These notes refer to the Digital Economy Bill [HL]
as introduced in the House of Lords on 19th November 2009 [HL Bill 1]

DIGITAL ECONOMY BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Digital Economy Bill [HL] as introduced in the House of Lords on 19th November 2009. They have been prepared by the Department for Culture, Media and Sport and the Department for Business, Innovation and Skills in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The communications sector is one of the three largest economic sectors in the UK economy, accounting for around 8% of GDP. In recent times, this sector has undergone significant changes, shaped by the development and use of digital technologies by industry and consumers.

4. It was against this background that *Digital Britain*, the government's investigation into this sector, was launched in autumn 2008. The government published the Digital Britain White Paper, entitled *Digital Britain: Final Report* (Cm 7650) in June 2009. The White Paper made a number of recommendations. The Digital Economy Bill takes forward those that require legislation.

STRUCTURE OF THE BILL

5. The Bill comprises 49 clauses and three Schedules and covers eleven topics.

6. Topic 1 is the general duties of the Office of Communications ("OFCOM"). Clauses 1 to 3 impose a new general duty on the communications regulator, OFCOM, to have particular regard, when performing their functions, to the need to:

- Promote investment in electronic communications networks;

- Promote investment in content that contributes to the fulfilment of specified public service objectives; and

- Make sure the investment is efficient, wherever possible.

7. Clauses 1 to 3 also impose a new duty on OFCOM to provide to the Secretary of State a report on the UK communications infrastructure every two years, and to report on media content.

8. Topic 2 is online infringement of copyright. Clauses 4 to 17 impose on internet service providers obligations aimed at the reduction of online infringement of copyright. OFCOM is responsible for the specification of the procedural and enforcement aspects of these obligations through the approval or adoption of legally binding codes of practice. Clause 17 gives power to the Secretary of State to make provision by order to amend Part 1 or Part 7 of the Copyright Designs and Patents Act 1988 for the purpose of preventing or reducing on-line copyright infringement.

9. Topic 3 is powers in relation to internet domain registries. Clauses 18 to 20 provide that, where the Secretary of State has serious concerns about the operation of a register of internet domain names, the Secretary of State may take steps, or ask the court to take steps, relating to the management or constitution of the body operating the register.

10. Topic 4 is the Channel Four Television Corporation ("C4C"). Clauses 21 and 22 extend C4C's functions.

11. Topic 5 is independent television services. Clauses 23 to 29 update the statutory framework for the Channel 3 and Channel 5 licences to introduce more flexibility and to remove the requirement for Channel 3 licence holders to produce and broadcast Gaelic language programmes. Clause 28 confers a new power on OFCOM to appoint persons to provide regional and local news for Channel 3 areas, or parts of such areas.

12. Topic 6 is independent radio services. Clauses 30 to 36 introduce changes to the licensing regime for independent radio services to facilitate the change to digital services.

13. Topic 7 is regulation of television and radio services. Clause 37 provides for the Secretary of State to alter the conditions of public service provision that OFCOM must include in Channel 3 and 5 licences, with the option to change the conditions back at a later date.

14. Topic 8 is access to electromagnetic spectrum. Clauses 38 and 39 enable the reallocation of spectrum currently used by mobile network operators.

15. Topic 9 is video recordings. Clauses 40 and 41 and Schedule 1 implement changes to video games classification as recommended in *Safer Children in a Digital World: Byron Review*[1], extending the range of video games that are subject to requirements to be age-rated and supplied only in accordance with the rating.

16. Topic 10 is copyright and performers' property rights: licensing and penalties. Clauses 42 and 43 and Schedule 2 amend the law on copyright licensing by:

- Giving the Secretary of State power to make provision by statutory instrument for the regulation of copyright licensing to enable (a) the regulation of collecting societies, (b) the conferral of extended powers on collecting societies to grant licences over works of non-members, and (c) to make other provision for the granting of licences in respect of orphan works; and

- Increasing penalties for some forms of copyright infringement.

17. Topic 11 is public lending right. Clause 44 amends the Public Lending Right Act 1979 and the Copyright, Designs and Patents Act 1988 to allow inclusion of non-print formats (audio-books and e-books) in the public lending right payment regime.

TERRITORIAL EXTENT AND APPLICATION

18. The Bill extends to all of the United Kingdom.

19. Video games classification and public lending right are transferred matters in Northern Ireland. The Northern Ireland Assembly's consent to the provisions on those topics is being sought.

20. There is no effect on the Welsh Ministers or the National Assembly for Wales and no other particular effect on Wales.

21. This Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

[1] Published in 2008, available at: http://www.dcsf.gov.uk/byronreview/

COMMENTARY ON CLAUSES

Topic 1: General duties of OFCOM

Background

22. Section 3(1) of the Communications Act 2003 ("the 2003 Act") provides that the principal duty of OFCOM, when exercising their functions, is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition. Relevant markets are those for any of the services, facilities, apparatus or directories in relation to which OFCOM have functions.

Clause 1: General duties of OFCOM

23. This clause amends section 3 of the 2003 Act. It inserts a new subsection (1A) which provides that when performing their duties under subsection (1) OFCOM must have particular regard, in all cases, to the need to:

- Promote appropriate levels of investment in electronic communications networks; and

- Promote appropriate levels of investment in public service media content, which fulfils the public service objectives specified in paragraphs (b) to (j) of section 264(6) of the 2003 Act. Examples of public service media content include content that reflects, supports and stimulates cultural activity in the United Kingdom, and content that facilitates fair and well-informed debates on news and current affairs.

24. Paragraph (c) of new subsection (1A) requires that OFCOM must have particular regard to the need for the investment to be efficient, wherever possible. It recognises that it may sometimes be necessary for OFCOM to promote investment that is not efficient. For example, investment in public service content may not always be efficient as this content serves a public policy as well as an economic objective.

Clause 2 : OFCOM reports on infrastructure, internet domain names etc.

25. This clause inserts three new sections into the 2003 Act which will require OFCOM to report to the Secretary of State on the state of the UK's communications infrastructure and services.

26. New section 134A requires OFCOM to produce an initial report in the first year after the provision comes into force, followed by subsequent reports at two-yearly intervals. It also requires that should OFCOM become aware of a marked change with a significant impact on business or the public, in any of the reporting areas, and which they consider should be brought to the attention of the Secretary of State, they should write a further report.

27. New section 134B sets out the subject matter to be covered by the reports. The initial report and the biennial reports will consist of a survey of:

- The different types of electronic communications network and service in the UK;
- Geographic and population coverage of those networks and services;
- Downtime, and measures in place to maintain or improve availability;
- Emergency planning; and
- A comparison between UK networks and services and equivalent networks and services provided in a range of other countries.

28. Additionally, in relation to UK networks, the reports will cover infrastructure sharing (for example, where two or more mobile operators pool their network of masts and both offer services across them), capacity (the amount of data that networks and parts of networks are able to carry and the rate at which they can carry it) and wholesale arrangements (the extent to which one operator can buy capacity on another operator's network and then sell it on to retail customers). In relation to services, they will also cover the use of the electromagnetic spectrum.

29. The clause also inserts a new section 134C into the 2003 Act which requires OFCOM to report on matters specified by the Secretary of State relating to internet domain names when requested to do so. These matters might include the management and distribution of internet domain names by registries and the misuse of domain names or the use of unfair practices by registries, end-users of domain names or their agents (known as registrars).

30. The reporting duty would, for example, enable the Secretary of State to ask OFCOM to report on the activities of internet domain registries based in the UK (and their registrars and end-users) in circumstances where the Secretary of State believes that the operation of those registries (or the activities of their registrars or end users) could adversely affect, or has already adversely affected, the reputation or operation of the UK's internet economy and/or the interests of consumers or the public in the UK.

31. In addition, the clause amends section 135 of the 2003 Act to enable OFCOM to use their existing information gathering powers to require communications providers and others to supply the information which they will need to write their reports. Those powers are subject to the restrictions in section 137 on the imposition of information requirements, which means, in particular, that a demand for information must be proportionate to the use for which the information is to be put. Penalties for contravention of the information requirements may be imposed under section 139.

Clause 3: OFCOM reports on media content

32. Section 264 of the 2003 Act requires OFCOM to report at least every five years on the fulfilment of the public service remit for television by public service broadcasters, namely the

BBC, Channel 4, S4C and providers of Channel 3 and Channel 5. The public service remit involves the provision of a balanced diversity of high quality content, which meets the needs and interests of different audiences in the United Kingdom. Paragraphs (b) to (j) of section 264(6) of the 2003 Act provide detailed public service objectives underpinning this remit. According to these objectives, examples of public service media content would include content that reflects, supports and stimulates cultural activity in the United Kingdom, and content that facilitates fair and well informed debates on news and current affairs.

33. This clause extends the scope of OFCOM's reviewing and reporting obligations beyond television. Under new section 264A, OFCOM will be required to consider the wider delivery of public service media content on other platforms, such as the internet and on-demand programme services, and review the extent to which such content contributes towards the fulfilment of the public service objectives defined in section 264(6)(b) to (j).

Topic 2: Online infringement of copyright

Background

34. The Bill includes provision concerned with online infringement of copyright. This is particularly, but not exclusively, in response to infringement of copyright in the fields of music, film and games. The provision inserts new sections 124A to 124M in the Communications Act 2003 ("the 2003 Act"), which impose obligations on internet service providers ("ISPs") to:

- Notify their subscribers if the internet protocol ("IP") addresses associated with them are reported by copyright owners as being used to infringe copyright; and

- Keep track of the number of reports about each subscriber, and compile, on an anonymous basis, a list of some or all of those who are reported on. After obtaining a court order to obtain personal details, copyright owners will be able to take action against those included in the list.

35. The obligations will be underpinned by a code approved by OFCOM or, if no industry code is put forward for approval, made by OFCOM. The code will set out in detail how the obligations must be met.

36. In case the initial obligations prove insufficient to reduce significantly the level of online infringement of copyright, the provisions also grant the Secretary of State a power to impose further obligations ("technical obligations") on ISPs. These would be imposed on the basis of reports from OFCOM or any other relevant considerations, and would require ISPs to take measures to limit internet access to certain subscribers. The intention is that technical measures would be used against serious repeat infringers only. Technical measures would be likely to include bandwidth capping or shaping that would make it difficult for subscribers to continue file-sharing, but other measures may also be considered. If appropriate, temporary suspension of broadband connections could be considered.

37. OFCOM would be subject to an obligation to prepare a code setting out the procedural mechanisms to give effect to the technical obligations of ISPs. The technical measures were described more fully in the consultation document issued on 16th June 2009, as supplemented by the government statement published on 25th August 2009[2].

38. To safeguard the interests of consumers, the provisions also require appeals processes to be set up as part of the underpinning codes. These would include the right to appeal decisions of ISPs to impose technical measures. The appeal would be to a person independent of OFCOM, with a further right of appeal to the First-tier Tribunal.

39. The provisions also set out how the costs of operating such a system may be shared. Funding from cost apportionment would enable an underpinning code to be developed by interested parties. To illustrate how the provisions might work in practice, possible processes of notification and court action are outlined below:

- Copyright owners identify cases of infringement and send details including IP addresses to ISPs;

- The ISPs verify that the evidence received meets the required standard, and link the infringement to subscriber accounts;

- The ISPs send letters to subscribers identified as apparently infringing copyright. They keep track of how often each subscriber is identified;

- If asked to do so by a relevant copyright owner, ISPs supply a serious infringers list showing, for each subscriber who has been identified repeatedly by the copyright owner, which of the copyright owner's reports relate to that subscriber. The list does not reveal any subscriber's identity;

- Copyright owners use the serious infringers list as the basis for a large scale "Norwich Pharmacal"[3] court order to obtain the names and addresses of some or all of those on the list. At no point are individuals' names or addresses passed from the ISP to a copyright owner without a court order;

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[2] http://www.berr.gov.uk/consultations/page51696.html

3 An equitable remedy taking its name from the order made in the case of *Norwich Pharmacal Co.* v *Commissioners of Customs and Excise* [1974] AC 133. A Norwich Pharmacal order requires a respondent to disclose certain documents or information to the applicant. The respondent must be a party who is involved or mixed up in a wrongdoing, whether innocently or not, and is unlikely to be a party to the potential proceedings.

- Copyright owners send "final warning" letters direct to infringers asking them to stop online copyright infringement and giving them a clear warning of likely court action if the warning is ignored; and

- Copyright owners take court action against those who ignore the final warning.

