

# Lobbying Government for Change

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I come to this conference as both a 'lobbyist' – trying to influence Government policy from a user's point of view as part of my role at MPLC, which represents film and tv rights in 33 countries around the world to collect for post-theatrical public performance viewing, - and from an 'insiders' point of view. I was a UK member of Parliament from 2010 to 2015 and was Prime Minister David Cameron's personal IP adviser – the first time this role was ever created in the 400 year history of parliament.

So I know how difficult it is to get Governments to listen and change legislation, and what it takes to get an idea from just being an idea to actually a law. I am mindful that everyone here today is from many different countries and my experience is from a Western perspective for sure, but I hope also has some synergy with all jurisdictions.

When I joined Parliament, the UK was on a slippery slope going the wrong direction on IP Rights protection. We had the Hargreaves report conceding ground to those shouting 'open resource' loudly and just about no-one in parliament was standing up for the Rights Holders. Most legislators didn't even know what IP stood for. 9 years later, the UK is arguably No 1 in the world for IP protection and I would argue a shining light whose model others are, or should be, following. Indeed, in 2015 each one of the three main parties – Conservative, Labour and the Liberal Democrats – ALL had IP specifically in their election manifestos which was the first time ever that this had happened. For my party, the Conservatives, it was the first time it was in their manifesto at all for which I am going to claim full credit. The parties had gone from almost indifference, or at worst influenced by the Open Rights Group, to solidly backing IP protection measures in basically 5 short years. And now no one in parliament is arguing that IP protection should be relaxed – the debate is all about how we further strengthen creative rights.

So how did this transformation happen?

No matter how good your argument, the bottom line is that most legislators (like the public) find intellectual property:

- confusing;
- not a vote winner with their constituents;
- of less importance than the economy or the health service; and
- lets be honest, boring.

Long, well-drafted briefing papers with perfect economic justifications sent to MPs, in the UK anyway, will swiftly be filed (unread) in the trash folder.

Neither is hosting talks and receptions a particularly effective tool – those who already know the arguments will turn up, but the 95% of others will go to something else. This is true even if you have celebrities attending (although having a photoshoot as part of any outreach can be effective – MPs love PR-friendly media pictures).

Of course, both of those things need to be done and can help.

However, the big breakthrough is to make your lobbying personal.

Legislators have more than one eye on the next election and will usually be much more receptive if the subject on which you are lobbying is something that can help them to get re-elected. Yet here is the dilemma – intellectual property is not a vote winner. For this reason, lobbyists need to develop innovative ways to get their message across. These might include taking Parliamentarians or advisors on visits to schools, colleges or universities that teach creative subjects, plus any type of related business in target constituencies (especially those with strong brand reputations). These are time consuming to arrange and cannot really be carried out by individual companies, so they should be effected via an association organisation. The performance of such organisations is down to their membership pushing for results – everyone here today should be in touch with their own trade associations to see what they are doing with legislators on a personal basis (meetings in parliament do not really count – it must be in the constituency and directly relevant to the legislator).

And this is not just my view. I met with the most high ranking civil servant at the Intellectual Property office in London a few weeks ago to get their direct input as well – and they said the same. They are not influenced by hundreds of letters all saying the same thing, they become much more interested when its personal.

For my part, when I was in parliament, I made it personal by setting up the competitions Rock the House and Film the House ([www.filmthehouse.com](http://www.filmthehouse.com)) – which have gone on to be the most successful competitions ever in the history of Parliament. They directly link creatives with their elected representatives, demonstrating that IP protection and promotion is important culturally and economically to every constituency. It is a grass-roots mechanism that forces MPs to engage with IP policy. Creative, fun and engaging solutions such as these are an example of how to engage on a personal basis with legislators, without relying on dry charts and numbers.

But of course its more complicated than just making it personal. You have to choose your battles – what do you really want to change?

Imagine that you are fortunate enough to get a private audience with the UK prime minister. He is running between meetings with just a few minutes to spare and he asks you the seemingly easy and obvious question: “What do we need to do in relation to intellectual property?” This actually happened to me with David Cameron.

Here is your one opportunity to make important recommendations directly to someone who can make a difference. Most readers will be involved in the world of intellectual property and will daily come across improvements or suggestions that could further protect rights holders. So pause here a minute and daydream about your answer. Try to ensure that your response can be explained in under four minutes. It should also be practical and acceptable to the public – many of whom have no idea what ‘IP’ stands for.

### *PAUSE*

As you might imagine, the answer is not as simple as it seems.

