



OPEN RIGHTS GROUP
ANNUAL REVIEW 2010



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Foreword: Harry Metcalfe, Vice Chair

When the Open Rights Group was founded five years ago, we knew the UK needed a strong, independent voice for digital rights. But since then it's fair to say that ORG has exceeded our expectations, as have the attempts by others to restrict our rights and freedoms online.

ORG has had an incredible year. Thanks to the hard work of our staff and volunteers we have delivered some superb campaigns and seen strong growth in the numbers of supporters making regular donations to ORG. On the back of this core support we have been able to grow ORG, run our campaigns and keep winning grant applications from major funders.

This past year was also a challenging one for digital rights. We saw the Digital Economy Act being railroaded through, endless negotiations on the ACTA copyright treaty, the possible return of the Intercept Modernisation surveillance programme and a host of online privacy issues arise. On the other hand we've seen the ID cards programme abolished and a series of transparency initiatives launched by the new government.

What remains certain is that digital rights remain a fast moving area fraught with risks for consumers. As online behemoths race to compete for market share, and legislators struggle to keep up whilst corporations continue to lobby hard for their interests, our digital rights are often very much at risk.

I believe ORG's role is more relevant than ever. Thank you to everyone who has helped this year and in previous years. We hope you'll join us for the work that lies ahead in protecting our digital rights. There is much still to do.

Harry Metcalfe

Vice Chair

1 Access to knowledge: copyright reform

Copyright is a right over forms of knowledge. It is justified, potentially, by helping to create new forms of culture and promoting access to them, as authors benefit from revenues flowing from their ownership of copyrights.

In practice, copyright can be distorted to produce cartel-like markets and to restrict benefits from flowing to authors and society. Rights holder lobbyists press for ever-greater and inappropriate controls over technology and social practices, as nearly every form of digital speech can potentially involve copyright infringement.

ORG works to remove the abuses and modernise copyright so it fits better with the digital age. We work to promote the public interest in copyright, so that free speech and innovation are promoted. For the last year, we have had a full time campaigner dedicated to these issues.

The Digital Economy Act

We ran our biggest campaign to date this year, to fight the Digital Economy Bill, which has unleashed the possibility of users being disconnected from the Internet for minor copyright infringements, and for websites to be blocked if they are found to contain “substantial” copyright infringement.

We did not stop the Bill. We have to be honest with ourselves about this: we did not, in a straight fight with the copyright industries, stop these measures from being passed. On the other hand, we did not waste our time, or entirely lose the war. None of the measures are yet active, and all of them face challenge by BT and TalkTalk in a Judicial Review.

The Act established a two stage policy for “online copyright infringement”. In ‘stage one’, Ofcom, the UK telecoms regulator, mandates a warning system. Copyright owners’ agents collect and supply IP addresses to ISPs, who send letters to the accused customers at set intervals. After a certain threshold, likely to be set at three letters (each representing a single infringement notice), rights holders can request users’ personal details via a court order. Legal proceedings would then take place. This private collection of data and matching represents a significant breach of online privacy, as highlighted by the EU Data Supervisor and Article 29 Working Group. Taking people to court, however, at least keeps any infringement claims within an accountable process.

Under the extremely controversial ‘stage two’ process, court action is replaced by a court order sanctioning automated interference with Internet accounts. There is an appeals process, but this only examines whether users protected their Internet account from abuse, not whether they were engaged in actual copyright infringement. Stage two would be activated by the Secretary of State and is thus highly political and open to campaigning and lobbying by both sides.

The grassroots campaign

Between 30-70,000 UK citizens took part in the campaign. By the time the Bill passed and the election was held:

- 35,000 people had signed a Number 10 petition started by TalkTalk and promoted by ORG
- 25,000 people joined ORG’s “Against the DEBill” Facebook group
- 20,000 had sent emails via 38 Degrees
- 15,000 had used ORG’s email tools introduced in April.
- 2,000 donated £20,000 towards adverts in national papers
- 350 had joined ORG as a paying supporter

Hundreds or perhaps thousands of people watched the Commons debates live on television, and commented via twitter using the #DEBill hashtag. The anger that the passage of the Bill then

created a spate of hacktivism. Around a dozen sites and tools explaining which MPs voted for and against, and which did not attend.

