

## London Boroughs of Brent and Harrow

### Trading Standards Consortium Committee – 17<sup>th</sup> July 2007

#### Report No. 02/07 of the Director of Trading Standards

For Information

#### TITLE OF REPORT: TRADING STANDARDS ENFORCEMENT OF COPYRIGHT DESIGNS AND PATENTS ACT 1988

### **1.0 SUMMARY**

1.1 This report provides information to Members on the new statutory duty placed upon local Weights & Measures Authorities to enforce the provisions of the Copyright, Designs & Patents Act 1988 (CDPA) from 6<sup>th</sup> April 2007.

### **2.0 RECOMMENDATIONS**

2.1 For discussion and comment by Members.

### **3.0 FINANCIAL IMPLICATIONS**

3.1 There are additional financial implications arising out of this report which have for 2006-07 been met by a direct grant from Central Government (see paragraphs 4.1 and 5.2). However, there may be further financial implications in future years if there is an increase in demand for enforcement action under the CDPA from consumers and intellectual property rights holders.

### **4.0 STAFFING IMPLICATIONS**

4.1 It is envisaged that funding for the work mentioned in paragraphs 3.1 and 5.2 will continue in the future as part of the Local Authority Revenue Support Grant. If sufficient additional resources are made available then a specialist Officer will be recruited jointly for the two boroughs to carry out the relevant functions under this Act.

### **5.0 DETAILS**

5.1 Following a Government review of the UK intellectual property framework, the 'Gower's Review of Intellectual Property' was published in December 2006. Andrew Gower, a former editor of the Financial Times Newspaper made various recommendations within his report, one of which was to make amendments to the CDPA giving Trading Standards Officers a statutory responsibility and powers to enforce the criminal provisions relating to copyright as set out in Sections 107 and 198 of the CDPA.

- 5.2 The Government earmarked £5 million for Local Authorities in England to use in the deployment of Trading Standards Officers for the enforcement of copyright legislation. The Department of Trade and Industry awarded Brent and Harrow Councils £41,798 of this money, calculated on a split of £25,240 for Brent and £16,558 for Harrow.
- 5.3 Copyright legislation applies to written work, songs, spoken words, artistic work such as pictures, sculpture or photographs, sound and film recordings and various types of broadcast. In the Consortium area, infringing copyright articles are commonly found at markets, from street traders in Harrow Town Centre, at football matches and concerts at the new Wembley Stadium and is also widespread across numerous internet auction websites. From these locations, illegal DVDs, music CDs, computer games and software are all readily available to dupe unsuspecting consumers. Anybody involved with copyright infringement, now faces the threat of prosecution by Trading Standards with the possibility of unlimited fines and a maximum of ten years in prison.
- 5.4 There are well established links between those who sell counterfeit or pirated goods and serious, organised criminal networks. Loss to the UK industry through the sale of counterfeit goods is estimated to be over £2 billion per annum. It is, therefore, pleasing to note that anybody convicted of an offence under CDPA can automatically be considered as having a 'criminal lifestyle' for the purposes of a financial confiscation investigation under the Proceeds of Crime Act 2002 clearly sending out the message that this type of crime does not pay.
- 5.5 On 6<sup>th</sup> April 2007, it became a statutory duty for Trading Standards Departments to enforce the provisions of the CDPA with the necessary powers to make test purchases, enter business premises, seize goods and documents and apply for entry warrants. It comes at a time when the Consortium is receiving more complaints about counterfeit or pirated goods than anything else.
- 5.6 Prior to the introduction of S107A, Trading Standards used the Trade Marks Act 1994 (TMA) very effectively as the appropriate legislation to prosecute counterfeiters. However, in recent years, there have been significant changes in the way criminals trade in illicit copies of copyright materials. Increasingly, in order to circumvent the TMA, illegal products have been marketed without any visible trade marks on the packaging. On pirate DVDs the trade marks shown on screen at the start of a film are often removed.
- 5.7 This was exactly the case recently when the Service received a complaint about a trader producing copies of DVDs at his shop in South Harrow. Officers visited the premises and found DVDs being illegally recorded. Before S107A came into force, there would have been a difficulty in taking the case forward under the TMA as the DVDs and its packaging were not labeled with any trade marks. The pirate had even taken the trouble to remove the lead-in to the film which bore the registered trade marks of the producer and name of the UK rights holder.

5.8 The only legislation that could practically be used in this situation was S107 CDPA. The factory was raided and the film pirate was subsequently prosecuted under CDPA. He received a fine of £4,000 and ordered to pay costs of £1,100. Without these provisions in the CDPA, no action would have been possible under these circumstances.

5.9 Trading Standards Officers now also have a statutory duty to enforce S198 of the CDPA which creates a criminal offence for supplying illicit recordings. This accounts for circumstances when the whole or a substantial part of a performance is recorded for a purpose other than for personal use, without the consent of the performer. This type of activity is commonly known as “bootlegging”.

## **6.0 Background Information**

6.1 Any person with any questions may contact N S Bilon, 1<sup>st</sup> Floor, 249 Willesden Lane, NW2 5JH; Telephone - 020 8937 5500.

Nagendar Bilon  
**Director of Trading Standards**