Lords copyright change 'could block YouTube'

Bobbie Johnson, technology correspondent

One of the most contentious parts of the controversial digital economy bill was voted down by the House of Lords last night – only to be replaced by a clause that campaigners say is even more draconian.

The Liberal Democrats forced through a surprise amendment to the bill’s notorious clause 17 on Wednesday – in a move that dealt a defeat to the government but troubled critics, who suggest it will have the opposite effect that its creators intend.

Instead of sweeping new powers that threatened sweeping alterations to British copyright law, the Lib Dems added a clause that gives extra oversight to the high court.

The new proposal – which was passed in the House of Lords by 165 votes to 140 – gives a high court judge the right to issue an injunction against a website accused of hosting a "substantial" amount of copyright infringing material, potentially forcing the entire site offline.

Putting forward the amendment, Lib Dem peer Lord Clement-Jones said that it would placate concerns over the so-called "three strikes" rule – which could see those accused of sharing files illegally online having their internet connections cut off – and added that it was a "more proportionate, specific and appropriate" way to approach infringement than the previous proposals made by the government.

"I believe this is going to send a powerful message to our creative industries that we value what they do, that we want to protect what they do, that we do not believe in censoring the internet but we are responding to genuine concerns," he said.
But instead of making the proposed system more transparent and accountable, critics say it will simply leave it open to abuse.

"This would open the door to a massive imbalance of power in favour of large copyright holding companies," said Jim Killock, executive director of the Open Rights Group. "Individuals and small businesses would be open to massive 'copyright attacks' that could shut them down, just by the threat of action."

"This is exactly how libel law works today: suppressing free speech by the unwarranted threat of legal action. The expense and the threat are enough to create a 'chilling effect'."

In particular, there are concerns that the amendment could follow in the footsteps of America's controversial Digital Millennium Copyright Act, which has been accused of encouraging companies to file bogus copyright claims to block material they dislike.

The high costs and dangers of dealing with copyright claims in court mean that many web hosts simply take down the material in question without checking whether the copyright case is legitimate – even going as far as shutting down entire websites in some cases.

Just last week the well-known whistleblower website Cryptome was taken offline when Microsoft attempted to suppress the publication of its so-called "spy guide" by issuing a copyright claim under the DMCA.

When the site's service provider received Microsoft's request, it not only blocked the document in question but also effectively removed the entire Cryptome site from the web.

Microsoft eventually retracted its claim in order to let the site – which had stayed online for years despite numerous run-ins with other companies and US government agencies – go back online.

The new amendment could also have dire implications for websites like YouTube, where users can upload copyright-infringing material without the knowledge of the site's owners.

The video sharing site, which is owned by Google, is already subject to a $1bn lawsuit by US media giant Viacom – but argues that it cannot screen every video that goes onto its site to check whether it infringes copyright. Given the large amounts of material hosted on the site, however, the whole thing could potentially be blocked by the high court.

Lilian Edwards, a cyberlaw expert at Sheffield University, said that the new proposals had some benefits but also had sweeping downsides.

"For the first time, Sony and the rest can now go to court and demand that every ISP in the UK blocks YouTube," she wrote.

"There will in reality be no, or few, court applications - just non-publicised notifications. This is essentially legislation for cover extralegal censorship for the benefit of entrenched private interests."
Such concerns mark only the latest controversy attached to the digital economy bill, which has caused upset since it was first proposed last year.

On Monday, Lord Puttnam said that the scheme was being rushed through parliament without sufficient scrutiny, and that legislators were subject to an "extraordinary degree of lobbying" from copyright holders.

The bill must pass through the House of Lords before it can be put before the Commons and turned into law. Reading continues in the Lords on Monday.

Comments in chronological order (Total 26 comments)

Dumbingitdown
4 Mar 2010, 7:53AM
meh - they still haven't accepted that there's a way around any of their draconian attempts at control and the only way this stupidity will end is when people realise you can't expect to get paid indefinitely for something you did a long time ago and were paid for producing at the time.
Copyright owners! If you didn't create the work, then why on earth should you get paid for its use...EVER?
Recommend? (34)
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Dogec
4 Mar 2010, 8:12AM
This bill has to be stopped.
I have written to my MP (Tony Baldry) in-numerable times about this and the secret treaty ACTA covering IP/rights which being negotiated around the world. It is not only the industry lobbyists but also the ACTA negotiations which are behind the bill. (See http://syganymede.blogspot.com/2010/02/acta-new-isp-limits-criminal-
The Bill has to be stopped and a proper public and open debate held on the issues. Otherwise yet another of our basic freedoms of speech and expression will be gone.

Considering the web is a UK invention, it’s just sad how backward looking our politicians are. The Lib Dems have achieved what seemed impossible and made a bad Bill even worse. As it was, the Bill already gave the copyright holders unprecendented powers over our fundamental rights and allowed them to become judge and jury. Now, thanks to this amendment, they’ll become executioners too. Depressingly, it also clearly shows that all three main parties are in the pocket of the Big 4 corporate monoliths and wish to impose draconian controls on the net at the expense of ordinary users.

