



# ***Intellectual Property Bill [HL] Committee Stage Report***

**Bill No 102 of 2013-14**

**RESEARCH PAPER 14/14** 7 March 2014

This is a report on the House of Commons Committee stage of the *Intellectual Property Bill [HL]*. It complements Research Paper 13/70 prepared for Commons Second Reading. Report stage and Third Reading are scheduled for 12 March 2014.

The Bill would simplify and clarify design protection and ownership, with the aim of supporting small and medium-sized enterprises. It would introduce new criminal penalties for copying of UK registered designs, facilitate the UK's joining the international Hague Agreement, and provide for a new design opinions service. It would also allow for the creation of a Unified Patent Court and the international sharing of information on patents. In addition, there is provision for a research exemption from freedom of information law and for greater accountability on the part of the Intellectual Property Office.

There were substantive amendments to two clauses relating to qualification for unregistered design right and the new criminal offence of unauthorised copying of a registered design. The latter clause proved the most contentious at Second Reading and in Committee.

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## Research Paper 14/14

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## Summary

This is a report on the House of Commons Committee stage of the *Intellectual Property Bill [HL]*. It complements Research Paper 13/70 prepared for Commons Second Reading. Report stage and Third Reading are scheduled for 12 March 2014.

The Bill would simplify and clarify design protection and ownership, with the aim of supporting small and medium-sized enterprises. It would introduce new criminal penalties for copying of UK registered designs, facilitate the UK's joining the international Hague Agreement, and provide for a new design opinions service. It would also allow for the creation of a Unified Patent Court and the international sharing of information on patents. In addition, there is provision for a research exemption from freedom of information law and for greater accountability on the part of the Intellectual Property Office.

The Public Bill Committee met four times over two days, 28 and 30 January 2014. Many of the issues raised during the Lords stages and at Commons Second Reading surfaced again in Committee. The only substantive amendments were to clauses 3 (qualification for unregistered design right) and 13 (offence of unauthorised copying). Both were moved by the Government.

The clause 3 amendment specifies that a "qualifying person" for the purposes of unregistered design right, when that term refers to a body corporate, must be a business formed under the law of a part of the UK or other qualifying country. This ensures that countries that do not offer reciprocal recognition of design rights cannot benefit from recognition of design rights in the UK.

The clause 13 amendments alter the wording to bring the terminology into line with that used in earlier legislation, to ensure that unintentional copying is not caught by the offence and, the Government argues, to provide a more precise test for the courts. Opposition criticism of the clause at Second Reading, reflected in amendments tabled at Committee stage, centred on two issues: whether criminal sanctions, with a maximum ten years' prison sentence, were appropriate for design infringement and might discourage creativity; and why the offence covered registered but not unregistered designs.

The last Committee sitting was given over to debate on a variety of new clauses proposed (but not moved) by the Opposition. These included proposals to combat "lookalikes" (products designed to look like well-known products), to bring clarity to retransmission rights for public service broadcasters, to equalise the criminal penalties for digital and physical copyright theft, and to appoint an "IP tsar".

## 1 Introduction

The *Intellectual Property Bill [HL]* was introduced into the House of Lords on 9 May 2013, where it received Second Reading on 22 May. It completed its parliamentary stages in the upper house on 30 July and was passed to the Commons, where it received First Reading on 29 August. Second Reading in the Commons was originally scheduled for 9 December 2013. However, business on that day was cleared to make way for tributes to Nelson Mandela and Second Reading was postponed until 20 January 2014.

The Bill makes changes to the law relating to designs, patents and freedom of information.

The [Bill page](#) on the Parliament website provides more information on the Bill's progress as well as links to the printings of the Bill and the Explanatory Notes published to accompany it. At the first Committee sitting, on 28 January, a Programme Motion was agreed allowing for the Bill to be considered over four sittings and this schedule was adhered to. Written evidence was submitted to the Committee from two organisations and two individuals.<sup>1</sup>

Library [Research Paper 13/70](#), prepared for Commons Second Reading, discusses the background to the Bill and provides a clause-by-clause commentary. This paper will not rehearse any of the material contained in the earlier paper but will instead provide summary details of the Commons Second Reading debate and the amendments made or proposed in Committee.

