Nick Fitzpatrick, DLA Piper, London

SEIZING NEW COMMERCIAL OPPORTUNITIES RISE OF OTT CONTENT ENABLES USERS TO REACH MASS GLOBAL AUDIENCE

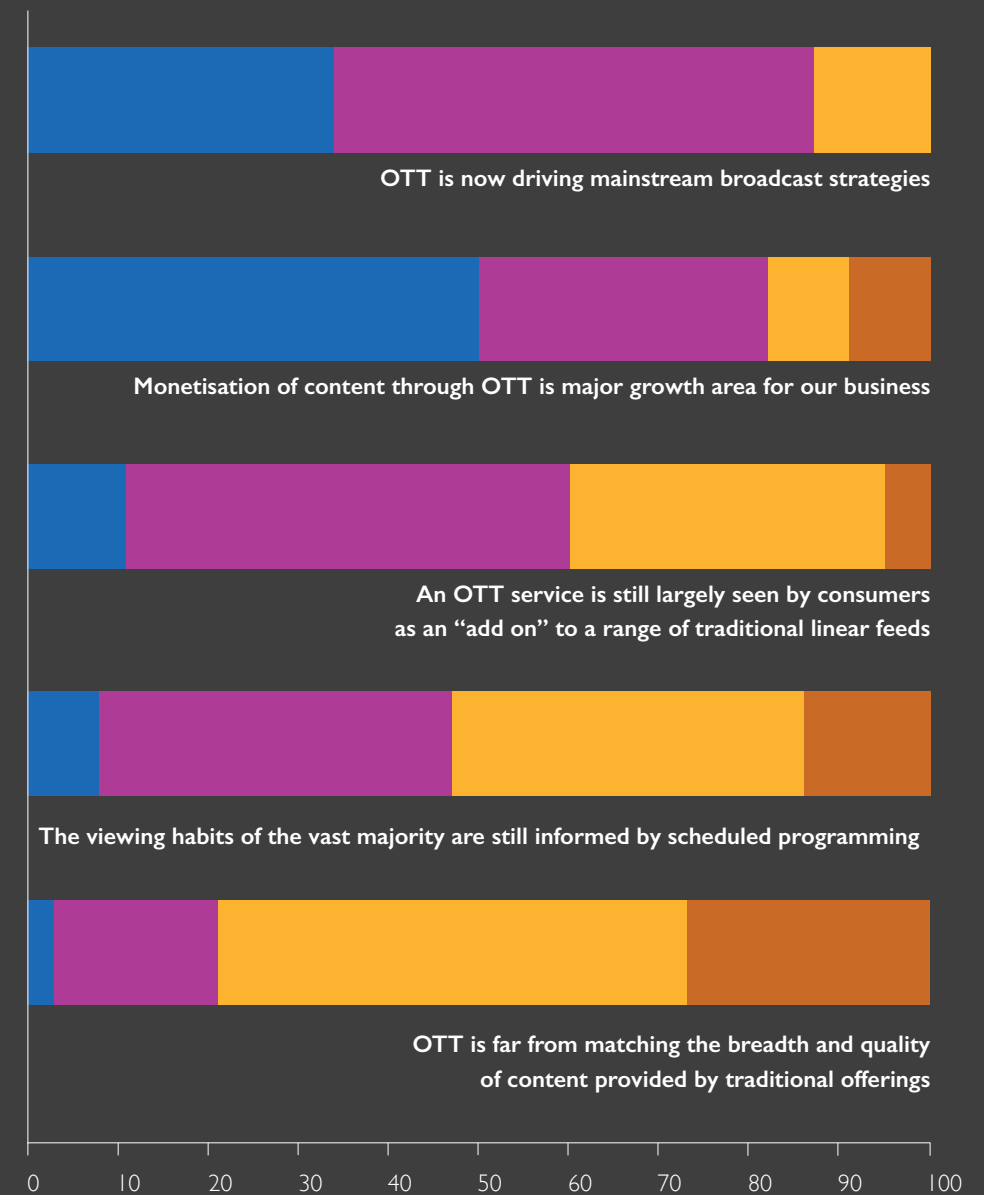
Nearly every market research report that analyses entertainment viewing habits reaches the same conclusion – OTT content is growing inexorably and is increasingly determining viewing habits. According to The Diffusion Group, US consumers will view an average of 18.9 hours of OTT TV content by 2020, a significant increase on the average of 12.1 hours per week in 2017 and the 3.6 hours per week in 2014.

Our survey data reveals the true extent to which content producers and broadcasters are hoping to benefit from this growth. Some 82% of respondents stated that monetising content through OTT is a major growth area for their business. Tellingly, 25% of survey participants expect more than half of their views to be driven by OTT in 2018, more than double the 11% whose views are mainly driven by OTT today.

“OTT applications represent the single most exciting prospect for driving business and revenue,” says Nick Fitzpatrick, Global Co-Chair Media, Sport & Entertainment sector, of DLA Piper, London

CHART 1

To what extent do you agree with the following statements regarding OTT content? (For each statement, select one answer only)



■ Strongly agree
■ Agree
■ Disagree
■ Strongly disagree

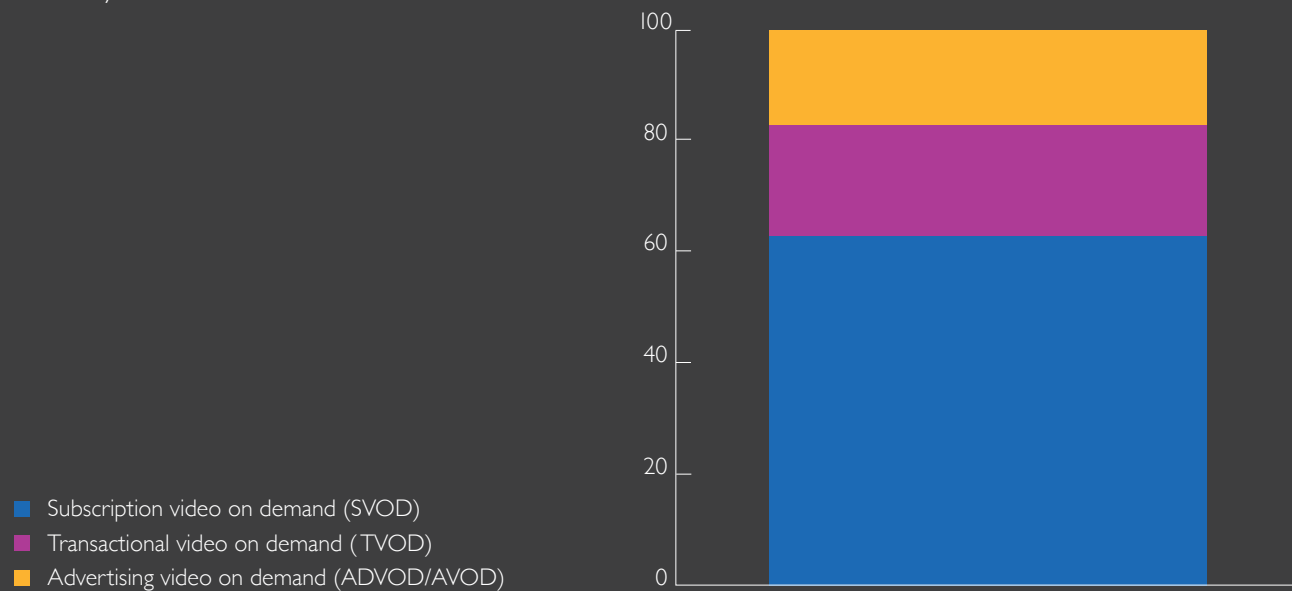
CHART 2

What percentage of your views do you believe are currently driven by OTT?
What do you anticipate will be the future share of OTT views in 2018?



CHART 3

What type of OTT model is most relevant/used in your business?



Asia Pacific and North American respondents more bullish on OTT potential

Our survey data reveals that some regions are much more excited about the potential for OTT content than others. Indeed 90% of Asia Pacific survey participants stated that OTT

is now driving mainstream broadcast strategies, significantly more than the 88% of the entire sample, the 71% of North American respondents and the 63% of European respondents.

Respondents in Asia Pacific and North America are also more optimistic about the potential to monetise content through OTT than their UK and European counterparts.

OTT is so attractive to content owners because it enables them to rapidly reach a large number of viewers, often in countries outside broadcasters' core audience, thus creating new licensing opportunities.

"Piracy through OTT is so strong and that indicates that people are now prepared to accept watching content through new mediums such as OTT," says Fabio Santoro, Marketing & Audiovisual Rights Director at the Italian football league Serie A.

"OTT enables us to touch and access different parts of the world. It benefits the league, the clubs and the players. The core question is about the reliability of people to pay to subscribe to watch this. You need to work out the economic model and what the advertising potential is. For the time being we think that combining traditional with new media is the key to success."