The emails sent by ORG supporters to MPs received were key to demonstrating discontent and building a group of opposed MPs, who are still committed to acting against the Act.

Our revelation of the BPI's "cut and paste" replacement of the Clause 17 web blocking legislation;ⁱⁱ or leaks to Advisory Council member Cory Doctorow of BPI braggadocio,ⁱⁱⁱ helped create a strong campaign narrative around the unprecedented levels of corporate lobbying that was taking place.

ORG ran MP training events in Edinburgh, Manchester, Sheffield and London. We ran further training events at ORGCon in July. Feedback was positive in that attendees felt able to enter a sustained dialogue – both face to face and via letters or emails - with their MPs and convince them to in turn become involved. We now have a template course for improving supporter engagement with the legislative process.

The year's work has again demonstrated the need to shift the debate. While it has shifted in our favour during the passage of the DEA in part from our work, there is a constant need to challenge vested interests and demonstrate real harm from the current drift of copyright policy.

The wider movement: politicians, artists and businesses

New politicians, including Julian Huppert MP and Eric Joyce MP, have been drawn into the cause. They have set up a specific All Parliamentary Group to look at the DEA.^{iv} ORG has built links with grassroots artists opposing the current copyright settlement. Digital businesses have felt they need a voice in the debate. ORG has encouraged new groups to form and works closely with all of these to make sure they are able to participate fully and effectively.

We also work closely with Tom Watson MP, who is both on our Advisory Council and a member of the Culture, Media and Sport Select Committee.

ACTA

ORG ran campaign work in support of the anti-ACTA campaign. A mass emailing campaign helped bring their Written Declaration to the attention of UK MEPs. We also directly lobbied UK MEPs in Brussels.

ACTA - thanks to global opposition – has been watered down. Its impact on legislation will be limited in the short term. Three strikes will not be rolled out in every ACTA signatory nation. What it does do is give rights holders space to lobby for new laws, and can be used as another break on reform of copyright, as new international agreements have to be renegotiated. As an agreement offering a higher level of protections, ACTA is highly likely to be used as a means to push developing nations into inappropriate levels of copyright enforcement, through trade agreements that push these nations into signing ACTA. Perhaps worst, a new institution governing ACTA could provide yet another forum for rights holder lobbyists to push for the changes they want, in their own narrow interests.

Net neutrality

Also related to our copyright work was our work on net neutrality in the UK and EU, which has increased in intensity as the UK enacts EU legislation permitting ISPs to put in place any kind of 'traffic management' they wish.

We produced a detailed consultation response earlier this year, and are now working with other organisations to highlight the problems before they emerge.

BBC DRM on HD broadcasts

We also worked on control of devices by copyright and DRM licensing. Outrageously the BBC have gained permission to encrypt part of their HD broadcasting, controlling the electronic programme guide and subtitling. Thus Ofcom have handed control over the vast majority of television devices and recorders in the UK to an off-shore consortium. ORG helped delay this, but did not succeed in stopping this. The result is that independent developers, especially open source developers, are unfairly cut out of the market. Devices for the mass HD market in the

UK will have to be UK-specific to comply with the licensing conditions to decrypt the EPG. This will force prices up. Anyone with a disability will be unable to modify their equipment or use specialised software.

We may have succeeded if we had challenged Ofcom through a Judicial Review of their decision, which was in our opinion technically faulty. We therefore will be investigating what means we could use to use legal challenges in the future.

User rights

Work on user rights is becoming a major priority with the recent announcement of a review of UK Intellectual Property legislation. Copyright still lacks many key user rights, including the right to parody works and to format shift.

