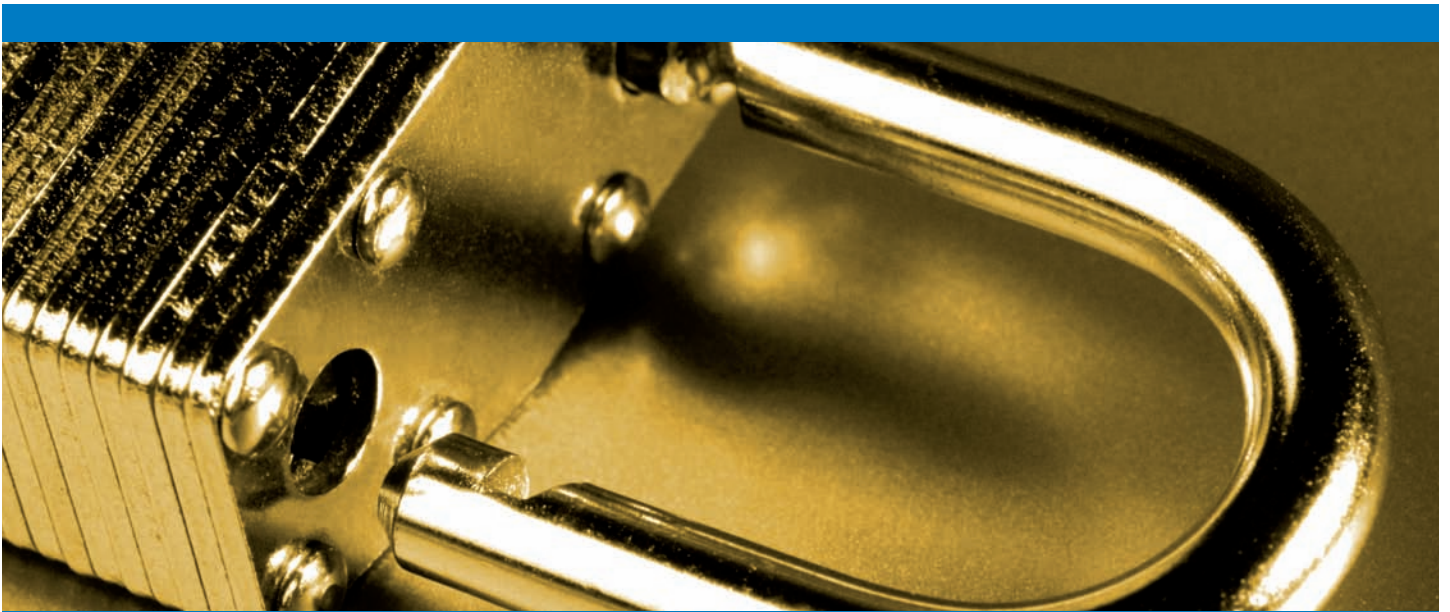




For Innovation

Counter Offensive

An IP Crime Strategy



dti

A DTI SERVICE



The economic threat posed by organised criminal activity requires a well organised response. This document sets out how the many people and organisations involved in the fight against counterfeiting and piracy have agreed to work together to improve the effectiveness of their response.

More and more of the goods and services that we take for granted or desire in a modern economy have some form of creative content embodied in them. If we want to continue to enjoy the fruits of creativity we have to ensure that the creators can make a living and get appropriate reward for their efforts. The framework of intellectual property laws is intended to do this, and those who ignore others' intellectual property damage all our economic interests in the long run. For example there are many people employed in fields as diverse as home furnishings, computer games and software, and music and film, 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.

Particularly serious is the evidence that IP crime is increasingly well organised. This creates big challenges for enforcement officers at the front line, whether these are the hard pressed staff of local trading standards departments, or those employed by companies to protect their sales income from piracy. I asked the Patent Office to work with the whole field of players because it seemed to me that we could collectively do so much more if we looked at how we worked together and tried to agree on what our priorities should be.