The benefits of OTT to rights holders and the impact on traditional viewing very much differs around the world. In Europe and the US, for example, OTT viewing is likely to displace traditional viewing, at least to a certain extent. But in other regions, OTT may bring material to viewers that have never been able to access content via traditional means.

"With the improvement of broadband infrastructure and internet speeds, demand for online video in Asia presents new opportunities for the media industry,"

says Laura Anil, Senior Legal Counsel for the APAC region at NBCUniversal International. "And, as the range of players – from local pay-TV platforms to global media companies – explore models for monetising growth in OTT (including subscription and ad-supported offerings) it will be interesting to see which models are most successful and whether these will differ across the region."

The majority (63%) of survey respondents stated that subscription video on demand (SVOD) is the OTT model that is the most relevant model for their business. Of course, different models will suit certain types of content and different types of organisations.

The rise of OTT and other direct to consumer digital content services takes place at a time of increasing regulatory intervention, many of which result from the audio-visual media policy changes taking place across Europe in the context of the "Digital Single Market Strategy".

These changes include the so-called "Portability" Regulation (Regulation 2017/1128 on cross-border portability of online content services in the internal market) allowing, and for pay services requiring, access to "home country" content services where the subscriber is elsewhere in the EEA. The new Portability Regulation comes into force in April, and business exploring OTT need to be aware of its implications.



David Pahl, DLA Piper, USA

DLA PIPER INSIGHT: OTT

“2018 will be a very interesting year for OTT in the United States, especially with the return to a hands-off regulatory regime and incipient emergence of 5G. The end – subject to court challenge – of “net neutrality” will enhance the ability of cable and telco ISPs to benefit from distribution of their own content or content services, and will give a leg up to big OTT services who can pay any necessary tolls.

Meanwhile, everyone seems to understand that great content is needed to drive OTT. AT&T (owner of DirecTV Now) continues to try to acquire Time Warner, Verizon has forsaken handset exclusivity to strike a new deal with the NFL and big tech and digital players continue to invest heavily in original content.”

David Pahl, Senior Counsel, DLA Piper, USA

“In Germany, a steady growth of OTT services can currently be observed and is likely to continue throughout the year. The audience share of Free TV program might be more affected than ever. Furthermore, the new Federal Data Protection Act (Bundesdatenschutzgesetz), which is based on the General Data Protection Regulation, will come into force in May 2018. It will affect marketing as well as OTT services and the IOT. Directly related to this is the coming into force of the ePrivacy Regulation that, among other things, includes regulations relating to electronic communication and will affect especially targeting or modern advertising methods. At this stage, however, it is still unclear whether the regulation will come into force in 2018 or at a later stage. Lastly, branded entertainment, an advertising tool that has already been used by traditional and online media companies (e.g. content marketing), is now on the way to become an important part in the audio-visual media world.”

Stefan Engels, partner, DLA Piper, Germany

“It is fascinating that OTT and other direct to consumer digital content services are becoming increasingly prevalent exactly at the time when, at least in Europe, regulatory intervention is shaking things up in that very space. One key example is of course the challenges – or opportunities – facing digital territorial licensing models in the context of the Commission’s “Digital Single Market Strategy”. Next up in that Strategy is so-called “portability” - allowing access to “home country” content services even when a subscriber is elsewhere in the EEA. The new Portability Regulation comes into force in April this year and we are helping numerous content services and licensors navigate its nuances – it is fair to say that there are interesting times ahead.”

Patrick Mitchell, partner, DLA Piper, London



Nick Fitzpatrick, DLA Piper, London

Peter White, DLA Piper, New York

EXPLORING THE BENEFITS OF VIRTUAL AND AUGMENTED REALITY

The launch of a number of high-profile virtual and augmented reality products in the last two years has led to widespread discussion about the licensing potential in this industry.

However, most survey respondents and interviewees do not believe that VR and AR will grow to the extent that it will be a material source of licensing or advertising revenues in the next two to three years. Only 4% of survey respondents stated that virtual or augmented reality will be one of their three main sources of advertising revenue by 2020. In contrast, 54% believed that OTT content will be one of their three main sources of advertising revenue.

That's not to say that content creators are not excited about its long-term potential. Indeed many pointed to examples of how their content could be used in a AR or VR context.

Bourn provides an example. "The evolution of virtual reality is definitely an opportunity for us, particularly where it explores new and innovative uses of music," he says. "Imagine, for example, immersing yourself through VR into a historic Beatles gig, based on live audio recordings taken at the actual concert. The opportunities are endless and we will do everything possible to facilitate this innovation through appropriate licensing."

"There is massive disruption going on in the marketplace. One of the less obvious areas is in the ad area. What happens when commercials come on? Everybody picks up their smartphone... they are not watching the commercial," says Peter White, Global Co-Chair Media, Sport & Entertainment sector, of DLA Piper, New York.

CHART 4

By 2020 where do you anticipate your advertising revenues to come from? (Please rank your top three, with one being the most effective)

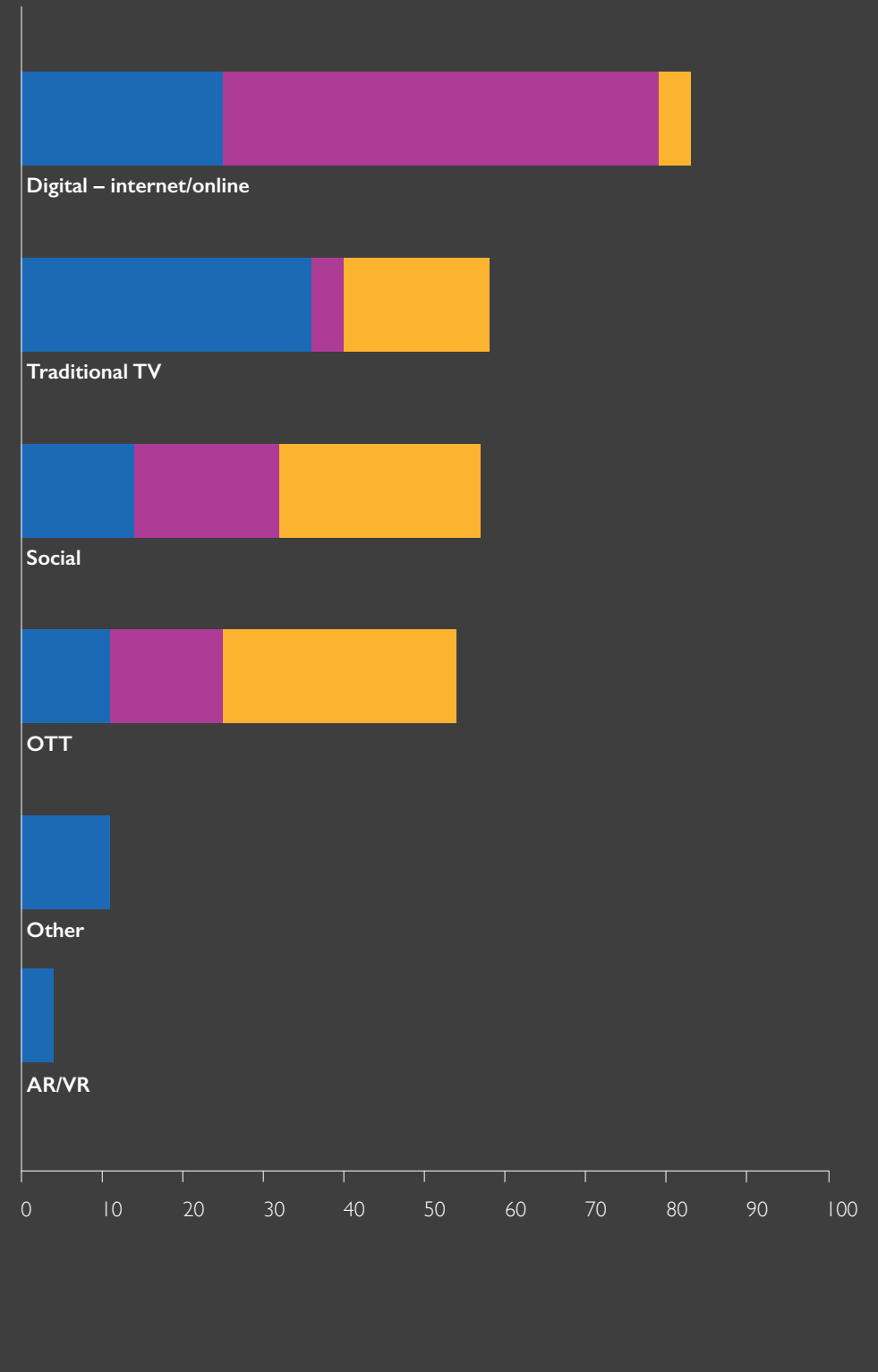


CHART 5
What are the greatest challenges facing the AR and VR industry?

