

GOWERS REVIEW OF INTELLECTUAL PROPERTY COVER SHEET FOR RESPONSES

Contact details of respondent	
Name	Lavinia Carey
Job Title (if applicable)	Director General
Organisation (if applicable)	British Video Association
Postal address	167 Great Portland Street London W1W 5PE
Telephone number	020 7436 0041
Email address	Lavinia@bva.org.uk

Please indicate below which issues are covered by your response. Not all issues will be relevant to all respondents – please feel free to skip questions that are not relevant to you.

General Questions covered:	
How IP is awarded	
How IP is used	
How IP is licensed and exchanged	
How IP is challenged and enforced	X

Specific Issues covered:	
Current term of protection on sound recordings and performers' rights	
Copyright exceptions – fair use and fair dealing	
Copyright – digital rights management	
Copyright – orphan works	
Copyright – licensing of public performances	
Copyright – designated archive status	
Patents – utility patents	
Pharmaceutical Supplementary Protection Certificates (SPCs)	
Trade Marks – international issues	
Designs – registered designs and unregistered design rights	
Legal sanctions on IP infringement	
Parallel Imports / International Exhaustion	
Coherence between competition policy and IP policy	

Have you raised any other issues in your response?

Y / N

Details of accompanying documents (Please continue on additional sheet if necessary)
Please read this in conjunction with submissions from the Film Distributors Association , the Motion Picture Association and the Alliance Against IP Theft

- Please **TICK BOX** if you **DO NOT** want your response posted on the Gowers Review website.

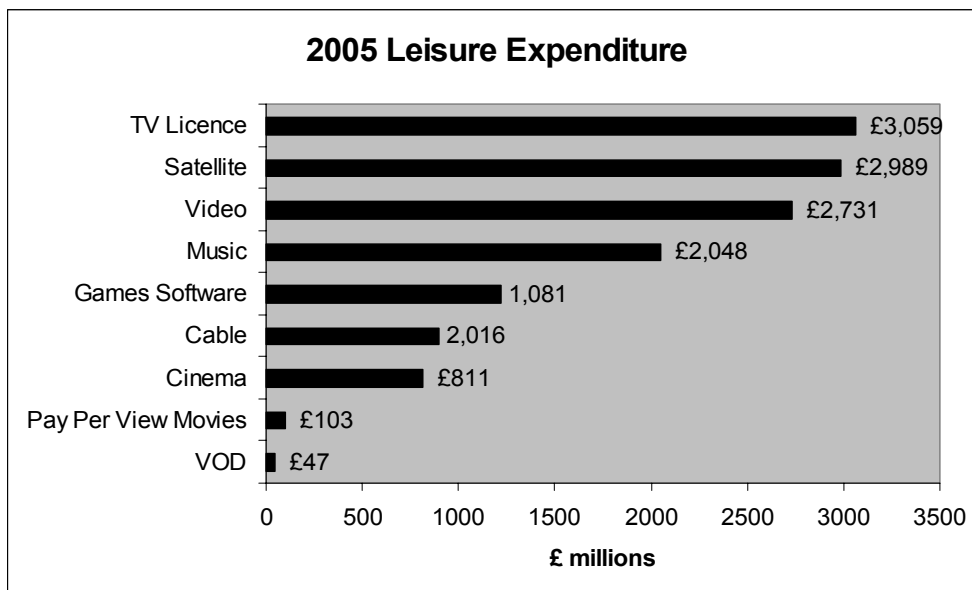


Introduction

The British Video Association (BVA) is a trade body representing the publishers of pre-recorded entertainment in the home and on the move. Founded in 1980, its membership accounts for 90% of an almost £3 billion market at retail value and is made up of distributors from major film studios, independents, television companies to specialist labels producing content covering sport, fitness, music, live comedy, documentaries, special interest and pre-school children's titles.

