

Copyright and piracy

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The passage of the Digital Economy Bill prior to dissolution highlighted some of the many ongoing issues of copyright

Millions of Britons break copyright law: beauticians and butchers playing the radio in their salons and shops; 'format-shifting' families copying newly purchased CDs onto their iPods; polemicists pasting internet images into their blogs; file-sharing teenagers downloading music videos without paying. It should come as no surprise that some find themselves at the sharp end of a crackdown: demands for the payment of licence fees or royalties, backed up by threats of civil action in the courts. Copyright sustains the creative industries.

PUBLIC PERFORMANCES AND FORMAT SHIFTING

Collecting societies that represent music copyright holders have been keen, some would say too keen, to remind small businesses that *Workers' Playtime* comes at a price. Could they do more to simplify the licensing system with more flexibility over tariffs? There is recognition that some sectors, such as voluntary organisations, have a case for special treatment.

Millions of Britons break copyright law, but much of this is tolerated

Format shifting for private use, while illegal, is largely tolerated in practice. People have been doing it for years; think of copying gramophone records on to blank audio-cassettes, for example. The Government's Intellectual Property Office has been consulting on how a limited exemption for private format shifting might be accommodated. This follows

on from one of many recommendations made by the Gowers review of intellectual property, commissioned by HM Treasury, which reported in December 2006.

ORPHAN WORKS

Gowers also made recommendations on 'orphan works', particularly with respect to introducing a regulated licensing scheme for their use. A work is an orphan if the owner of its copyright cannot be found. Some works, notably photographs on the internet, can sometimes become orphaned too easily for comfort – if you are a photographer hoping to gain reward for the exploitation of your creation. And should you come forward there is no guarantee that the funds set aside on your behalf by a collecting society would be enough. Too many photographers want to set their own price. To the chagrin of museums and other potential users, a licensing scheme proposed in the recent *Digital Economy Bill* was dropped: a victim of the wash-up process at the end of the last Parliament.

Extended licensing schemes and orphan works will not leave the political agenda. The European Commission is looking into this; national copyright laws cannot escape international influences.

INTERNET PIRACY

By far the most controversial clauses of the *Digital Economy Bill* survived wash-up. Measures to tackle online copyright infringement, which were much debated and amended in the House of Lords, made it

INTERNET COPYRIGHT INFRINGEMENT

- Copyright holders estimate that 6.5 million people in the UK illegally file share
- Illegal downloading costs the creative industries around £400 million per year

into the Statute Book. The *Digital Economy Act 2010* provides for a two-stage attack on internet piracy: a system of warning letters to begin with and, if that does not work, "technical measures" to limit, or even suspend, internet access. However, the latter could not be introduced without giving the warning letters, backed up by court action, a chance to work. A code of practice will be drawn up which will include safeguards for users. Could this lead to copyright enforcement that is actually *less* effective than informal arrangements between internet service providers and rights holders?

Both Houses will have the opportunity to vote before internet access suspension measures can be introduced

At least a year will have to pass before the Secretary of State is allowed to introduce secondary legislation to bring in these technical measures. And that would be subject to a 'super-affirmative' level of parliamentary scrutiny – though still no match for the passage of primary legislation. Both Houses of Parliament would have to vote to approve

the regulations *and* there would be a chance for extra scrutiny and amendment beforehand. Another code of practice would apply, giving users extra rights of appeal before their internet access could be limited.

Ofcom would have oversight of the online copyright enforcement system – a significant addition to the responsibilities of a media regulator that has hitherto kept clear of the internet.

Though dubbed by Government a tool of last resort, the anticipation of internet disconnection alarms many. Critics point to the fact that whole households could be punished for the transgressions of a single individual sharing the same internet account. The situation is potentially even more acute in the public wi-fi systems provided by libraries and small businesses such as restaurants and bars. Could small businesses withdraw from wi-fi if new regulations are brought in under the *Digital Economy Act 2010*? Might mere anticipation of any future regulations be enough?

The new Parliament can decide both how far to take forward provisions in the *Digital Economy Act* and whether extended licensing can be introduced in ways that meet both the needs of consumers and rights holders. To placate the latter, it will have to be done in a way that does not make copyright a right to copy.