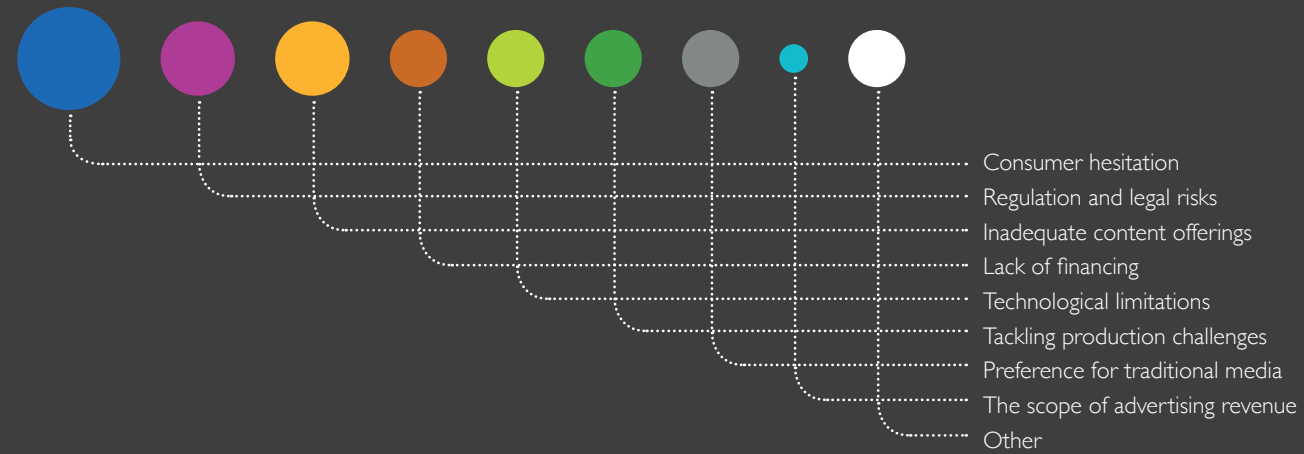
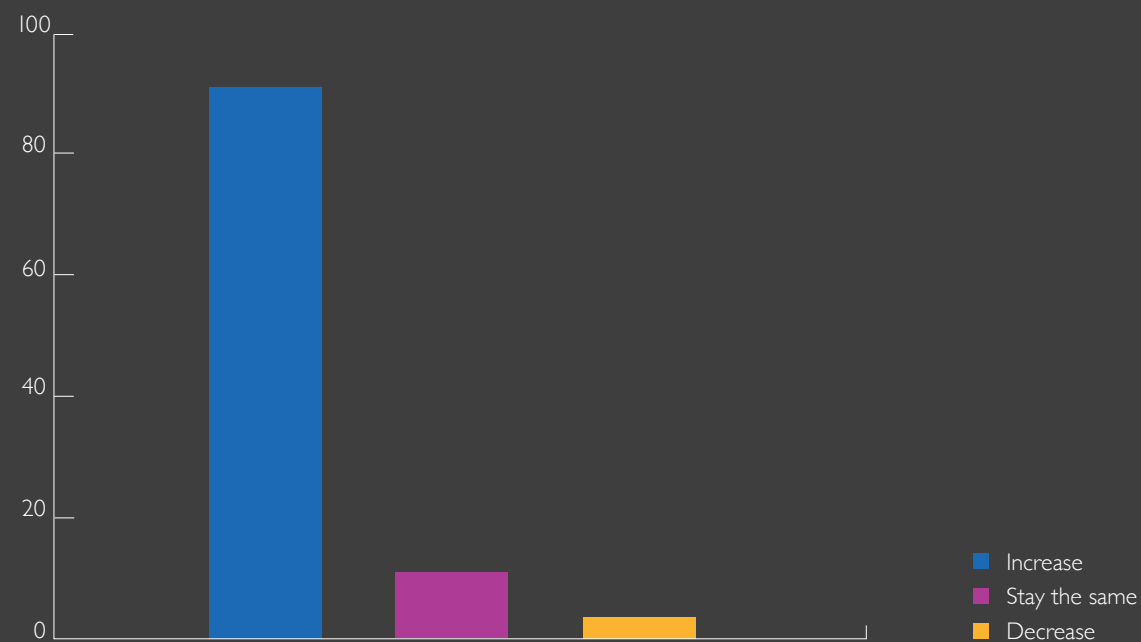


CHART 6
In 2016, VC and corporate investment in AR/VR start-ups totalled \$2.3 billion. How do you expect this level of investment to change when reported this year?



The survey data indicates that there are multiple factors currently stymying growth of the AR and VR industry, from consumer hesitation to pay the current high prices for many VR products to legal risks and inadequate content offerings.

Of course, many of these challenges can be overcome with investment. Encouragingly, some 88% of survey respondents stated that venture capital investment in AR and VR start-ups will increase on the \$2.3 billion recorded in 2016 this year.

“We expect augmented reality to become more prevalent...” says Qiang Li, co-Regional Managing Partner, Asia, of DLA Piper, Hong Kong, “However, we do not expect to see monetisation occur in the short to medium term unless one of China’s technology giants comes up with a solution.”

LEVERAGING THE INTERNET-OF-THINGS

The internet-of-things (IOT) market is growing rapidly. According to Gartner, some 8.4 billion “things” will be connected worldwide in 2017, a 31% annual increase. By 2020 over 20 billion things are forecast to be connected.

In theory, the data collected by IOT devices about individuals’ habits and preferences should enable more targeted advertising. Survey respondents share this view - 66% say IOT is enabling more targeted ad spend or subscription income.

In addition, some 73% of respondents stated that IOT is enabling better targeting and production of content.

“As people increasingly use connected devices, a more accurate picture of consumer preferences is emerging.”

explains Anil. “For brands, this means more efficient, targeted campaigns that focus on the right audiences while, for content providers and distributors, these insights will better inform business strategy, unlocking the right content within environments that reflect the needs of the viewer/user.”

However, while survey participants are generally positive on the potential of IOT, there was a degree of scepticism about the extent to which it will truly transform advertising and content delivery.

Some 34% of respondents were concerned that issues related to cyber security and piracy might hinder the potential for IOT being maximised. A further 32% stated that a lack of scale of IOT devices is the main reason why the potential of IOT might not be fulfilled.

CHART 7

To what extent do you agree with the following statements regarding the internet-of-things?

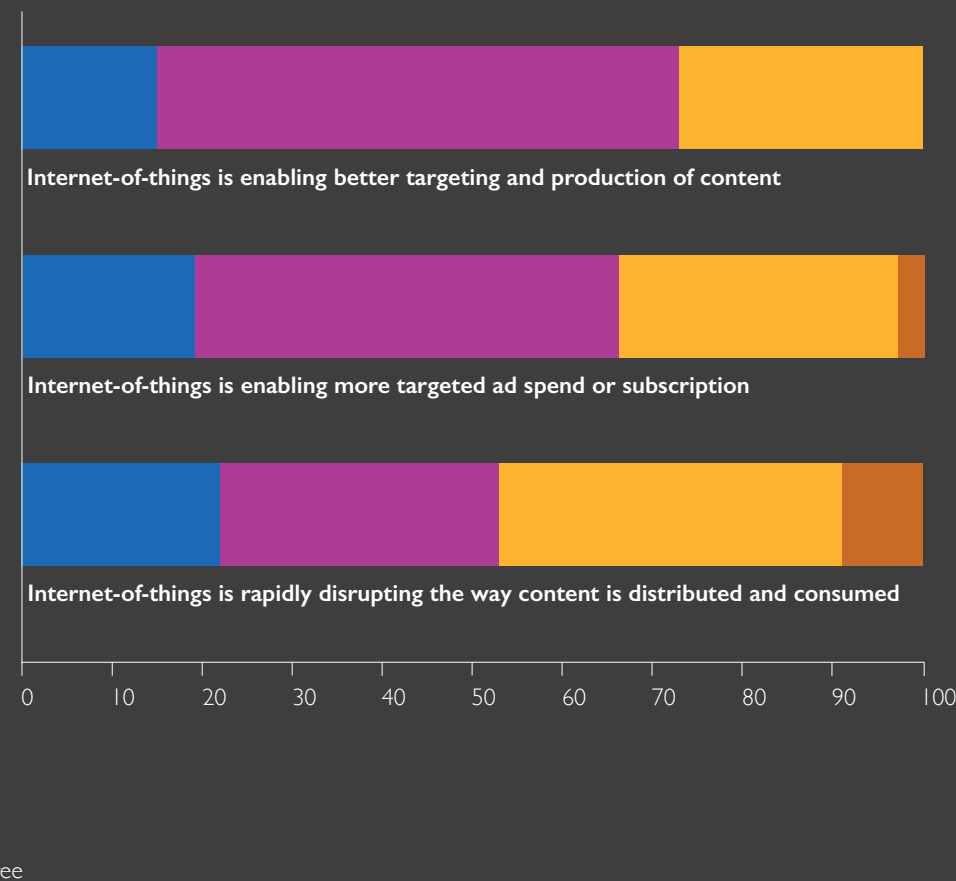
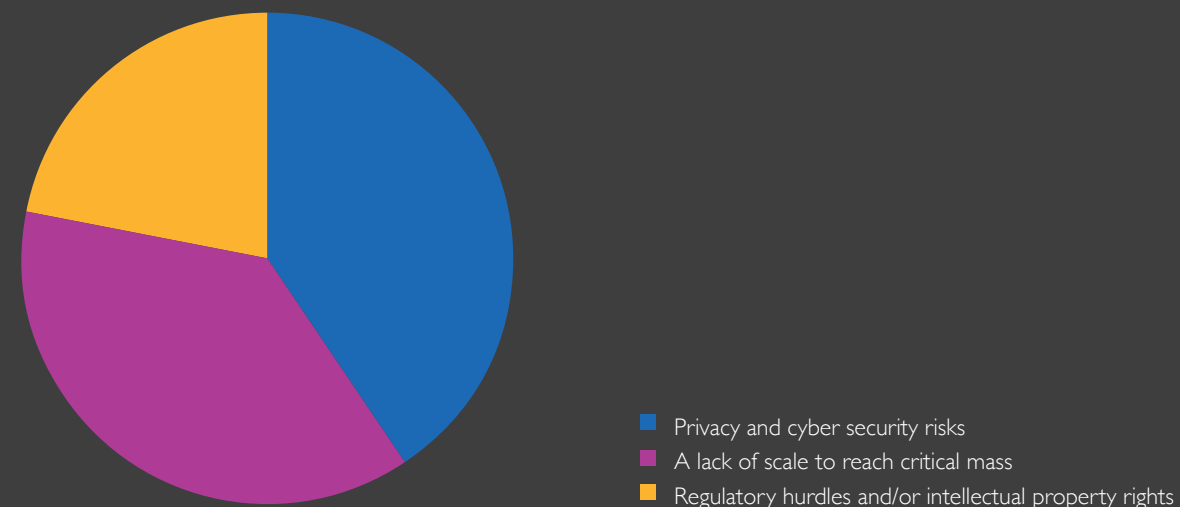