40. OFCOM will be under a duty to report regularly to the Secretary of State on the efficacy of the initial obligations in reducing the level of online copyright infringement. Taking those reports or any other relevant factors into account, the Secretary of State may direct OFCOM to assess whether, and if so which, technical measures against particular subscribers may be appropriate, and to report back to the Secretary of State. The Secretary of State may, on the basis of this report or any other consideration, make an order imposing on ISPs "technical obligations" to take measures against subscribers who meet certain criteria. The measures would be to limit the subscribers' internet access.

41. If the Secretary of State imposed technical obligations on ISPs, OFCOM would be required to make a code for the purpose of regulating the technical obligations, or to revise the existing code to take account of them. The new or revised code would need to comply with requirements relating to enforcement. For example, it would have to include rights for a subscriber to appeal against a technical measure that an ISP had taken or proposed to take, and would need to comply with requirements as to the reimbursement of costs.

42. The intention is that copyright owners would be held to the same standards of evidence of copyright infringement as for the initial obligations, and that the procedure for reporting infringement of copyright would be the same as well.

43. Clause 17 gives power to the Secretary of State to make provision by order to amend Part 1 or Part 7 of the Copyright Designs and Patents Act 1988 for the purpose of preventing or reducing on-line copyright infringement.

Clause 4: Obligation to notify subscribers of reported infringements

44. The section of the 2003 Act that is inserted by this clause (section 124A) sets out an obligation for ISPs to notify subscribers of copyright infringement reports ("CIRs") received about them from copyright owners. It describes what CIRs and notifications to subscribers must contain, the procedures that copyright owners must comply with when making CIRs, and the procedures that ISPs must follow when sending subscriber notifications.

45. Copyright owners are currently able to go on-line, 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, at present they 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. Therefore, the copyright owner relies on the ISP's ability to match the IP address to the name and address of the subscriber concerned.

46. However, the ISP is unable to pass this information on to the copyright owner without a court order. To do so would breach data protection and privacy law. To help ensure that the subscriber is made aware that their account appears to have been used to breach copyright, section 124A imposes an initial obligation on the ISP, in relevant cases, to notify the subscriber if the ISP receives a CIR from a copyright owner.

47. The notification from the ISP must inform the subscriber that the account appears to have been used to infringe copyright, and it must provide evidence of the apparent infringement, direct the consumer towards legal sources of content, and provide other advice. The code may require the notification to include other material as well, such as a statement that information about the apparent infringement may be kept and disclosed to the copyright owner in certain circumstances. Further apparent infringements using the subscriber's account may result in additional notifications.

Clause 5: Obligation to provide infringement lists to copyright owners

48. ISPs will have to keep a record of the number of CIRs linked to each subscriber along with a record of which copyright owner sent the report. Under section 124B of the 2003 Act, inserted by clause 5, an ISP may be required to provide a copyright owner with relevant parts of those records on request ("copyright infringement lists"), but in an anonymised form so as to ensure compliance with data protection legislation. The intention is for the code to set out a threshold number of CIRs, for example 50, which means that a subscriber will be considered a serious repeat infringer whose alleged infringements must be covered by any copyright infringement lists that the ISP provides to the relevant copyright owner.

49. A copyright infringement report represents a single breach of copyright at a moment in time. At present, a copyright owner has no way of knowing whether the subscriber behind that CIR habitually infringes copyright online or whether the CIR represents a curious individual trying file-sharing for the first and only time. Because of this, the high costs involved in legal action deter copyright owners from enforcing their rights. By allowing copyright owners to target only the most serious repeat infringers, copyright infringement lists provided by ISPs are intended to make legal action a more attractive and effective tool for copyright owners to use in respect of their copyright.

50. The lists would be made available to copyright owners on request in an anonymised form. For example, while a list might (for example) identify subscriber 936 as being linked to the most CIRs, it would not include any personal information about subscriber 936. In order to get this personal data, the copyright owner would need a court order. However, the list would allow the copyright owner to identify subscriber 936 as someone against whom legal action may be appropriate.

Clause 6: Approval of code about the initial obligations

51. The obligations provided for in new sections 124A and 124B would not have effect until there was a complementary code in force that had been approved or made by OFCOM.

52. Clause 6 inserts new section 124C in the 2003 Act. This section sets out the requirements for OFCOM's approval of a code regulating matters in connection with the initial obligations. The process by which infringements are detected, the standard of evidence that the copyright owner must meet before an ISP must send a notification letter, the format of CIRs, and the routes of appeal for consumers are all issues of detail that section 124C would require the code to deal with. The government hopes that all stakeholders (ISPs, copyright owners and consumers) will contribute to the development of an industry code. Other criteria that an approved industry code may specify include setting in advance the number of CIRs the ISPs will be expected to process in a given period (say, six months).

53. Without these criteria, there would be no obligation for copyright owners to provide infringement information in a standard format and no protection for ISPs in the event that copyright owners set extremely high levels of expected CIRs.

54. The government also envisages that any approved code would also set out the time a copyright owner has to submit a CIR (so that a CIR must relate to a recent infringement) and the time the ISP has to act on the CIR and send a notification to the subscriber (for example, 5 working days).

55. The government's intention is for the obligations to fall on <u>all</u> ISPs except those who are demonstrated to have a very low level of online infringement. This is on the basis that it would be disproportionate (in cost terms) to require an ISP to incur significant costs to counter a problem that does not exist to any significant degree on its network. The proposal is therefore for the code to set out qualifying threshold criteria, based on the number of CIRs an ISP receives in a set period of time. The government anticipates that most small and medium ("SME") ISPs and, possibly, the mobile networks would fall under the threshold. However, this exemption would not be a one-off exercise and the qualifying period would be a rolling one (for example, "x" number of CIRs received in a rolling 3 month period). ISPs would need to ensure online infringement of copyright remained at a low level or else face the prospect of passing the qualifying threshold. Once in scope, ISPs would have to comply with the obligations and to continue to do so even if the number of CIRs later fell below the threshold.

56. In order to ensure that the code covered all the necessary areas and to a sufficient standard, OFCOM's approval would be needed before it could come into force and the Secretary of State would need to consent to the approval.

57. Before approving a code, OFCOM would be expected to carry out consultation. Under sections 124C and 124E (which is inserted by clause 8), OFCOM would also need to satisfy themselves that the code was objectively justifiable, proportionate and transparent.

Clause 7: Initial obligations code by OFCOM in the absence of an approved code

58. Clause 7 inserts new section 124D in the 2003 Act. The new section provides for the making by OFCOM of a code regulating the initial obligations if there is no industry code. The government hopes industry can devise a satisfactory code which OFCOM approves. However, if that does not happen, OFCOM must develop a code themselves for adoption by order. It is possible that stakeholders may be able to reach agreement on parts of the code, which OFCOM can then consider, and, if appropriate, include as part of OFCOM's code. Again, the consent of the Secretary of State would be required for the making of the code.

Clause 8: Contents of the initial obligations code

59. Clause 8 inserts new section 124E in the 2003 Act. This sets out what the code underpinning the initial obligations (whether an industry code or OFCOM's own code) must contain. The reason for including the underpinning material in a code, rather than directly in the 2003 Act, is that it is likely to be detailed and to have to be adapted and refined over time.

60. The code must set out the process by which the initial obligations will operate and the procedures that copyright owners and ISPs must follow in relation to them. It must set out the criteria, evidence and standards of evidence required in a CIR and the required format and content of a notification letter sent to a subscriber. It must set out the enforcement procedures that OFCOM or a body set up by OFCOM to administer the code may employ in the event of a failure to comply with the code. And it must also specify the rights of subscribers to challenge actions under the legislation by the ISPs and copyright owners.

Clause 9: Progress reports

61. Clause 9 inserts new section 124F in the 2003 Act. Section 124F places an obligation on OFCOM to prepare full reports (every 12 months) and interim reports (every 3 months) about the infringement of copyright by subscribers to internet access services. Each report must be sent to the Secretary of State as soon as practicable after the end of the period for which is prepared.

62. These reports will help the Secretary of State to monitor trends in online copyright infringement and to ascertain the effectiveness of the obligations on ISPs. As part of the reports OFCOM will, for the first time, be required to produce assessments of the level of online infringement of copyright. The reports will also take account of various factors which might affect the level of online copyright infringement, such as the steps taken by copyright owners to enable subscribers to obtain lawful access to copyright works, and the extent to which copyright owners are making CIRs and following up with legal action against subscribers. They are intended to be a source of information that the Secretary of State can draw on when taking decisions about whether to impose additional obligations on ISPs.

Clause 10: Obligations to limit internet access: assessment and preparation

63. New section 124G of the 2003 Act, inserted by clause 10, confers a power on the Secretary of State to direct OFCOM to assess whether ISPs should be obliged to take technical measures against certain subscribers, or direct OFCOM to take steps to prepare for

technical obligations. In particular, OFCOM may be required to carry out a consultation or assess the likely efficacy of different kinds of technical measure, and to report back to the Secretary of State. Technology used for the purposes of online infringement of copyright is changing fast and it is not possible at this stage to know which technical measures would be effective.

64. The government's aim is for the initial obligations in new sections 124A and 124B to significantly reduce online infringement of copyright. However, in case the initial obligations prove not as effective as expected, new section 124H gives the Secretary of State the power to introduce further obligations, should that prove appropriate.

65. OFCOM would be required to set out supporting provision in a technical obligations code under section 124I (which is inserted by clause 12).

Clause 11: Obligations to limit internet access

66. New section 124H of the 2003 Act is inserted by clause 11 and gives the Secretary of State power to order ISPs to impose technical measures on internet access service subscribers meeting certain criteria.

67. The government envisages that the criteria for taking a technical measure against a particular subscriber would be the same as the criteria used to determine whether the subscriber's alleged infringements are included in a copyright infringement list under the initial obligations. So a technical measure would be applied if a subscriber had been linked to a number of CIRs sufficient to place them on a serious infringers list.

Clause 12: Code by OFCOM about obligations to limit internet access

68. If the Secretary of State makes an order under section 124H requiring ISPs to take technical measures against subscribers, OFCOM will be under an obligation to adopt (by order) a code underpinning the technical obligations. This is provided for in new section 124I of the 2003 Act, inserted by clause 12.

69. Section 124I sets out the procedure for the making by OFCOM of the code on technical obligations. It also provides that the Secretary of State's approval of the code is required before it can be made.

Clause 13: Contents of code about obligations to limit internet access

70. Clause 13 inserts new section 124J in the 2003 Act. Section 124J sets out a list of matters which are to be included in the technical obligations code. Thus the code must, for example, include provision in relation to enforcement. The code would have to provide subscribers with a right to challenge the imposition of a technical measure. Also, under the code, if there was a legal challenge by a subscriber, the taking of the measure could be postponed until the person hearing the challenge or (on appeal) the First- tier Tribunal had resolved the appeal.

71. The code could provide for OFCOM to set up bodies in charge of administering the code and hearing appeals from subscribers.

72. The government envisages that the code would also set out the process by which a technical measure would be taken, and the information that would have to be sent to a subscriber facing such a measure. It would also address how any costs might be apportioned, and set out the dispute mechanism in the event of disagreement between an ISP and a copyright owner.

Clause 14: Enforcement of obligations

73. Clause 14 inserts new section 124K in the 2003 Act. Section 124K sets out the penalties which may be imposed on an ISP for the contravention of their initial obligations or obligations to impose technical measures, or of the obligation to provide assistance to OFCOM under section 124G.

74. The maximum penalty is specified as the sum of £250,000. However, the Secretary of State has a power to increase this amount by order. The order would be subject to the affirmative resolution Parliamentary procedure.

Clause 15: Sharing of costs

75. The initial obligations and any later technical obligations will give rise to costs. These will include the cost to ISPs of processing copyright infringement reports and issuing subscriber notifications, the costs to ISPs associated with the imposition of any technical measures, OFCOM's costs in approving or preparing the codes, the cost of enforcing them, and the funding of any subscriber appeals to an independent appeals body or the First-tier Tribunal.

76. New section 124L of the 2003 Act, inserted by clause 15, confers a power on the Secretary of State to specify by order provision which must be included in the codes and which sets out how costs are to be apportioned between copyright owners and ISPs. The costs are those incurred under the copyright infringement provisions. The purpose of the section is to help ensure that the parties carry out their obligations in an efficient and effective manner and that both ISPs and copyright owners have economic incentives to take action to reduce online infringement of copyright through commercial agreements.

77. The government believes that most of the costs of subscriber appeals to an independent person determining appeals or the First-tier Tribunal should be funded by industry, so that a subscriber does not face significant costs in making an appeal.

Clause 17: Power to amend copyright provisions

78. Clause 17 inserts a new section 302A into the Copyright Designs and Patents Act 1988 ("the 1988 Act"). It enables the Secretary of State to make provision by order to amend Part 1 or Part 7 of the 1988 Act for the purpose of preventing or reducing on-line copyright

infringement. The power may only be exercised if it appears to the Secretary of State appropriate to do so having regard to technological developments that have occurred or are likely to occur.