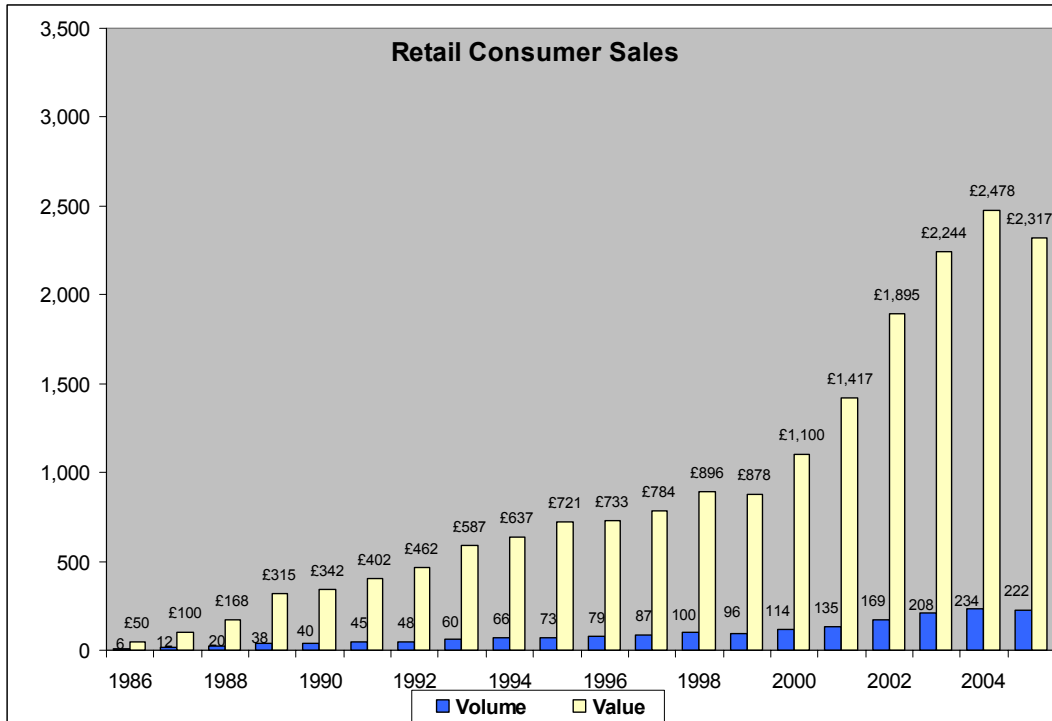
Background

The video industry has been a key component in the shift over the last 25 years from a supply push market in cultural, educational and entertainment content to a market that has become demand lead and driven by consumer choice.



Source: BVA Yearbook 2006 (PPV includes satellite and cable)

Without copyright laws and the means to enforce IP rights, it is debateable whether the market would have developed with this wide range of services available to consumers. By the late 1980s video home entertainment became the most popular means by which films were viewed in Britain and the arrival of DVD in 1998 boosted its popularity still further, making it the most profitable (over 50% of the total) form of exploitation for a film producer by which to earn a return on investment. The product benefits and keen high street competition which lead to falling high street prices for DVDs meant that by the early 2000s this home technology had become the most rapidly adopted, fastest growing consumer electronics platform ever.

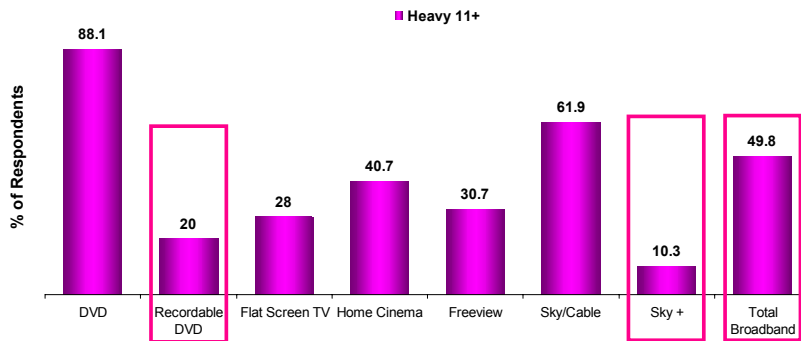


Source: BVA Yearbook 2006 (volume in millions)

At the same time new technology and the development of DRMs have lead to other means of delivering film and other audio-visual content offered to the public, improving choice, reducing prices through competition and increasing the opportunities for creators to reach their audiences. By 2005 the market for DVDs had reached maturity and the continued growth in sales is no longer outstripping the fall in sales of VHS cassettes, as consumers find other ways of satisfying their demand for audio-visual content.