I am very pleased by the spirit of cooperation that comes through in this report, and in what I have heard about the meetings that were held during the development of the strategy. There is clearly a desire to work together and make a difference. And there are now new tools against economic crime, such as the Proceeds of Crime Act, and the Assets Recovery Agency, which will help improve the odds of success.

Finally I want to thank all those who contributed to the development of this strategy (the list is an impressive one, and is set out at the end), and wish them every success with this difficult but vital endeavour.

A handwritten signature in black ink, appearing to read 'Daniel Sainsbury' followed by a stylized flourish.

SAINSBURY OF TURVILLE

EXECUTIVE SUMMARY

It is generally accepted that intellectual property crime, or counterfeiting and piracy as it is more widely known, has grown considerably over the past 10 years.

In the last decade the political make up of Europe has changed and there has been increased globalisation of world trade. Widespread availability of technology and communications has made it is easier to manufacture in one geographic location and distribute elsewhere. However, more open borders and increasing trade has also made it easier for intellectual property crime to flourish across borders, threatening every country in the EU.

The traffic of counterfeit and pirated products is a serious threat to consumers, business and the national economy.

The traffic of counterfeit and pirated products is a serious threat to consumers, business and the national economy. Commentators suggest that intellectual property crime threatens to overwhelm honest business throughout the European Community. Jobs are lost, prices increase and it is often the taxpayer who ultimately meets the extra costs.

It is reported that 7% of all world trade is in counterfeit goods, a total annual value of over £250 billion. The International Chamber of Commerce estimates that the EU has lost over 100,000 jobs in a 10 year period. Without coordinated action to clamp down on the criminals and to dissuade consumers from seeing it as a “victimless crime”, a cycle of economic destabilisation can occur.

Criminals have been quick to exploit economic mechanisms in Europe and to adapt technology. Therefore a new and coordinated approach is needed.

The proposals incorporate contributions and advice from many interested parties, including government, enforcement agencies and industry groups. Although the Patent Office has been happy to lead the development of the strategy it has in reality been conceived of and is owned by all involved. A list of those who participated is at Annex B.

THE MAIN DELIVERABLES FROM THE STRATEGY WILL BE:

- a statement of priorities and of evidence gaps and proposals to plug them;
- a management structure to coordinate the different players and to share information;
- a specific operational role for the Patent Office in terms of processing and evaluating information

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INTELLECTUAL PROPERTY CRIME - A NATIONAL STRATEGY

Intellectual Property (IP) crime damages the economy and local communities, destroys businesses and harms consumers. The nature of the crime, its size, diversity and scope has hindered the task of coordinating a dynamic response.

Despite sizeable indicators of the problem, facts are difficult to validate. There is a need for reliable information a standard model that will underpin strong tactical strategies.

This document sets out proposals to tackle intellectual property crime. It recognises the strengths and weaknesses of existing enforcement strategies and the need to bring together different parts of government, industry stakeholders, policy-makers and enforcers, to create a coordinated approach to intellectual property enforcement.

There is a need for reliable information, a standard model that will underpin strong tactical strategies.

1. IP crime is more generally known as counterfeiting and piracy. Counterfeiting is, *wilful trade mark infringement*, while piracy involves, *wilful copyright infringement*. These are very similar and often overlapping crimes.
2. Whereas trade mark infringement generally comprises the counterfeiting of brand name products, such as designer clothes, sportswear and expensive jewellery; piracy is copyright abuse involving the illicit copying of computer software, recorded music, and film.
3. IP crime is not a new phenomenon but due to globalisation and advances in technology counterfeiting and piracy has become big business. The criminals involved are often well organised as a result of other endeavours and are set up to sell the counterfeited or pirated items for vast profits. However, public perception has not developed as quickly and the common view is that counterfeiting and piracy causes little harm.