79. In addition to the problems caused by services such as unlawful peer-to-peer (P2P) file-sharing and other many-to-many infringements which are dealt with by other provisions of the Bill, cyber lockers (on-line data repositories) and similar services have also been identified as areas where damaging online copyright infringements are already occurring and where the problem could grow rapidly. The government's concern is that in a rapidly moving technological environment a response that is more flexible than relying on new primary legislation is required in order to meet technological evolution.

80. The power may be exercised to:

- Confer, modify or remove a power, right or duty; and
- Require a person to pay fees.

81. The order made under this provision is to be:

- Made by statutory instrument;
- Subject to approval by resolution of each House of Parliament; and
- Subject to the requirement that it is made after consultation of persons likely to be affected by the order or their representatives, as the Secretary of State thinks fit.

82. The use of the power is restricted by the requirement for prior consultation and by the affirmative resolution procedure, which requires Parliament's approval for any order before it may be made. It is also limited so as not to allow the Secretary of State to create or modify any criminal offence. Illustrative examples of the possible ways in which this power could be used include: adapting the legal process (including for example section 97A of the 1988 Act) to allow rights holders to take more effective action more quickly against websites hosting or sharing material in breach of copyright; creating a fast track process; or imposing a duty on a body to report on the prevalence of new or emerging types of online infringement.

Topic 3: Powers in relation to internet domain names

Background

83. The Bill gives powers to the Secretary of State to intervene in the operation of domain name registries. Such registries allocate internet domain names to end users. Internet domain names (such as www.google.co.uk) underpin the addressing system for the internet.

84. The Bill confers powers exercisable in circumstances where there has been misuse of domain names, or the use of unfair practices by registries, registrars and end-users of domain names, or where registries have failed adequately to deal with complaints. The powers are only exercisable where those failures have adversely affected or are likely adversely to affect (a) the reputation or availability of electronic communications services or networks in the UK and/or (b) the interests of consumers or members of the public in the UK. The provisions only affect registries which take the form of companies formed and registered under the Companies Act 2006 or limited liability partnerships.

85. The powers allow the Secretary of State to appoint a manager of a registry or to apply to court to intervene in relation to a registry's constitution in order to secure that the registry remedies specified serious failures (and any consequences of them).

Clause 18: Powers in relation to internet domain registries

86. This clause amends the Communications Act 2003 ("the 2003 Act") by inserting a new section 124N. The section applies where the Secretary of State wishes to use the new powers set out in clauses 19 and 20 and is satisfied that there has been a serious failure of a registry because:

- The registry itself, its end-users (that is, owners of or applicants for domain names) or registrars (that is, agents of end-users) have been engaging in practices prescribed in regulations made by the Secretary of State which are unfair or which involve the misuse of internet domain names; or

- The registry's arrangements for dealing with complaints in connection with domain names do not comply with requirements prescribed in regulations made by the Secretary of State.

87. Possible examples of unfair practices would be cyber-squatting (that is, registering domain names which are of economic value to other people and then charging those people high prices to buy them or use them for their own purposes); drop-catching (that is, waiting until the expiry date for an existing registered domain name, snatching it and then charging the previous owner to buy it back); or pressure sales tactics.

88. Possible examples of the misuse of internet domain names would be registering intentionally misleading domain names, perhaps using them for phishing (a form of internet fraud); distributing malware or spyware, which are computer viruses; spamming; intentionally misleading the public into believing there is a connection between the domain name owner and other organisations (or that another organisation owns or authorises the use of the domain name).

89. The section provides that such a failure will be serious where it has adversely affected or is likely adversely to affect the reputation or availability of electronic communications

networks or services provided in the UK, or the interests of consumers or the public in the UK.

90. Where the section applies, the Secretary of State must notify the registry specifying the failure and a period within which the registry may make representations to the Secretary of State. In practice, the Secretary of State may (if he considers it appropriate in the circumstances) require OFCOM to prepare a report on the allocation, registration and/or misuse of internet domain names by UK-based registries under section 134C (inserted by clause 2(1)) before exercising his powers.

91. New section 124N defines internet domain registry and other terms used in these provisions.

Clause 19: Appointment of manager of internet domain registry

92. This clause amends the 2003 Act by inserting new sections 124O and 124P. If the Secretary of State has served a notice under new section 124N, the period allowed for making representations has expired and the Secretary of State is satisfied that the registry has not taken appropriate steps to remedy the failure or its consequences, the Secretary of State may appoint a manager in respect of the property and affairs of the registry to secure that appropriate steps are taken to remedy the failure or the consequences of the failure.

93. New clause 124P makes provision about the powers and functions of the manager so appointed. In particular, the Secretary of State may provide for the manager to take over any or all specified functions of the directors in order to ensure that the registry remedies the failure or the consequences of it, and may also prevent the registry's directors from carrying out those functions (subsection (2)). The Secretary of State may also provide for the remuneration of the manager, which may be payable by the registry itself (subsection (3)). In order to ensure that this power does not affect the rights of third parties or the insolvency process, section 124O(4) provides that the appointment does not affect the rights of any third party to appoint a receiver or manager, or the rights of any receiver or manager appointed by a third party. For similar reasons, section 124O(6) provides that if certain office holders under insolvency legislation are appointed in respect of the registry, the Secretary of State must discharge the order appointing a manager. The Secretary of State must also keep the order under review and discharge it if appropriate, for example if the registry has remedied the failure (section 124O(5)).

94. Section 124P(5) to (7) allow the Secretary of State to seek directions from a court in connection with the manager's functions. This might be done in order to counter obstruction of the manager by a registry or its officers, since disobeying the court's directions would amount to contempt.

95. Section 124P(8) applies all the provisions to limited liability partnerships as if the references to a director were to a member of the limited liability partnership.

96. Subsection (2) of clause 19 inserts a reference to an order under section 124O into section 192(1)(d) of the 2003 Act. The effect of this is that the registry has a right of appeal on both the facts and the law to the Competition Appeal Tribunal (and thence to the Court of Appeal on a point of law) in respect of a decision to appoint a manager.

Clause 20: Application to court to alter constitution of internet domain registry

97. This clause amends the 2003 Act by inserting a new section 124Q. This gives the Secretary of State the power to apply to the court for an order to alter the constitution of a registry and to limit the registry's ability to amend its constitution itself without the leave of the court. The provision only applies where the Secretary of State has served a notice under new section 124N, the period allowed for making representations has expired and the Secretary of State is satisfied that the registry has not taken the appropriate steps to remedy the failure or its consequences. The court may only make an order if the court considers it is appropriate in order to secure that the registry remedies the failure specified in the section 124N notification and any consequences of that failure. Section 124Q(5) provides that, in the case of a company, the constitution means the articles of association, and in the case of a limited liability partnership, it means the limited liability partnership agreement (as defined). The Secretary of State may exercise his power under this section to apply to court to alter the constitution and the power under new section 124O to appoint a manager concurrently (if he considers it appropriate).

Topic 4: Channel 4 Television Corporation

Background

98. C4C's existing primary functions currently relate only to the Channel 4 television channel. Taking into account the growth of digital media, the Bill introduces provisions that extend the functions of C4C in relation to media content. The Bill achieves this by introducing new C4C functions via a new section 198A of the Communications Act 2003 ("the 2003 Act").

Clause 21: Functions of C4C in relation to media content

99. This clause will require C4C to participate in the making of a broad range of high-quality content that appeals to the tastes and interests of a culturally diverse society, and broadcast or distribute such content on a range of different delivery platforms. This content must include news and current affairs, content for older children and young adults and feature films. C4C will also be required to participate in the making of high quality films. To "participate" in this way includes investing in or otherwise procuring content. For the avoidance of doubt, these new duties on C4C to make content do not disapply the condition in Channel 4's regulatory regime, referred to in section 295 of the 2003 Act, requiring C4C not to be involved, except to such extent as OFCOM may allow, in the making of programmes to be broadcast on Channel 4.

100. The clause also makes provision as to the wider aims C4C must pursue in performing their duties, drawing on the core public purposes that C4C identified in their March 2008 report *Next on 4*[4]. C4C must support new talent and innovation, support and stimulate well-informed debate, promote alternative views and perspectives and help to inspire change in people's lives.

101. The clause also requires C4C, in the performance of their duties, to have regard to the desirability of:

- Working with cultural organisations;
- Encouraging innovation in methods of content delivery; and
- Promoting access to and awareness of services provided in digital form.

Clause 22: Monitoring and enforcing C4C's media content duties

102. This clause contains provision for monitoring and enforcing the delivery of C4C's new functions, through new sections 198B, 198C and 198D of the 2003 Act. This complements, and is in part modelled on, the existing accountability framework for the delivery of the public service remit of the Channel 4 licensed public service television channel, under section 266 of the 2003 Act.

103. New section 198B requires C4C to prepare, every year, a statement of media content policy, setting out how C4C propose to discharge their functions in the coming year. The statement must also report on their performance against the proposals contained in the previous year's statement.

104. In preparing this statement, C4C will be obliged to have regard to guidance issued by OFCOM and also to consult OFCOM. It will be open to C4C to produce the statement of media content policy either as a separate document or as part of a single document in combination with the statement of programme policy which it is required to provide in relation to the Channel 4 service.

105. OFCOM will be required to keep their guidance under review and revise it as they think fit.

106. New section 198C gives OFCOM a new obligation to review and report on the performance of C4C's new duties, which may well include the making and broadcasting of

[4] Available at: http://www.channel4.com/about4/next_on4.html

programmes on television, at the same time as their reviews of the fulfilment of the public service remit under section 264 of the 2003 Act.

107. New section 198D introduces enforcement powers for OFCOM in relation to the fulfilment by C4C of their new functions. It creates a new power of direction for OFCOM in the event that C4C fail to perform their new duties under new section 198A or to prepare or publish a statement of media content policy. The new section gives OFCOM the power to direct C4C to revise their latest statement of media content policy, to take such steps to remedy the failure as OFCOM may prescribe in the direction, or both. OFCOM must include in any direction a reasonable timetable for complying with it and state the factors OFCOM will take into account in determining whether or not a failure has been remedied. OFCOM must consult C4C before issuing such a direction. By virtue of sections 41(1) and (6) of the Broadcasting Act 1990, OFCOM have the power to impose a financial penalty on C4C for a failure to comply with a direction given by OFCOM under section 198D.

108. This clause introduces, by means of a new section 271A of the 2003 Act, an additional power for OFCOM exercisable in the event that C4C fail to comply with a direction relating to a failure to perform one or more duties under section 198A. OFCOM must be satisfied that C4C are still failing to perform the relevant duty or duties and, if OFCOM are satisfied that it is reasonable and proportionate to the seriousness of the failure, they have the power to vary the licence under which the Channel 4 television service is licensed. OFCOM may vary the licence by making or adding such conditions to the licence as they consider appropriate to remedy C4C's failure to perform the relevant new duties under section 198A. If, subsequently, OFCOM conclude that any of the new conditions are no longer required, they may vary the licence again, from such time as they determine. OFCOM must consult C4C before exercising the power to make or add conditions to the Channel 4 licence.

Topic 5: Independent television services

Background

109. In the *Digital Britain: Final Report*, the government accepted OFCOM's analysis that the value of the existing commercially-owned public service broadcasting Channel 3 licences will decline further between now and the completion of digital switchover and that the regulatory obligations attached to the licences will therefore require further review over the period. Clauses 23 to 29 make amendments to provisions contained in the Broadcasting Act 1990 ("the 1990 Act") and the Communications Act 2003 ("the 2003 Act") in order to introduce additional flexibility into the licence processes for the commercially funded public service television broadcasters.

Clause 23: Determination of Channel 3 licence areas

110. Section 14(2) of the 1990 Act requires OFCOM to structure the Channel 3 licence map on a regional basis. However, section 14(7) of the 1990 Act provides a caveat preventing OFCOM from constructing a licence area from either the whole of England or the whole of Scotland.

111. This clause repeals section 14(7) of the 1990 Act to remove that restriction. At the same time, it inserts new section 14(7A), which provides that there must always be at least one licence area wholly contained within Scotland. Section 287 of the 2003 Act will still allow OFCOM to insert conditions in a licence to require the holder of a nationwide licence to provide regional programmes.

112. The clause also inserts a new section 216A in the 2003 Act, allowing OFCOM to renew Channel 3 licences for a larger or smaller area than the area to which they relate before renewal. However, this power can only be exercised with the consent of the existing licence holders for the areas concerned.

113. As a consequence of new section 216A, the clause amends section 216 to give OFCOM the power not to renew a licence if the area to which it relates is or will be covered entirely by another Channel 3 licence or licences which OFCOM have renewed or propose to renew.

