



Private prosecutions: The quiet battle against illegal streaming

By **Oliver Mosley**, barrister at QEB Hollis Whiteman

The world of private prosecutions has taken a bit of a beating. Once hailed as an effective alternative to state prosecutions, they are now painted by some as a symbol of what happens when a resource-drained state retreats from its responsibility to prosecute crime and protect victims. What is said to be left is a dangerous and irresponsible route, where private prosecutors bludgeon opponents into submission rather than acting as responsible 'ministers of justice'.

The Post Office scandal may well be one of the biggest miscarriages of justice in British legal history: hundreds of innocent postmasters ("SPMs") privately prosecuted by their own employer for fraud and theft over almost a decade, based on the data generated by the flawed IT system, Horizon. If Post Office had been a responsible prosecutor, the flaws with Horizon would have been discerned earlier. Instead, there were "failures of investigation and disclosure in all the 'Horizon cases' across a period of 12-13 years", per the stark judgement of the Court of Appeal.

The State, uninfluenced by such personal considerations, would never hide major flaws with their own evidence; it would be disclosed to the defence and a true verdict would have prevailed. Or so the theory goes.

The Post Office judgment has triggered a wave of negative publicity. There have been calls for new rules and the Government has said they will end the way private prosecutors can often recover their costs from public funds, even if there is an acquittal, said to motivate 'high volume, low success' cases. This can create a meat grinder of criminal allegations where defendants are put through years of stress by a private prosecutor, only to be acquitted at the end.

The RSPCA has been another recent casualty. They recently announced plans to end nearly two centuries of privately prosecuting alleged animal abusers and would instead turn over the responsibility to the CPS. The stated reason was the increasing complexity of animal cases, but they have also come under pressure from MPs who had complained of an over-eagerness by the charity in prosecuting.

They also present a headache for the CPS. Cases brought privately that are contrary to the public interest or that have insufficient evidence are sometimes taken over by the CPS (using their statutory powers) and then

discontinued by them. This can be because the private prosecution is interfering with a different ongoing criminal investigation, or simply when it's vexatious. The need for the CPS to use this 'oversight' power is a messy one, itself at risk of subsequent challenge.

So you may think private prosecutors are in need of some good publicity.

With that in mind, welcome to the world of illicit streaming. A rapidly expanding area of private prosecution work: going after the people who steal content from broadcasters and then re-stream it to a network of subscribers using equipment that can be bought off sites like eBay.

Let's look at a straightforward example. Imagine a person, who we'll call Dave. Dave buys a re-streaming kit for £100-150 and captures content from Sky, BT and Netflix. He then purchases a server which users can pay to access. For £10 per month, subscribers can view "his" content. To Netflix, Dave is one subscriber. But Dave has actually subscribed thousands of people to Netflix's content without them ever knowing, pocketing the profit in the process.

Now imagine Sarah. Sarah doesn't have the technical know-how to set up a system from scratch, so she decides to simply bulk buy the content from Dave, and from the servers of other illicit streamers, and stream it all via her server. Dave might provide Sky, BT and Netflix. But other servers might supply Apple TV, Disney+ and Amazon Prime. So, Sarah's users now have access to all those sites. Sarah is now a re-streamer.

And so the reverberation continues. Servers upon servers all streaming content from each other, like how stolen goods flow from one criminal to another until it's hard to discern where it came from in the first place.

This is intellectual property theft. But it's often said to be victimless. After all,

the only real losers are the media conglomerates. Prosecuting illicit streaming is also difficult, highly technical and resource intensive. The CPS economic crime unit are unlikely to pivot from victim-based crime to protect big business. It would require a major shift in resources, specialist training, and a level of digital infrastructure that the CPS simply don't have.

So the public interest is said to be minimal. But the reality of illicit streaming is dangerous. It can net millions for the people at the top of the tree (the Daves of the world). Illicit streaming cost the European TV industry €3.21bn in 2021, and 17m were estimated to have accessed illicit streams. And there is evidence that some have links to organised crime and are associated with other forms of criminal behaviour.

The exponential rise of illicit streaming can also have casualties. Ensuring IP integrity means production companies can produce high-quality content, pay their taxes, and employ people in 'UK plc', which contains one of the largest creative industries in the world. This may explain why it's becoming a government priority and is seen as a "significant and pressing threat", according to a recent consultation by the UK's Intellectual Property Office.

Ari Alibhai, a barrister at QEB Hollis Whiteman Chambers and a specialist in this field has extensive experience in prosecuting illicit streaming organisations on behalf of major broadcasters and rights' holders. He's fresh off the back of a major IP trial, which concluded with the conviction of six defendants who ran the 'Flawless' streaming site. He says:

The prosecution of Flawless was an extensive nationwide investigation undertaken by the Federation Against Copyright Theft (FACT), the Gwent Police, the West Midlands Police, the Lancashire Constabulary, the Metropolitan Police and the trading standards team from Hammersmith & Fulham, Kensington and Chelsea and Birmingham council. The case was privately prosecuted by the Premier League.

Flawless had customers worldwide and generated receipts in excess of £7.2m. It was run by these defendants in the UK but had 25 paid employees and was

running from 2016. An investigation by FACT was launched in 2017 following complaints made to Crimestoppers: Flawless was found to be streaming over 300 channels including Sky, BT, Virgin and numerous overseas broadcasters like NBC from America, beIN from Qatar, and Sportsnet from Canada.

Search warrants executed at two London addresses found 11 computers, 20 Sky viewing cards, 3 video encoders. It was all being run from a spare bedroom. Further properties were searched around the UK, with computer hardware recovered from all of them.

The investigation found that the service was being advertised via its website and via Facebook. Flawless had 42,000 subscribers being charged £10 per month, plus a network of over 100 'resellers' who collectively had a further 20,000 subscribers. It was estimated that this was the equivalent of 60,000 homes being provided with stolen content.

Part of their 'sell' was that they could broadcast live football on Saturday afternoons when legitimate UK broadcasters were not able to. This is a major selling point for illicit streamers: genuine broadcasters are prevented

from broadcasting live via the Football Association's 'closed period' on Saturday afternoon, designed to protect attendance at local clubs. One of the message threads we accessed from the defendant's phone showed that 80% of Flawless' users were subscribed only to view Premier League matches.

Flawless was also a complex system. It offered video-on-demand, a catch-up service, pay-per-view events, and a sophisticated 'TV guide' modelled on Sky's. The set-up allowed them to copy legitimate satellite/cable broadcasts, legitimate IPTV transmissions, and copies of illegal broadcasts made by other sites.

Flawless were running multiple highly technical systems to circumnavigate broadcasters' security features. One way was how they managed to unscramble broadcast transmissions by taking a legitimate Sky viewing card, hacking and then copying the de-scramble 'control words' from it, and then automatically sending the de-scramble code to the users viewing boxes."

There is little doubt that the illicit streaming market will continue to grow, especially at a time when people are seeing their disposable income

shrink while the cost of subscriptions goes up. We're likely to see an increase in Prosecutions brought against people simply for watching illicitly obtained content: once considered an impossibility.

Netflix's recent crackdown on sharing accounts shows how rights holders and broadcasters are stepping up their fight against piracy, so everyone involved in illegal streaming at every level will need to take notice.

Some private prosecutors may have taken a beating and the threat of regulation looms large. But in the world of illicit streaming, private prosecutions are leading a reputational fightback.

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The trial of the FLAWLESS defendants R v Gould, Gordon, Jolley, Felvus, Brown and Smith concluded on 15 February 2023 at Birmingham Crown Court but is still subject to reporting restrictions.



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