OVERVIEW OF PROBLEMS IN THE UK

4. While crimes such as drug dealing and trafficking are viewed with great concern, the general perception of IP crime is that it is a “victimless crime”.
5. During recent years the scope and scale of the problem has grown at a rate previously unknown. No product is too cheap to counterfeit and no brand immune.
 - 5.1. There are 4 main factors contributing to the growth of IP crime:
 - Widespread availability of technology
 - Increased globalisation of world trade; it is easier to manufacture in one geographic location and distribute elsewhere. The result of more open borders and more trade is that it is also easier for counterfeits to flow across borders.
 - Legal penalties in many countries are low; if they exist at all.
 - The influence of organised crime.
6. It is widely estimated that 7% of all world trade is in counterfeit goods, a total annual value of over £250 billion. The creative industries in the UK that contribute 8% of UK GDP feel particularly badly hit; the anti piracy unit of the British Phonographic Industry (BPI) reports levels never seen before in commercial piracy of music. Indeed the BPI's annual survey states that piracy has doubled over the last two years. In the UK alone there has been an 81% increase in the value of commercial piracy, which is treble that quoted in 2000.
7. The International Federation of the Phonographic Industry (IFPI) which represents over 1,500 music producers in over 40 countries also reports dramatic increases, estimating that almost 40% of all CDs and cassettes sold around the world are pirated copies. CD R piracy has grown exponentially in Russia, Latin America, North America and Eastern and Western Europe and in a global economy events can impact quickly on domestic business and consumers.

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8. Perhaps even more concerning is the arrival of more dangerous fakes and a transition from familiar luxury items such as perfumes and sports goods to products such as foods, beverages, automotive parts and medicines. The World Health Organisation says that up to 80% of pharmaceuticals in African countries such as Niger are thought to be fakes.
 9. Consumers in the UK still appear to be relatively unconcerned because of a divergence of public perception and the lack of understanding about the effects of IP crime. Recently there have been stronger signals with lengthier sentencing and higher penalties for those convicted of counterfeiting and piracy. However, mixed messages are conveyed and lower penalties are more common than those imposed for more high profile criminal activities.
 10. IP crime affects Government, business and consumers. Losses of jobs, higher taxes and increased prices are all passed on to the taxpayer who ultimately meets the extra cost of greater policing and rises in insurance premiums and interest rates.
 11. More recently the complex distribution networks required by counterfeiters have attracted organised groups who have moved to IP crime because it is high profit and low risk. Anecdotal evidence of links to organised crime has been in existence for some years and of late there has been a modest start to confirming these links. The National Crime Intelligence service (NCIS) claims that “many serious and organised criminals are involved in the manufacture of counterfeit products, or in their distribution and therefore it is reasonable to assume that a proportion of the profits are used to fund other serious crimes”.
 12. It is clear that counterfeiting and piracy have emerged as clear and serious threats to business, consumers and government. A wide range of industry sectors are affected. As a result the Treasury loses both money and economic knowledge. Without coordinated action and policy to clamp down on the criminals and to dissuade consumers from seeing it as a “victim less crime”, a cycle of economic destabilisation occurs with control slipping to the criminals.
 13. Counterfeiting and piracy is an attractive criminal enterprise. The complex distribution networks required by counterfeiters have attracted organised groups who have moved to IP crime because it is high profit and low risk. The growing evidence of this migration and the historic difficulties in developing a coordinated response has resulted in greater room for criminal exploitation. Therefore Governments are more actively developing policies to reduce IP crime.

IP crime affects Government, business and consumers. Losses of jobs, higher taxes and increased prices are all passed on to the taxpayer...

THREATS TO THE UK AND THE EUROPEAN UNION

14. The cost to society of turning a blind eye is huge. In 2000 a report by the Centre for Economics and Business Research estimated that counterfeiting within the EU costs over 17,000 jobs every year and reduces annual GDP by €8bn. In fact the Counterfeiting Intelligence bureau, established in 1985 by the International Chamber of Commerce to meet the international problem of trade mark counterfeiting, estimates that the EU has lost over 100,000 jobs in a 10 year period. As counterfeiters avoid paying taxes additional revenue is lost to national governments; significantly reducing the money available for key public initiatives.