I have put this question dozens of times to many different audiences and I am sorry to say that most responses are wide of the mark with regard to what is required. Answers such as ‘strengthen rights’ or ‘tighten legislation’ may be conceptually correct, but the prime minister does not want concepts – he wants concrete suggestions which can be enacted. That is why he is asking you, as the expert with the facts. He wants to instruct his civil servants – who will know very little about intellectual property – **on specifics, not ethereal messages of hope.**

What is worse, rights holders groups still do not campaign on the big-ticket issues, preferring to argue about nuances such as the private copying exception or the equalisation of offline and online penalties. While these points are important, they miss the big picture.

For me, it is about two groups, which all IP legislation needs to be aimed at.

The first are those that make large amounts of money out of illegal websites – whether they are responsible for online streaming or selling physical counterfeits. Stop the money to those sites and we are well on the way to winning the battle against piracy. This is a great ‘cause’ to campaign on since it is not aimed at users, its aimed at the those most members of the public have little sympathy for.

The second group is more difficult and requires a good deal of caution and tact – it’s the group of people in society that create the demand for online illegal services. They need to stop deliberately buying illegal products on the Internet or face the consequences. And this is often where the trouble starts in terms of wanting government to change.

*Education, carrot, stick*

The prime minister made it clear in our chat that the last thing he wanted to do was to target the errant teenager who downloads a few tracks, preferring to exhaust other options first. While stopping the errant teenager doing illegal activity is important, we need to get to a position where such behaviour is not only socially unacceptable, but also impossible.

So in my answer, I suggested that we need to beat piracy by using a three-step solution: **education, carrot, stick**.

The first step is **education**. We have lost the hearts of many of the public, who have become used to downloading copyrighted works for free and buying counterfeit goods. Most do not see the harm they are doing – we are all familiar with arguments such as, “I wouldn’t have bought it anyway” and “They are rich and can afford it.” I am sure I do not need to set out here why those arguments are wrong, but we very much need to win over the general population.

The next step is the **carrot**. The industry – especially the music industry – was very slow to adapt to and embrace new marketing models. Streaming, for example, was seen as evil and to be resisted. However, this is a mistake. When I speak to university students about why they download from illegal sites, their answer is simple: it is easy and user friendly. Legal streaming websites for music and film have recently become much simpler, faster and have much wider licensed content than their illegal counterparts. But less than a decade ago, legal streaming sites was rarely an option. Rights holders ignore consumer preference at their peril – consumers have a way of telling suppliers how they want product delivered and at what value.

Once we have won the argument as to how counterfeiting ruins long-term products and we have the right business models in place, then of course there needs to be an effective **stick** – especially when dealing with large-scale criminality.

How we get through these stages – and what the government can do about it – was my task. To that end, I produced four reports for the prime minister, containing 36 recommendations.

#### *Four reports*

##### *Search engines*

I started with the highest profile of the first-step solutions – search engines – and produced my first report in May 2014: “Search Engines and Piracy” ([www.olswang.com/media/48165108/search\\_engines\\_and\\_piracy\\_mike\\_weatherley\\_mp.pdf](http://www.olswang.com/media/48165108/search_engines_and_piracy_mike_weatherley_mp.pdf)). Search engines are often cited as the evil opposition. After all, many say that they destroyed the US Stop Online Piracy Act by mobilising the population and holding the Internet to ransom. The argument goes that without search engines directing users to illegal sites, the world would be a better place. Certainly, I agree

that the search ranking of illegal sites should be demoted (actually I would go further and say that if a court has ruled that a site is illegal, it should not appear anywhere on a search engine's results), and that search engines could do much more about this; but let us not forget that search engines are not actually the enemy when it comes to stealing intellectual property. They do not create or consume the illegal content. They could do more and certainly they should not make money from any illegal activity; but there is so much more to beating counterfeiting and piracy than simply scapegoating search engines. Incidentally, Google went up against Congress on the Stop Online Piracy Act primarily because there had been no dialogue – the ensuing debacle is an apt reminder of why stakeholders should always be consulted before legislators attempt to draft or implement new legislation.

I am delighted to report that as a result of my report, the UK government started holding regular bi-monthly meetings with stakeholders and search engine companies. In addition, and as a direct result of my lobbying, a commitment was added to the manifesto to insist that illegal sites be de-ranked (and, as I said earlier, the first time that intellectual property has ever found its way into a Conservative manifesto).

