



Digital Economy Bill: amendments

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Author: Grahame Danby
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This brief note provides some background to amendments that have been tabled in relation to the *Digital Economy Bill*, Bill 89 2009-10.

A government amendment to leave out **clause 43** (extension and regulation of licensing of copyright and performers' rights) reflects the fact that the Opposition spokesman (Jeremy Hunt) stated in second reading that he could not support this clause. It has been controversial particularly among photographers fearful that their work could become "orphaned" whereby the copyright owner (usually the photographer) would remain unidentified and unrewarded. **Schedule 2** which is linked to the clause would similarly be removed by a government amendment. A Liberal Democrat amendment would merely amend the clause to give explicit protection to photographs.

An amendment¹ moved by the Secretary of State (Ben Bradshaw) and the Liberal Democrat spokesman (Don Foster) would leave out **clause 18**. This clause has a controversial history: it replaced what was probably an even more controversial clause (then "clause 17") which would have given the Secretary of State (limited) powers to amend copyright legislation by order. Clause 18 as it stands would allow copyright owners to apply to a court to require internet service providers to block access to websites associated with copyright infringement. The clause was introduced in the Lords report stage by the Liberal Democrats. In its place the Government now proposes a new clause (NC1) that would merely give the Secretary of State powers to introduce (circumscribed) regulations making broadly similar provisions at a later date – subject to certain criteria and enhanced parliamentary scrutiny (NC2). While the new clauses are likely to be controversial it is notable that they will have cross-party support. Such is the magnitude of the concerns in the creative industries which benefit from copyright protection.

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¹ Amendment 4, towards the end of the amendment papers

Clause 18 and its proposed replacements are targeting in particular websites that host copyright infringing material (some have suggested this could capture established brands like youtube and wikileaks). **Clauses 4-17** also deal with online copyright infringement of this kind but have as their primary target copyright infringement brought about using file-sharing techniques. The Government, with broad support from the Opposition, does not propose substantial amendments to these. These clauses have been a particular focus of concern among internet user groups who have been emailing MPs. Such groups have focused on the importance of the internet as a creative tool and arena for free expression and their champions, including Tom Watson MP, tend to criticise what they perceive as an overreliance on outmoded models of copyright enforcement at the expense of the encouragement of new business models for rewarding creative work. New clause 3, which only rehearses an objective of clauses 4-17, is a measured expression of this.

A series of amendments have been tabled by Tom Watson, John Grogan and David Drew aimed at further circumscribing these copyright infringement provisions. In particular, many of the amendments specifically target online copyright infringement using peer-to-peer filesharing methods (as distinct from accessing publicly available website material which might nonetheless be subject to copyright). It should be noted amendments passed in the House of Lords have already added to the warning system for alleged offenders, made the appeal process more user-friendly and delayed (potentially indefinitely but in any case for at least a year) consideration of the introduction of technical measures to limit internet access.

Internet disconnection – the ultimate technical sanction – has been a signal focus of opposition. Such technical measures could only be introduced after further parliamentary scrutiny – but only via the affirmative procedure for secondary legislation. Amendment 25 (by Tom Watson, John Grogan and David Drew) would replace this by a super-affirmative procedure. The Liberal Democrats have also tabled amendments (16 and 17) to this effect.

Other government amendments acknowledge the Opposition's stated hostility: amendment 1 would remove clause 1 (general duties of Ofcom) and amendment 5 would remove clause 29 (appointed providers of regional and local news).