## 2 Second Reading debate

In introducing the Bill, the Minister for Universities and Science, David Willetts, reminded the House that the Bill formed part of the Government's commitment to implement the recommendations of the Hargreaves Review<sup>2</sup> of intellectual property law. Some of the measures proposed by Hargreaves had already been acted on and "there is more to come". He described it as a "small but perfectly formed Bill" that would aid the design industry in particular. He recognised that the introduction of criminal sanctions for infringement of design rights (**clause 13**) was the Bill's most controversial feature and confirmed that discussions were continuing with business about the scope and clarity of the new offence. He also announced that, in response to business concerns that it was "unduly broad", he would be tabling an amendment to **clause 3**, which concerns the qualification criteria for unregistered design rights.<sup>3</sup> Richard Fuller (Conservative) asked the Minister to say how he would measure whether the changes proposed by the Bill were a success. Having observed earlier that the design sector, which accounts for about 2% of UK export earnings, was made up almost exclusively of small and medium-sized enterprises (SMEs), Mr Willetts responded that he would look to "the further growth of innovative SMEs in our design sector".<sup>4</sup>

For the Opposition, Iain Wright (Shadow Minister for Business, Innovation and Skills) cited statistics showing the importance of the creative industries to the UK economy. He questioned why the Government had not made these industries one of their 11 priority sectors. He said that with the increased proportion of intangible assets on their balance sheets, companies needed to pay ever more attention to intellectual property (IP) issues. In this context, the present Bill appeared "brief and flimsy". He suggested that it was "the

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<sup>1</sup> National Union of Journalists, Universities UK, Dr Dimitris Xenos, Jane Lambert (published on the [Committee website](#))

<sup>2</sup> Intellectual Property Office, *Digital opportunity: a review of intellectual property and growth*, May 2011. See also Commons Library Standard Note 6430, *The Hargreaves Review of Intellectual Property*, 17 May 2013.

<sup>3</sup> [HC Deb 20 January 2014 c40](#)

<sup>4</sup> [HC Deb 20 January 2014 cc38, 43](#)

remnants of a much larger piece of legislation”, perhaps of the long-promised Communications Bill.<sup>5</sup>

Like several other Members who spoke after him, Mr Wright questioned whether **clause 13** was appropriate and proportionate. He wondered whether it would act as a sufficient deterrent to those who deliberately infringe designs or whether it would unfairly criminalise those who accidentally or inadvertently copy a design. He was also unclear why, as provided for by the Bill, registered designs should be subject to criminal sanctions but unregistered designs should not.<sup>6</sup> His speech also made reference to **clause 3** as drafted, which he found inequitable in that it appeared to extend the qualification of unregistered design rights to the functional designs of companies incorporated in countries that do not offer reciprocal protection for UK functional designs. (This point was expected to prove contentious in Committee; in the event, the Government brought forward amendments of its own.)<sup>7</sup>

Pete Wishart (SNP spokesman on culture and sport) expressed disappointment that the Bill had been introduced initially in the Lords, arguing that a matter as important to the economy as IP legislation should be scrutinised first by elected Members. He made a similar point about the accountability to Parliament of the Government Minister responsible for IP (Viscount Younger of Leckie), who is a member of the House of Lords rather than an MP.<sup>8</sup> Like several other speakers in the debate, he welcomed **clause 21**, which will require the Secretary of State to report on the activities of the Intellectual Property Office (IPO) and how it has supported innovation and growth in the UK, but he insisted that any such measure must be “quantified”.<sup>9</sup> Helen Goodman (Shadow Minister for Culture, Media and Sport) called for reform of the IPO, on the grounds that “it does not have an important role at the moment”.<sup>10</sup> Gerry Sutcliffe (Labour, a former minister) was one of several Members calling for the appointment of an “IP tsar” to provide oversight at the strategic level.<sup>11</sup>

In his speech, Mike Weatherley (Conservative), who acts as intellectual property adviser to the Prime Minister, suggested that the Bill was a “missed opportunity” to debate other IP matters, such as Hargreaves’s recommendations on copyright exceptions. As well as calling for an extension of **clause 12** to include unregistered designs, he wanted the Bill to provide for an increase in the maximum penalty for digital copyright theft to 10 years, more effective protection for brands in relation to copycat packaging by competitors, an extension of the reporting requirements of the IPO to include educational activities, and the consistent promotion of the benefits of a robust IP framework.<sup>12</sup>

Winding up the debate, the Minister, David Willetts, repeated the Government’s reasons for taking the view that unregistered designs should not be subject to a criminal sanction – a matter that was debated earlier in the Lords<sup>13</sup> and would be aired again in Committee (see below). Several Members had listed what they saw as omissions from the Bill. In response, the Minister commented: “on this occasion, we have a slim Bill, but there seems to be a fat Bill that Members are trying to impose on us”.<sup>14</sup>