Political developments in Europe bring further challenges. The enlargement of European Community offers greater stability and prosperity, strengthening the Community's position in world affairs. To ensure clean and fair markets there is a need for effective enforcement..

15. Political developments in Europe bring further challenges. The enlargement of the European Community offers greater stability and prosperity, strengthening the Community's position in world affairs. But to ensure clean and fair markets there is need for effective enforcement and we need to harmonise laws throughout the EU. Differences in national laws and procedures can lead to difficulties with enforcement. In the circumstances, the UK has welcomed the approach of the European Commission of exploring further measures for IP protection.

The EU recognises that effective enforcement of IP rights is an important part of innovation and wealth creation and the EU proposals for the Enforcement Directive are part of a broad based approach by the Commission to tackle IP enforcement.

16. Unfortunately it is true that IP law in many countries is still not robust. By 2006 all members of the World Trade Organisation (except least developed countries) should have implemented the TRIPS Agreement (Trade - related Aspects of IP Rights), which lays down the basic rules for IP protection and enforcement. Some countries have strengthened their legislation but in practice cases are often difficult to fight in courts that are habitually reluctant to prosecute or impose criminal penalties. In China, which is considered to be the counterfeiting capital of the world, there is still little legal deterrence.
17. Many transitional and developing countries are particularly at risk. Often they face considerable political challenges and can appear unconcerned. It is important to understand their vulnerability. In China for example there has been explosive growth as a result of the shift from public to private enterprise systems. It has been reported that over 38 million people are out of work and counterfeiting is seen as just another provider of much needed jobs.
18. There is no doubt that UK and world businesses are struggling to protect their brands. They are unable to do this alone and rely upon Government and enforcement agencies. The growing pace of technology means that, traditional barriers geography and communications form no obstacles to IP crime. It is now a business for "household" criminals and organised rings working well outside well policed nations.

Businesses are beginning to unite in taking action

Successes

19. Businesses are beginning to unite in taking action. Problem countries are now seeing a withdrawal of foreign investment. The electronics company Sony markedly reduced its music operation in Hungary because of a perceived ambivalence to counterfeiting and piracy.
20. The World Customs Organisation is also working on new ways of monitoring and controlling international supply chains and last year Interpol established an “IP Action Group” to improve co-ordination of international enforcement action.
21. The United States Patent Office (USPTO) has taken a strong role on enforcement issues. The Office has established an Enforcement Division that advises the US Trade Representative on counterfeiting and piracy matters in connection with trade agreements and works in coordination to ensure countries implement World Trade Organisation commitments to protect and enforce IPR. The USPTO also has a strong domestic focus, developing training and awareness programmes working with a wide variety of agencies to provide media information and relay messages. It has developed an Intra Government Co-ordination Council made up of industry, other Government Agencies and enforcers and works to foster better understanding, and effective partnerships. In addition, it provides technical assistance and develops cohesive strategies.
22. Closer to home, where needs have been greatest, there have been significant successes. In 2003 the Police Service of Northern Ireland (PSNI) seized counterfeit goods valued at over £7m, up £4m from 2001. In addition NCIS uncovered one of the biggest IPR frauds when a professional criminal with a long history of theft, drugs and armed robbery was found to be underpinning his activities through copyright and trade mark fraud. A police raid at four locations revealed a massive operation incorporating counterfeit perfume, wine, alcohol, clothing and CDs worth over £17m. The criminal faces 10 years’ imprisonment.
23. There are other excellent examples of partnerships that have brought noteworthy results; for example in 2001 when the police, BPI and IFPI shared intelligence that led to the conviction of two Russians who were involved in a counterfeit CD operation and credit card fraud. The City of London fraud Squad acted when an undercover agent investigating pirate CD traffic from Russia to London, discovered what the police described as the “most sophisticated fraud network ever encountered in the UK”. Potential losses exceeded £5 million.

