



Government Affairs & Policy

Current UK Intellectual Property (IP) legislation and regulation generally serves the software industry well. The principles of UK law provide adequate measures that allow owners of creative product to protect their IP and the UK is a world leader in incubating creative ideas that can be brought to market. The UK IP system enables rights holders to grant licenses for reasonable financial returns from creativity.

However, the challenge for the software industry rests principally in two areas – enforcement and deterrent.

Programme objective

Enforcing IP rights, particularly for smaller software developers who have fewer resources and money than their larger competitors, is not easy and if a law cannot be adequately enforced then it has very little reason to exist at all.

The Federation's Parliamentary Lobbying and Policy represents its membership software publisher community, both large and small. Its focus is to both draw attention to the value of a business's IP whilst ensuring adequate enforcement legislation within the UK to deter infringement.

Enforcement, deterrent, accountability: a three pronged approach

Through the Federation's extensive action to support the IP of its members in the software industry, the organisation has identified three key areas of reform that will help enforce, deter and hold to account those who would commit software piracy.

Benefits:

- FAST brand use and association
- Intellectual property awareness and appreciation
- Call to action on law makers to deliver appropriate enforcement, deterrent and accountability
- Media and PR involvement

1. Enforcement: Representative Rights, implement Directive 2004/48/EC

Enacting Article 4 of Directive 2004/48/EC of the European Parliament and of the Council on the Enforcement of Intellectual Property Rights would provide the Federation with representative rights to sue as the rights holder. A number of problems currently exist:

- A lack of representative rights leaves some infringers with the sense that they can ignore the enforcement activities of the Federation.
- Direct contact between software houses and their customers increases the pressure on IP rights holders to negotiate a settlement rather than to insist on their full IP rights being upheld.
- Many software companies do not wish to appear as aggressors to their customers.

Implementing this Directive would put organisations such as the Federation on a stronger legal footing, and the government would reduce the need for rights holders personally to resort to the courts as it would be more likely that resolution could be reached at an earlier stage. This would reduce the associated legal costs from protracted disputes connected with IP rights enforcement – a particularly important issue for SME developers.

2. Deterrent: The risk of incurring deterrent damages needs to be genuine

The impact of infringement on software IP rights holders needs to be better reflected in the damages paid by the infringer. Currently, infringement cases result in the infringer having to only pay the cost of the licences, or less in a settlement if they have failed to purchase in first instance. This leads to organisations taking a relaxed “lets pay if we have to” attitude to software licensing as there is no risk for non-compliance, effectively rewarding software piracy! Worse, the current situation creates a financial cost saving incentive to turn a blind eye to use of unlicensed software.

We are calling for a genuine change in the damages regime in order to make ‘use’ infringement less attractive by having effective and dissuasive damages for software copyright infringement.

3. Accountability: There needs to be greater personal responsibility in a company

A lot of software IP infringement within businesses happens by turning a ‘blind eye’ when software copying takes place. There is a lack of personal accountability for even the largest cases of infringement – which can run into six figure costs in un-purchased licenses.

By updating the copyright law, the corporate veil may be pierced and directors and/or management may be proceeded against if duly responsible and are neglectful for in that role, closing the lack of knowledge loophole. Company directors would need to be pro active in ensuring that their companies did not commit offences.

Membership Benefits

The Federation’s aim is to reduce the level of software piracy so that our members can prosper and be confident that their IP is being safeguarded. The Federation has a well established reputation gained over 30 years experience with access to expertise through our network of contacts in protecting software IP brands.

As well as representing many large multi-national software publishers FAST also has a strong UK based membership of smaller entrepreneurial software developers who are building innovative new applications and tools for the global industry. FAST represents the whole software community and strives on behalf of the software industry as a whole to value and protect IP.

On behalf of lobbying members FAST will issue quarterly newsletters that will be sent to a core influential lobbying community within Parliamentary and influential circles highlighting the legislative changes requested, plus encouraging meetings and support from areas of influence. We communicate with many different Government departments, including: IPO, MOJ, BIS DCMS, Home Office, The Treasury and advisory bodies such as the Civil Justice Council.

As a result of continued and successful lobbying on behalf of the industry, the Federation strives to retain trusted adviser status to Government, MPs and the civil service to ensure that software intellectual property matters are heard and acted upon.

Lobbying membership will also include focused lobbying meeting with backbench MPs and influential civil servants.

Membership deliverables:

- Opportunity to contribute to the development of Federation policy discussions and influence its engagement with government.
- An annual parliamentary reception giving members the opportunity to meet with parliamentarians to discuss their concerns directly.
- Contribute to the parliamentary bulletin to get their story in front of MPs
- Opportunity to meet with their constituency MP and local trading standards to discuss specific local issues.
- Benefit from media relations activity promoting the activity of FAST members in the lobby programme.