Clause 24: Initial expiry date for Channel 3 and 5 and public teletext licences

114. Section 224(2) of the 2003 Act provides the Secretary of State with the power, by order, to postpone the initial expiry date of licences to provide Channel 3 services, the licence to provide Channel 5, and the licence to provide the public teletext service. This clause amends section 224(2) to provide that different initial expiry dates may be set for those three different types of licence.

115. Section 224(3) of the 2003 Act currently prevents the Secretary of State from exercising the power to postpone the initial expiry date if digital switchover is set to occur before 1st July 2013. The clause repeals section 224(3) and therefore gives the Secretary of State more flexibility to extend the duration of licences where appropriate.

Clause 26: Report by OFCOM on public teletext service

116. Section 218(1) of the 2003 Act currently places a duty on OFCOM to do all they can to secure the provision of a national teletext service.

117. Clause 26 inserts a new section 218A into the 2003 Act that places a duty on OFCOM to prepare a report on the viability of the public teletext service. The clause stipulates the assessments that OFCOM must include in the report. OFCOM must submit this report to the Secretary of State, and prepare and submit further reports when asked to do so by the Secretary of State.

Clause 27: Power to remove OFCOM's duty to secure provision of public teletext service

118. Clause 27 will remove OFCOM's duty to do all that they can to licence someone to provide the public teletext service and replace it with a power to do so.

119. This change will come into force on a day appointed by the Secretary of State by means of a statutory instrument, which must be approved by Parliament before it can take effect. The Secretary of State may only make this order if he is satisfied that it would be in the public interest, and that either condition A or B stipulated in clause 27 has been met. Condition A is that the Secretary of State has laid before Parliament a report prepared by OFCOM under section 218A of the 2003 Act (inserted by clause 26) on the viability of continuing the provision of the public teletext service. Condition B is that OFCOM, after inviting applications for the licence to provide the public teletext service, receives no applications by the closing date or considers that it could not award the licence to any of the applicants.

Clause 28: Appointed providers of regional or local news

120. This clause inserts a new section 287A in the 2003 Act which confers a new function on OFCOM of appointing and funding providers of regional or local news (or both). The new section allows OFCOM to set criteria and conditions for the provision of this type of news service in return for funding.

121. The new section gives OFCOM the power to include any conditions they think appropriate in the regulatory regime for a regional Channel 3 service, in order to secure that the service includes news programmes provided by the person appointed to provide news for all or part of that regional Channel 3 service area.

122. OFCOM are required to publish the criteria that they intend to use when appointing a news provider and must consult the Secretary of State before so doing.

123. The new section requires OFCOM to specify certain conditions relating to the terms of the appointment, including the term of the appointment and the area for which the provider is appointed. OFCOM may attach a number of other conditions to the appointment and may revoke an appointment at any time. In practice, revocation would take place where OFCOM considered a material breach of the appointment had occurred, and reasonable notice would be given to all parties affected.

124. Other conditions that OFCOM may set include those relating to the distribution and sharing of the content produced. Specifically, the content may need to be provided to the national news provider on Channel 3 and may also be provided to other parties in a range of formats. Conditions may be set that encourage the provider to support or promote wider benefits to society in connection with the provision of news. For example, this might include commitments to media skills and training. OFCOM must consult the Secretary of State before setting conditions in connection with the appointment of, or the making of payments to, news providers.

Clause 29: Broadcasting of programmes in Gaelic

125. This clause repeals section 184 of the 1990 Act, which contains requirements for certain Channel 3 licensees in Scotland (currently STV) to show Gaelic language programmes.

126. The repeal of section 184 will be commenced by order. A fixed date for commencement has not been set because, at present, not all viewers are able to access Gaelic language television other than through STV. However, it is anticipated that, post switchover, more Gaelic television will be available to more viewers on other platforms. The effect of that development might be that it would no longer be necessary to impose Gaelic language broadcasting requirements on Channel 3 licence holders (although they may choose to broadcast in Gaelic).

Topic 6: Independent radio services

Background

127. The Bill provides for the regulatory framework necessary to facilitate the delivery of a digital switchover of radio services to Digital Audio Broadcasting (DAB), referred to in the *Digital Britain: Final Report* as a "Digital Radio Upgrade". In particular, the provisions give powers to the Secretary of State to nominate a date for digital switchover and ensure that OFCOM have sufficient powers to provide for an orderly changeover on that date, particularly powers to:

- Terminate relevant analogue licences by the nominated date for digital switchover without the licence holders' consent, subject to a minimum notice period of 2 years;

- Renew national and local analogue radio licences for up to a further 7 years so long as licence holders also provide content in a digital service via a multiplex[5];

- Allow approved local licences to be renewed by the nomination of a national DAB service, providing that the analogue and digital services share at least 80% of their content; and

- Allow for variation of the frequency or coverage area of a multiplex licence, with the aim of improving the coverage of DAB.

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[5] A multiplex consists of a number of digital services, such as radio stations, bundled together and transmitted digitally on a single frequency in a given transmission area.

128. The Bill reduces regulatory burdens by enabling local stations to share premises and administrative costs within an area approved by OFCOM.

Clause 30: Digital switchover

129. Clause 30 allows the Secretary of State to give notice to OFCOM of a date by which digital switchover must occur for services specified in the notice. In making a decision to nominate a switchover date, the Secretary of State must take account of any reports by the BBC and OFCOM about the future of analogue broadcasting.

130. The date for digital switchover is the date after which it will no longer be appropriate for the service in question to be broadcast in analogue form.

131. The Secretary of State may nominate different switchover dates for different types of radio services and may withdraw a nomination of a switchover date.

132. After a switchover date has been set, OFCOM are required to vary the licence periods of all licences for the services specified by the Secretary of State so that they end on or before that date. However, OFCOM cannot shorten the duration of a licence so that it would end less than 2 years from the date on which OFCOM give notice of the variation, unless the licence-holder consents.

133. OFCOM may not vary a licence period so that it ends after the switchover date.

Clause 31: Renewal of national radio licences

134. Clause 31 allows the further renewal of national analogue licences for a period of up to seven years. All of these licences have already been granted a renewal of 12 years under the powers in section 103A of the Broadcasting Act 1990 ("the 1990 Act").

135. The procedure to be adopted for licence renewals under the new section 103B of the 1990 Act is that set out in subsections (2) to (9), (11) and (12) of section 103A of that Act. However, within these subsections, the provisions which refer to a situation where a digital service is not yet on-air do not apply. This is because an applicant for a renewal under section 103B will already be providing a national digital simulcast service under the conditions of the previous renewal.

136. OFCOM must include a condition in renewed licences requiring licence holders to do all they can to provide a digital simulcast of their radio service throughout the renewal period.

137. An application for renewal must be made no later than three months before the relevant date, as defined in the existing section 103A(11) of the 1990 Act. Normally, OFCOM must determine the relevant date at least one year in advance. Clause 31(3) allows OFCOM to set a relevant date of less than one year after the date of determination where they consider that the relevant date falls no more than 15 months after the day on which clause 31

comes into force. However, OFCOM must determine the relevant date as soon as practicable following commencement of clause 31.

Clause 32: Renewal and variation of local radio licences

138. Clause 32 allows OFCOM to renew a local analogue licence for a period of up to seven years, provided it has already been renewed under section 104A of the 1990 Act or is granted on or after the date on which clause 32 comes into force.

139. The procedure to be adopted for licence renewals under the new section 104AA is that set out in subsections (3) to (12), (13) and (14) of section 104A of the 1990 Act.

140. Under current renewal conditions, the applicant for renewal of a local licence must nominate a local digital sound programme service and a local DAB multiplex. Sections 104AA and 104AB make provision for holders of local licences to make a "national nomination", that is, to nominate a national digital sound programme service and a national DAB multiplex. The power to make a national nomination is restricted to licences which are defined as an "approved licence". It will be for OFCOM to determine, following consultation, whether a particular licence is approved for this purpose. The consultation requirement may be satisfied by OFCOM publishing a document before clause 32 comes into force.

141. A national nomination must be made in the application for renewal or before OFCOM consider the application, and it may only be made where OFCOM are satisfied that the national digital sound programme service will include at least 80% of the content included in the service provided under the approved licence.

142. Section 104AB(4) requires that, if a licence holder is to make an application under section 104AC in relation to other approved licences, such licences must be specified in the national nomination.

143. The new section 104AC relates to a situation where an approved licence which has not yet been renewed under new section 104AA is specified in a national nomination made under new section 104AB(4) in connection with the renewal of another licence. It allows OFCOM to vary the approved licence, at the request of the licence-holder, by replacing the "local digital services condition" with a "national digital services condition".

144. A local digital services condition is a condition that OFCOM are currently required to include in renewed licences as a result of section 104A(12) of the 1990 Act, and by which a licence holder is required to do all the licence holder can to ensure that a local digital sound programme service is broadcast on a local radio multiplex service. The purpose of allowing such a condition to be replaced with a national digital services condition is so that holders of approved licences that have not yet been renewed under section 104AA but that wish to

provide a digital service on a national multiplex, rather than on a local multiplex, are not, as a result, in breach of their local digital services condition.

145. Before OFCOM vary a licence under this provision, they must be satisfied that the national digital sound programme service will include at least 80% of the content included in the service provided under the licence that is the subject of an application for variation.

146. An application for renewal of a licence under section 104AA must be made no later than three months before the relevant date, as defined in the existing section 104A(13)(c) of the 1990 Act. Normally, OFCOM must determine the relevant date at least one year in advance. Clause 32(3) allows OFCOM to set a relevant date of less than one year after the date of determination where they consider that the relevant date falls no more than 15 months after the day on which clause 32 comes into force. However, OFCOM must determine the relevant date as soon as practicable following commencement of clause 32.

Clause 33: Variation of licence period following renewal

147. This clause adds section 105A to the 1990 Act and allows the Secretary of State to reduce the duration of a licence renewed under section 103B or 104AA. This power only applies where the Secretary of State has not nominated a digital switchover date or has withdrawn a digital switchover date without nominating a further date.

148. The Secretary of State may give notice to OFCOM of a termination date, specifying the services affected. Different termination dates may be given for different services, but the termination date cannot be before 31st December 2015.

149. OFCOM are required to reduce the duration of a renewed licence so that it ends on or before the termination date set by the Secretary of State, but OFCOM cannot give less than two years' notice of termination of the licence, unless the licence-holder consents.

150. OFCOM cannot vary the licence period under this section so that the licence expires after the termination date set by the Secretary of State.

151. The Secretary of State must consider, before 31st December 2013, whether to exercise the powers contained in section 105A.

Clause 34: Content and character of local sound broadcasting services

152. This clause allows OFCOM to amend the conditions of a local licence to allow local programming to be made outside of the licensed area and gives greater discretion to OFCOM to determine the appropriate level of locally-made content.

153. OFCOM may agree to a departure from the character of a service provided under a local licence if programmes will continue to be made within an area approved by them. OFCOM must consult prior to approving an area or withdrawing their approval. The

consultation requirement can be satisfied by OFCOM publishing a document before clause 34 comes into force.

Clause 35: Local radio multiplex services: frequency and licensed area

154. This clause inserts section 54A into the Broadcasting Act 1996 ("the 1996 Act"). It allows OFCOM to vary the frequency, or extend or reduce the coverage area, of a local radio multiplex licence.

155. It is up to the holder of a licence to apply to OFCOM for approval of a variation. In so doing, the licence holder must submit a technical plan which indicates the proposed coverage area, the timetable and the technical means for implementing the change. OFCOM must consult on the proposal before granting the application, and they may only grant approval if they consider that the variation will not unacceptably narrow the range of local DAB programmes in the area for which the local radio multiplex is provided.

Clause 36: Renewal of radio multiplex licences

156. Clause 36 contains a power to amend Part 2 of the 1996 Act (and, in particular, section 58) by regulations for the purpose of making further provision about the renewal of radio multiplex licences. In particular, regulations made under this power may make provision about the circumstances in which OFCOM may renew a licence, the period of such renewal, the information that OFCOM may require from an applicant, the requirements that an applicant must meet, the grounds for refusal of an application, payments to be made and further conditions that may be included in a renewed licence.

157. The power, which is exercisable until 31st December 2015, is subject to the affirmative procedure, requiring approval by both Houses of Parliament.

Topic 7: Regulation of television and radio services

Clause 37: Application of regulatory regimes to broadcasters

158. Section 263(4) of the Communications Act 2003 ("the 2003 Act") gives the Secretary of State the power to cease to include certain obligations in the licence of any service. However, this power does not include any flexibility to remove obligations for a limited period or to reintroduce those if it is appropriate so to do.

