



Digital Economy Bill: Clauses 26, 27 and 28

The Digital Economy Bill will soon have its Second Reading in the House of Commons, and the Alliance for Intellectual Property would urge you to support its measures relating to intellectual property as they will benefit creators and designers.

The Alliance for Intellectual Property represents trade associations across the creative, branded and design industries concerned with ensuring that IP rights are valued in the UK and that a legislative regime exists which enables the value and contribution of these rights to be fully realised.

What is the Digital Economy Bill?

The Digital Economy Bill was announced in the Queen's Speech on 18 May 2016, and will include a range of measures to ensure that the UK remains a world leader in the digital economy. The main elements within the Bill are (1) fast broadband and support for consumers, (2) enabling digital infrastructure, (3) protecting intellectual property, (4) Government digital services, and (5) protecting citizens in the digital economy.

Why are we supportive of the Bill?

The Alliance for IP has campaigned for the consequences of intellectual property infringement in the digital world to be brought into line with that in the physical world. We are also supportive of measures to improve protection for design rights. The measures in the Bill relating to improving intellectual property protection are Clauses 26 and 27.

1. Clause 26

The creative industries are a success story for the UK, contributing £84.1 billion to the UK economy. It is critical that businesses, individual creators and rights holders are afforded the best possible protection for their intellectual property – regardless of whether the work itself is available in physical and/or digital form and regardless also of whether consumers' access to the work is via physical or online means.

Clause 26 aims to change an anomaly in law that means that there is currently a disparity between the maximum penalty available for online and physical infringement of copyright.

The anomaly stems from the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002, which increased the maximum imprisonment penalty for physical copyright theft from two to 10 years but was unable to effect the same increase in penalty for online infringement as offences related to that area are subject to the provisions of the European Communities Act 1972, which prevents sentences of more than two years being applied.

In 2014 the Intellectual Property Act also introduced a 10 year maximum penalty for the intentional infringement of a registered design. This leaves copyright as a clear anomaly and far less protected than other types of IP infringement.

Harmonisation of the maximum criminal penalties for online infringement of copyright is not targeting those accessing illicit content (the 'end-users') but would provide the appropriate sanctions necessary for enforcement organisations to act effectively against those running or facilitating the running of sites or services at scale.

Dealing with this anomaly will enable law enforcement organisations and ultimately the judiciary to seek greater sanctions against those serious offenders and allow a greater range of sentencing options, matching those which have been available for physical copyright infringement for some time.

2. Clause 27

Clause 27 sets out to remove the potential excuse that a consumer or potential/actual infringer of a designed product may argue that s/he did not know that a design for that product had been registered. The proposal is to achieve this by extending the ways in which a designer may indicate to consumer/s that his/her design is registered.

Specifically, it says that, in addition to or instead of including the design registration number on the product itself or on the product packaging, the designer may include details of, or a specific link to a website that (at no cost to the visitor) "clearly associates the product with the number of the design".

This will make it easier for designers to update and communicate design registration and other information about the rights associated with products without having to constantly change their packaging and products. It will act also as a deterrent to copying of designs by demonstrating and reminding people that there is design right protection.

It is encouraging to see that Government is including this provision within the draft legislation – and that they are making also significant reductions in the costs for design registration so that it will be easier for designers to protect and enforce the registration of their individual work.

3. *Clause 28*

The Bill repeals Section 73 of the Copyright Design and Patents Act 1988. This currently exempts cable platforms from paying copyright licence fees to retransmit the core public service broadcaster channels. Many Alliance members license content used in broadcasts and Government has already acknowledged that the original justification for Section 73 is no longer applicable. We support the repeal of these provisions as any legislation which reduces the scope of rights for rightsholders must be clearly justified, setting out why the loss of rights is outweighed by the public value, and evidenced.