A STRATEGY TO COMBAT IP CRIME

24. Combating IP crime requires a new and coordinated approach. The challenge is to create and coordinate an enforcement network which targets resources more effectively and produces results on the ground.
25. Operational activities need to be integrated in a wider strategy that attacks underlying harm. To do this we need to build and bring together the knowledge we already have and develop our understanding of the problems and the methods used by those responsible. Producing and sharing expert information is essential in driving strategic and operational decisions.
26. Our strategy is to join up Government, industry and enforcement agencies around the creation of an annual “National Enforcement Report”. We will draw together the enforcement work carried out by the main stakeholders to establish the state of play. The Report will then feed into a control strategy decided by a high level decision making group; a Strategic Tasking and Co-ordination Group. This group will be made up of key decision makers from Government, industry and enforcement who will set priorities for prevention and enforcement action.

Combating IP crime requires a new and coordinated approach. The challenge is to create and co-ordinate an enforcement network...

27. To ensure the Strategic Tasking and Coordination Group has relevant and up to date information there is a critical need for regular high quality assessments and actionable reports. As a result work has begun with the National Criminal Intelligence Service on building up an analysis model within the Patent Office which will be used to inform the targeting of enforcement work.
28. The proposed model will be structured on a control strategy based on the existing Concerted Inter-agency Drugs Action Group (CIDA). This set out a partnership approach leading to the creation of inter-agency strategies for tackling the various sectors of serious and organised crime.
29. The model aims to provide high quality assessments and actionable information. Providing:-
 - Tactical Assessments
 - Problem Area Profiles
 - Target Area Profiles
 - Threat Assessment Reports
30. Our strategy will also be structured on existing national intelligence models (NIM) applying common standards to the way knowledge is managed. Based on best practice established from across the international law enforcement community it will aim to bring together expertise from a wide variety of backgrounds.

31. The Enforcement Hub (EH) will operate inside the Patent Office and will offer a structured approach, producing key facts for planning and decision making. It will be designed to provide an enforcement picture that will impact at 3 levels of business:

- Local issues - crime affecting small areas
- Cross border - crime affecting more than one area
- Serious and organised crime operating at a national or international scale.

A theatre of operational sub groups will bring the model together.

32. Together the National Enforcement Report and the Patent Office Enforcement Group will support sector strategies and resource decisions between broad areas of threat. The Strategic Tasking Group will play its part by identifying key areas where business and consumers are most at risk. The report will complete the circle by allowing us to measure the impact of our work against a solid baseline.

33. Alongside this the strategy will need to consider the international aspects of IP crime; making a distinction between operational enforcement work and broader policy and support activities. There will be need to develop bi-lateral and multi-lateral strategies with overseas governments to partner the enforcement drive; identifying best practice and gaps in enforcement activity.

34. There will be a strong need to engage priority countries and to take an active part in developing policy and support work which can be broadly divided into the following categories:

- Legislation & policy
- Training
- Awareness and publicity - outreach
- Threat assessment, analysis and information exchange

WE WILL:

- Coordinate an international effort in the UK
- Support international enforcement
- Help develop enforcement EU intelligence models
- Develop an arena for joint investigation teams
- Help develop and deliver training to transition countries and public officials(UK diplomatic staff, etc)
- Conduct research and develop links for exchanges of information and best practice
- Make assessments of policy and proposed legislation
- Help ensure regulatory compliance from transition countries
- Formulate strategies for advising legislative bodies, national governments and international agencies
- Contribute to news, media and public awareness statements
- Represent the UK at conferences and on inter agency working groups

- 35.** Directing enforcement work requires sound strategies based on accurate and up to date information.