Heavy DVD buyers – core consumers - are already likely to own technologies that will further reduce DVD purchasing over time

% of all Individuals who claimed to own hardware



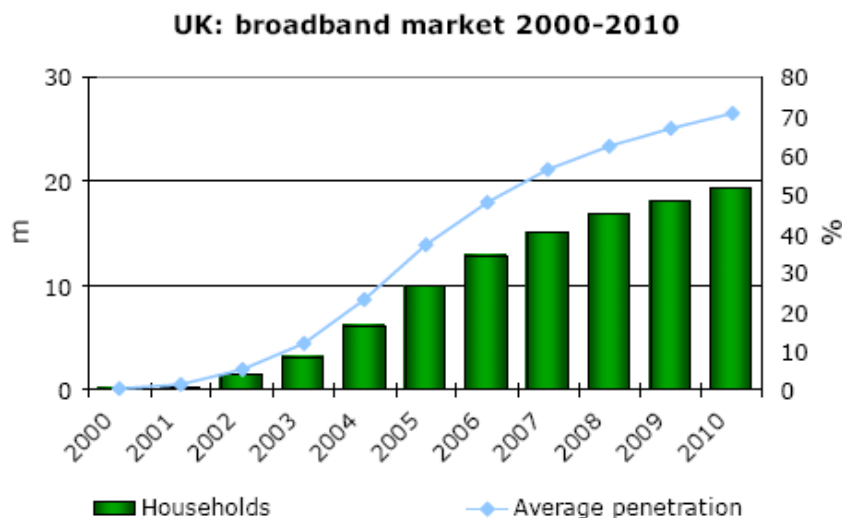
Potential threats to continued DVD purchasing

Q7 - % Individuals Already Own – HML DVD over 52 weeks
 tnsWorldpanel © Worldpanel™ Entertainment, TNS 2006

Source: BVA annual tracking study

The rapid pace of technological change is presenting video distributors with an ever increasing range of platforms on which to offer their products to the market to suit all kinds of ages and tastes, preference in access, price points and time-scale. 2006 will see the launch of new, high definition video discs providing even greater quality picture, sound, bonus material and interactivity, together with links to on-line added value content.

Public participation in the media, thanks to the expansion of high speed broadband, also means that users now control the schedule and will soon be up-loading as much as they are downloading. The world wide web and new content delivery services will encourage content creation for small, niche audiences as well as easing access to large scale blockbuster titles.



Source: Screen Digest

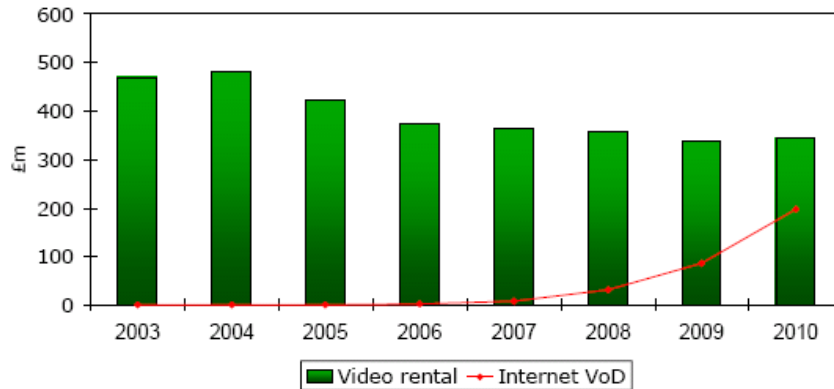
Successful new services have already been introduced within the audiovisual sector, for example:

- Home Choice’s VoD packages, a TV-over-DSL service based in London and South East England
- Lovefilm.com, which launched the UK’s first downloading service in December 2005. It began by offering movies on a rental basis, ie they have 24 hours to view. From April 2006 Lovefilm.com has introduced an electronic sales service whereby, included in the price of a DVD sent by post, consumers get a download version for a PC, a download version for a portable device and a back up to download to a disc.