159. The clause amends section 263(4) to allow greater flexibility in response to market changes. The clause provides for the Secretary of State to alter the conditions of public service provision that OFCOM must include in Channel 3 and 5 licences, and then to change the conditions back at a later date. The Secretary of State may only make these alterations by affirmative order, which would require approval by Parliament before it could take effect.

Topic 8: Access to electromagnetic spectrum

Background

160. Availability of next generation mobile broadband services requires the availability of spectrum. There are suitable blocks of spectrum either ready for allocation, or about to become available, namely spectrum at 2.6 Gigahertz (GHz) and 800 Megahertz (MHz) otherwise known as the Digital Dividend, available as a result of digital switchover. Attempts by OFCOM to bring this spectrum to market have, however, been subject to delay due to issues around spectrum used for delivery of second generation (2G) mobile services.

161. These issues are complex and revolve around the change of use of spectrum at 900MHz and 1800MHz, known as spectrum liberalisation. To date, the use of 900MHz spectrum has been constrained to providing 2G services through a European Directive 87/372/EEC. This Directive has now been amended by Directive 2009/114/EC, to allow these spectrum holdings to be used for Universal Mobile Telecommunications Systems (UMTS, a 3G mobile technology) and requires the UK to implement this change by May 2010. The revised Directive requires Member States to look at whether competitive distortion results from these changes. OFCOM's view was that there was an issue and proposed the reallocation of some spectrum but OFCOM have been unable to agree with operators how this will be achieved. In parallel, the UK also has to implement a Radio Spectrum Committee Decision that allows the use of 1800MHz spectrum for UMTS.

162. With little certainty on when this would be resolved, the government announced in the *Digital Britain: Interim Report*[6] that it was seeking a solution, either through a voluntary industry consensus or an imposed government solution. An Independent Spectrum Broker was appointed to take this work forward.

163. The Independent Spectrum Broker's initial set of proposals were published on 13 May[7], and the government responded to these in the *Digital Britain: Final Report*[8]. Although the government stated that it was minded to implement the proposals, further work by the Independent Spectrum Broker was required. This work has now been completed, following extensive engagement with the mobile operators and other interested parties.

164. The government is now considering the proposals with a view to making a final decision. It has become clearer during the latter phase of the Independent Spectrum Broker's work that certain aspects of the Wireless Telegraphy Act 2006 ("the 2006 Act") would need amending to implement some of the recommendations of the Independent Spectrum Broker.

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[6] http://www.culture.gov.uk/what_we_do/broadcasting/5944.aspx

[7] http://www.culture.gov.uk/reference_library/publications/6147.aspx

[8] http://www.culture.gov.uk/what_we_do/broadcasting/6216.aspx

165. The proposals put forward by the Independent Spectrum Broker require the application in certain cases of annual licence fees, including what is known as Administered Incentive Pricing, to spectrum that has been auctioned, including spectrum that has been relinquished by operators to conform to the spectrum caps referred to below and spectrum authorised for use by 3G licences extended from a fixed term to an indefinite term.

166. Under the proposals put forward by the Independent Spectrum Broker, a set of temporary spectrum caps will be put in place during the auction and for a limited period after to prevent any one person holding more than a specified amount of spectrum. Operators may therefore be in a position of having to relinquish spectrum in order to comply with these caps and the relinquished spectrum will be auctioned.

167. Where operators are required to relinquish spectrum in order to comply with temporary spectrum caps, time limits will be set for that release of spectrum within the wireless telegraphy licence conditions. It is important that this release happens in the timeframe set out to ensure effective competition is maintained. Licensees will also be subject to certain retail service and wholesale access obligations, in order to widen access to the spectrum. OFCOM's existing powers to revoke or prosecute for breach of a wireless telegraphy licence condition may be disproportionate or insufficiently flexible to enforce the conditions which are proposed pursuant to a direction under section 5 of the 2006 Act to allow the timely reform of the spectrum.

Clause 38: Payment for licences

168. Subsections (1) to (3) of this clause allow OFCOM to make regulations under section 12(1)(b) of the 2006 Act which apply charges payable during the term of the licence to specified cases of wireless telegraphy licences allocated by auction. Section 12(5) of the 2006 Act, which includes power to impose charges payable during the term of the licence, does not apply to a licence that has been allocated through auction.

169. Subsections (4) to (7) of this clause allow OFCOM, with the consent of the Secretary of State, to make regulations under section 14(1) of the 2006 Act which will permit or require licences to which the regulations apply to provide for payments between operators in relation to licences auctioned under section 14 of the 2006 Act.

170. Under existing legislation, payments for spectrum at auction are made to OFCOM who must pay them into the Consolidated Fund. Under the Independent Spectrum Broker's proposals, the proceeds from any 2.1GHz relinquished spectrum should go back to the operator who relinquished it, on the basis that they bought this at auction in 2000. There will also be additional payments between operators arising from the auction of other relinquished spectrum.

Clause 39: Enforcement of licence terms etc

171. This clause inserts a new section 43A into the 2006 Act giving OFCOM power to impose financial penalties for contravention of certain licence provisions, terms or limitations

to which section 43A applies by virtue of a licence provision. A provision applying section 43A can only be included in a licence if it appears to OFCOM that a direction of the Secretary of State made under section 5 of the 2006 Act requires OFCOM to include a particular provision, term or limitation in the licence.

172. Under the current legislation, OFCOM's powers in respect of breaches of wireless telegraphy licences are limited to prosecution where such breach amounts to an offence under Chapter 1 of Part 2 of the 2006 Act or to revocation of the licence.

173. OFCOM has power under sections 42-44 of the 2006 Act to impose financial penalties for contraventions of the terms, provisions or limitations of a general multiplex licence.

Topic 9: Video Recordings

Background

174. The Video Recordings Act 1984 ("the 1984 Act") makes it an offence to supply a video recording, such as a DVD, containing a video work, such as a film or video game, unless the video work has been submitted to an authority designated by the Secretary of State for classification as to its suitability to be viewed by persons of particular ages and the DVD is supplied in accordance with the classification certificate. The Secretary of State has designated principal office holders in the British Board of Film Classification (BBFC) for this purpose. Certain types of video works are exempted (see section 2 of the 1984 Act). They include video works that are designed to inform, educate or instruct, or that are concerned with sport, religion or music, provided that they do not contain specified types of content, such as sexual activity or gross violence.

175. Most video games are currently exempted from the 1984 Act, unless they contain content such as sexual activity, gross violence or other matters of concern listed in section 2(2) and (3) of the Act. The BBFC classify video games which contain any film material, because the film material is not usually exempt from the requirements of the 1984 Act, even when it is contained in an exempt game. Additionally, on a voluntary basis, the video games industry submits to the BBFC games which they believe are likely to be classified as 18+.

176. Video games which are currently exempted under the 1984 Act are usually classified on a voluntary basis by the Pan-European Games Information (PEGI) system. PEGI classifications of 12 and over are administered throughout Europe by a UK body, the Video Standards Council (VSC).

Clause 40: Classification of video games, etc

177. The Bill will extend the statutory classification requirement to video games that are only suitable for viewing by persons aged 12 years and above. This extension of the classification requirement to a wider age bracket for video games will implement Professor

Tanya Byron's recommendation set out in her independent review entitled *Safer Children in a Digital World* [9]and it follows in the wake of a UK-wide public consultation on the future structure of the video game classification system.

178. Clause 40 sets out the conditions that must be satisfied for the game to be an exempted work under the 1984 Act. The existing statutory exemptions for video games will continue to apply. So those games that, taken as a whole, are designed to inform, educate or instruct, and those concerned with sport, religion or music, will not be required to be classified, provided that they do not depict human sexual activity, gross violence or any of the other matters set out in section 2(2) and (3) of the 1984 Act.

179. A video game will also be exempted if it satisfies one or more the conditions set out in new section 2A. The first condition is that the game does not contain anything listed in section 2A(2)(a) to (h). The second condition is that the designated authority (or a person nominated by it) has confirmed in writing that the game is suitable for viewing by persons under the age of 12. The criteria listed in section 2A(2)(a) to (h) are based on the criteria used by the PEGI[10] system to determine whether a video game is only suitable for those aged 12 years and above. They include depictions of violence against human or animal characters, depictions of activity involving illegal drugs, swearing and offensive language. Depictions of violence against human or animal characters would not meet the criteria if the character was of a rudimentary form, such as a simple stick character.

180. The Secretary of State would have power to amend the criteria set out in section 2A(2)(a) to (h) by regulations, subject to the affirmative resolution procedure. This would enable the criteria to be updated, if necessary, in the future, subject to Parliamentary scrutiny. The Secretary of State would also have power, by regulations subject to the affirmative resolution procedure, to add or remove further criteria for exempted video games.

181. Section 3 of the 1984 Act sets out the circumstances in which a supply of a video recording is an exempted supply, even if the film or game contained in the video recording is not exempted. The Bill amends that section to secure that the supply of video games by means of amusement arcade machines is exempted (see new subsections (8A) and (8B)), unless the game includes any of the matters mentioned in section 2(2) and (3) of the 1984 Act. It also confers on the Secretary of State a new power to amend section 3 of the 1984 Act, by regulations subject to the affirmative procedure, by adding, varying or removing exempted supplies under the Act.

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[9] http://www.dcsf.gov.uk/byronreview

[10] PEGI age related logos, content descriptors and the guidelines for completing the ratings questionnaire can be downloaded from the opening page of VSC website http://www.videostandards.org.uk

Clause 41: Designated authority for video games

182. This clause inserts a new section 4ZA into the 1984 Act and allows the Secretary of State to designate two different authorities under section 4 of the Act. So, a person (or persons) may be designated to make arrangements with respect to video games ("the video games authority") and a different person or persons may be designated for making arrangements in respect of other video works ("the video works authority).

183. Some mechanism is thought to be necessary to enable the designated authorities, where appropriate, to transfer work between them. New section 4ZB provides that where two authorities are designated under section 4, responsibility for classifying a class of video games may be allocated by the video games authority to the video works authority. This would allow the video games authority to allocate to the other authority responsibility for video games that are considered to be suitable only for supply in licensed sex shops. It also provides that the video games authority may allocate responsibility in relation to video games when they are supplied in a particular type of video recording – for example, responsibility might be transferred for video games that are supplied on the same disc as a film or within the same boxed set as a film. An example would be the basic games found on Blu-Ray discs. Once an allocation is made, the video works authority has responsibility for making arrangements in respect to the allocated works.

184. An allocation must be made by notice and may only be made with the consent of the video works authority. It may only be withdrawn by notice and with consent. When making or withdrawing an allocation, the video games authority must have regard to any guidance issued by the Secretary of State.

185. Any question as to which authority is responsible for making arrangements with respect to a class of video games may be determined conclusively by the video games authority. New section 4ZA(2) provides that references in the 1984 Act to the designated authority in relation to a particular video work will be to the authority designated to be responsible for making arrangements in relation to the video work, taking account of any allocation made by the video works authority under new section 4ZB.

186. New section 4ZC relates to video works that are found within video games, for example, a film which can be viewed as part of the process of playing a game. Where the video work already has a classification certificate issued by the video works authority, it enables the video games authority to take account of that certificate. For video works that have not already received a classification certificate, it enables the video games authority to make arrangements to obtain and have regard to any subsequent determination made by the video works authority as to the suitability of all or part of the video work included in a video game. The video games authority must consult the video works authority with respect to the appropriateness of the arrangements that it makes for taking account of such matters. It must also have regard to any guidance issued by the Secretary of State.

Schedule 1: Classification of video games etc – supplementary provision

187. Schedule 1 makes further amendments of the 1984 Act.

188. Section 4 of the 1984 Act makes provision about the arrangements to be made by the designated authority. Sections 4(1)(b)(i) and (ii) and 7 are to be amended to clarify that the arrangements may include provision for the revocation of classification certificates.

189. A new subsection (1C) is to be inserted into section 4 so that arrangements made under this section may require a person seeking a classification certificate for a video work to agree to comply with a code of practice, such as the PEGI[11] code of practice. That code includes provision relating to the labelling of video recordings.

190. A new subsection (3A) is to be inserted into section 4 to ensure that, prior to making any designation under section 4, the Secretary of State must satisfy himself that adequate arrangements will be made for taking account of public opinion in the United Kingdom. This means that the designated authority must have an effective system to gauge public opinion and take account of it.

191. Section 4(5) currently requires the Secretary of State to approve tariffs for fees to be charged by the designated authority in connection with the classification of video works. The Bill would amend this so that the designated authority simply has to consult the Secretary of State about the fees that it proposes to charge.