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<sup>5</sup> [HC Deb 20 January 2014 cc44-7](#)

<sup>6</sup> [HC Deb 20 January 2014 cc49-50](#)

<sup>7</sup> See below, p5

<sup>8</sup> [HC Deb 20 January 2014 cc63-4](#)

<sup>9</sup> [HC Deb 20 January 2014 c65](#)

<sup>10</sup> [HC Deb 20 January 2014 c76](#)

<sup>11</sup> [HC Deb 20 January 2014 c73](#)

<sup>12</sup> [HC Deb 20 January 2014 cc70-1](#)

<sup>13</sup> HC Library Research Paper 13/70, *Intellectual Property Bill [HL]*, p14

<sup>14</sup> [HC Deb 20 January 2014 c81](#)

### 3 Committee stage

The Public Bill Committee met four times over two days, 28 and 30 January 2014. Many of the issues raised during the Lords stages and at Commons Second Reading surfaced again in Committee. The only substantive amendments were to clauses 3 (qualification for unregistered design right) and 13 (offence of unauthorised copying).

#### 3.1 Unregistered design right

**Clause 1** of the Bill aims to tighten the definition of what would qualify for unregistered design right. As drafted, the protection would not extend to a design if it were “commonplace” in the UK, the European Union or other territories with which the UK has reciprocal arrangements. Territories in the latter category include the Falkland Islands, Gibraltar, Hong King, New Zealand and the Turks and Caicos Islands. For the Opposition, Iain Wright tabled an amendment intended “to clarify whether that ignores the international dimension”. Following the definition of “novelty” used in the *Registered Designs Act 1949*, the amendment proposed that, to be deemed unoriginal, a design must be classed as commonplace in the UK or in the European Economic Area. In response, the Minister, David Willetts, said that, while the amendment would add three countries to the list (Iceland, Liechtenstein and Norway) it would remove countries such as New Zealand, countries which “offer broadly similar protection to UK businesses as the UK offers to them”. The amendment was withdrawn.<sup>15</sup>

Also withdrawn, after a short debate, was another probing amendment which would have required the Secretary of State to undertake a review within a year to ensure that the Government assess how the provisions in the Bill about simplifying and clarifying the current regime are achieving their objectives. The Minister responded that “the last thing we need is an endless series of legal requirements to review various aspects of the legislation, clause by clause, after six or twelve months”.<sup>16</sup>

**Clause 2** changes the default ownership of an unregistered design, so that, in the absence of a contract to the contrary, the designer would be the initial owner of a design, not the person who commissioned it. Pointing to the fact that many SMEs were slow to catch up with changes in legislation, Mr Wright argued for an amendment ensuring that this provision did not take effect until the Act had been in force for at least six months. In reply, the Minister outlined how Government would “work with business to educate them about the change in the law and what it means for them in practice”. Although Mr Wright was “disappointed” with the Government response, he agreed to withdraw the amendment.<sup>17</sup>

A further probing amendment to clause 2 was prompted by the Government consultation on reforming the UK designs legal framework. This had asked whether the *Registered Designs Act 1949* should be amended to incorporate joint ownership provisions similar to those in the *Copyright, Designs and Patents Act 1988*. Most respondents agreed in principle that joint ownership should be recognised. However, there was no agreement as to whether the law needed changing, since design law already contains general provisions on joint ownership. The Opposition amendment sought to bring the two existing Acts into harmony. After consulting specialist IP judges, the Minister said, the Government was not minded to change the law. Mr Willetts also pointed to an obstacle in seeking to amend EU design rights created under an EU regulation, and the amendment was withdrawn.<sup>18</sup>

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<sup>15</sup> [PBC 28 January 2014](#) cc6-8

<sup>16</sup> [PBC 28 January 2014](#) c8

<sup>17</sup> [PBC 28 January 2014](#) cc10-11

<sup>18</sup> [PBC 28 January 2014](#) cc11-13

The law currently specifies certain criteria, based loosely on nationality, that determine which individuals and bodies qualify for unregistered design rights in the UK. **Clause 3**, as drafted, would maintain the principle of qualification but aims to simplify and expand it, so that those who are economically active in the EU and those countries to which qualification has been extended by Order may qualify. In bringing forward Government amendments to this clause, the Minister, David Willetts, said that he was responding to concerns raised by stakeholder and industry groups: “The issue was whether the proposed simplifications tipped the balance too far in favour of businesses where UK designers cannot gain reciprocal protection”.<sup>19</sup> The Minister explained this (technical) amendment in some detail. In essence, he explained,

it ensures that a qualifying person consists of a business, which must be formed under the law of a part of the UK or other qualifying country, and properly ensures that countries that do not offer reciprocal recognition of design rights cannot benefit from recognition of design rights in the UK.<sup>20</sup>