The key deliveries will be:

- The set up of the IP Crime Group (Launched February 2004 and will meet every six months to discuss progress and decide best practice);
 - The introduction of an Annual National Enforcement Report by December 2004 (after this the report will be published by January every year);
 - The set up of a Strategic Tasking and Coordination Group (Autumn 2004)
 - The introduction of a Patent Office Enforcement group and knowledge system within the Patent Office (Autumn 2004);
 - The set up of a theatre of operational sub groups (Autumn 2004);
 - Coordination and support of international enforcement efforts, intelligence models, training to transition countries and public officials (UK diplomatic staff, etc).
- 36.** Short term actions. By Autumn 2004 the IP Crime Group will establish:
- Strategic goals
 - A performance measurement system
 - A national information requirement (Memorandum of Understanding)
 - An operational agreement
 - Control procedures

CONCLUSION

37. The enforcement arena has become more crowded over the past 5 years with numerous bodies competing for political space. As a result coordination of action and coherent messages are threatened. Too many autonomous agencies duplicate effort, waste resources and give ambiguous signals. Recent successes demonstrate that stronger partnerships between enforcers and business bring greater levels of competence and effectiveness. It is clear that more needs to be done.
38. The aim is to promote a national strategy bringing together government policy - makers, business, and enforcers to create a coordinated approach to IP enforcement.
39. Creating a strategy around an annual “National Enforcement Report” will allow us to draw together the enforcement work carried out by major stakeholders to establish the state of play and a better strategic picture. The Report will then feed into discussion of a high level Strategic Tasking and Coordinating Group who will set priorities and coordinate activities for the following year.
40. The work of the Group will be helped through clear and unambiguous information provided by an enforcement group based at the Patent Office.
41. An integrated knowledge framework will help us to develop an intelligence led strategy and will outline the scale and scope of the problem, expose those responsible and present clear targets for enforcement action. In addition, we will be in a position to make use of specialist enforcers and business experts ensuring the right skills and resources can be employed in the optimum manner, offering enforcement bodies a clear advantage.
42. There are clear benefits in driving a coordinated approach. For example, those involved in IP enforcement work have developed their own methods of tackling the problems. Consequently a wide range of skills and expertise exists. Unfortunately there has been little cross fertilisation and therefore there have been difficulties in establishing best practice. Agreed understandings on methods and goals are essential and the establishment of the Strategic Tasking and Coordination Group will allow us to:

The aim is to promote a national strategy bringing together government policy-makers, business and enforcers to create a coordinated approach to intellectual property enforcement.

- assess performance
- identify and introduce common standards
- adopt standard training methods
- evaluate the impact of our work