192. A new subsection (6A) is to be inserted into section 4 to ensure that the designated authority complies with any guidance issued by the Secretary of State relating to arrangements made under that section. For example, the Secretary of State may provide guidance on administrative matters such as how records of classification certificates are to be kept and how appeal arrangements may be set up. New subsection (6B) makes it clear that the Secretary of State's guidance is not to extend to the criteria to be taken into account in making individual classification decisions. Section 4A of the 1984 Act sets out the criteria to which special regard is to be given by the designated authority when making such decisions.

193. New section 7A of the 1984 Act provides that classification certificates may be issued so as to have effect only for the purposes of a particular video recording. This enables video works to be classified by reference to the recording in which they are to be published. For example, a video game may be classified for the purposes only of its supply for use on a particular platform, such as Nintendo or Xbox. Section 7A(2) provides that, in such a case, the classification certificate can only be relied on for the supply of the video work for use on that platform and not for its supply more generally.

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[11] http://www.videostandards.org.uk

194. The offences set out in the 1984 Act at sections 11 (supplying a video recording of classified work in breach of classification), 13 (supplying a video recording not complying with requirements as to labels, etc) and 14 (supplying a video recording containing false information as to classification) are amended to provide that an offence is not committed where the video work concerned is an exempted work or the defendant believed on reasonable grounds that the video work was an exempted work. For example, the defendant might believe, on reasonable grounds, that a video game has not been classified because it is suitable for viewing by persons aged under 12, having regard to the criteria set out in new section 2A(2)(a) to (h).

195. The offences under the 1984 Act relate to the supply, or possession for the purpose of supply, of a video recording that contains a video work. Section 22(2) of the 1984 Act provides that a video recording contains a video work if it contains information by means of which all or part of the video work can be produced. There is an exception to this: if a video work contains an extract of another video work (for example, a film that includes an extract from another film), the extract is not part of the work of which it is an extract but a part of the video work which contains the extract; and hence the video recording contains that video work including the extract. An increasing variety of video recordings are available, some of which contain a mixture of films and video games. New subsection (2A) of section 22 would provide a power for the Secretary of State to make provision about the circumstances in which a video recording does or does not contain a video work for the purposes of the 1984 Act. This would allow provision to be made to take account of new formats, such as where a video game contains a whole film within it or a film contains a game within it.

Topic 10: Copyright and performers' property rights: licensing and penalties
Clause 42: Extension and regulation of licensing of copyright and performers' rights
196. This clause introduces powers for the Secretary of State to make regulations authorising the use of orphan works (defined in regulations) and extended licensing as well as the regulation of licensing bodies. Currently, some uses of a work without the consent of the copyright owner even where that owner cannot be identified or traced are an infringement of copyright. There are civil penalties for infringement and infringement can be a criminal offence if it takes place on a commercial basis. As a result, many orphan works, some of significant cultural value, are not used.

197. The advent of digital media has increased the volume and speed at which material protected by copyright or performers' rights is created and disseminated in the United Kingdom. Extended licensing will allow a licensing body to act on behalf of those remaining rights holders who are not members of, and so are not represented by, the body once that body has been authorised to do so by the Secretary of State. This is intended to make the system of rights clearance simpler for those seeking to use works.

198. Any licensing body authorised to operate extended licensing, or to license orphan works, or that is failing to self-regulate, will be subject to obligations to adopt a code of practice.

199. The clause introduces four new sections into the Copyright, Designs and Patent Act 1988 ("the 1988 Act"):

- Section 116A enables the Secretary of State to make regulations which will provide for the authorisation of a licensing body or other person to use or to license the use of orphan works. It also provides for regulations to define orphan works. Subsections (2) to (5) of the section enable the Secretary of State to determine whether a licensing body or other person meets the requirements for authorisation, and to provide for the treatment of royalties and other sums paid for authorisation of the use of orphan works and for the rights and obligations of any person if a works ceases to be an orphan work.

- Section 116B enables the Secretary of State to make regulations to authorise a licensing body to operate extended licensing of published works and to allow a rights owner to exclude itself from such licensing by notice. Subsections (2) to (5) of section 116A apply also to regulations about extended licensing.

- Section 116C introduces Schedule A1 to the 1988 Act (inserted by subsection (2) of the clause and Part 1 of Schedule 2 to the Bill) which confers powers on the Secretary of State to provide for codes of practice relating to licensing bodies and the regulation of licensing bodies and other bodies authorised under sections 116A and 116B.

- Section 116D provides that section 116B and Schedule A1 do not apply in relation to Crown copyright or Parliamentary copyright. It also makes general provision about regulations under the provisions inserted by the clause, including provision about parliamentary procedure for making regulations.

Clause 43: Increase of penalties relating to infringing articles or illicit recordings

200. The Gowers Review of intellectual property[12] recommended that the penalties for online copyright infringement under section 107 of the 1988 Act should be matched with those that apply for physical infringement, by increasing the maximum prison sentence. Section 107 of the 1988 Act currently restricts fines awarded on summary conviction for criminal infringement of copyright under section 107(4)(a) and 107(4A)(a) to the statutory maximum, which is £5,000 in England and Wales and £10,000 in Scotland. The clause increases the maximum fine that may be imposed for these offences to £50,000. It also increases the maximum fine on summary conviction for making, importing, distributing or

[12] Gowers review of Intellectual Property, 6 December 2006

making available an illicit recording under section 198(5) or 198(5A) from the statutory maximum to £50,000.

Schedule 2: Licensing of copyright and performers' property rights

201. The Schedule makes supplementary amendments to the Copyright, Designs and Patents Act 1988 ("the 1988 Act") in connection with clause 42.

202. Part 1 of Schedule 2 inserts Schedule A1 into the 1988 Act. Paragraphs 1 and 2 of Part 1 give the Secretary of State the power to make regulations requiring a licensing body to comply with a code of practice which complies with requirements set out in those regulations and to impose a code on any licensing body that fails to do so. Paragraph 2 provides that these powers can only be exercised for the purposes of provision made under section 116A, that is the authorisation of the use of orphan works or section 116B, that is the authorisation of extended licensing or where it appears to the Secretary of State that a licensing body's system of self-regulation is failing. Paragraph 2 also enables provision to be made for the procedures to be followed before regulation is applied or ceases to apply.

203. Paragraph 3 enables the Secretary of State to make regulations to provide for the consequences of the non-compliance with a code of practice or authorisation under section 116A or 116B, including financial penalties and a right of appeal to the Copyright Tribunal.

204. Paragraph 4 makes provision for fees to be charged to licensing bodies for regulation.

205. Part 2 of Schedule 2 inserts paragraphs 1A to 1D into Schedule 2A to the 1988 Act. These paragraphs contain provisions equivalent to sections 116A to 116D for performers' property rights and apply Schedule A1 in relation to those rights.

Topic 11: Public Lending Right

Background

206. Clause 44 amends the Public Lending Right Act 1979 ("the 1979 Act") and the Copyright, Designs and Patents Act 1988 ("the 1988 Act") to reflect the changing nature of book publishing and the increasing demand for the loan of books from public libraries in formats other than print. It does this by:

- Extending eligibility for public lending right ("PLR") payments to the authors of audio-books and e-books;
- Extending PLR to producers and narrators of books that are recorded as sound recordings; and
- Protecting public libraries who lend the books from liability for breach of copyright or breach of rights in performances.

207. The clause does not extend PLR to works that are available for loan from public libraries but that do not consist mainly of written or spoken words or still pictures. For example, films, music recordings and computer games are not covered. Neither does the clause extend PLR to digital files downloaded outside library premises.

208. Since its introduction in 1979, PLR has compensated authors for the potential loss in sales resulting from their works being freely available to borrow from public libraries. Under the current PLR scheme established by virtue of the 1979 Act translators, editors, compilers and illustrators are included (along with writers) in the definition of 'author' and so are eligible for PLR payments. PLR is now recognised by European legislation (Directive 2006/115/EC on rental right and lending right) as reflecting and protecting the exclusive lending and rental rights of holders of rights in print books.

209. Authors, performers and producers of non-print books, such as audio-books and e-books, have rights conferred on them under the 1988 Act allowing them (or anyone to whom they have assigned their rights) to authorise or prohibit the lending of their work by public libraries. The law currently requires libraries to enter into individual contractual and financial arrangements with those rights holders for the lending of non-print books.

210. It is the view of government that this requirement could be having an impact on the willingness of libraries to lend audio and e-books. It could also be resulting in libraries lending works in breach of the rights of authors and other rights holders. Clause 44 is designed to help simplify the current system of payment to rights holders, give a wider range of rights holders' protection under the PLR scheme, and support innovation in publishing and the creative industries. The government hopes that it will also increase non-print lending by encouraging authors to enter the non-print market.

Clause 44: Public lending right

211. This clause amends the definition of "book" in the Public Lending Right Act 1979. The 1979 Act pre-dated the advent of most audio and e-books and consequently use of the word "books" within it is interpreted as being limited to books in printed format. This clause extends the definition to works that are recorded as sound recordings, and works recorded electronically, so long as they consist mainly of written or spoken words or still pictures. As is already the case for printed books, it is intended that the PLR payment scheme established under the 1979 Act will not cover audio and e-books whose author is described as other than a natural person, or that are musical scores, Crown Copyright publications, newspapers, journals or periodicals, or that are not offered for sale to the public or do not have an international standard book number ("ISBN").

212. The clause also amends the definitions of "lending", "loan" and "borrowed" in the 1979 Act with the aim of capturing almost all cases in which a public library makes a book (whether in print or audio or e-book form) available to a member of the public for use away from the library for a limited period of time. The exception is where the book is communicated by means of electronic transmission to a place other than the library, for

example where the library makes digital files available for remote downloading. In practice this exception is likely to apply to e-books for which a licensing agreement exists between the library and author or publisher under which incremental payment is made based on usage, rather than on individual units purchased on a once-and-for-all basis.

213. The clause amends the definition of "author" in the 1979 Act. Producers and narrators of audio-books and of e-books recorded as sound recordings play a role in making works in audio formats new and unique creations, not just different formats of the same printed volume. Like authors, producers and narrators are conferred with lending rights under the 1988 Act: copyright in the case of producers and performers' rights in the case of narrators. This clause extends eligibility for PLR to those additional categories of rights holder.

214. PLR as extended by the clause continues to be available to all rights holders primarily resident within the European Economic Area (EEA). The clause also preserves the lending rights of non-EEA rights holders under the 1988 Act so that they remain able to license or assign their rights to public libraries (and other persons) independently.

215. The clause makes consequential amendments of the 1988 Act to reflect the extended definitions of "book", "author" and "lending" in the 1979 Act. The amendments reduce the scope of copyright and rights in performances under the 1988 Act. This is to protect public libraries from liability under that Act when they lend works that are eligible for PLR. As a result of the changes, libraries will generally no longer need to make agreements with authors before lending out their e-books and audio-books.

General clauses

Clause 45: Power to make consequential provision etc.

216. This clause gives the Secretary of State the power to make incidental, supplementary, consequential, transitional, transitory or saving provision in connection with the amendments to various enactments made by the Bill. Certain necessary consequential amendments have already been identified and are included in the Bill. This power allows any further amendments to be made, where necessary, in order to give proper effect to the provisions made by the Bill.

Clause 46: Repeals

217. This clause introduces Schedule 3 which contains repeals of provisions of the Public Lending Right Act 1979 (c.10), Video Recordings Act 1984 (c.39), Broadcasting Act 1990 (c.42) and Communications Act 2003 (c.21).

Clause 47: Extent

218. This clause provides that the Bill extends to England and Wales, Scotland and Northern Ireland. Subsection (2) provides that any amendments made by this Bill to the Acts listed in subsection (2) may be extended to any of the Channel Islands or the Isle of Man under relevant extending powers in those Acts. Subsection (4) permits amendments made by

this Bill to Part 1 of the Copyright, Designs and Patents Act 1988 to be extended to any British overseas territory under section 157(2) of that Act.

FINANCIAL EFFECTS AND PUBLIC SECTOR MANPOWER

219. There are two areas where there are potential effects on public expenditure and public service manpower: public lending right and effects on OFCOM.

220. The Public Lending Right Registrar distributes DCMS grant in aid ("GiA") to authors as PLR payments. Expanding PLR to cover books in non-print formats will require an ongoing commitment to provide additional GiA of an estimated £0.75 million per year.

221. The Bill also includes a number of provisions which make changes to OFCOM's activities and duties. It is expected that the additional duties the Bill places on OFCOM, and any associated increase in staffing, can be carried out within OFCOM's existing expenditure cap. The new local and regional news activity (clause 28) will be financed through a new source of funding additional to the existing funding cap. Further information about long-term funding can be found in *The Government's response to the consultation on "Sustainable independent and impartial news in the Nations, locally and in the regions"* [13].