The Opposition had tabled a similar amendment, but Mr Wright recognised that the Government’s amendments went further, “possibly adding a bit more complexity in to the arrangements”, and he withdrew his own.<sup>21</sup>

### 3.2 Registered Community design

**Clause 5** concerns registered Community design right. As the Minister explained to Committee, it

relates to the delicate balance in copyright between the rights holders and potential users and ensures that the owner of a copyright cannot be sued for infringement of design. Under existing law someone permitted to use a registered Community design which is valid in the UK could be sued for infringement of the associated UK copyright, whereas users of the equivalent UK registered design are protected from that possibility. The clause extends the existing exemption to include, alongside UK registered designs, their EU counterparts.<sup>22</sup>

In view of the fact that the vast majority of designs are unregistered, the Opposition put down a probing amendment which sought to extend the clause 5 protection further to cover UK and EU unregistered design. The Minister responded that this would be impracticable, since, unlike registered rights, unregistered rights by definition do not appear on public registers where they can be weighed up and challenged by anyone, including the copyright holder. Mr Wright accepted this point, and after a lengthy (and at times light-hearted) discussion about the anomalous protection offered under copyright and design law respectively to two-dimensional and three-dimensional artefacts, withdrew the amendment.<sup>23</sup>

### 3.3 Registered designs

**Clause 8** would create a power enabling the Hague Agreement on the international registration of industrial design to be brought into UK law by secondary legislation, while retaining the current ability for designers to register in the UK as part of an EU-wide application. Here, as with clause 2, the Opposition tabled an amendment requiring that, within six months of the Act coming into force, the Secretary of State report to both Houses on plans to publicise changes to the law under this provision. In reply, the Minister outlined the education and public information work undertaken by the IPO and affirmed that the

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<sup>19</sup> [PBC 28 January 2014 c14](#)

<sup>20</sup> [PBC 28 January 2014 c16](#)

<sup>21</sup> [PBC 28 January 2014 c15](#)

<sup>22</sup> [PBC 28 January 2014 c18](#)

<sup>23</sup> [PBC 28 January 2014 cc18-21](#)

number of applications made under the Hague provision would be reported via IPO annual reports and parliamentary answers. Thus reassured, Mr Wright withdrew his amendment.<sup>24</sup>

The main thrust of **clause 9** is to allow the public, for the first time, to inspect registered design documents electronically. The existing regime, based on the *Registered Designs Act 1949*, relies on paper documentation. The Opposition tabled a probing amendment which would have omitted subsection (5). This subsection allows the Secretary of State “by rules [to] specify cases or circumstances in which a document kept at the Patent Office in connection with a registered design may not be inspected”. Why, Mr Wright asked, was the Minister seeking such “broad and draconian powers”? Mr Willetts explained that it would be unreasonable for such an extensive new power of access to be unconstrained. In some circumstances, information may be commercially sensitive. A second circumstance is where publication is potentially defamatory. He added that the regulations, when first produced, would be subject to the affirmative procedure and, since the right of electronic inspection is a new one, it needs to be set out in primary legislation. Mr Wright was satisfied with this explanation and withdrew his amendment.<sup>25</sup>

**Clause 10** provides for two alternative routes for appealing against IPO design decisions: to the High Court or to a person appointed by the Lord Chancellor. This brings design into line with the routes of appeal for trade mark disputes. In the earlier consultations, the Government had floated the idea of a third route of appeal, to the Intellectual Property Enterprise Court (IPEC, formerly the patents county court). An Opposition probing amendment sought to restore the IPEC as a third route. The debate exposed a difference in interpretation of the consultation findings and the Government’s approach. Mr Wright’s understanding was that the Government favoured an appeal to either the patents county court [*sic*] or appointed persons. However, in his response Mr Willetts said that, following the consultation and impact assessment, “the message came back pretty clearly [from stakeholders] that they thought the trade mark route was also the right one to use in the design context”. He rejected the IPEC route on the grounds that “it would be an additional complexity for business”, and Mr Wright withdrew the amendment.<sup>26</sup>

**Clause 11** introduces a power for the Secretary of State to provide for a non-binding opinions service for designs. Although initially providing for registered designs only, it could be extended in future to unregistered designs. The Opposition was uncomfortable with one subsection which states that “an opinion given by the registrar under the regulations is not to be treated as a decision of the registrar”. Mr Wright tabled an amendment deleting this subsection in an attempt, as he put it, “to tease from the Minister the precise difference between an opinion and a decision, and the extent to which either term can be subject to an appeal”. Mr Willetts explained that, although an “opinion” is not binding, he was advised that some form of review mechanism was needed in order to ensure that the Bill was “human rights-compliant”.<sup>27</sup> He was also pressed about the secondary legislation to be issued under this clause and undertook to place a document in the Libraries of both Houses outlining what the regulations would contain.<sup>28</sup> The amendment was withdrawn.

