

Why trading standards access to communications data is so important

Local authority trading standards services are tasked with enforcing over 250 pieces of legislation on everything from animal health and underage sales to mass-marketing fraud and metrology.

Enforcement duties are continually evolving and in recent years trading standards teams have been increasingly tasked with detecting and preventing online criminality in the form of intellectual property fraud and the selling of counterfeit and dangerous goods to often unsuspecting consumers.

Evidence confirms criminality on social networking sites (SNS) (specifically on Facebook) is resulting in consumers being sold counterfeit & unsafe goods, illicit tobacco and alcohol. It is also fuelling other criminality with instances of illegal gambling and money lending identified. In addition, targeted pop-up advertisements are causing consumer problems as they often divert visitors to other Facebook accounts or websites and very often the sellers are anonymous throughout the transaction process.

The common misconception

There is a common misconception that local authorities only utilise their access to communications data to investigate small, 'trivial' matters.

On the contrary, the reality is that some local authority services, such as trading standards, require access to communications data to stop criminals from conducting large-scale organised criminal activity which is increasingly being perpetrated online behind the veil of closed SNS accounts.

A particular area of concern for trading standards is the sale of dangerous and counterfeit goods which could cause major harm to UK consumers. Products of concern which are being sold online fall broadly into two categories:

- 1) Items imported from China and the far east which are unlikely to have undergone any safety testing, and
- 2) Items that sellers have made themselves.

A wide range of consumer products are being sold with safety implications: hover boards are of great concern at present as the vast majority of items stopped by the National Trading Standards Safety at Ports Team have been found to be unsafe, but children's clothing and accessories with free running hood cords, and items with various choking and asphyxiation hazards; unsafe electrical chargers; teeth whitening, skin lightening and other cosmetic products, unsafe mattresses and other upholstered furniture; and fireworks are also worryingly being sold in increasing numbers online.

Although the sale of goods via Facebook started on a local level, enforcement officers now find sellers from other local authority areas post items for sale on various 'local' buy and sell sites in that area, local sellers also often post on a county or area wide basis too.

Working with the current legislation

When a trading standards officer investigates a SNS account they are essentially faced with one of two of the following scenarios:

1. Open Account (no privacy settings) – personal name, e.g. Joe Bloggs
 - An officer is required to obtain a directed surveillance authorisation or a CHIS (covert human intelligence source) authorisation under RIPA.
 - Ordinarily these accounts do not pose too much of an issue for the investigating officer as it is normally possible to identify the individual's identity and location.

- A request for telecoms data via NAFN will normally result in basic subscriber information being provided (often fictitious), e.g. Mickey Mouse, Disneyland, UK, and may include a hush mail, Gmail or other email account which are impossible to trace.
2. Closed account (privacy partial/lockdown) – trading name, e.g. ‘designerklobba’
- These accounts can trade freely in whatever criminality they choose.
 - It is normally impossible to identify the trader’s identity or location, as they communicate via personal messaging behind the closed account wall.
 - A request for telecoms data via NAFN will normally result in the same, often fictitious, basic subscriber information.

There has been a trend in recent years for **more and more SNS traders to adopt closed privacy settings** both individual and group accounts, the latter are accounts whereby sellers have to join to be able to buy and sell, these groups can have thousands of members all operating behind the closed account.

Under RIPA, communications data requests to Facebook and other SNS have produced minimal information, and non-compliance with requests cannot be enforced as Facebook, as with other tech giants, are based overseas. Although some sellers can be identified by arranging to meet in person to collect items, this is not practical in many cases, especially as the trend to post items away from the seller’s home continues to grow. Furthermore subscriber information, which local authorities are permitted to obtain under RIPA, is often falsified by the seller and can result in false on non-existent leads. In this scenario, the only certain way to identify the seller is by obtaining and then resolving the seller’s unique IP address.

Without access to communications data, specifically source IP addresses, the local authority services charged with investigating and prosecuting cases of online criminality will be unable to bring illegal online traders to justice and sales of dangerous counterfeit goods on SNS will continue to thrive putting consumers at risk.

We welcome the government’s proposed changes to definitions of communications data under the Investigatory Powers Bill. However, we are calling on the government to clarify local authority powers in relation to communications data access to avoid any confusion on the issue and to ensure local authority services are clear about exactly which powers they are able to utilise to investigate online criminality.

Recent examples of trading standards interventions

The following examples of recent press stories relating to TS provide a flavour of the types of investigations being carried out by local trading standards every day and help to illustrate why local authority access to communications data is so important for investigating these types of cases.

Haul of fake goods leads to investigation (Biggleswade Chronicle, 12/01/15)

The Trading Standards team carried out search warrants at two addresses in Sandy and Shefford last Friday, to stop the supply of counterfeit goods being sold on Facebook selling groups.

Approximately £5000 worth of fake clothing, footwear, handbags and headphones was seized and a formal criminal investigation will now follow.

The Operation was also filmed by the BBC’s Rogue Trader programme.

Warning sounded on fake tobacco products (Northern Scot 02/01/15)

AN ALERT has been sounded over the sale of counterfeit tobacco products in Moray. Trading Standards officers have reported an upsurge in the supply of counterfeit items through sites like Facebook.

Trading standards officers catch men selling counterfeit goods through Facebook (Wales Online, 10/12/14)

Justin Davies, prosecuting at Merthyr Tydfil Crown Court, said White bought hundreds of pounds worth of fake goods and took to the property he shared with Richards at Seventh Avenue in Galon Uchaf before using a friend's Facebook account to sell them.

"Office of Fair Trading issue warning about counterfeit goods on Facebook" (Isle of Man News, 25-02-2014)

The OFT is currently investigating a number of instances of Facebook being used as a medium to sell counterfeit goods. The OFT is also aware of an increasing number of buy/sell groups being set up on Facebook which may be targeted by criminals to sell counterfeit goods in small quantities.

John Peet, Chief Inspector of Trading Standards said:

"It is apparent that most individuals who make use of social media and online marketplaces to sell counterfeit goods are blissfully unaware of the fact that they could be being monitored by enforcement agencies.

Who we are

The Chartered Trading Standards Institute is a professional membership organisation representing trading standards professionals in local authorities, the business and consumer sectors and in central government. We set standards and organise qualifications for the education of members and to improve trading standards practice. We provide information, evidence and policy advice to support national and local stakeholders.

CTSI exists to promote and protect the success of a modern vibrant economy, and to safeguard the health, safety and wellbeing of citizens by empowering consumers, encouraging honest business and targeting rogue traders.