The proliferation of multimedia-enabled mobile and personal devices also allows downloading, playback and streaming of video content. It is therefore anticipated that during 2006 additional on-line offerings will be launched as “ultra-fast” broadband connections are launched by competing telecommunications companies.

The entertainment industry is experimenting rapidly with business models and advanced technologies to get revenue-generating content to the consumer. Issues of importance include content ownership and copyright protection, content monetization, digital rights management, the creation of markets for new content such as short movies, push-based information-clips, trailers and highlights.

UK: Internet VoD spending v. video rental



Source: Screen Digest

By 2010 Screen Digest anticipates that the rental and retail VoD market in the UK will be worth £197 million, equating to 7% of total DVD spending.

So it is timely that the British government should be consulting wholesale on the role of intellectual property through the Gowers Review. While developing copyright laws in Britain allowed for the mass media to grow and flourish over the decades, so they have in recent years facilitated increasing public access to works which has improved choice, stimulated new business models to develop and enabled the creative economy to thrive.

General Questions

The British Video Association endorses the submissions made under the general section of the Call For Evidence by the Motion Picture Association, the Film Distributors Association and the Alliance Against IP Theft, of which the BVA is a founding member.

How IP is challenged and enforced

A great deal of consumer research has been carried out in the area of copyright theft, to understand better its impact on the audio-visual industries and the attitudes of the public.

	Total loss to industry	Loss due to physical piracy	Private copy/ illicit copies received	Loss to on-line copyright theft
Total loss to industry	£719 m	£284 m	£40 m/ £307 m	£88 m
Loss to box office	£302 m	£105 m	£15 m/ £150 m	£32 m
Loss to video retail market	£330 m	£146 m	£21 m/ £118 m	£45 m
Loss to video rental market	£80 m	£28 m	£4 m/ £39 m	£9 m
Loss to Pay Per View TV	£8 m	£5 m	£1 m/ £0 m	£2 m

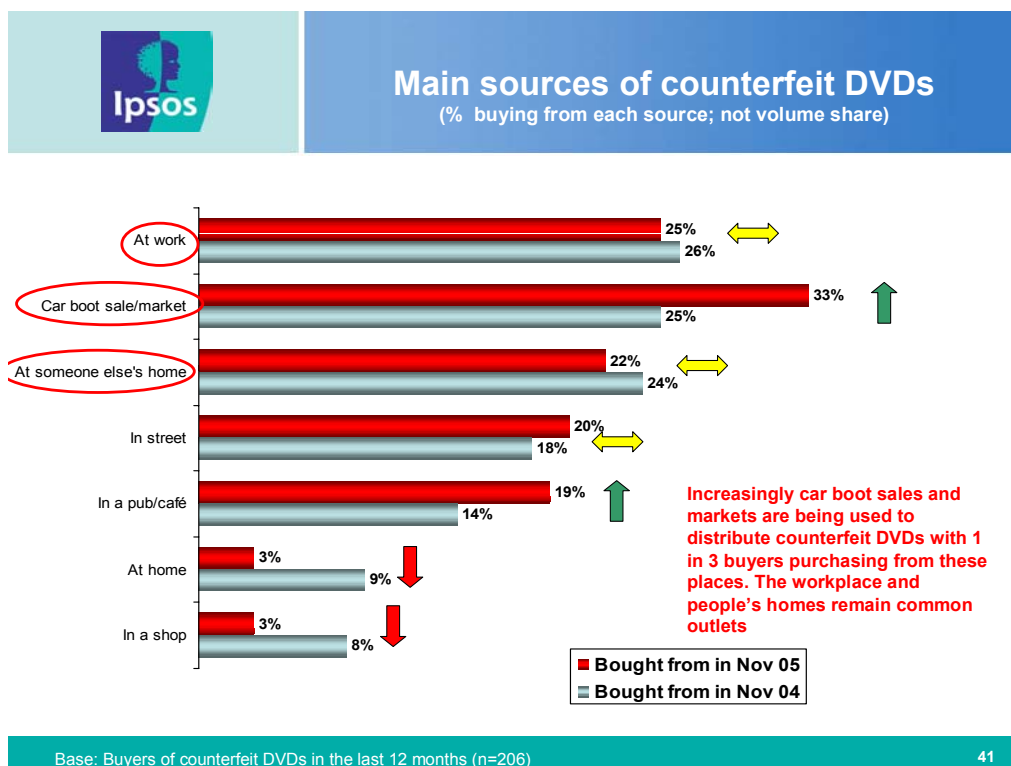
Source: IPSOS November 2005 from BVA tracking study