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<sup>24</sup> [PBC 28 January 2014](#) cc23-5

<sup>25</sup> [PBC 28 January 2014](#) cc25-7

<sup>26</sup> [PBC 28 January 2014](#) cc27-30

<sup>27</sup> [PBC 28 January 2014](#) cc30-1

<sup>28</sup> [PBC 28 January 2014](#) c32. Deposited as DEP2014-0172, *Part 1. Letter dated 30/01/2014 from David Willetts MP to Iain Wright MP regarding Intellectual Property Bill in Public Bill Committee on 28 January. 2 p., Part 2. Delegated powers: Explanatory note of what secondary regulations will contain. 16 p.*, 28 January 2014.

### 3.4 Unauthorised copying

In Lords proceedings and again at Commons Second Reading, the Bill's most contentious element was **clause 13**. This makes the deliberate copying of a UK or EU registered design a criminal offence and specifies the circumstances under which the offence applies. The Government introduced a number of amendments to this clause in Committee. Industry representatives, the Minister said, had raised concerns with Government that the scope of clause 13 could be interpreted more widely than was intended. The Government therefore proposed to amend the wording to make it clear that the copying must have been *intentional*:

The insertion of the word “intentionally” is not intended to make the sanction more difficult to prove—the clause was always aimed at situations where there was an intention—but to allay the concerns of stakeholders that unconscious copying could be caught by the offence, which is not the purpose of the clause.<sup>29</sup>

An Opposition amendment [27] aimed at a similar tightening of the definition, but used the word “deliberately” rather than “intentionally”. Mr Willetts countered that the Government's chosen wording was preferable because “intention” is more familiar to the courts in terms of framing the mental element of a criminal offence and thus less likely to provoke legal debate.<sup>30</sup> David Lammy, a former minister with responsibility for IP, suggested that by resorting to the well-established legal concept of *mens rea* the bar was being set too high: “we can get into a legal hinterland with a lot of litigation attached”.<sup>31</sup>

In the clause as introduced in the Commons, a person commits an offence when that person “copies a registered design so as to make a product exactly or substantially to that design”. Again, industry had expressed concern that the word “substantially” is not clearly defined in registered design law or criminal IP law. Government amendments sought to reword the clause so that it refers instead to designs “with features that differ only in immaterial details”. This, the Minister said, reflected existing language used in the *Registered Designs Act 1949* and provided a more precise test for the courts.<sup>32</sup>

The Opposition tabled a number of amendments designed to clarify what legislative blocks and thresholds are in place to ensure that inadvertent, unintentional or accidental copying is not punished with prison sentences of up to ten years. Underlying them, Mr Wright explained, was a concern that “there is a risk that criminal sanctions will deter innovation and invention in this country”.<sup>33</sup> One [25] would ensure that the Bill contained a clear and acknowledged difference between copying and infringement. Another [28] stipulated that when a person commits the offence, they do so knowing that, or being reckless as to whether offering, putting on the market, importing, exporting or selling of the product is an infringement of the registered design. In a similar vein, an amendment [29] was proposed to show that it is a defence for a person charged with an offence to reasonably believe that the registered design was not infringed. In response to these, the Minister said that putting in extra tests and requirements would render the Act harder to enforce in the courts. He felt that sufficient safeguards were already built in:

... clause 13 makes it clear that the criminal offence will apply only to businesses that knowingly use a copied design in the course of business activities to profit from that copying. If the business did not know that the design was copied, the offence would not apply. That is how we tackle the Opposition spokesman's concern that there will

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<sup>29</sup> [PBC 30 January 2014 c59](#)

<sup>30</sup> [PBC 30 January 2014 c59](#)

<sup>31</sup> [PBC 30 January 2014 c66](#)

<sup>32</sup> [PBC 30 January 2014 c60](#)

<sup>33</sup> [PBC 30 January 2014 c63](#)

somehow be a chilling effect on innovation—by saying that there has to be an intention.<sup>34</sup>