Orphan works

ORG contributed to the EU's work last year on orphan works, and also wrote a consultation response for EDRI on *Europeana.v* We were the only EU public interest body at the EU's "Google books" hearing.

The UK and EU are looking at an 'orphan works' exception, which are likely to be limited to academic works. This would fall far short of what is needed.

2 Electronic voting and electronic counting

Thanks to ORG's previous campaigning, electronic voting has stayed off the UK government's agenda even after the general election changed the minister and department responsible for these matters. However we were disappointed to see both the Scottish Government and London Elects remain committed to the use of electronic counting for elections they will be administering in 2012. In London's case this was in the face of strong criticism of the cost-benefit analysis used to justify the decision coming from ORG and the Electoral Commission. London Mayor Boris Johnson dodged questions on the matter, deferring to his Chief Executive Leo Boland, who has previously expressed his hope they can move quickly to completely electronic elections.

The UK government have accelerated the move to individual voter registration. This is a good step to improving the security of our election processes which overall ORG has welcomed. However, what sort of data matching is used to verify individual identities is a source of potential concern. ORG remains engaged with the key stakeholders in electoral processes and is planning to observe the electronic counting of the Scottish local elections and London mayoral plus assembly elections in May 2012.

3 Open Data

This year ORG have started work on an Open Data campaign. The starting point for ORG's Open Data campaigning is framing a rights based approach to Open Data. It is becoming increasingly clear that Open Data dovetails the digital evolution of the transparency and right to information agenda, fundamental for citizenship. However, much like before these rights are just the starting point for true participation, so we must also look at what other constraints there may be, for example technological literacy. At ORG we also generally believe in the potential of new technologies to, as well as becoming detrimental, actually increase and enhance citizens participation. However, much civic minded data re-use until now has been geared towards the citizen as individual and consumer, and in terms of using data for complex decision making and collective organisation we have only scratched the surface. We will be advocating a balanced approach which recognises both the possible risks and benefits of opening specific datasets.

One of the pillars of ORG's campaign will be to mainstream Open Data and form partnerships with other organisations that are not yet engaging with these issues. Making the data truly useful means both helping groups to open up data and information, but also building capacity in those groups to make use of the data for visualisation, analysis and generally use open data to increase their effectiveness. A possible focus would be environmental data, which combines a special status in terms of access and a very active and vocal set of potential groups.

By itself ORG will not be campaigning on specific data areas, as this would be outside its remit, but we will be joining with other groups with specific interests. For example the campaign's first major piece of work is, with FreeBMD, building a broad Open Genealogy Alliance to promote Open Data in the genealogy sector. Based on work so far, and recent government moves towards Open Data, the next year proves to be very interesting indeed for ORG's campaign and Open Data advocates.

4 Privacy

Privacy is a fundamental right, upon which our freedom of speech rests. Questions like the anonymity of sources, as well as the right to organise without intrusion, depend on privacy. In the digital age, privacy is also about the balance of power between us as citizens, and the state and corporations. Without privacy rights, and strong data protection regimes, our power to retain control over our lives is reduced, as information about us can be processed and used without our consent or control.

Intercept Modernisation Programme and Data Retention

IMP has raised its head again, merely months after the new coalition government took office. Details are not known, but documents clearly point to investment in a scheme that would aim to intercept online and mobile communications, and store 'traffic data', ie who communicates with whom.

We are working to make sure these plans are defeated. They would be an abuse of our fundamental rights, as well as largely pointless and a waste of money.

At the EU, data retention laws are being reviewed. These laws create duties for ISPs and communications providers to 'retain' the traffic data of their customers that they would generally routinely collect, for long periods. Civil liberties groups like ORG widely think they are an abuse of privacy rights. We expect to be heavily involved in these debates next year.

Data Protection

The EU's Data Protection laws are under review. We have started analysis of the current directive and the debates surrounding it, and have contributed to the UK's call for evidence.^{vi} Given the huge volumes of personal information now being processed publicly and privately, the Data Protection Directive is a core piece of legislation that protects citizens' privacy rights. It is however out of date, and also needs to cover law enforcement, which has been brought within the EU's remit.