CHART 8

What are the key obstacles to maximising the potential of the internet-of-things?



DLA PIPER INSIGHT: IOT

"These findings are in contrast to the popular perception that consumers, particularly younger ones, are very willing to trade their personal information for access to online content with limited regard for the implications. The impending EU General Data Protection and E-Privacy Regulations, and tighter privacy laws elsewhere, are no doubt having an impact on media owner and advertiser attitudes. Consumer regulators have also been prepared to consider the provision of such data as legally equivalent to a financial payment."

Duncan Calow, partner, DLA Piper, London

DLA PIPER INSIGHT: ADVERTISING

"Big data is still in its infancy. Many predict that predictive analytics (converging customer-related demographic and behavioral data with third-party data to create predictive algorithms) is the next step to achieving higher customer take up and revenues: allowing advertisers to focus their campaigns toward those customers predicted to be the most likely drivers of increased ARPU."

Digital networks are clearly well placed to take advantage of this by generating the data analytics necessary to maximise the effectiveness of marketing and customer interactions. However as we have identified elsewhere in this report, tied privacy/data protection concerns continue to be a counterweight to gathering and use of data. There is continued concern, with albeit little real action, in the United States about data collection and usage, while in Europe, businesses continue to adapt to the regime introduced by the General Data Protection Regulation."

Nick Fitzpatrick, Global Co-Chair Media, Sport & Entertainment sector,
DLA Piper, London





“There’s been increasing attention into piracy that is carried out through streaming and particularly by those parties who can change their domain names and react very swiftly to a court decision on a specific and well defined site,” notes Giangiacomo Olivi, partner, of DLA Piper, Milan.

TACKLING EMERGING PIRACY THREATS THE EVOLVING INFRINGEMENT CHALLENGE

From internet streaming and file sharing sites, to illicit streaming devices and stream ripping, content creators and rights holders face a number of infringement challenges. That said, our survey data reveals that while certain sources of infringement have become more prolific in the last 12 months, others appear to be declining.

According to the survey data, internet streaming websites and apps are currently top of the agenda. Some 41% of respondents stated that internet streaming impacts their business most in terms of frequency, while 45% stated that it has the greatest financial impact on their business. This is significantly more than the number that highlighted any other source of IP infringement.

Second on the agenda for the industry is the threat posed from illicit streaming devices, the most well-known of which are Kodi boxes with pre-loaded content and add-ons. Some 27% of respondents stated that these devices most frequently impact their business while 24% said they have the greatest detrimental financial impact.

Interestingly, file sharing sites, which have traditionally been the largest source of content infringement, were only ranked as the third greatest source of piracy.

Of course, the most problematic type of infringement very much depends on the form of content and the jurisdiction. In the Asia Pacific region, for example, interviewees frequently mentioned that internet streaming and illicit streaming devices present the greatest challenge. “We have started to see a shift from bit torrent and downloading to streaming, which is now the predominant source of piracy,” confirms a Senior Counsel at a major international broadcasting company. “Internet speeds are a lot faster now so people can watch good HD content through streaming.”

“Another emerging issue is illicit streaming devices, which are pre-loaded with free or subscription apps and can offer to users entire channels of infringing content. They are worrying because they are very easy to use and can be hooked up to a television set by simply using a HDMI cable. So it’s no longer tech geeks huddled over their laptops but whole families enjoying pirated content.”

Giangiacomo Olivi, DLA Piper, Milan

But in other countries and for some specific forms of content, the threat of illicit streaming devices seems to be diminishing. In the UK, for example, there have recently been successful prosecutions of retailers of Kodi boxes with pre-loaded content and add-ons. The maximum sentence for online copyright infringement was also increased from two to ten years earlier this year.

Furthermore, illicit streaming devices are now much less effective in streaming top-end sports content following the introduction of a live server blocking order for Premier League content for the entirety of the 2017/18 season. This followed the previous grant by the English High Court of a number of blocks by rights holders across the audio-visual sector targeting infringement via varying types of online service.

“Streaming devices have been a big contributor to the piracy problem, although recently online market places through which illicit devices can be bought have tightened up their rules, which has helped,” explains Matthew Hibbert, Head of Litigation at Sky. “This time twelve months ago we were focussing a lot on sales of IPTV boxes with pre-loaded content. While there is still work in that space, increasingly we are looking to address the problem of piracy delivered via social media and apps. Those platforms are a major source of pirated content.”

Of course, for other types of content such as music, the main sources of piracy are very different. The source of piracy that is most rapidly rising up the agenda for music

artists and rights holders is stream ripping, in which a permanent copy of a piece of content is obtained from a legitimate source, such as Spotify or YouTube. According to research published by PRS for Music and the Intellectual Property Office (IPO) earlier this year, use of stream ripping grew by 141% between 2014 and 2016 and now accounts for 70% of music related infringement.

“Over the past 10 to 15 years, the music industry has been tackling established piracy hotspots, including P2P services like Napster, LimeWire, and Pirate Bay; locker services like MegaUpload; and aggregator sites like FilesTube,” explained Simon Bourn, Head of Litigation, Enforcement and Anti-Piracy at PRS for Music. “The fastest-growing form of piracy that is impacting the music industry now is “stream ripping”, which is the label given to all services that derive unlicensed downloads from legitimate streaming services like YouTube and SoundCloud.”

“The licensed framework provides for the accounting of micro royalty payments to the creators each time a song is streamed. If users only access the legitimate service once, to rip the stream, there is then no need to return to the site each time you want to listen to a song. This means the songwriters are only paid a fraction of a penny, once, and all repeat plays of that ripped stream happen outside of the ecosystem. The likes of YouTube are the biggest platforms for music consumption and stream-ripping is a significant threat to the sustainability of the licence model.”

CHART 9

Which of the following types of IP infringements are impacting your business most in terms of their frequency?