The British Video Association advocates a four pronged strategy to tackling copyright theft:

1. **Increased industry security** at all points in the lifecycle of a work. A range of measures from pre- and post-production to a print protocol in theatrical distribution, enforcement against camcording in cinemas, technical protection measures for content, overt and covert measures on packaged media have been introduced.
2. **Legislative reform** where anomalies in IP law create difficulties for copyright owners to exercise their rights and improve the deterrents and remedies for IP theft.
3. **Greater enforcement**, not only by our industry anti-piracy body in which investment has increased resources, but also by public enforcement agencies.
4. **Public communications** programme to increase awareness of the harm done by copyright theft, respect for intellectual property and the value of creative industries.

There is a fifth element to combating IP theft, beyond the remit of a trade association to deliver, and that is the development of new products and services that will meet the changing consumer demand for audio-visual content. The BVA's role is to support distributors by commissioning consumer research to help inform its members' strategic planning process.

In an effort to reduce consumer demand for counterfeit and pirated DVDs the BVA launched a joint initiative in 2004 with its retail partners to establish the Industry Trust for IP Awareness Ltd, whose objective is to improve the public's understanding of the harm done by copyright theft. Our communications strategy to date has focused on risks to consumers and their communities of buying fakes, while also targeting specific hotspots of supply, for example by warning company directors (in 2005) and managers of licensed premises (in 2006) of the risks to them of allowing fakes to be sold in the workplace, pubs and clubs.



Source: Presentation to BVA in January 2006

Our campaigns are positively changing public attitudes, as indicated by the latest results from our consumer tracking study carried out by NOP. By December 2005:

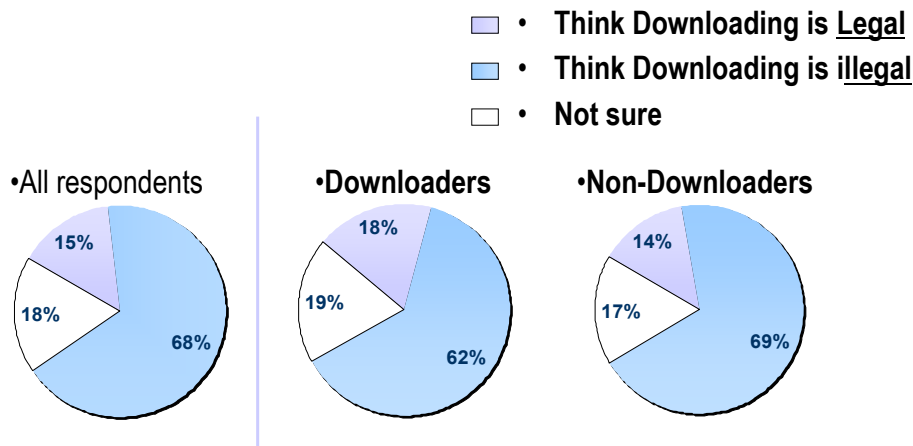
- Consumer awareness of core message (piracy is a crime) among the important group of 15-24s stood at 60%, compared with 56% in December 2004
- 82% adults believe piracy is a crime in December 05, up from 75% in June 05
- 27% population said they'd never buy a pirated DVD versus 19% in December 2004
- 38% had seen specific campaign advertisements in December 05 compared with 29% in December 04

However, consumer feedback in the IPSOS study shows that while fewer people (9% of GB population by December 2005) are buying a greater number of fake DVDs, more people (6% of GB population) are downloading more illicit audio-visual content and making a higher number of unauthorised copies, the impact of which costs the audio-visual industry more in cannibalized sales than the 77.75 million fake DVDs sold in 2005.