### *Finance*

Following this first report, I turned my attention to what I consider to be the most effective and promising weapon in our armoury – stopping the money flowing to the criminals. My report “Follow the Money: Financial Options to Assist in the Battle Against On-line Piracy”

([www.olswang.com/media/48204227/follow\\_the\\_money\\_financial\\_options\\_to\\_assist\\_in\\_the\\_battle\\_against\\_online\\_ip\\_piracy.pdf](http://www.olswang.com/media/48204227/follow_the_money_financial_options_to_assist_in_the_battle_against_online_ip_piracy.pdf)) made a number of recommendations, focusing on the following three main components:

- a voluntary scheme to stop brand owners from advertising on illegal sites;
- a request that we legislate to tackle the remaining rouses sites (typically porn and casino sites); and
- efforts to target payment providers – if you cannot pay for goods on an illegal site, that takes sales away directly.

The Police Intellectual Property Crime Unit (PIPCU) has estimated that as much as 90% of piracy could be stopped if governments could stop the flow of money to the criminals. I am pleased to say that a voluntary code is now in place and the UK Intellectual Property Office is constantly reviewing what the next stages could be.

### *Education*

For my third report, “Copyright Education and Awareness” ([www.mikeweatherley.com/wp-content/uploads/2014/10/11.pdf](http://www.mikeweatherley.com/wp-content/uploads/2014/10/11.pdf)), I focused on the message of education and what the government and stakeholders need to do together. I am pleased to report that a steering group continues to meet regularly, with good proposals coming through.

### *ISPs*

This brings me on to the fourth report – my parting shot as I left Parliament: “Safe Harbour Provisions and On-line Service Providers” ([www.mikeweatherley.com/wp-content/uploads/2015/03/Safe-harbour-provisions-and-online-service-providers-FINAL.pdf](http://www.mikeweatherley.com/wp-content/uploads/2015/03/Safe-harbour-provisions-and-online-service-providers-FINAL.pdf)). During my time as the prime minister’s adviser, I was impressed by how everyone engaged and made helpful suggestions, with the exception of one general group: the ISPs. When representatives of one of the ‘big four’ met with me and declared, with folded arms, that they were not going to help and that we would have to legislate to get them to do anything constructive in the fight against piracy, I felt that it was my duty to issue a report that stirred up the debate around safe harbours. None of the ISPs has commented at all on any of the recommendations, which perfectly illustrates why the report was necessary.

### *A general Point*

And any speech by someone from the UK would not be complete without mentioning PIPCU. Sure the UK had site blocking and other measures, but The Police Intellectual Property Crime Unit is a class act.

Since its launch in the United Kingdom in 2013, PIPCU has arrested hundreds of people, suspended thousands and thousands of domain names and diverted literally many millions of visits from copyright-infringing sites to the PIPCU domain suspension site.

In addition, it has coordinated the reduction of 73% of UK top companies’ advertising spending on piracy sites, set up a list of infringing websites and hacked hundreds of suspected pirate sites, replacing advertising banners with anti-piracy messages.

Every country should have a PIPCU. When I met with the IPO recently, they said that if I got a chance, promoting the concept of a PIPCU would be their top suggestion.

And on that, I congratulate Taiwan for having the Criminal Investigation Brigade, formally known as the IPR police under the Special Second Police Corps, headquartered in Taipei with offices elsewhere, who work closely with the creative industries focusing solely on intellectual property rights enforcement.

And I recognise that now many countries have a very effective ‘Internet Watch List’ to identify sites making money from illegal and shutting them down. This is all excellent news and a great first step.

I will end with four pleas – things that every single person here today can do. And I do mean every single person here. Not the person sitting next to you, but actually you yourself directly.

First, while many companies – be that commercial or legal or whatever - are actively involved with their trade associations, an alarming number are not. So please, get involved and spend some money so that your trade representatives can really engage with legislators and associated supporting organisations such as PIPCU. As the IPO said to me, acting collectively through a recognised reputable association carries a lot of weight.

Second, please look at your own in-house rules and procedures. You may think that this is obvious, but a huge number of brand companies advertise on illegal sites. They might hide behind the argument that they employ a digital ad agency which subcontracts and thus cannot determine where all the ads go. This is nonsense. You are in control and not a single ad of yours should ever appear on any website that facilitates counterfeiting or piracy in any way.

Thirdly – be sure about what you are lobbying for. Clipping at the edges for some minor amendment is of course important, but don't forget the big picture. Imagine you are talking to the Prime Minister and what it is that would really help beat the pirates. And try and make your message personal.

And fourthly – get yourself a PIPCU – and support actively the one you have like you do in Taiwan. If you Lobby for only one change or cause, please lobby for that.

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