Three of the Opposition amendments [25, 27 and 28] were pressed to a Division. All three were defeated by 11 votes to 7.<sup>35</sup> The Government amendments were passed without a vote.<sup>36</sup>

Some Committee time was also spent on an Opposition probing amendment which sought to extend criminal sanctions to unregistered designs. Mr Wright said that he could not understand “the Government’s logic on this issue”. If the majority of designs are unregistered and the intention is to protect designers to the fullest extent of the law, why the inconsistency in treatment? His particular concern was that “the small designer with very few resources will be picked on by the large companies”. The Minister, Mr Willetts, replied that it would be hard to extend the offence from registered to unregistered design rights because it is difficult to establish ownership of a design protected under unregistered design rights without the accessibility and certainty of a public register. Citing an example from furniture design, he argued that the amendment was “trying to introduce a criminal sanction in an area in which it is simply not reasonable to expect people to know whether they are infringing a right.” Mr Wright did not consider this an “adequate” explanation and promised to return to the issue at a later stage.<sup>37</sup>

### 3.5 Patents

**Clauses 15 to 19** of the Bill were passed unamended. The debate during Committee focused on two main areas.

Firstly, the provision in **clause 16** allowing the Comptroller-General of Patents, Designs and Trade Marks to revoke a patent on his own initiative if an opinion has been issued against it. Iain Wright expressed concern that the power was too wide and was of the view that the existing system was effective. In response, David Willetts, explained that for a patent to be revoked it would have to be “clearly invalid” and that the main benefit would be to small businesses aiming to enforce patent infringement:

If a small company has an invalid patent that is stopping a big business, that big business can challenge it in the courts. The problem comes when it is the other way around—when the big company has an invalid patent but the small business cannot afford to challenge it in the courts. We envisage that these new powers will largely be used by small businesses for which the legal bill—I cited an example of a £100,000 bill—would be a real barrier.<sup>38</sup>

The second issue debated was the location of the Unitary Patent Court and any divisions. The Court would be established under **clause 19**. Pete Wishart, SNP spokesperson, made the case for Edinburgh and Mr Ian Wright the case for Hartlepool.<sup>39</sup> In response, the Minister assured speakers that there was close engagement between the UK Government and the devolved administrations and that he was committed “to ensuring that all areas of the UK will have access to the court”. He also stated that he had not ruled out a travelling assize model.<sup>40</sup>

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<sup>34</sup> [PBC 30 January 2014](#) cc67-8

<sup>35</sup> [PBC 30 January 2014](#) cc70-1

<sup>36</sup> [PBC 30 January 2014](#) cc70-1, 74-5

<sup>37</sup> [PBC 30 January 2014](#) cc71-4

<sup>38</sup> [PBC 28 January 2014](#) c36

<sup>39</sup> [PBC 28 January 2014](#) c38

<sup>40</sup> [PBC 28 January 2014](#) c40

### 3.6 Freedom of information

An amendment was proposed by Iain Wright at Committee Stage to change the first line of **clause 20** (relating to research exemptions from the *Freedom of Information Act 2000*) from “Information *obtained in the course of, or derived from, a programme of research* is exempt information if...” to “Information *created or obtained in the planning of, course of, or derived from, a programme of research* is exempt information if...”.<sup>41</sup> The clause was welcomed in general and the amendment proposed to ensure planning stages of research work were covered. However, the Minister, David Willetts, felt the amendment was both unnecessary, as there was no evidence this was a problem, and, as the intention of the clause was to match the “Scottish exemption”, it was undesirable to create different regimes:

...The second objection is that we think that there is a good argument for a UK-wide regime and that if we try to make subtle differences between FOI legislation affecting researchers in Scotland and those in the rest of the UK, it might cast doubt on Scottish legislation, which we think meets the purpose. We think that having one framework of FOI legislation works well, which is why, for us, moving towards the Scottish exemption makes sense. Having a subtle difference in drafting between our regime and the Scottish regime, because of a supposed weakness in the Scottish regime, would open up a can of worms in the implementation of FOI legislation. We therefore do not believe that this is necessary.<sup>42</sup>

The amendment was withdrawn but Iain Wright noted that the issue would be returned to at Report stage.