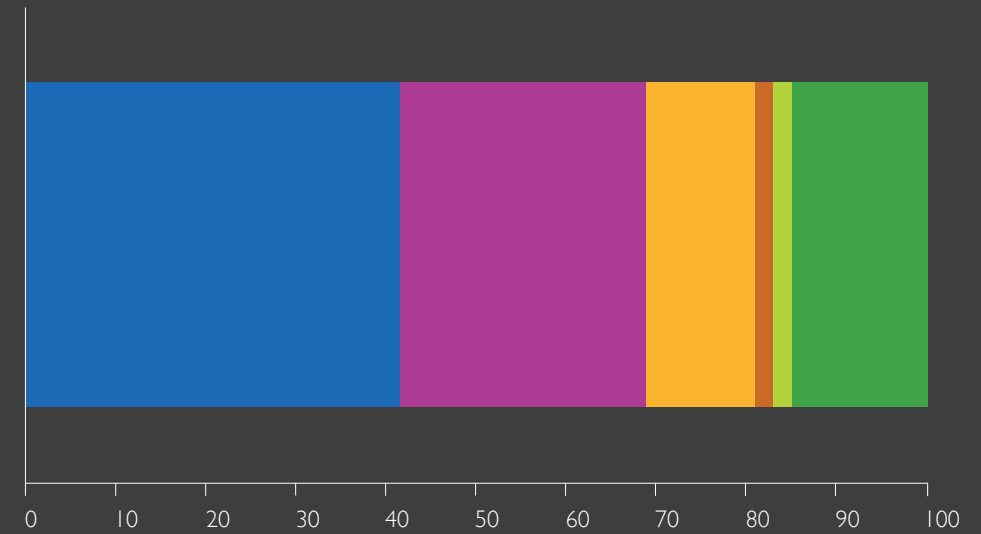
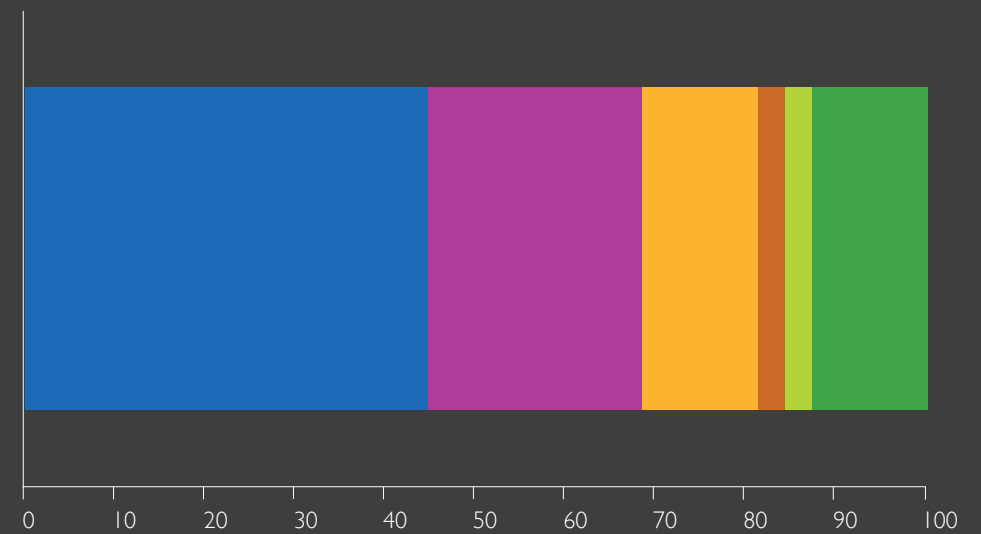


CHART 10

Which of the following types of IP infringements are impacting your business most in terms of their financial impact?



- Internet streaming websites/apps
- IPTV or Kodi devices
- File sharing sites/apps
- Use of residential (rather than commercial) subscriptions
- Clip aggregator sites/apps
- Other

CHART 11
Which of the following types of IP infringements have increased most in the last 12 months in terms of their frequency?

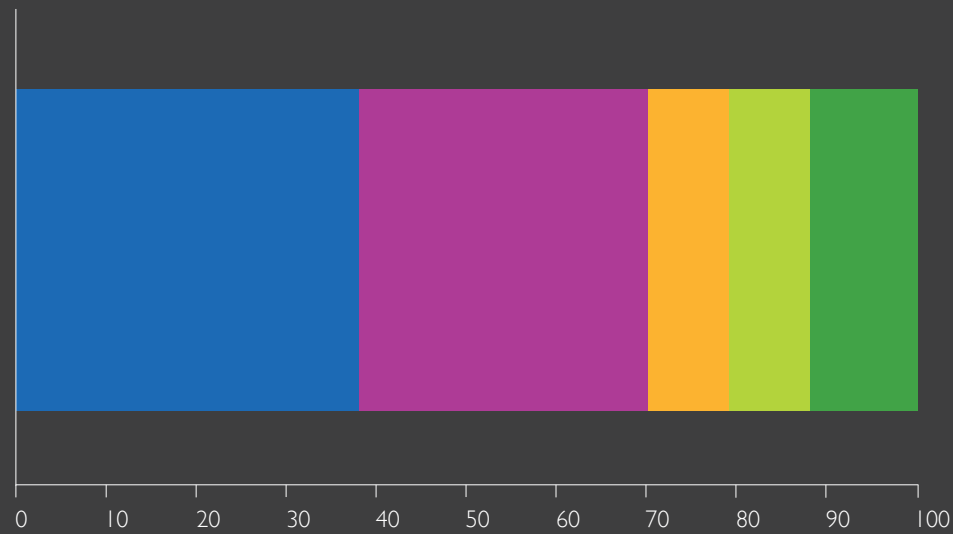
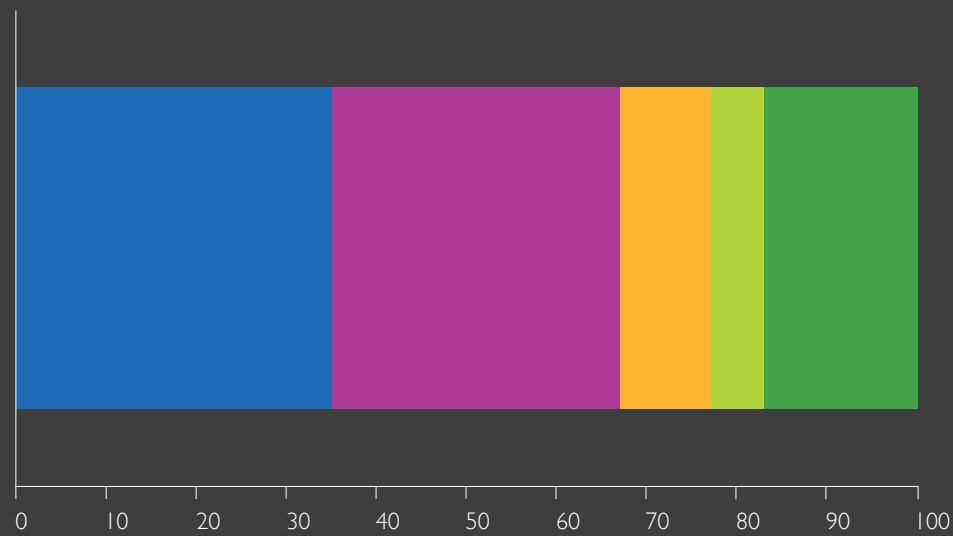


CHART 12
Which of the following types of IP infringements have increased most in the last 12 months in terms of their financial impact?



- Internet streaming websites/apps
- IPTV or Kodi devices
- File sharing sites/apps
- Clip aggregator sites/apps
- Other

ARE SOME THREATS MORE PROMINENT IN CERTAIN JURISDICTIONS?

The survey data reveals that there are some regional variations in the sources of IP threats that most frequently impact businesses. Although internet streaming websites/apps are the most common threat across the entire sample of survey respondents, participants in the UK stated that IPTV or Kodi boxes are the most common threat while those in Asia Pacific stated that these devices are the joint most common threat alongside internet streaming. Survey respondents in Europe are much more concerned by internet streaming. Some 50% believe internet streaming is the most common source of content infringement.

Survey participants in the UK and Asia Pacific also stated that illicit streaming devices and internet streaming were broadly equal in terms of their financial impact on their business. In contrast European and North America respondents generally stated that internet streaming has more of a detrimental financial impact on their business than illicit streaming devices.

COMBATTING INFRINGEMENT

As the type of IP infringement evolves, so too do the strategies and technologies needed to prevent them. The survey data and interviews confirm that there is no silver bullet to combatting content infringement. Instead, companies in this sector are relying on a combination of legal measures and preventative technologies to fight infringement. The importance of collaboration between content creators, licence holders, large technology platforms and retailers also cannot be underestimated.

