

## The Digital Economy Bill: an overview

**November 2009**

Below is an overview of the clauses in the first draft of the Digital Economy Bill which are most likely to be of interest to the publishing industry.

### **Peer to peer filesharing**

The Bill introduces two obligations on Internet Service Providers (ISPs) – to send notification letters to their subscribers linked with an alleged on-line copyright infringement, and to record the number of these notifications with which each subscriber is associated and make this data available to rights holders on an anonymised basis on request. This will enable rights holders to apply for a court order to get access to the names and addresses of serious repeat infringers and thus take targeted legal action.

The Bill provides the Secretary of State (SoS) with the power to require Ofcom to implement technical measures (such as bandwidth capping or temporary account suspension) against the most serious infringers if the notice sending does not result in a significant reduction in file-sharing. The SoS reserves the right to put this out to consultation or to request an efficacy report on the likely effectiveness from Ofcom.

Temporary account suspension is only one of several potential technical measures. It would only be introduced after several warnings to subscribers, and in conjunction with a clear route of appeal, including up to a First Tier Tribunal.

Much of the detail around these measures will be established in a Code of Practice, to be drawn up in concert with industry and ISPs over the coming months.

### **Other online copyright infringement**

The Bill includes a 'futureproofing' power that will allow the Secretary of State to amend existing legislation for the purpose of preventing or reducing online copyright infringement, in relation to technological developments that have occurred or are likely to occur. This is in recognition of the fact that the measures outlined above are only suitable for dealing with P2P and other related types of infringement. The draft provision is therefore designed to equip Government with a flexible means of dealing with emerging threats quickly and in a targeted way.

### **Financial penalties**

The Bill will increase the maximum financial penalty that can be imposed on summary conviction for some criminal infringement of copyright and performers' rights from £5,000 to £50,000. This £50,000 fine will apply only to criminal offences, and not to cases such as the majority of file sharing cases, which comprise civil rather than criminal infringement.

## **Orphan works**

The Bill makes provision for the legal use of orphan works by enabling the Secretary of State to make regulations for the authorisation of a licensing body or other person to use or to license the use of orphan works. It also provides for regulations to define orphan works. The Secretary of State will have the power to determine whether a licensing body or other person meets the requirements for authorisation. At present, much of the detail of this clause will be decided through consultation and secondary legislation.

## **Extended collective licensing**

The Bill makes provision for extended collective licensing by enabling the Secretary of State to permit collecting societies, subject to certain safeguards, to assume a mandate to license the use of works and collect fees on behalf of rights holders who have not signed up to that society, subject to the rights holders retaining the ability to opt out of such arrangements. Again, much of the detail of this clause will be decided through consultation and secondary legislation.

The Bill provides for any new powers for collecting societies and other bodies that will be authorised to license the use of orphan works or rights, or set up extended collective licensing schemes to be balanced with safeguards, including codes of practice for collecting societies.

## **Public lending right (PLR)**

PLR payment is a small amount of funding paid directly to authors as recognition for the loan of their books by public libraries. The legislation also allows public libraries to lawfully loan books by exempting them from certain copyright legislation. Currently only printed books can be registered for Public Lending Right (PLR) payment.

The Bill provides for extending the eligibility for PLR to non-print books, extending PLR to lending rights holders in respect of these non-print works and expanding the definition of a 'loan' by a library to include digital media loans. (Non-print formats will include CDs, tapes and downloads of e-books and audiobooks). PLR will only be extended to audiobook and e-book files downloaded within library premises. Digital lending will be restricted to one loan to one user per copy of the work held by the library and will be for a limited period only. Obligations around Digital Rights Management will be defined in secondary legislation.