

Clarifying the Digital Economy Bill

The Guild is a member of the Creators' Rights Alliance and, through them we are addressing some issues relating to Copyright that could seriously impact upon our members.

The Digital Economy Bill, as presented to Parliament, would give Ministers very wide powers to amend the basic law on creators' rights – the Copyright, Design and Patents Act 1988 (CDPA) – without further Parliamentary debate, by writing 'Statutory Instruments' that are 'laid before Parliament' but cannot be amended.

The two explicit provisions in the Bill that cause *most* concern among CRA members would allow Ministers to write rules:

- setting out how they will authorise collecting societies *or others* to issue licenses for the use of 'orphaned works' - those whose creators cannot be identified; and
- setting out how they will authorize collecting societies to issue 'extended collective licenses'.

Creators' Rights Alliance member organisations are raising the following concerns, with a view to assisting Parliamentarians with drafting amendments to the Bill.

1) Moral rights

It is a logical and legal absurdity to talk of licensing works whose authors cannot be identified, while there are still significant groups of authors who do not have the right to be identified.

We need to ensure that creators can defend their work from inappropriate use and distortion; that works are clearly attributed; and that further works are not orphaned. There is a strong public interest in this guarantee of the authenticity of works.

Addressing this concern would require amendment of CDPA to limit the exceptions to moral rights in 1988 S. 79, S. 81, and S. 205C.

2) Metadata

'Metadata' is data about data – in an art exhibition the labels are metadata about the art ('Sarah Lucas, 1990: chair, kipper'). In a digital world creators need not only the 'moral right' to be identified in the first place, but also to ensure that all uses of a creator's work shall be accompanied by comprehensive data, always including the full credits of the original creator / originator (see moral rights) and further data to ensure that the work is traceable and attributed, and (the actual substance of the amendment) that there are effective sanctions against removal of metadata.

We need this to ensure that illegitimate use can be detected; and that payment and recourse to law can be sought. Maintenance and protection of such metadata must also be a condition of any proposals for Extended Collective Licensing.

CRA member organisations are working on a new section of the CDPA (which would be numbered 296ZH) to ensure that metadata identifying the creator or originator is protected.

3) Representative bodies

The proposals are slack when it comes to describing what kind of organisation may license orphaned works or negotiate extended collective licenses.

Content aggregators must not be allowed to self-license: if that were to happen it would seriously distort the market.

CRA members are working on an amendment clarifying that only organisations that demonstrably represent the rights and interests of creators should be granted authority to do these things.

4) Enforcement

At present, individual creators find it next to impossible to get justice when their work is used without permission. They can sue only for the amount it would have cost to license the work if the user had asked nicely; but the courts frown on hearing cases over such relatively small amounts.

One NUJ member sued for £200, got booted from Small Claims Court to County Court, where she won – but had to pay £4,000 costs a penalty for bothering the court with such a small case.

CRA member organisations are working on ways to improve this.

Then there is the section of the Digital Economy Bill that would set up a system in which Internet users who distribute copyright works would get two warnings and could then have their net connection throttled. We are also seeking clarification that this – which assumes that the ‘rightsowner’ is a corporation with deep pockets – does not prevent individual creators taking action against online use of our work.

There is also concern about amendments already put in to the Bill by Lord Lucas which would make ‘rights owners’ responsible for all fees and court costs arising from such ‘throttling’ – including the costs of a user who appealed and lost.

5) Diligent search

The Bill says nothing about what rules would be used to decide whether a user had carried out a 'diligent search' for a work's creators before applying to license it as an 'orphan work'. CRA members seek clearer provisions on this.

6) Who should benefit from 'Extended Collective Licensing'?

UK law already provides something like this: when a TV programme is re-transmitted on satellite television, a single fee is paid to a collecting society under a 'collective license' that it has negotiated with the satellite operator. The 'collective license' is 'extended' by law to cover creators who do not belong to that collecting society – hence 'extended collective license'. These non-members can still claim their share of the cash from the collecting society.

The question that could do with clarification is: what bodies will or should be negotiating and benefiting from such licenses? Should they be restricted, for example, to genuinely public libraries – rather than Google-libraries? We know that the BBC is interested in this as a way of putting its programme archive online without clearing rights with the individual creators.

7) Powers to amend more widely

Various organisations, including some as powerful as Google, are objecting to Section 17 of the Bill, which would set up the 'throttling' scheme, giving Ministers powers to make much wider changes to the CDPA. CRA member organisations are also concerned about powers that might, depending on interpretation, be even wider, elsewhere in the Bill (for example in the Section 116(D)2(b) that would be inserted into the CDPA by Section 42 of the Bill).

These activities are supported by the following organisations:

- [ALCS](#) (Authors' Licensing and Collecting Society)
- [ABSW](#) (Association of British Science Writers)
- [AOI](#) (Association of Illustrators)
- [BAPLA](#) (British Association of Picture Libraries and Agencies)
- [CIOJ](#) (Chartered Institute of Journalists)
- [DGGB](#) (Directors Guild of Great Britain)
- [GMG](#) (The Garden Media Guild)
- [ISM](#) (Incorporated Society of Musicians)
- [NUJ](#) (National Union of Journalists)
- [PCAM](#) (Producers and Composers of Applied Music)
- [OWPG](#) (Outdoor Writers and Photographers Guild)
- [SOA](#) (Society of Authors)
- [WGGB](#) (Writers Guild of Great Britain)