

Commercial Briefing

Update

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The Digital Economy Bill

The Digital Economy Bill (the "Bill") is currently before the House of Lords undergoing the committee stage readings. At the first of these readings on 6 January 2010, 74 amendments to the Bill were proposed, highlighting the range of opinions that the scope of the first draft of the Bill has attracted.

Purpose of the Bill

The Bill implements aspects of Government policy on digital media set out in the 'Digital Britain' White Paper which was published in June 2009. The key areas covered by the Bill include:

- imposing obligations on internet service providers to reduce online copyright infringement, and allow the Secretary of State to amend copyright legislation to the same end. This obligation covers the governments determination to tackle unlawful file sharing;
- extending the role of Ofcom to include reporting on communications infrastructure and media content;
- allowing the Secretary of State to intervene in internet domain name registration;
- requiring Channel Four to provide public service content on a range of media;
- providing more flexibility over the licensing of Channel 3 and Channel 5 services and allow Ofcom to appoint providers of regional and local news;
- modifying the licensing regime to facilitate switchover

to digital radio; and

- making provision for the regulation of copyright licensing.

Controversy

The element of the Bill which has attracted the most media attention is the measures against unlawful file sharers. Specifically, the proposal to disconnect those found guilty of copyright infringement.

The powers contained in the Bill that are given to rights-owners have also attracted much criticism and have been described as draconian and loosely drafted. Concerns raised include:

- the obligation on Internet Service Providers (ISPs) to provide evidence that a subscriber has illegally downloaded content is not subject to a standard of objectively reasonable belief; and
- ISPs may face potential liability for sending out libelous allegations to subscribers, and for disconnecting people on erroneous evidence.

House of Lords proposed amendments

Proposed amendments to the Bill at the first committee stage reading include:

- the suggestion that copyright holders should have to inform ISP of the value of infringements, in order to set

out how much they believe the infringements have cost them financially; and

- in relation to disconnecting illegal file sharers, an obligation on the Secretary of State to first consider whether it is (a) necessary and proportionate to the goal of protecting and enforcing copyright, and (b) appropriately balances the interest of rights holders and the interests of the public in due process, privacy, freedom of expression and other fundamental human rights.

Comment

The Bill is unusual in that it proposes measures relating to online infringement of copyright, public-service broadcasting and content, network infrastructure and digital safety in one piece of legislation.

While the obligations to be imposed on ISPs aimed at reducing illegal file-sharing, such as the potential suspension of an infringer's internet connection, are welcomed by most copyright owners, there remains much criticism of the sanctions available to rights-owners.

The number of amendments proposed by the Lords at the first committee reading is unsurprising given the controversy that the Bill is causing. It is also likely that the Bill will be much revised in the next four committee readings before it is finally put before the House of Commons later in 2010.

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