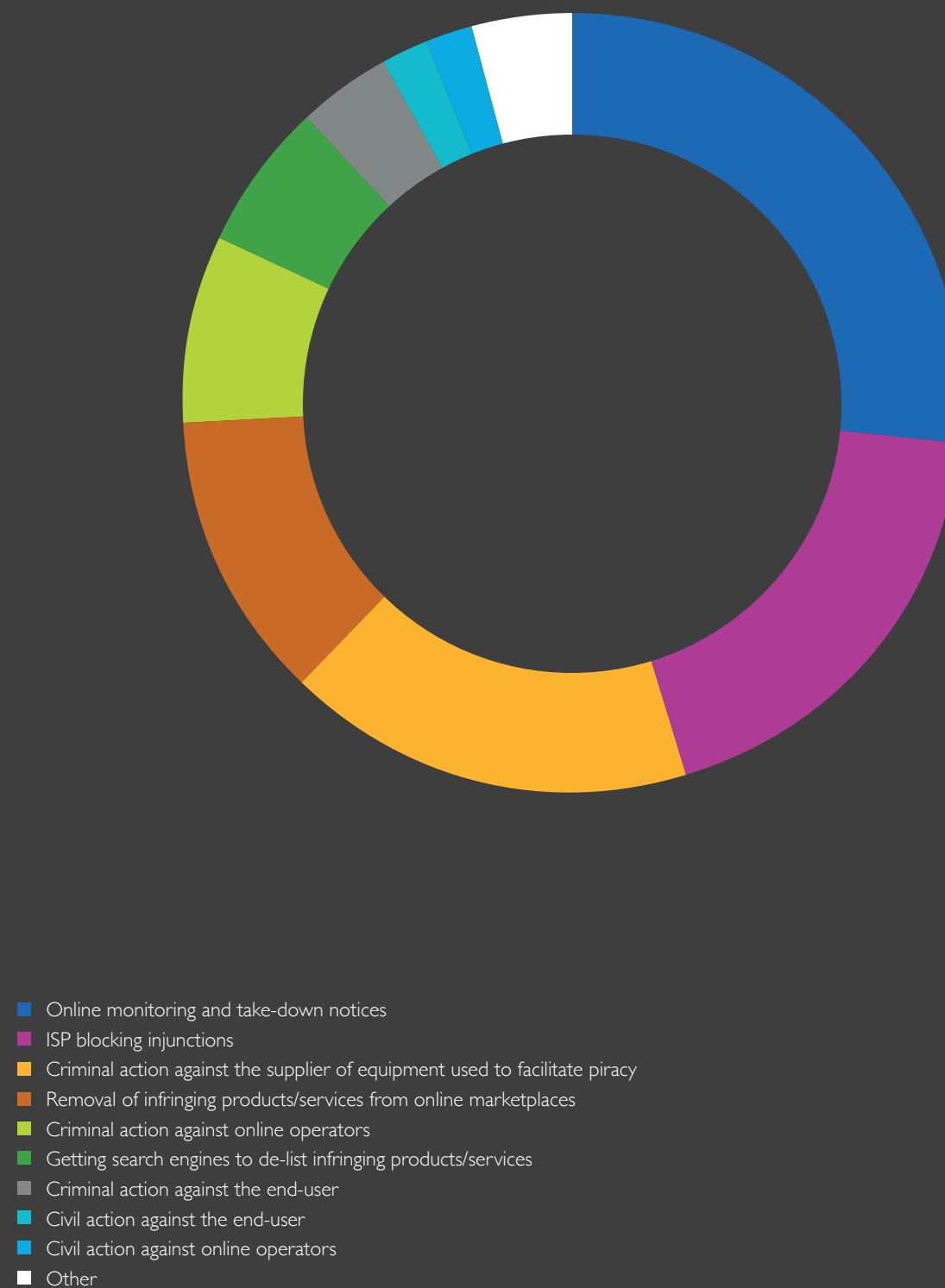
According to the survey data, content creators and licence holders find online monitoring and take-down notices most effective in addressing IP infringement. Some 27% of respondents stated this measure is most effective. A further 19% find ISP blocking injunctions most effective.

These initiatives have certainly proved effective when implemented comprehensively. For example, the Premier League obtained an ISP blocking order requiring ISPs to block servers hosting illegal streams of its matches for the last two months of the 2016/17 season. This resulted in more than 5,000 IP addresses being blocked that had previously been streaming illegal Premier League content.

According to Hibbert, it is already delivering positive results. "It has had a major disruptive impact," he says. "It makes illegal streams harder to get, less reliable, and less socially acceptable." The blocking order has since been extended to the 2017/18 season and recently, UEFA has obtained a similar order for Champions League and Europa League matches. Hibbert expects other rights holders to follow suit.

CHART 13

Which of the following are most effective for your business in addressing IP infringement?





Survey respondents ranked criminal action against suppliers of equipment used to facilitate piracy as the third most effective in combatting infringement. That said, the ability to prosecute suppliers of such devices very much varies by jurisdiction.

In the UK prosecutors have had some notable successes. For example an individual that earned thousands of pounds by selling Kodi boxes with pre-installed content was given an 18 month suspended sentence in July 2017. That said, participants in this research noted that it can be difficult to prosecute retailers of illicit streaming devices in other regions.

“The UK is presently at the forefront of enforcement efforts against illicit streaming devices and there have been some prosecutions against retailers of these boxes led by PIPCU [the Police

Intellectual Property Crime Unit],” explains a Senior Counsel at a major international broadcasting company. “The issue we have in Asia Pacific is that illicit boxes fall between some of the traditional copyright infringement offences and as such there is often no direct legislation that tackles the issue. Authorities and content owners end up having to resort to a hodgepodge of existing legislation to attempt to tackle this new problem.”

Anti-piracy technologies also have a strong role to play in combatting infringement. Some 38% of respondents stated that DRM technologies, which ensure that only those with valid permissions can use a particular file, are the most effective technology in doing so. Some 29% said encryption is most effective, 12% said fingerprinting is most effective and 12% said watermarking is most effective.

In addition to this, companies are increasingly investing in technology that automates the process of issuing take-down notices to technology platforms. “Automated search and takedown is becoming a necessary tool for combatting traditional online piracy,” explained a Senior Counsel at a major international broadcasting company. “There are technologies that enable you to match the content and then send out automated takedown requests to hosting platforms. Given the volume of take-down requests that are sent it’s no longer feasible to have a team of people trawling the internet to look for infringing content.”

However, there is a broad range of these types of products with different strength and weaknesses. Rights owners therefore need to think carefully about the solutions they use and potentially use a number of different products.

“Every platform that can be used for the facilitation of pirate content works in different ways, uses different technologies and has teams of different sizes at their disposal to deal with take-down requests,” explains Pascal Hetzscholdt, Director, Content Protection, Europe & Africa at 21st Century Fox.

“Platforms also have different systems to receive notifications. Some use web forms, some use APIs and some just use email. So there is only really so much automation you can put in place and humans are also required. Some rights owners are investigating whether machine learning can mimic humans and traditional search engines and find infringing content on the web. There are many vendors with different levels of expertise and some will, for example, deal with YouTube a lot better than another. So most rights owners usually use more than one vendor.”

Qiang Li of DLA Piper, Hong Kong, notes, “China is an enormous market. With that enormous market, there are also more opportunities for people to illegally gain access to content. China is not alone in addressing piracy issues, especially in a culture where people routinely share content with large WeChat groups.”



Qiang Li, DLA Piper, Hong Kong

FAVOURED METHODS OF COMBATTING INFRINGEMENT, BY REGION

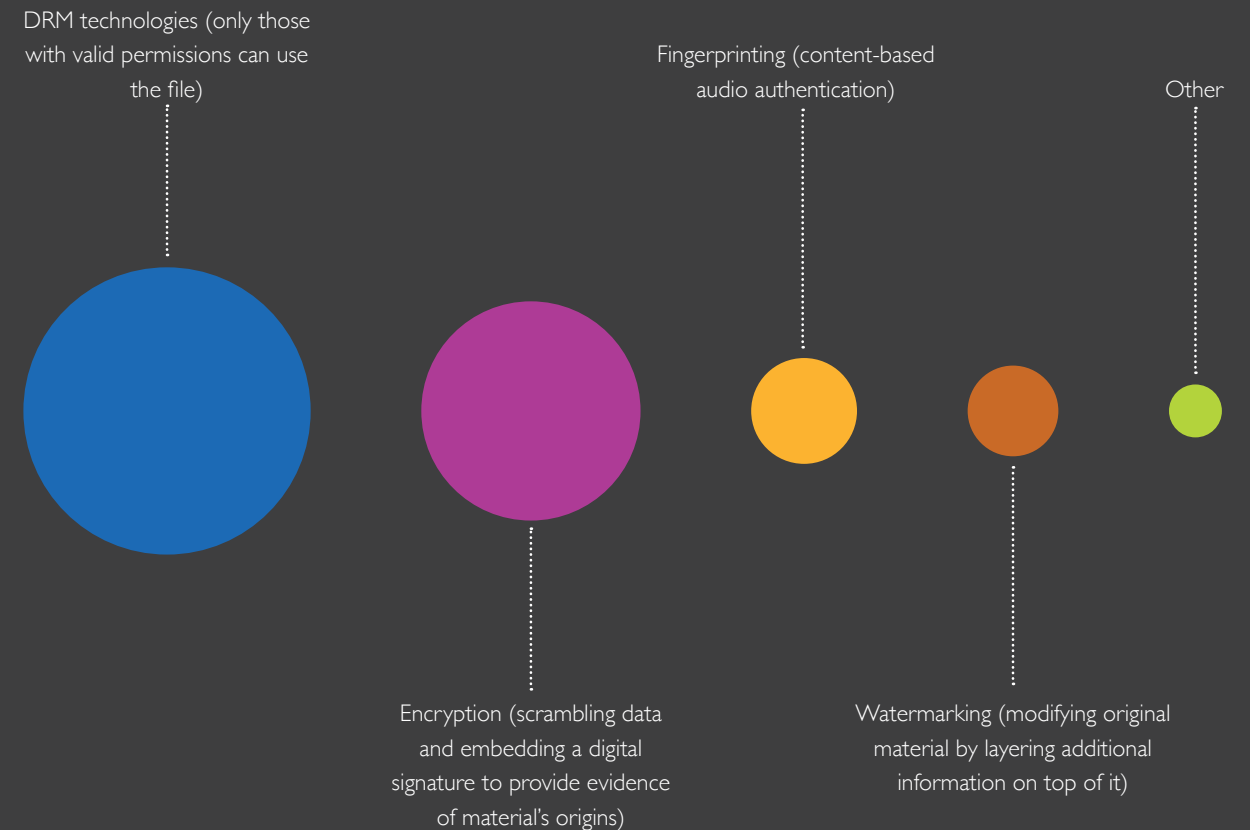
There are some regional variations in survey participants' views on the methods that are most effective in combatting infringement. A significant 67% of North American respondents believe online monitoring and take-down notices are the most effective deterrent to IP infringement.

