

RADIOCENTRE BRIEFING ON THE ENTERPRISE AND REGULATORY REFORM BILL

Introduction

The Government has proposed a wide ranging Bill to create the right conditions for economic recovery by strengthening the business environment, reducing regulatory burdens and improving business and consumer confidence.

The copyright section of the Bill largely attempts to legislate towards a new copyright framework to follow on from the findings of the [Hargreaves Review](#).

The Bill has undergone public scrutiny in both the Commons and the Lords with final stages expected before the end of February 2013.

The key points for RadioCentre and users of copyrighted material are centred on the new clauses relating to copyright which are covered in in Part 6 of the draft Bill. (Schedule 21 Clauses 69 to 80).

Summary of the key points

The Bill only relates in part to the mechanics of licensing copyright. Of most relevance are the sections that create a backstop power requiring collecting societies to adopt codes of conduct.

The Bill also contains several key points which will be of wide interest to the broadcast industries:

- It will provide the power to enable exceptions to copyright and to rights in performances – which will allow private copying, parody and exceptions to current law set out in the Copyright, Designs & Patents Act 1988.
- It will allow licensing schemes to be introduced for the commercial and non-commercial use of ‘orphan’ copyright works where rights holders can’t be identified.
- It will also allow for the authorisation of collecting societies to operate voluntary extended collecting licensing (ECL) schemes within the UK for the mass licencing of works.
- It will provide the power to implement into UK law the EU Directive 2011/77/EU on the term of protection for sound recordings. This will allow the term of protection for sound recordings to be extended from 50 to 70 years.

Clause 68: The regulation of copyright collecting societies

• Background

The main sections of interest for the radio sector and are likely to be where the Bill proposes to increase the governance and accountability of collecting societies.

The UK, Ireland and Poland are the only three EU countries that do not already have statutory regulation on this market to challenge the operating behaviour of such organisations. Although the Copyright Tribunal exists in the UK to resolve disputes it only has the power to investigate matters of scheme pricing if an agreement cannot be reached, rather than regulating the behaviour of bodies.

There are in the region of 15 copyright licensing bodies in the UK operating in an unregulated monopolistic market. For the commercial radio sector PRS for Music (PRS) and Phonographic Performance Ltd (PPL) are the bodies which grant licences for the usage of music in broadcast.

Schedule 21 the Enterprise and Regulatory Reform Bill introduces a backstop power to enable the application of a statutory code of conduct for collecting societies. This power would be used in the event of failure by a collecting society to implement or adhere to a voluntary code which encompasses certain minimum standards.

RadioCentre is supportive of this clause to give the Secretary of State the power to intervene if a collecting society fails to implement minimum standards through a voluntary code and implement a statutory code to a society.

In addition each collecting society will appoint and fund an independent and impartial person to arbitrate on disputes and review their performance against their code, known as a Code Reviewer. An Ombudsman will then be the final arbiter on complaints between the collecting society and its members or licensees in relation to minimum standards of their code(s) of practice. It should be noted that the Ombudsman service will not include matters that are within the jurisdiction of the Copyright Tribunal.

Although there is a clear ambition to make collecting societies subject to further scrutiny and regulation as they operate in an unregulated market, at this stage RadioCentre accepts that self- regulation represents progress towards greater accountability for collecting societies.

Progress

All UK collecting societies have now published their 'Codes of Practice' based on the [British Copyright Council Codes](#).

There are a number of working groups facilitated by the Intellectual Property Office (IPO) with a group of licensees, copyright representatives and collecting societies who are seeking to finalise the practical arrangements of how the minimum standards will be implemented and reviewed.

This IPO working group will also appoint an independent Code Reviewer to investigate complaints arising from any failures to adhere to the minimum codes.

We welcome the Ombudsman scheme which copyright societies have all agreed to sign up to and feel that this strengthens the self-regulatory basis of the codes. However we are keen to see evidence that these powers work in practice to investigate and resolve complaints.

We expect the IPO working groups to continue to work towards delivering the practical guidance for the industry once the Bill receives Royal Assent in June and expect the publication of statutory instruments by 2014.

Bill timetable:

- Commons First Reading - 23 May (occurred)
- Second Reading - 11 June 2012 (occurred)
- Committee Stage - 19, 21, 26, 28 June, 3, 5, 10, 12, 17 July (occurred)
- Report Stage and remaining stages - 16, 17 October (occurred)
- Lords First Reading - 18 October (occurred)
- Second Reading - 14 November (occurred)
- Committee Stage - 3, 5, 10, 12, 18 December (occurred)
- 9, 14, 16, 28, 31 January 2013 (occurred)
- Revised Bill published 4 Feb [here](#)
- Report Stage - 26 February (provisional)
- Royal Assent expected June 2013
- Publication of statutory instruments estimated Oct 2014.