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# **Digital Intellectual Property Rights The State of Ever-adapting Copyright Protection and Corresponding Issues: The Case in the United Kingdom**

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I am going to use this time today to talk about our experience in the UK, specifically what we see as **the drivers for change** to copyright protection online, **what we are doing** in response to those drivers and what are **the challenges that we face** in doing so.

- Government's aim for the IP system is to aid **entrepreneurism, economic growth and social & commercial innovation.**
- This requires a balance between protecting those who have invested time and money in content creation, and allowing others room to innovate.

- Opportunities arising from technology
  - Digitisation of (legacy) media
  - Access anywhere at anytime
  - Legitimate sharing of material
- Challenges arising from technology
  - Copying is free and easy
  - Unlawful sharing is easy
  - Competition with 'free' is hard



- Digitisation of legacy media
  - Google Books
  - Europeana
- Access anywhere at anytime
  - Spotify
  - Streaming services
- Legitimate copying/sharing or re-use of material
  - Mash-ups/user generated content
  - E-learning tools



## **Digitisation of legacy media**

- **Google Books**
  - Waiting for US legal decision
  - Discussions with UK publishers
- **Orphan works – EU measure**
  - Encouraging interests to explore solutions
  - Attempted domestic legislation during DEB.

## **Access anywhere at anytime**

- Cross Border Licensing – EU Measure



## **Legitimate copying/sharing or re-use of material**

- Mash-ups/user generated content
  - Hargreaves' review of IP and Growth looking at 'fair use'.
- E-learning tools
  - Gowers recommendations (on hold til after Hargreaves' review)



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- Copying is free and easy
  - Digital to digital
  - Perfect quality
- Unlawful sharing is easy
  - P2P
  - File locker services (cyberlockers)
- Competition with 'free' is hard
  - New legitimate services need room to establish market share

# What are we doing about unlawful digital copying?

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- Digital Economy Act 2010
- Anti Counterfeiting and Trade Agreement (ACTA)
- Bi-lateral discussions
- Facilitating meetings between ISPs and rights holders
  
- ..but also improving economic evidence base.

# What are we doing about unlawful digital copying?

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## Summary

The Act includes provisions relating to;

- the UK's communications infrastructure,
- public service broadcasting,
- **online infringement of copyright,**
- and security and safety online and in video games.

## Why?

- Rights holders estimate that around 7 million people regularly file-share unlawfully in the UK, and that online infringement costs around £400 million a year.
- Understood to be impeding development of a successful, varied and competitive digital content market.
- The people doing it can only be identified by matching an IP address to an internet account. This requires a court order – a slow and expensive process, controversial and highly unpopular.



The Act aims to help rightsholders tackle online infringement of copyright by;

- placing obligations on Internet Service Providers to work with rights holders and, if necessary, to take technical measures against infringing subscribers.
- It also provides a reserve power for the Secretary of State to introduce Regulations for rights holders to seek a court injunction to prevent access to specified online locations for the prevention of online copyright infringement;

- The online infringement of copyright provisions of the Act will require secondary legislation before they can be implemented.
- Work is underway on the supporting legislation with an aim to bringing the provisions into effect in a couple of months time.





## **What do the provisions mean in detail?**

- Copyright owners are currently able to go online, look for material to which they hold the copyright and identify unauthorised sources for that material. They can then seek to download a copy of that material and in doing so capture information about the source including the IP address along with a date and time stamp.
- However, copyright owners do not have the ability to match this information to the broadband subscriber to whom that IP address was allocated at that precise time. This information is only held by the subscriber's ISP.



## **What do the provisions mean in detail?**

- The Act provides that, if alleged infringements are reported to an ISP by a copyright owner, the ISP must then inform the subscriber that the account appears to have been used to infringe copyright.
- These notification letters are intended to be educational in the first instance and direct the consumer towards legal sources of content, include information about subscriber appeals and the grounds on which they may be made, and provide other information. The notifications will also explain how the customer can secure their wi-fi connection.

## What do the provisions mean in detail?

- If a particular subscriber receives a certain number of notification letters they will then be put on a serious infringers list (held by the ISP). This list may then be made available to copyright owners following a Court Order.
- This will allow legal action (civil) to be targeted at only the most serious infringers.

## Further measures?

- It is anticipated that a system of notifications backed up by targeted legal action will be effective in reducing the levels of casual infringement significantly.
- If it later appears (after a minimum of 12 months) that something further is needed, then the Secretary of State has a reserved power to consult on the introduction of ‘technical measures’.
- Measures may include bandwidth capping, port blocking, traffic shaping or potentially (temporary) account suspension.
- Any measures taken will have to be ‘proportionate’.

## Implementation

- New Government committed to implementing online infringement measures.
- Digital Economy Act contains high level obligations and powers – detail to be provided by Code.
- Ofcom consulted on Code:
  - Proposes applying obligations to ISPs with more than 400,000 subscribers – the biggest 7
  - Proposes not applying obligations to mobile ISPs
  - Looking at position of community Wi-Fi (e.g. libraries)
  - Appeals process important, both in being a robust, accessible resort for subscribers and being affordable and proportionate



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# Website blocking?

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- The Copyright Designs and Patents Act 1988 (CDPA) already includes s97A which allows copyright owners to seek injunctive relief against ISPs. This provision has not yet been used (though case in progress), with copyright owners asking for more clearly targeted provisions.
- Clause 17 of The Digital Economy Act therefore includes a reserve power to introduce website blocking injunctions (available from the courts) in cases where the website is/or is likely to be used for infringing copyright.
- This power would require secondary legislation before it could come into effect.

## What accompanies the enforcement measures?

- Work continues on supporting legislation to bring in the notification system.
- Copyright owners are encouraged to make material available in an attractive manner (price and convenience)
- Education of consumers continues from copyright owner initiatives, as well as government led work (IPO outreach work, youGov website etc).



- Heavy lobbying from certain creative sectors
- Very rapid use of blogging and campaign websites
- Lots of Ministerial correspondence
- Lots of parliamentary debate
- Difficulty in communicating real effect of legislation (the emotional argument often wins the day)
- Complex interplay of UK and EU law.

...and problems continue with Judicial Review.

- The Digital Economy Act:  
[http://www.opsi.gov.uk/acts/acts2010/ukpga\\_20100024\\_en\\_1](http://www.opsi.gov.uk/acts/acts2010/ukpga_20100024_en_1)
- Digital Britain Website:  
<http://interactive.bis.gov.uk/digitalbritain/>
- IPO Website:  
<http://www.ipo.gov.uk>