Some 43% of Asia Pacific respondents agree with their North American counterparts that online monitoring and take-down notices are most effective in preventing infringement, though 29% also ranked ISP blocking injunctions as the most effective tool available.

More UK and European respondents believe that criminal action against suppliers and end-users of infringing content has an important role to play in preventing infringement that their North American and Asia Pacific counterparts. A quarter of European respondents say criminal action against equipment suppliers are most effective in preventing infringement while another 17% say criminal action against the end-user is most effective. UK respondents have a similar view, with 18% ranking action against equipment suppliers as their top choice.

CHART 14

How effective are the following content protection methods?





Jamie Ryder, DLA Piper, Dubai

DLA PIPER INSIGHT: MIDDLE EAST

"2018 is set to be another transformational year for the media sector and nowhere more than the Middle East. Piracy is a global problem but is particularly prevalent in the Middle East. Advancements in technology and connectivity mean that it is now easier for pirates to access copyright content which poses a number of challenges.

Legal reform in the Middle East has so far not kept pace with technological advancements and though both civil and criminal remedies exist for piracy throughout the region, enforcement remains an issue. As such, collaboration between content creators, rights holders, broadcasters, technology platforms and others is growing to combat this increasing threat.

Meanwhile, traditional pay-TV models continue to be challenged by new and expanding OTT models as traditional technology companies like Twitter and Facebook seek to exploit their global footprint, which may itself assist in combatting piracy if offered at the right price point."

Jamie Ryder, Legal Director, DLA Piper, Dubai

ADDRESSING THE REGULATORY ENVIRONMENT

Survey respondents and interviewees indicated that improvements to the current legal and regulatory framework are needed to tackle the continuously evolving content infringement threat effectively across the audio-visual sector:

Specifically in relation to illicit streaming devices, 94% of individuals stated that the current legal framework is insufficient to tackle the growing threat of IPTV and Kodi boxes as a tool for infringement.

Survey responses highlighted a range of sanctions and initiatives that should be

implemented to specifically help combat this threat, from more severe criminal and civil sanctions to ISP blocking and educational campaigns.

A quarter of survey respondents stated that more severe criminal sanctions would be most effective in preventing infringement resulting from illicit streaming devices. A further 16% believe more blocks by internet access ISPs against the domains or IP addresses to which the boxes connect to access infringing content will be most effective, while 14% said more extensive civil sanctions would be most effective.

CHART 15

Is the current legal framework sufficient to tackle the growing threat of IPTV or Kodi boxes as a tool for infringement?

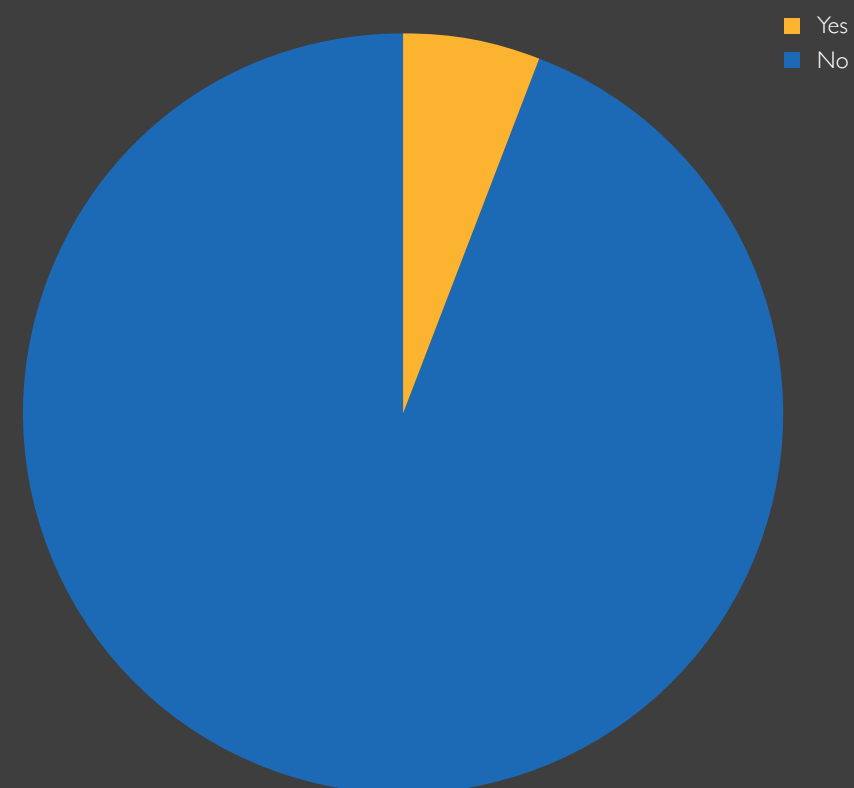
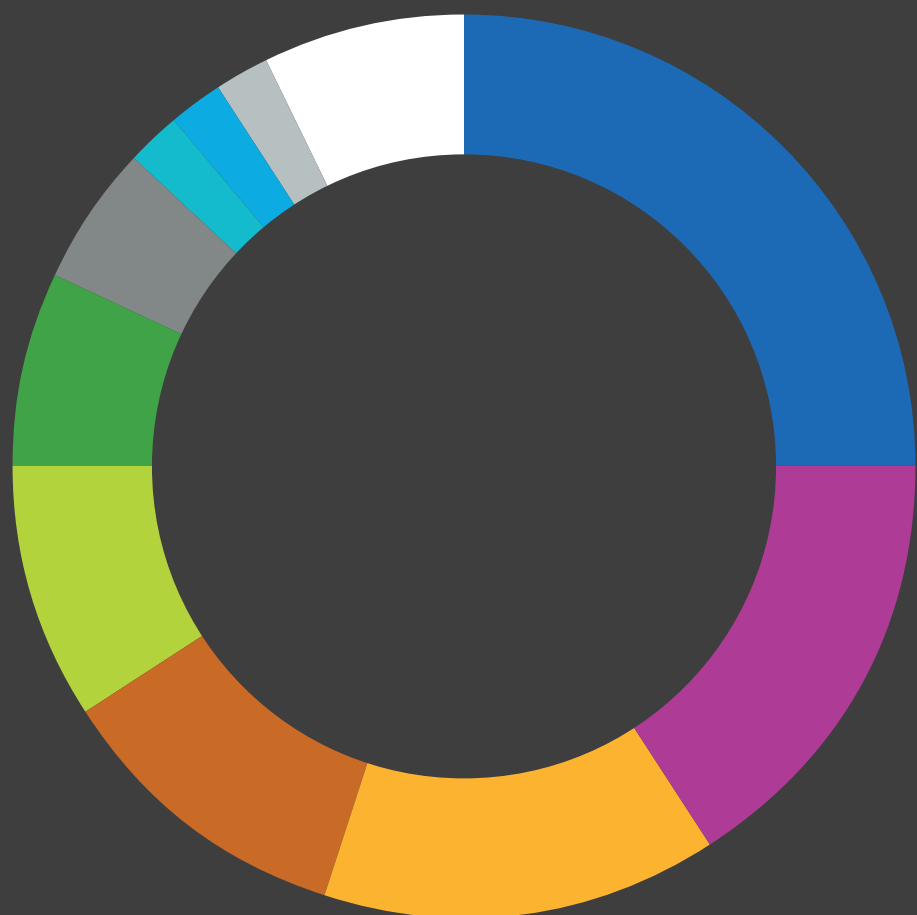


CHART 16

Which of the following additional measures would be most effective in preventing infringement resulting from the use of IPTV/ Kodi boxes?