In the UK, the problems are exacerbated by a weak implementation of the original directive. Problems include lack of damages for 'moral harm' from unfair processing, narrow definitions of 'private data', lack of independence, lack of a duty to comment on legislation and developments and weak enforcement powers.

The EU's Commissioner, Viviane Reding, is pursuing the UK government over a number of privacy problems. She has announced that the UK will now be taken to court for failing to correctly implement interception measures. She has started the process with the Data Protection Directive.

While this is partly due to her strong personality and desire to protect EU citizens' rights, the timing is particularly helpful as it must make the UK's position weaker in terms of the demands we may wish to make. Given the current state of data protection in the UK, which has weaker laws and controls than the original EU legislation, the UK may well press for a weaker directive.

5 What we need from you

Wiki contributions

ORG's Wiki constantly needs new information, on issues, MPs, lobby organisations, and making a note of news reports.

Working with your MPs and MEPs

MPs and MEPs need to hear from constituents. We need you, as a citizen to develop relations with your MP, so they hear from the public, not just industry lobbyists. If you can gain the trust of your MP, then you can start to help them develop their views. After all, it is your vote, not industry, that counts in the end.

Internships

If you have spare time in the working week, and live close enough to travel to our offices, you can apply to help as an intern in our offices. Our interns help with research, the new Zine project and video work. Our interns add a lot to ORG's work, and hopefully learn a lot about digital rights as well.

Developers

We are always on the look-out for developers who can help with small coding tasks. You can join our web developers list or our sysadmins team.

ORG Discuss

You can join our email discussion group, if you would like to chip in to discussions about digital rights issues happening now.

Legal experts

Legal experts can join our ORG Law group, and help us with legal advice about government threats.

Join!

If you haven't already, please join ORG! Through regular donations, as well as your activism, we can build our movement. A growing number of people donate, and this is making a huge difference to what we can achieve.

6 Finances and governance

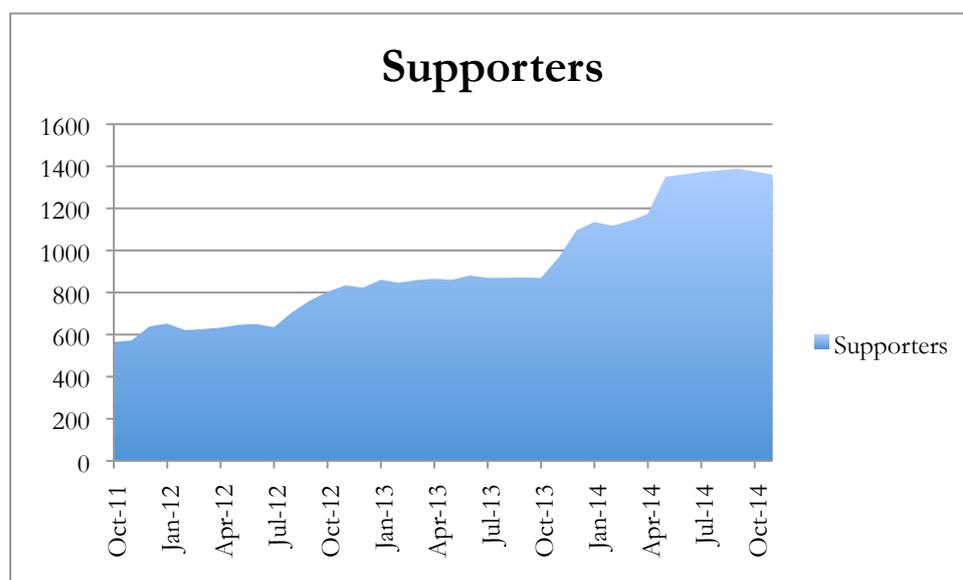
Advisory Council and Board

The expertise of our Advisory Council and Board remain two of our greatest assets. This summer and Autumn, we ran an open recruitment process for Advisory Council members, the results of which we will announce shortly.

