

## Digital Economy Bill: Briefing to the House of Commons on Second Reading

### Summary

Open Rights Group have several concerns over the Bill. These include:

1. Ten year sentences for Online copyright infringement
2. Age verification for online pornography
3. Data sharing

### 1 Ten year sentences for Online copyright infringement

Open Rights Group have expressed concerns over the penalties for online copyright infringement on numerous occasions, especially in our response to the government's consultation. The overwhelming majority of respondents objected to the new ten year sentencing powers, on the basis that they are manifestly disproportionate, as the current offence is open to abuse.

Unfortunately, while the government and IPO have tried to solve the problematic part of the offence (that of "[prejudicially affecting](#)" to the copyright owner) they have merely substituted it for another vague concept: that of creating a "risk of loss" to copyright holders. This creates an extremely low threshold whereby criminal liability may be imposed.

Our concern is that this can be used to target ordinary Internet users by legitimately threatening them with the maximum ten-year prison sentence. Following the [consultation responses](#)<sup>1</sup>, the new definition of criminal liability was supposed to expressly state that they would be exempt.

Furthermore, stating that there needs to be "a reason to believe" that infringement will cause a loss or will create "a risk of loss" would capture a wide range of behaviour, particularly file sharing. By its very nature file sharing means that shared music, films or books can be further shared, and therefore a "risk of loss" would occur by definition from this activity.

None of the creative industries have advocated pursuing individual file sharers as criminals for this behaviour, preferring education, persuasion and non-criminal sanctions as means to deal with this unwanted activity.

However, abusive copyright owners will be able to substantiate that file sharing is a criminal matter, punishable by way of a custodial sentence. This would in particular fuel the activities of "copyright trolls". Copyright trolls currently specialise in detecting the sharing of pornographic material and sending legal threats to the potential infringers.

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<sup>1</sup> ORG Response to IPO consultation on online infringement

<https://www.openrightsgroup.org/ourwork/reports/response-to-ipo-consultation-on-raising-jail-sentences-for-online-infringement>

These speculative and threatening letters are sent in bulk to hundreds of account holders after detecting copyright infringement. The copyright trolls gain profits when a certain number respond and pay up to cease troubling them. These accusations are frequently incorrect, misleading and sent to account holders who did not sanction any such file sharing. Sending such speculative threats is unfortunately perfectly legal. This Bill, if it retains the concept of “risk of loss” will aid these threats by enabling the copyright trolls to argue that account holders may face criminal charges and ten year prison sentences.

We believe the easiest fix is to remove the concept of “risk of loss”, even if the ten year sentences are retained.

## **2 Age verification for online pornography**

Compulsory age verification poses [serious privacy concerns](#)<sup>2</sup> that are not addressed within the Bill. Commercial pornographic websites may collect the exact identity details of their users, creating clear commercial opportunities for themselves.

Data collection creates inherent risks of data breaches and the lack of safeguards within the Bill creates opportunities for 'Ashley Madison' style data leaks revealing personal sexual preferences; since privacy protections are entirely absent from the Bill.

Amateur and smaller commercial websites will be unduly burdened by the Bill. Imposing the cost of age verification on them will make their existence as free and commercial entities untenable. This may also adversely affect sexual minorities by denying them the means to freely express their sexuality.

While the Bill lacks proposals for blocking websites that do not comply for good reasons, it is proposed that payment providers will also be responsible for enforcement: hardly a bullet-proof solution. Meanwhile, online pornography will still be available to those under 18, without age verification, elsewhere on the Internet.

It is concerning that these age verification solutions have arisen from the government’s collaboration with pornographic producers who would themselves be able to raise additional revenue from the data collection itself. The Bill needs to reflect a clear separation of commercial interests and child protection objectives.

The role of the age verification regulator needs to be defined in more detail on the face of the Bill. Such a regulatory body may lack expertise in aspects of age verification. Thus, without clearly defined duties (such as the protection and maintenance of privacy) there is a significant risk that they will adopt superficial solutions to address complex issues.

Child protection should also be addressed from alternative perspectives. Children and young adults should receive effective education and guidance, whilst carers

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<sup>2</sup>ORG Overview of the Digital Economy Bill 2016

<https://www.openrightsgroup.org/blog/2016/overview-of-the-digital-economy-bill-2016>

should be encouraged to provide protections suitable to a specific child. Such an approach is more likely to succeed without imposing significant costs, restrictions or risks on a large number of adults.

### **3 Data sharing**

We have been involved in the process of open policy making on data sharing and we have summarised the concerns in a [consultation response](#)<sup>3</sup>.

The Bill would allow for bulk sharing of civil registration data at a request of a Department. The database will include the entire population and easily poses a risk of being misused. There is lack of corresponding safeguards that would reflect the size of the database. The sharing of these common identifiers across government has the whiff of ID Cards by stealth. For these reasons, bulk powers should be removed or at least have strict restrictions posed on their use.

Safeguards for data sharing should be brought on to the face of the Bill instead of being buried in Codes of Practice. Currently the Bill is lacking transparency and for this reason it should reinstate Parliamentary approval for permanent data flows and include sunset clauses.

The proposals to share the data on people's debts across government departments show limited benefits. The provisions in the Bill are not capable of cancelling or prioritising the debt. More changes to how data is handled would be necessary to ensure that benefits are delivered.

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<sup>3</sup>Consultation Response Data Sharing Open Rights Group  
<https://www.openrightsgroup.org/ourwork/reports/orgs-response-to-data-sharing-consultation>