SUMMARY OF IMPACT ASSESSMENT

222. A package of impact assessments has been published. This includes:

- An overarching impact assessment which summarises the overall monetised and non-monetised costs and benefits for the Bill as a whole;
- An equalities impact assessment for the Bill as a whole; and
- Specific impact assessments for each of the policy areas the Bill covers, including specific impact tests and equalities assessments.

223. Copies have been placed in the Vote Office of the House of Commons and the Printed Paper Office of the House of Lords. In addition, the full impact assessment is available on the BIS website: http://www.bis.gov.uk/digitaleconomybill

[13] http://www.culture.gov.uk/reference_library/publications/6431.aspx

224. The Bill brings forward a number of specific policy proposals, decisions and recommendations across several substantive policy areas. The rationale for these different proposals, and the respective costs and benefits of these measures, are summarised in the overarching impact assessment, and discussed in detail in the individual impact assessments. There is not an aggregated cost/benefit analysis.

225. Key monetised and non-monetised costs include:

- Potential costs to consumers and businesses if the changes to OFCOM's general duties were to result in reduced clarity about OFCOM's remit;

- Costs of implementation of the online copyright infringement provisions, estimated to be in the region of £290 to £500 million, with the possibility of higher costs to broadband consumers;

- Potential compliance costs to members of internet domain registries should they have to comply with a request from the Secretary of State;

- One-off costs for the implementation of the news provisions. These will need to be determined;

- A small loss to producers of Gaelic programming; and

- Due to the extension of the radio licence renewal regime, a loss to Government of around £10 million where it might have raised funds via the "blind auction". The regime will also reduce opportunities to enter the analogue commercial industry, therefore potentially reducing competition.

226. Key monetised and non-monetised benefits are likely to arise as follows:

- Changes to OFCOM's general duties are likely to improve OFCOM's ability to further citizens' and consumers' interests through promoting greater and accelerated investment by network operators and in UK public service content;

- The online copyright infringement provisions will bring benefits to rights-holders by recovering displaced sales (estimated benefit £1700 million);

- The provisions on internet domain names are expected to benefit consumers by giving greater protection in terms of reduced exposure to risk of financial loss and less distress associated with mistakenly accessing a (fake) site similar to the one they were intending to access, and the availability of better delineated disputes procedure;

- By allowing flexibility around licence obligations, the provisions on public service broadcasting should ensure that the costs of licences reflect their true market value. This should allow licence holders to make cost savings based on short term variations to public service obligations;

- Co-location changes introduced by the provisions on independent radio services are expected to allow cost savings and economies of scale. Large stations could see profits before interest and tax rise from six per cent to 24 per cent assuming a ten per cent fall in advertising revenue or from six per cent to seven per cent assuming a 20 per cent fall in revenue;

- Provisions on extended collective licensing are not themselves expected to bring monetised benefits. However, anecdotal evidence suggests an estimated reduction in administration costs of two to five per cent. Provisions on matched penalties may bring indirect benefits to business through a reduction in pirated goods and an increase in legal sales of their products;

- Provisions on public lending right could bring benefits to rights holders in non-print books of up to £750,000 in additional payments.

CARBON ASSESSMENT

227. The Bill will not have a significant impact on the environment or carbon emissions.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

228. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act).

229. Lord Mandelson has made the following statement:

"In my view the provisions of the Digital Economy Bill [HL] are compatible with the Convention rights."

230. All of the provisions of the Bill have been considered in relation to compatibility with the European Convention on Human Rights and other international human rights obligations. Only those clauses which raise potential compatibility issues are discussed below. In relation to the remainder of the clauses, there are no rights potentially engaged.

Topic 1: General duties of OFCOM

Power for OFCOM to require information from network providers (clause 2)

231. Article 8 of the Convention is potentially engaged but that would depend on the circumstances and use of the power. It is possible that some of the information which will be required to be provided may constitute commercially confidential information. Such information supplied by network providers is capable of being information which would engage Article 8.

232. However, OFCOM are a public authority for the purposes of section 6 of the Human Rights Act 1998 and must therefore exercise any power compatibly with Convention rights. In addition, section 137 of the Communications Act 2003 provides that any request for information must be proportionate to the use to which the information is to be put. The information to be provided by network providers is necessary to enable OFCOM to fulfil their new reporting duties under this clause in relation to the capability and resilience of the communications infrastructure and internet domain names. Section 393 of the Communications Act 2003 places restrictions on the disclosure of information obtained under powers conferred by that Act. It is therefore considered that conferring this power on OFCOM does not constitute a breach of Article 8 rights.

Topic 2: Online infringement of copyright (clauses 4-17)

Notification provisions

233. Article 8 of the Convention and Article 1 of the First Protocol to the Convention are potentially engaged by these measures. The Bill will place requirements on internet service providers ("ISPs") to comply with two initial obligations; to send notifications to subscribers who have been identified by copyright owners in relation to alleged infringements of copyright; and to maintain internal lists of the number of times an individual subscriber has been identified and provide certain (non-identifying) information from those lists to affected copyright owners on request.

Additional technical measures

234. The Secretary of State will have the power by order to impose obligations on ISPs to take technical measures against internet subscribers. Such measures may include temporary suspension, bandwidth capping and bandwidth shaping. OFCOM will adopt a code of practice setting out procedures to enable ISPs to give effect to these measures.

235. When following any rules specified by the Secretary of State or OFCOM for giving effect to the technical measures, ISPs will potentially be hindering subscribers from accessing the internet (and hence their e-correspondence), or from having the broadband connection speed and content they contracted for. These measures may amount to interferences with the right to respect for private life, the right to freedom of expression and the right to peaceful possession of property. The rights are engaged because affecting the ability of a subscriber to access the internet at a given speed or, potentially, at all will tend to affect their ability to communicate with others by on-line methods (by email, and through instant messaging and contributions to internet discussions). This would tend to affect their private and family life in

the widest sense, but also Article 10 rights to freedom of expression and freedom of information.

236. However, such interference does not render the provisions incompatible with the Convention. The provision represents an acceptable balance between subscribers' rights and the public interest in the protection of the copyright of third parties. Copyright owners have limited methods of protecting their copyright, which may be less effective across national boundaries than within a single jurisdiction. Infringement over the internet is likely to cross national boundaries. Moreover, subscribers may be infringing the rights of more than one copyright owner at a time, and these provisions permit action benefiting many copyright owner. By providing for a warning to subscribers that they are infringing the rights of others and permitting them to rebut the assumptions underlying that warning before technical measures are taken against them, these provisions strike the appropriate balance between the rights of subscribers and the rights of copyright owners.

237. Determinations made by ISPs when applying the rules made by the Secretary of State for the imposition of technical measures are likely to amount to determinations of a civil right or obligation within the meaning of Article 6 of the Convention. The legislation provides for appropriate review mechanisms by an independent and impartial tribunal, and these mechanisms render the provisions compatible with the Convention.

Power to amend copyright provisions

238. Clause 17 inserts a new section 302A into the Copyright, Designs and Patents Act 1988 ("the 1988 Act"). It enables the Secretary of State to make provision by order to amend Part 1 or Part 7 of the 1988 Act for the purpose of preventing or reducing online copyright infringement, if it appears to the Secretary of State appropriate to do so having regard to technological developments that have occurred or are likely to occur.

239. In addition to the problems caused by services such as unlawful peer-to-peer (P2P) file-sharing and other many-to-many infringements which are dealt with by other provisions of the Bill, cyber lockers (online data repositories) and similar services have also been identified as areas where damaging online copyright infringement are already occurring and where the problem could grow rapidly. The government's concern is that in a rapidly moving technological environment a response that is more flexible than relying on new primary legislation is required in order to meet technological evolution.

240. The provisions only contain a power and create no immediate substantive effect. Whilst the Convention rights may be engaged by an exercise of the power the government believe that the power can be exercised in a manner which is compatible with them. Section 3 of the Human Rights Act 1998 in any event requires powers to be exercised in a manner that is compatible with the Convention rights. Before exercising the power the Secretary of State has a duty to consult. A further safeguard is that any order made using the power is subject to the affirmative resolution procedure. These safeguards are intended to help ensure that the power will only be exercised when necessary and in a proportionate way and only after a fair

and transparent process has been followed. A further safeguard is that the power specifically does not allow the Secretary of State to create or modify any criminal offence.

Topic 3: Power in relation to domain name registries (clauses 18 – 20)

241. These provisions amend the Communications Act 2003 in order to regulate internet domain name registries where there has been a serious failure of a registry consisting in either the use of prescribed practices that are unfair or involve the misuse of domain names or the failure of the registry to have in place a complaints procedure which complies with prescribed requirements. The Secretary of State may appoint a manager in respect of the property and affairs of the registry to secure that appropriate steps are taken to remedy the failure or the consequences of the failure, and/or the Secretary of State may apply to the court to seek an order making such alterations to that registry's constitution as are necessary to secure that appropriate steps are taken to remedy the failure or the consequences of the failure.

242. The measures to be taken by the Secretary of State are only to be taken in circumscribed circumstances, to secure specified aims, following adequate opportunity for the registry to make representations. The registries will be able to appeal the appointment of a manager or a decision of a court. Therefore, although the appointment of a manager and/or the alteration of a registry's constitution may amount to a interference in the property rights relating to a particular registry, the Departments consider that these provisions nonetheless represent an appropriate balance between the private rights of registries and their owners to conduct their businesses freely and the public interest in ensuring that the entities which register internet domain names do not operate in a manner which impacts negatively upon consumers, the general public, or the reputation of the UK's internet economy.

243. Alteration of the constitution of a registry and the appointment of a manager also arguably engage the determination of civil rights and/or obligations pursuant to Article 6 of the Convention. However, as regards intervention in respect of a registry's constitution, those rights are secured by the fact that (a) alteration can only take place after the Secretary of State has applied to the court for an order to alter the constitution of a designated registry, and (b) the court's decision will itself be appealable to a higher court. Furthermore, the alteration the court may make is limited to the changes that are necessary for securing that the registry rectifies a relevant failure or remedies the consequences of such a failure. With regard to the appointment of a manager over the affairs and property of the registry, the Departments consider that Article 6 rights are secured by the fact that (a) the powers of the manager are limited by the provision that the sole purpose of the appointment is to secure that the registry rectifies the relevant failure or to remedy the consequences of the failure, and (b) that the decision is appealable on both the facts and the law to Competition Appeal tribunal (and thereafter to the Court of Appeal on a point of law).

Topic 7: Regulation of television and radio services

Power for the Secretary of State to re-impose conditions under the regulatory regime for Channel 3 and Channel 5 licence holders (clause 37)

244. The Secretary of State currently has the power under section 263 of the Communications Act 2003 to provide that conditions which are included as part of the regulatory regime for any service should cease to be so included, whether permanently or on a temporary basis. Those conditions include, for example, programming quotas, and conditions in relation to news and current affairs programming. The power is being extended to provide that the Secretary of State has power to re-impose conditions which were previously excluded by an order made under section 263. This may adversely affect the rights of licence holders if conditions are re-imposed on the licences which they hold.

245. The regulatory regime at Part 3 of the Communications Act 2003 is applicable to public service broadcasters. Those broadcasters apply for licences on the basis that they wish to be public service broadcasters, and with the expectation that conditions will be placed upon their licences to secure compliance with a regime designed to protect the public service nature of their broadcasting output. This provision strikes an appropriate balance between the rights of broadcasters and the general public interest in securing a robust regulatory regime for public service broadcasting.

Topic 8: Access to electromagnetic spectrum

Power to allow OFCOM to levy penalties for failure to meet licence conditions (clause 39)

246. OFCOM may impose a penalty on a licence holder who fails to comply with particular provisions of a licence which was granted as the result of an auction following a direction given by the Secretary of State. The imposition of this penalty will be a determination of civil rights under Article 6. However, the procedures involved in determining those civil rights are not such as to amount to a breach of Article 6 for the reasons set out below.

247. OFCOM are a statutory body, established under the Communications Act 2003, and are required to act in a proportionate and reasonable manner themselves in accordance with section 6 of the Human Rights Act 1998. Moreover, an appeal against a decision to levy such a penalty will lie to the Competition Appeal Tribunal, an independently constituted body.

248. The levying of a penalty will amount to a deprivation of licence holders' possessions. However, this provision strikes an appropriate balance between the rights of individual licence holders and the public interest in the opening up of spectrum to further competition in the field of mobile broadband, and ensuring that those who use spectrum are properly regulated. Safeguards against the disproportionate exercise of this power include a ceiling on the amount of the penalty, the requirement that the amount be appropriate and proportionate and the duty of OFCOM to give reasons regarding the imposition of a penalty.