This is a trickier area of consumer behaviour to influence, due to the private nature of the activity and the absence of a clear link with local or organised crime. The resulting harm is very difficult to communicate to an audience that believes that making unauthorised copies for themselves and others, either by file-sharing or ripping the encryption on a DVD, is anything other than an acceptable way round the system to get something for nothing.

People know downloading is illegal

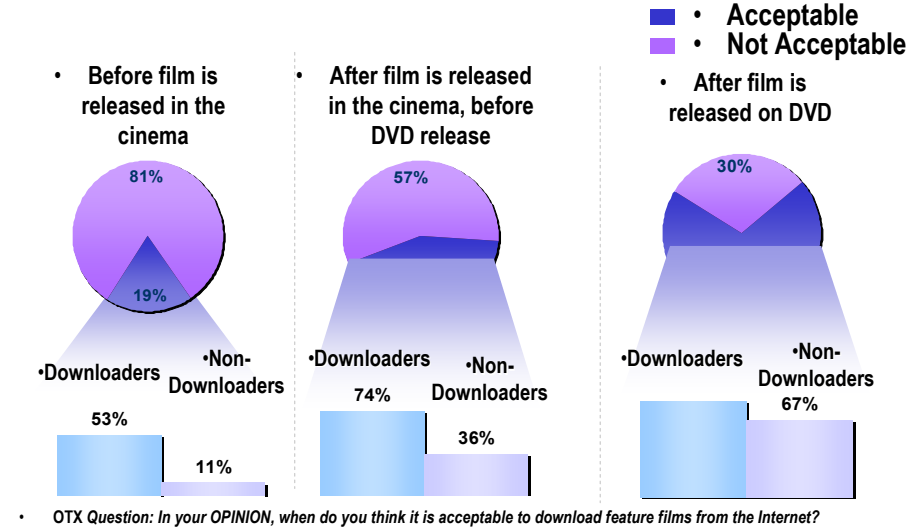
Including those who engage in it...



- OTX Question: In your OPINION, do you think it is legal to download feature films from the Internet that are coming to the cinema, still in the cinema, or not yet available on home video or DVD?

Source: OTX presentation January 2006

Downloading is seen as more socially acceptable as a film ages



Source: OTX presentation January 2006

The Industry Trust for IP Awareness is therefore in discussion with other sectors of the audio-visual industry to expand its reach and fighting fund so that it is able to address this difficulty and create greater respect for intellectual property and greater transparency on how copyright and DRMs work to the benefit of both creators and consumers.

This submission does not detail the harm caused to the community by IP theft or the examples of how serious and organised crime is involved as these can be found in the submission from the Alliance Against IP Theft. For answers to specific questions on DRMs, copyright exceptions and legal sanctions please refer to the Alliance and MPA submission.

Our recommendations for specific legislative solutions to the problems experienced in the video industry with enforcement of IP rights can also be found within the Alliance Against IP Theft submission. In summary these are:

Are there specific problems with enforcing the main different forms of IP: patents, copyright, trade marks, and designs?

- Funding for trading standards to be increased and targeted in a more co-ordinated manner
- Trading standards to be given the ability to prosecute market organisers who persistently allow the sale of fake goods at their markets
- Section 107A of the CDPA Act to be enacted giving trading standards the power and duty to enforce copyright legislation
- Company directors be made more liable for IP theft in the workplace, through non-regulatory means initially, but via Statute if necessary
- Presumptions of copyright ownership in criminal matters to apply
- Courts to allow witness anonymity in civil search and seizure applications

Are there barriers to challenging infringement and enforcing your IP rights on grounds of cost? What drives these costs?

- Role of the supervising solicitor be removed
- Burden of proof be reversed in cases of copyright infringement
- Sampling of seized infringing product be allowed in criminal cases in Scotland

Are you aware of any inconsistencies or inadequacies in the way the law applies legal sanctions to infringement of different forms of IP or to different circumstances?

- System of damages reviewed and amended to allow the awarding of additional damages in cases of IP infringement
- Sentencing Guidelines Council be charged with examining sentencing and publish minimum sentencing guidelines
- Sections 107A and 198A of the CPDA be enacted
- Extend the offence of circumventing technical protection measures to computer programme

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