Last year, we also ran our first Board elections. Neil McGovern and Emma Byrne were elected for two years. We would like to thank everyone who stood, voted and helped run the election process.

Supporter growth

Supporter numbers continue to grow. This, we hope, is an expression of confidence in ORG, but also the foundation of our future work. It helps hugely with securing new grants, and provides a firm foundation for our campaigning.



Financial report

Our full financial report for 2009 is included here. In 2010, once our accounts are completed, ORG will be able to report further growth, as we secured new grants as well as supporter donations. This year, we will for the first time gain more in grant income than supporter donations. In 2011, we hope to get close to earning and spending £250,000, and be making a strong contribution to a full range of digital rights issues.

OPEN RIGHTS**Income and Expenditure Account for the year ended 31 October 2009**

	2009	2008
	£	£
INCOME		
Subscriptions	62,973	49,306
Grant from Joseph Rowntree Reform Trust Ltd	22,000	20,000
Grant from 01Zero-One	-	19,800
Grant from Open Society Foundation	13,336	11,696
Donations	5,479	4,950
Reimbursed expenses	2,459	2,664
Refunded overpayment	-	899
Interest receivable	174	706
	106,421	110,021
EXPENDITURE		
Gross Pay	61,632	50,531
Associations and memberships	93	213
Employer's NI Contributions	4,776	5,698
Bank Service Charges – Paypal	926	789
Bank Service Charges – Co-op	1,147	115
Business Insurance	997	346
Campaign event	1,432	1,860
Core campaigning (JRRT)	1,668	
Creative Business in the Digital Era	-	9,343
Campaigns (core / general)	2,097	
Database State Seminars (JRRT)	1,696	
IP Campaigner (OSI)	15,636	6,981
E-voting	-	1,292
Policy specialists	350	-
Other campaigns	-	100
Marketing	4,478	3,420
Office supplies	403	823
Postage and delivery	-	279
Printing and reproduction	623	486
Professional fees	903	1,942
Service Providers	1,836	1,427
Telephone	363	283
Training	-	570
Travel and hotel	2,452	2,848
Unclassified (To be reimbursed)	69	357
Other overheads	-	115
	103,577	89,818
SURPLUS OF INCOME OVER EXPENDITURE FOR THE YEAR	2,844	20,203
Balance Brought Forward	28,547	8,344
Balance Carried Forward	31,391	28,547

Balance Sheet as at 31 October 2009

		2009		2008	
	Notes	£	£	£	£
Current Assets					
Cash at bank		43,857			48,813
Prepayments		<u>139</u>			
			43,996		
Creditors: Amounts falling due within one year					
Subscriptions received in advance	2	6,628		1,215	
Other creditors		<u>5,977</u>		<u>19,051</u>	
			<u>(12,605)</u>	<u>20,266</u>	
			31,391	28,547	
			=====	=====	
Net Assets					
Represented by:					
Accumulated Fund			31,391	28,547	
			=====	=====	

i Examples of which are available at <http://www.theyworkforthebpi.com/>,
<http://www.youtube.com/watch?v=U0Ru8qlQEH0> <http://www.didmymphshowupornot.com/>
and <http://whatdebill.org/>

ii <http://www.guardian.co.uk/technology/2010/mar/11/digital-economy-bill-amendment-lobbyists>

iii <http://boingboing.net/2010/03/12/leaked-uk-record-ind.html> Cory Doctorow published an email from Richard Mollett of the BPI outlining his views of the DE Bill debate

iv <http://www.deappg.co.uk/>

v http://ec.europa.eu/information_society/activities/digital_libraries/doc/consultations/2replies/edri.pdf

vi <http://www.openrightsgroup.org/ourwork/reports/call-for-evidence-data-protection-act>