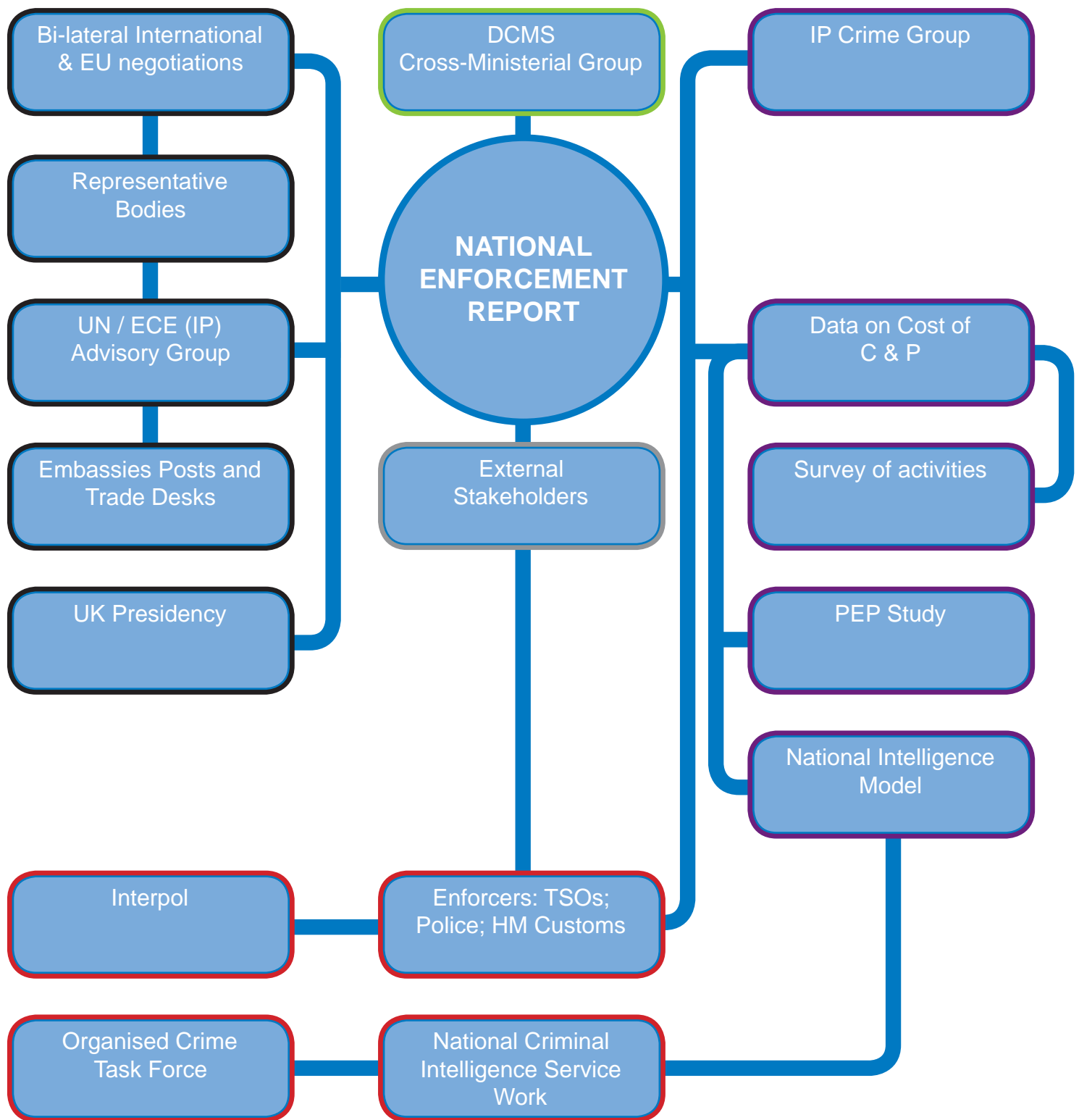
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43. There are many examples of good practice and we will aim to put in place initiatives to ensure those working in the enforcement environment are joined up and able to share expertise and make use of the most effective techniques.
44. Overall the creation of an agreed National Strategy through an Annual Report will aim to:
- establish the strategic and tactical picture
 - identify areas of threat and specific harm
 - provide key knowledge
 - share and exploit information
 - address short and long term problems
 - bring together local, national and international partners
 - build partnerships and more consistent approaches
 - develop aligned objectives
 - set priorities and resources
 - spread best practice
 - raise awareness
 - measure performance
 - evaluate the impact
 - provide an Annual Report
45. If you have any comments or observations regarding this document please write to:

The Patent Office
IP and Innovation Directorate
Concept House
Newport
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NP10 8QQ

or

[e-mail ipenforcement@patent.gov.uk](mailto:ipenforcement@patent.gov.uk)

National Enforcement Strategy



Contributors to the National Strategy

The Alliance Against Counterfeiting & Piracy

Anti Copying in Designs (ACID)

The Anti-Counterfeiting Group

The Assets Recovery Agency

The British Phonographic Industry

The British Society of Plant Breeders

The British Video Association

Business Software Alliance

H M Customs and Excise

The Department of Culture, Media and Sport

DTI Solicitors

DTI Europe and World Trade

The Entertainment, Leisure and Software Publishers Association

The Federation Against Copyright Theft

The Federation Against Software Theft

The Home Office

International Federation of Phonographic Industries

Lovells Solicitors

The Mechanical Copyright Protection Society

Microsoft

The Motion Picture Association

The National Crime Squad

The National Criminal Intelligence Service

The Northern Ireland Office

The Office of Harmonisation in the Internal Market

The Police Service of Northern Ireland

REACT UK

The Local Authorities Coordinators of Regulatory Services

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