Topic 9: Provisions in relation to video games classification (clauses 40 and 41 and Schedule 1)

Classification of video games

249. The authority designated under the Video Recordings Act 1984 ("the 1984 Act") is concerned with classifying video works, which includes the provision of age ratings to apply to those works and advice on what is contained within the work. The supply of a video work other than in accordance with a classification certificate is a criminal offence. The amendments to be made to the 1984 Act by the Bill mean that more video games will fall within the ambit of the Act. The amendments may affect the economic interests of producers and publishers of video games. But the system of regulation and control provided by the 1984 Act, and the amendments to be made to it by the Bill, represent an acceptable balance between the rights of producers and publishers to distribute their work and the legitimate interest in the protection of health and morals and the prevention of crime or disorder. In particular, one of the purposes of the classification of video games is to protect children from the impact of age-inappropriate material.

Appeals from classification decisions

250. It is proposed that the designated persons who make determinations about the classification of video games will be the principal office holders of the Video Standards Council (VSC). An appeal from a determination as to whether a video game is suitable for classification and if so, the determination of the age rating that applies to it, is arguably a civil right for the purposes of Article 6. In designating persons under the 1984 Act, the Secretary of State must be satisfied that adequate arrangements will be made for an appeal from classification decisions (see section 4(3) of the 1984 Act). The Secretary of State expects to require the appeal body that will hear such appeals to be structurally independent of that organisation, in that no members of the Video Standards Council would sit on the appeal body. In addition any decision of the appeal body may be subject to judicial review.

Offences

251. The 1984 Act contains a number of offences. For those offences, the primary burden of proof rests with the prosecution to establish all the elements of each offence. But the 1984 Act also provides a number of defences that require the defendant to prove his or her knowledge or belief of certain facts or circumstances pertaining at the time of the alleged offence. For example, a person does not commit an offence in relation to the supply of a video recording if he or she reasonably believed that the supply was exempted. This potentially engages Article 6(2). However, such provision is reasonable where the matters are matters which will be within the defendant's knowledge and which it would be difficult for the prosecution to prove, such as matters relating to the defendant's state of mind at the time of the alleged offence.

Enforcement of classification provisions

252. Section 17 of the 1984 Act sets out powers of entry, search and seizure. Judicial authorisation governs the use of those powers. A justice of the peace must authorise a constable to enter and search premises and he can only do so if he is satisfied that there are

reasonable grounds for suspecting that an offence under the Act is being committed, and that there is evidence that the offence is or has been committed on those premises. A constable may only seize property in these circumstances if he has reasonable grounds to believe that that property may be required as evidence in relation to criminal proceedings under the Act. The 1984 Act therefore includes safeguards for the use of the powers. The provisions amount to an acceptable balance between Article 8 rights, and the public interest in upholding, by criminal sanction if appropriate, the classification system. These provisions are not being amended by the Bill.

253. Section 21 of the 1984 Act provides for the forfeiture of a video recording where a person is convicted of an offence under the Act and a court orders that the goods are to be forfeited. Where a criminal offence has been committed and goods that were the subject of those proceedings are seized, it is in the public interest to dispose of such property to further prevent the commission of offences and the spread of illegal material. The court cannot make a forfeiture order unless it gives the owner of the goods (or any person with an interest in the goods) an opportunity to be heard or to say why the order should not be made. An order cannot be made until after the time to appeal against a conviction has expired and, if an appeal has been instituted, that appeal has been determined. This provision represents an acceptable balance between the private rights of persons adversely affected by the loss of their possessions through forfeiture and the public interest in the proper operation of the classification system and the enforcement of that system. Section 21 is not being amended by the Bill.

Topic 10: Copyright licensing (clauses 42 and 43 and Schedule 2)

The granting of licences in relation to orphan works

254. Section 116A of and paragraph 1A of Schedule 2A to the Copyright Designs and Patents Act 1988 ("the 1988 Act") which will be introduced by clause 42 will allow the Secretary of State to make regulations for the authorisation of licensing bodies and other bodies to license the use of orphan works and orphan rights, as defined in the regulations. The compulsory licensing of an orphan work or right is potentially an interference with the rights of the unidentified or untraced right holder.

255. This measure strikes an appropriate balance between the private interests of right holders in controlling use of their works or rights, and the public interest in allowing the use of works or rights where consent cannot be obtained because the right holder cannot be identified or traced. Section 116A(6) of and paragraph 1A(6) of Schedule 2A to the 1988 Act give the Secretary of State power to make regulations determining when a work or rights is classified as orphan and when it ceases to be so. The Government intend that such regulations will impose adequate checks to ensure that works or rights are not so classified when the right holder can be identified and contacted and so is capable of giving consent to their use of their work or right. Secondly, the Secretary of State may by regulations made under section 116A(3) of and paragraph 1A(3) of Schedule 2A to the 1988 Act provide for the treatment of royalties collected, including holding money for the owner of the orphan work or right should they subsequently be identified allowing compensation for use which they have not

authorised. Finally, the Secretary of State has powers under section 116A(4) of and paragraph 1A(4) of Schedule 2A to the 1988 Act to determine through regulations the rights and obligations in respect of an orphan work or right if the owner of rights in the work is subsequently identified. It is in the public interest that orphan works and rights should be available to the public, subject to safeguards which can be provided by regulations for any such owner who is subsequently identified. There is nothing inherent in the powers introduced by this clause that could be challenged as a breach of the Convention. Compatibility with the Convention will depend on the circumstances and use of the powers.

Extended licensing

256. Section 116B of and paragraph 1B of Schedule 2A to the 1988 Act which are introduced by clause 42 provide for the Secretary of State to authorise extended licensing schemes. It is doubtful that Article 1 of the First Protocol is engaged in relation to the rights of a non-member of a licensing body whose works are licensed by that body under an extended licensing scheme because that right holder can opt out of the scheme. The measure is compatible with the Convention because it strikes an appropriate balance between the interests of the right holder in controlling use of their works, and the public interest in users having access to simplified licensing systems for use of copyright works and performers' rights.

The regulation of licensing bodies and bodies that are authorised to use and license the use of orphan works or rights

257. Licensing bodies license the use of copyright or performers' rights owned by their members, collect in royalties and distribute these to members after deducting the expenses of collection. The Secretary of State will have powers under section 116C of, Schedule A1 to and paragraph 1C of Schedule 2A to the 1988 Act (all introduced by clause 41) to make regulations requiring licensing bodies to adopt a code of practice if they are authorised to license orphan works or rights, or to carry out extended collective licensing or where it appears to the Secretary of State that their self-regulation fails to protect the interests of right owners, licensees, prospective licensees or members of the public.

258. The Secretary of State also has powers to determine through regulations made under section 116A(5) of and paragraph 1A(5) of Schedule 2A to the 1988 Act, that a person shall cease to be authorised to license the use of orphan works or rights, or a licensing body shall cease to be authorised to carry on extended collective licensing where it has failed to comply with requirements in those regulations. The Secretary of State has powers under paragraph 2(2) of Schedule A1 to the 1988 Act to make regulations determining when the regulatory requirements cease to apply to a licensing body that is not authorising use of orphan works or rights, or carrying on extended collective licensing. There is nothing inherent in the powers introduced by these provisions that could be challenged as a breach of Convention. Compatibility with the Convention will depend on the circumstances and use of the powers.

259. The imposition of regulatory requirements on a licensing body so that it is not able to continue with its licensing activities unless it complies with that regulation may be a

determination of civil rights and obligations within the meaning of Article 6. Similarly, where a licensing body has been authorised to license the use of orphan works or rights, or to carry on extended licensing, the removal of that authorisation and the rights attaching to it may be a determination of civil rights and obligations. The requirements of Article 6 are met because a licensing body will be able to apply for judicial review of any decision to impose regulation or to remove authorisation. The same considerations apply to the powers under regulations to remove an authorisation from a body other than a licensing body to use or to authorise the use or orphan works or rights. That is, such a body will be able to apply for judicial review of any decision to remove authorisation.

260. This measure strikes an appropriate balance between the rights of licensing bodies to operate freely and the public interest in ensuring that their business practices are transparent and take proper account of the interests of licensees and, where relevant, the members they represent and the general public.

261. The removal of the right to license the use of orphan works or rights, or to operate an extended licensing scheme does not amount to an interference with rights conferred by Article 1 of the First Protocol. Those rights will be established in detail in regulations, which will set out the circumstances under which the rights can be exercised. The jurisprudence of the European Court of Human Rights has made clear that, where a right is granted, removal of the right does not amount to a deprivation of that right if it is exercised in a manner which is inconsistent with conditions which made the exercise of that right possible.

Imposition of penalties

262. Paragraph 3 of Schedule A1 to the 1988 Act will allow the Secretary of State to make regulations to impose penalties, including financial penalties, on a licensing body if it fails to comply with a Code of Practice imposed under the Schedule. Any such penalty may amount to a determination of civil rights or a criminal charge under Article 6 of the Convention. The nature of the penalty will be determined by the regulations made by the Secretary of State in exercise of the power taken. At that time, it will be necessary to consider whether the extra protections in Article 6(2) and 6(3) of the Convention apply, and how they are met when the Regulations are made. These Regulations may provide for a right of appeal to the Copyright Tribunal against the imposition of a penalty; an appeal to such an independent and impartial tribunal will be compliant with Article 6. There is nothing inherent in the powers introduced by this clause that could be challenged as a breach of the Convention. Compatibility with the Convention will depend on the circumstances and use of the powers.

Topic 11: Provisions in relation to Public Lending Right (clause 44)

263. This measure amends the Secretary of State's power under the Public Lending Right Act 1979 to make a scheme determining eligibility of authors for public lending right payments. The amendment will mean that the scheme can include audio-books and e-books, and their authors, producers and narrators. Interference with copyright holders' rights, and rights in performances, will potentially occur, because the owners of those rights in relation to works newly included in the scheme will no longer be able to prohibit or licence the lending

of such works by public libraries. Article 1 of the First Protocol will not be engaged until any amendments to the scheme are made under the expanded power.

264. The government considers that when the amendments are made, there will be no breach of Article 1 of the First Protocol because the power strikes an appropriate balance between the private interests of intellectual property owners, and the public interest in permitting the extension of the works covered by the scheme at a time when there is an increasing demand for the lending of books in formats other than printed and bound formats (audio-books, for example). Furthermore, the scheme provides that some of the copyright and performance rights owners will be compensated for the loss of the power to contract individually with public libraries, as they will receive remuneration on a "rate per loan" basis.

COMMENCEMENT

265. Clause 48 provides that most provisions of the Act will come into force at the end of two months after the Act is passed.

266. The following clauses come into force on the day which the Act is passed:

- Clauses 6, 7 and 8, 15 and 16(1): relating to online infringement of copyright;
- Clauses 30 to 32: relating to independent radio services; and
- Clauses 47, 48 and 49: general clauses.

267. The following provisions come into force on such a day as the Secretary of State may appoint by statutory instrument:

- Clauses 18 to 20: relating to powers in relation to internet domain names;
- Amendments made by clause 27, and related repeals: relating to the power to remove OFCOM's duty to secure provision of the public teletext service;
- Clause 29: relating to the repeal of provisions enabling obligations to be impose on Channel 3 providers to make and broadcast programmes in Gaelic;
- Clauses 40 and 41 and Schedule 1: relating to video recordings; and
- Clause 44: relating to public lending right.

ABBREVIATIONS

2G	Second Generation Mobile services – see also GSM
3G	Third Generation Mobile services – see also UMTS
BBC	British Broadcasting Corporation
BBFC	British Board for Film Classification
BERR	Department for Business, Enterprise and Regulatory Reform (now part of BIS)
BIS	Department for Business, Innovation and Skills (formerly BERR and DIUS, until June 2009)
C4/C4C	Channel 4/ the Channel Four Television Corporation
CDPA	Copyright, Designs and Patents Act 1988
DAB	Digital Audio Broadcasting
DCMS	Department for Culture, Media and Sport
DIUS	Department for Innovation, Universities and Skills (now part of BIS)
EEA	European Economic Area
EU	European Union
GHz	GigaHertz – a measurement of frequency in radio spectrum
IP	Internet Protocol
ISP	Internet Service Provider
MHz	MegaHertz – a measurement of frequency in radio spectrum
OFCOM	The Office for Communications
PEGI	Pan-European Game Information – an age rating system for video games
PLR	Public Lending Right

S4C	Sianel Pedwar Cymru
SME	Small and Medium Enterprises
STV	Scottish television (Grampian TV and Scottish TV)
UMTS	Universal Mobile Telecommunications System – a 3G mobile technology

DIGITAL ECONOMY BILL [HL]

EXPLANATORY NOTES

These notes refer to the Digital Economy Bill [HL]
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