### 3.7 Reporting duty

**Clause 21** would require the Secretary of State to present to Parliament an annual report setting out how, in his or her opinion, the activities of the IPO have supported innovation and economic growth in the UK during that year and how effective the legislation has been in furthering those aims. The clause does not prescribe the content of the report in any more detail. The Opposition tabled several amendments to this clause, designed to put detail on the face of the Bill. One required that the statutory report give consideration to job creation in the IP sector. Another amendment (numbered 35 on the Order Paper) was prompted by the Culture, Media and Sport Committee report on the creative industries.<sup>43</sup> It required that the report include “an assessment of the degree of online copyright infringement and the extent to which identified search engines and other internet services facilitate this end”. Mr Wright illustrated his argument with examples from the music industry of the effects of mass infringement. The dominant market position of Google had already excited much discussion at Second Reading, and this theme was picked up in a new clause, tabled by the Opposition on digital piracy. It would have required the Secretary of State, within three months of the Act coming into force, to set out firm proposals on how the Government planned to take action to ensure that technology companies hinder access to copyright-infringing materials.<sup>44</sup> Gerry Sutcliffe (Labour) and Pete Wishart (SNP) both spoke in support of the original clause and the amendments.<sup>45</sup>

In reply, the Minister said that he had expected a warmer reception for this clause, since “it is the first time that the Government have provided for such an obligation”. He said that he was resistant to adding detail on the face of the Bill, because this is an area of rapid technological

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<sup>41</sup> [PBC 30 January 2014 c75](#)

<sup>42</sup> [PBC 30 January 2014 c77](#)

<sup>43</sup> Culture, Media and Sport Committee, *Supporting the creative economy*, 26 September 2013, HC 674 2013-14, p20

<sup>44</sup> [PBC 28 January 2014 cc43-7](#)

<sup>45</sup> [PBC 28 January 2014 cc47-9](#)

and commercial change: “We do not know what the issues of the greatest controversy and public interest will be in five years’ time”. That said, he gave assurances that the first such report (for 2014) will review online copyright infringement, as well as the IPO’s educational activities.<sup>46</sup> Mr Wright accepted his arguments up to a point, but reiterated that online piracy has been an issue for the last twenty years and is likely to remain so for the next twenty. He therefore pressed for a Division on amendment 35. The amendment was defeated by 10 votes to 7.<sup>47</sup>

### 3.8 Opposition new clauses

The fourth and final sitting of the Committee was devoted to various new clauses (NCs) proposed by the Opposition. All were withdrawn after debate.

NC 1 provided for the appointment of a Director General of Intellectual Property Rights. Mr Wright quoted, as had many Members in earlier proceedings, Lord Younger’s remark that Google had more access to the Prime Minister’s Office than he did as Minister for IP. Mr Wright called for the creation of an “IP tsar” on the model of the US “Intellectual Property Enforcement Co-ordinator”.<sup>48</sup> In reply, Mr Willetts said that he saw no need to create “another paybill for the civil service” when his Department was already reducing its overheads, and he summarised the policy-making roles of key individuals, Departments and the Creative Industries Council.<sup>49</sup>

NC 2 arose from dissatisfaction with the Government’s handling of copyright reform. Mr Wright described how many people were taken by surprise when copyright clauses appeared in (what is now) the *Enterprise and Regulatory Reform Act 2013*. This, and continued uncertainty over when and how new copyright exceptions will be introduced by statutory instrument, suggested a lack of “clear vision” on IP policy.<sup>50</sup> The new clause called on the Government, before introducing secondary legislation, to publish and lay before Parliament a report setting out its long-term plans for the future of IP. The Minister responded by listing the various reviews of IP in recent years, concluding: “We do not need a clause calling for another review. The problem with IP and copyright is not insufficient reviews, but insufficient implementation. We are implementing.”<sup>51</sup>

NC 4 related to section 73 of the *Copyright, Designs and Patents Act 1988*, which allows the immediate retransmission of the main free-to-air public service broadcasters (PSBs) by cable in the area where the original PSB channel was broadcast. The purpose of the section was to allow cable operators to retransmit PSB services without agreement, consent or, at times, payment, and without the risk of infringing copyright. Under the *Communications Act 2003*, PSBs must offer their PSB channels to cable operators. It has been a source of complaint, however, that the PSBs have to pay for the right for their channels to be carried on satellite platforms. The new Opposition clause would have placed an obligation on the Secretary of State to report to Parliament, within six months of the Act coming law, on whether the section 73 provision was still applicable in the current broadcasting landscape. In reply, the Minister drew attention to a Departmental strategy paper published in August 2013, which had set out the Government’s policy objective of achieving “zero net charges”, i.e. for fees for access to the main platforms and for PSBs to cancel each other out.<sup>52</sup> He resisted the timescale set in

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<sup>46</sup> [PBC 28 January 2014](#) cc49-50