- More severe criminal sanctions
- More blocks by internet access ISPs against the domains or IP addresses to which the boxes connect to access infringing content
- More extensive civil sanctions
- Legislative clarification of causes of action against sellers/resellers of such boxes
- Educational campaigns about IP infringement
- Obligations on platform operators such as the XBMC Foundation, which operates the Kodi platform
- Further legislative clarification that end-users who access pirated content using such boxes infringe copyright
- Legislative clarification of causes of action against operators of apps/add-ons which are loaded onto such boxes
- Legislative clarification of causes of action against operators of subscription services accessible via such boxes
- Greater public resource dedicated to investigating and prosecuting infringers
- Other

Prosecuting retailers of illicit streaming devices has become easier following the Filmspeler ruling in The European Union's Court of Justice in April 2017, which clarified that selling IPTV boxes specifically configured for film and TV piracy is illegal.

That said, there is still a desire for regulations to be clarified to specify that such activity is illegal. Hibbert explains why. "There have been a number of high-profile convictions of and judgments against suppliers of devices and content, which sends a clear message that piracy is illegal. The CJEU's decision in Filmspeler was particularly helpful because it clarified that the supply of an IPTV device with unauthorised content loaded onto it is a criminal offence.

"However, I would still like to see the Copyright, Designs and Patent Act (CDPA) amended to criminalise the supply of devices whose main purpose is to provide unauthorised access to content. Not only would that put the position beyond doubt, but it would send a strong message about the Government's commitment to supporting the UK's creative industries."

Where relevant legislation is implemented, the issue becomes one of effective enforcement. "Broadcasters are discussing how they can combat the rise of illicit streaming devices and many believe the current legislation is not adequate to go after all parties involved in the process of manufacturing and distributing these devices,"

confirms Malobika Banerji, Senior Legal Counsel at A+E Networks Asia.

"But the bigger issue is enforcement of these laws should they exist. It's hard because the manufacturing and distribution of these devices happens across jurisdictions. For example, devices may be manufactured in China, the feeds uploaded in India, and then the devices are available for distribution in Thailand. So how do you go about enforcing? The current copyright legislation is inadequate to cover everyone involved in the process. Copyright legislation that included everyone involved in the process would be better."

In relation to online streaming infringement, many interviewees stated they would like to see legislative change relating to the exemption of liability laws that many large technology platforms rely on not to take responsibility for infringing content on their sites and also not to pay artists adequately for their content, the so-called "value-gap".

Hibbert outlines the problem. "The law currently only requires platform operators to respond to notices of unlawful content on their platforms, and even then in a limited way. Platforms should have systems that stop illegal content being there to start with. This issue is recognised by European lawmakers who are looking at changes to intermediary liability – the question is how fast changes will come and how broad they will be."



zemships
Emissionsfrei über die Alster

“I do not believe there will be that many changes, as we have the same interests and the industry works well together. There’s an appetite for good solutions in this area,” thinks Stefan Engels of DLA Piper, Germany.



Stefan Engels, DLA Piper, Germany

ASSESSING THE IMPACT OF BREXIT

The Brexit process is creating significant uncertainty in many industries in the UK, and the media and entertainment sector is no different. Over two thirds (69%) of UK-based survey respondents stated that Brexit is impacting their business in some way.

Quite how Brexit will impact companies in this sector is not yet clear, primarily because there is currently little clarity on what the

outcome of the Brexit negotiations between the UK and the EU will be, beyond the UK Government's intention to leave the Single Market and Customs Union. That said survey participants frequently highlight two important areas where clarity needs to be provided – how Brexit will alter broadcasters' regulatory requirements and ability to sell to the EU, and how UK copyright law might be impacted.

COUNTRY OF ORIGIN

The key European legislation, currently under review, is the Audiovisual Media Services Directive (the “AVMSD”), which regulates television and digital services within the EU. The Directive embraces the so called “country of origin” principle in relation to regulation. After a “hard Brexit” a broadcaster would no longer be able to rely on compliance with UK regulation and, where relevant, OFCOM licencing registration to provide a “passport” enabling their services to be legally made available within the EU.

Instead, such companies would need to have an establishment sufficient to comply with the AVMSD in another EU member state in order to “passport” their services throughout the EU.

In the past, most global broadcast companies have tended to prefer the UK as the base for the European facing operations. This is based on a variety of factors but one importance criteria has been this ability to “passport” services by virtue of the AVMSD.

Therefore a key issue is that following Brexit, in the absence of suitable replacement arrangements with the EU, the media and entertainment industry in the UK is currently likely to lose access to the EU’s single market for broadcasting services. This could adversely impact the UK’s status as a broadcasting hub.

Because of the lead time required to establish suitable facilities, premises, licenses and employees, many broadcasters are in the process of creating a new establishment in another EU member state to hedge against the possibility of a hard Brexit. The Netherlands and Ireland have proven to be popular possible alternative venues.

One way to qualify as being “established” in a member state is to set up a new Head

Office, taking editorial decisions, in a different EU member state. Several broadcasters have taken steps to do so. Some broadcasters have considered the option of investing in new uplinking facilities in other EU states in order to deal with the uncertainty.

“If we have a hard Brexit or broadcasting isn’t specifically covered in a transition deal then we would either have to set up an uplink in the EU, for example in Dublin, or re-locate some operations there in order to get ourselves licensed with the Irish equivalent of Ofcom,” explained Kevin Smith, General Counsel at Sports Information Services. “It could cost up to £2 million to build a new uplink facility, which represents about 10% of our annual operating profit. So it’s going to be a headache for a business of our size as well as other small to medium sized broadcasters.”

“So the question at the moment is whether broadcasters invest in new uplinking facilities in EU jurisdictions which may not end up being necessary, or not do this but risk being in a situation where they wake up the day after Brexit to find that they are criminals in their EU reception territories. The European parliamentary scrutiny committee has raised the issue with the Minister who has acknowledged the concerns but so far has been unforthcoming with any detail. In the Lords, the Minister for DEXEU acknowledged the concerns but offered little insight beyond promising a fuller response in due course.”

However, a number of broadcasters find the possibility of moving uplink facilities daunting. Many are concerned with the difficulty or impossibility of altering existing commercial arrangements, uprooting uplinking or playout facilities, bearing associated additional costs and other practical issues.

CHART 17

What is most important to your business as part of the Brexit process?





Giangiacomo Olivi, DLA Piper, Milan

COPYRIGHT

Currently, UK copyright law has been impacted by the EU through specific EU directives that amend the CDPA and by rulings of the Court of Justice of the European Union, which the UK has to adhere to. It is likely, although not certain, that these laws will be directly transplanted into UK law when Brexit formally happens.

There is more uncertainty whether future EU law that impacts the media industry will be applied to the UK after Brexit. For example, the European Commission published its proposed directive for copyright in the EU single market last year, part of which deals with so-called Value Gap issue discussed earlier in this report. This might have significant consequences for the obligations of technology platforms that host content. But the Brexit process means

there is uncertainty about whether the new directive will apply following Brexit.

“We expect to see the final version of the Directive passed sometime this year, although we really don’t know how or if that will be implemented in the UK in light of Brexit,” explains Bourn. “It really depends on whether the UK would prefer to do something specific for our market.”

Survey respondents highlighted a number of issues that were important to them in the Brexit negotiations. Some 40% stated that maintaining access to the single market was most important. A further 30% said clarity on the impact of cross-territoriality on licensing models was most important while 15% said clarity over the judicial system was most important.

“The other key issue for Italy, and for Europe, will be the impact of Brexit. A lot of companies have their licensing and authorisations in the UK, as a base to proceed with their business in the rest of Europe. This will change and there will be operators who may shift their base to other European countries. However, in the long term, this change will be offset by the increasingly globalised nature of the marketplace,” says Giangiacomo Olivi of DLA Piper, Milan

Conclusion

While companies in the audio-visual sector are facing a number of infringement challenges, there are also a huge number of opportunities to boost licensing and advertising revenue. OTT content presents the most immediate and exciting opportunity for rapid growth. There is also tremendous excitement about the long term opportunities related to the growing use of IOT and VR/AR.

In-house teams and senior executives need to keep up to date with the emerging piracy threats and also the latest technologies and legal methods that can be used to combat them, noting the successes highlighted in this report. This report confirms the view that there is no silver bullet to tackling infringement. Instead, content creators, licence holders, broadcasters, technology platforms, regulators and law enforcement must collaborate and use a variety of technologies and legal measures to tackle emerging sources of piracy.

Of course, it's vital to seek specialist expert advice when navigating these challenges and opportunities.

We would welcome discussing any of the issues raised in this report at your convenience.

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