<sup>47</sup> [PBC 28 January 2014](#) cc52-4

<sup>48</sup> [PBC 30 January 2014](#) c79

<sup>49</sup> [PBC 30 January 2014](#) c87

<sup>50</sup> [PBC 30 January 2014](#) c89

<sup>51</sup> [PBC 30 January 2014](#) c91

<sup>52</sup> Dept for Culture, Media and Sport, *Connectivity, content and consumers: Britain’s digital platform for growth*, July 2013, p26

the amendment, since there is ongoing litigation in the courts concerning the interpretation of section 73. Judging this response “reasonable”, Mr Wright withdrew his amendment.<sup>53</sup>

NC 5 would have increased the criminal penalties for digital copyright offences, so that they were consistent with the criminal penalties for physical copyright theft. The current maximum for online infringement is two years, that for physical theft ten years. Mr Wright argued that this would harmonise the penalties for trademark, physical copyright, registered design and online copyright theft, which he supposed was in line with the Government’s stated aim of streamlining the IP regime. Mr Willetts responded that the equalisation of penalties had been examined before. It had been one of the proposals in the Gowers review of copyright.<sup>54</sup> However, he noted that the previous government had not been minded to change the sentencing regime, on the grounds that prosecutors can use other offences that do carry a maximum of ten years, such as those under the *Fraud Act 2006*. The present Government would commission a study of the criminal sanctions available for copyright infringement, and Mr Willetts gave an undertaking that its findings would be published before the end of 2014. He highlighted one compromise option: the possibility of reaching an equal penalty for both types of infringement at some point between two and ten years. The new clause was withdrawn.<sup>55</sup>

NC 6 returned to a theme already raised at Second Reading. It would have outlawed the sale of “lookalikes” or “parasitic” packaging – that is, products, websites or physical goods and services designed deliberately to look like well-known branded products. The practice is used by rival products to mislead customers into believing that they are buying another, probably better-known, brand. In introducing the clause, Mr Wright quoted from the Gowers review, which found that UK brands are not well protected and existing legislation inadequate.<sup>56</sup> In response, the Minister said that legal remedies were already available in the form of trademark protection, registered design rights and the common law tort of “passing off”. He added that the Government is currently reviewing the consumer protection regulations to examine whether there is a need to give businesses a private right of action, which they could use as an additional means of protecting themselves against lookalikes. The new clause was withdrawn.<sup>57</sup>

In Committee and at Second Reading, Opposition Members also raised the problem of copycat websites, including those purporting to be Government sites. The Minister recognised their concerns and, after summarising what can be done by local authority trading standards officers and the Advertising Standards Authority, reported that the Cabinet Office had commissioned a cross-Government group to evaluate the problem and seek solutions.<sup>58</sup>

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<sup>53</sup> [PBC 30 January 2014](#) cc94-6

<sup>54</sup> HM Treasury, *Gowers Review of Intellectual Property*, December 2006, p4

<sup>55</sup> [PBC 30 January 2014](#) cc96-8

<sup>56</sup> HM Treasury, *Gowers Review of Intellectual Property*, December 2006, p100

<sup>57</sup> [PBC 30 January 2014](#) cc99-105

<sup>58</sup> [PBC 30 January 2014](#) c103

## **Appendix 1 – Membership of the Committee**

*Chairs:* Dai Havard, Andrew Turner

Gordon Birtwistle (*Burnley*) (LD)  
Ben Bradshaw (*Exeter*) (Lab)  
Stephen Doughty (*Cardiff South and Penarth*) (Lab/Co-op)  
Jim Dowd (*Lewisham West and Penge*) (Lab)  
Sam Gyimah (*Lord Commissioner of Her Majesty's Treasury*)  
Duncan Hames (*Chippenham*) (LD)  
David Lammy (*Tottenham*) (Lab)  
Jonathan Lord (*Woking*) (Con)  
Karen Lumley (*Redditch*) (Con)  
Andy McDonald (*Middlesbrough*) (Lab)  
Neil Parish (*Tiverton and Honiton*) (Con)  
Mark Pawsey (*Rugby*) (Con)  
Gerry Sutcliffe (*Bradford South*) (Lab)  
Paul Uppal (*Wolverhampton South West*) (Con)  
Mike Weatherley (*Hove*) (Con)  
David Willetts (*Minister for Universities and Science*)  
Pete Wishart (*Perth and North Perthshire*) (SNP)  
Iain Wright (*Hartlepool*) (Lab)  
Nadhim Zahawi (*Stratford-on-Avon*) (Con)

Georgina Holmes-Skelton, *Committee Clerk*