Until this piece of trash becomes law, does that mean that downloading and uploading copyrighted content is legal? In which case I am set on downloading the entire internet onto my flash drive right now. What fuels the need for 20mb and 100mb broadband? Well it isn’t for checking email. Its for file sharing. The ubiquitous Ipod became an icon for carrying around mp3s all of which were legit I’m sure. Words and laws on paper only set out the parameters that computer hackers have to break. Encrypted networks, personal online hard-drives opened to the public or selected members, sharing files on personal messengers like MSN or Skype, file sharing by traditional email and streaming content online so that you don’t download any content at all to your harddrive are all examples of current technology that this bill does not take account of, imagine what the future holds. You cannot stop digital media from being traded, all you can do is try to make some money from it.
Typical Lib Dems, they wring their hands for ages, stand on the sidelines, become almost invisible... and then when they actually DO something, it just makes the situation worse!
The Bill, and the amendment, are all based on old technology; it takes almost no account of the current standards and certainly ignores the potential for development in the future - as such it is already out of date.
If this goes ahead then the Lib Dems will go down in history as the party that ushered in state-sanctioned censorship by the corporate giants.
Thanks Lib Dems.

Support those who waive copyright on their creations. Stop buying copyrighted products. Generate an alternative culture. Capitalism will always protect possession (nine tenths of the law). Only free choice of alternatives will change the game. If the majority won’t do that then let them be exploited. Reduce sales and even the copyright holders will catch on to the damaging effects copyright protection is having. The Market gives, so let the Market take away.

There is an alternative to copyright use copyleft, http://en.wikipedia.org/wiki/Copyleft

The Liberal Democrats forced through a surprise amendment to the bill's notorious clause 17 on Wednesday
The best part is, for people like me who support the bill, that the lobbying
organisations like the Open Rights Group aren't very bright, and don't know anything about law. Clause 17 didn't really grant any additional powers to the government at all - it was a statement of intention. Copyright law could be amended by Statutory Instrument before this act was written anyway (and indeed has been many, many times, including introducing the new criminal offense for bypassing DRM in 2003). So the ORG has wasted mountains of time trying to block a clause on powers the government has anyway, and it’s been replaced with a useful new power for the courts too.

Phazer

Communicationalist

4 Mar 2010, 10:21AM
It's encouraging to note that there appears to be a critical mass of citizens who can see that current copyright (and IP in general) law is intellectually inconsistent and practically incompatible with the digital era.

I propose a general amnesty: all copyright belonging to publishing companies representing artists who are already dead should revert immediately to the public domain.

Living artists who support their families through publishing royalties have a period of three years to renegotiate their publishing contracts. If they feel their work is not being sufficiently valued, they may cancel them.

"Artists" who so depend on the "representation" of publishers and record companies who own their work that they fear they will become nobodies as soon as that representation is removed, may either retire into obscurity or become employees of their "representatives".

rhinocero

4 Mar 2010, 10:54AM
This isn't just about copyright. Excellent take on why this new bill is bad for business from Cory Doctorow here: http://www.boingboing.net/2010/03/04/libdem-lords- seek-to.html

PickMyBananas
4 Mar 2010, 11:28AM
See this is what happens when you have a bunch of people who don't understand the technology making decisions to help their chums in the media industry maintain the status quo in the digital era.

Remember, it took the innovation of a computer company to show the music industry how to do proper music distribution via the internet. Music and Movie Industries have since just tried to play catch-up but still don't realise that the old methods of business will not apply to today's world. That's why they pressure our politicians for ill-thought out laws like this. Unfortunately, for us, they have the ear of our politicians.

I'm all for artists receiving monies for their created work. But it's the publishers who want to still screw them over. I think a paradigm shift needs to be initiated whereby artists cut out the middle man of publishers and just distribute their music directly to the public. In today's digital world this is far more realistically achievable than in anytime in history. Trouble is will anyone ever take that risk.

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Avitz
4 Mar 2010, 11:34AM
If this law manages to pass, the public up roar will be insane, and on that note, the media's would most likely be on the publics side. Problem is this is getting out of hand now.

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boombox
4 Mar 2010, 11:53AM
I'm all for artists receiving monies for their created work. But it's the publishers who want to still screw them over. I think a paradigm shift needs to be initiated whereby artists cut out the middle man of publishers and just distribute their music directly to the public.

Let me introduce you to a radical concept: it's called "Division of Labour"
Would you rather artists spend all day creating stuff, or all day licking envelopes, Twittering, doing sync deals with movie companies, arguing with lawyers, and all the other stuff related to distribution and marketing? Or would you rather they hire experts to it for them.

How about we leave the choice to them. And you go back to whatever it is you're good at.

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Uh-oh. Lib Dem sleaze. Lord Clement-Jones takes £70k p/a from copyright lawyers:

Recommen?d? (5)

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boombox, No one's saying musicians can't hire PR and marketing experts if they feel
the need, but in a world where you can go straight from the studio to immediate online
publishing, a record company is superfluous.
The roles you're describing are a marketing and legal one. You can hire those people to
do those jobs for you independently.
Record companies had a role to play when music existed on a physical product which
was available in a finite amount, but digital distribution has made this role obsolete.
A ‘model in a nutshell’ for musicians would be as follows:
1) Write great music
2) Attract followers with great music
3) Get them to pay to come and see you
4) Use the proceeds to hire an excellent producer and studio
5) Give this music away and attract even more followers
6) Make tonnes from tickets and merchandise when you’re selling out big venues
7) If your music really is great, a publishing deal might see you getting paid loads for
the rights to use your music
And all without the need for a record company! In the internet age, you can’t expect to
be paid forever a single performance which can be duplicated infinitely.
Music is a performance art, as it has been since the beginning of time, if you can't
make your money from performing it, you can’t rig the system to provide for you ad
infinatum.
Maybe in the future we’ll be rid of coked up executives and pampered divas living like
emperors. Fuck ’em. What we will always have is the capacity to make great music.
Recommen?d? (3)

Talk about disingenuous (and ill-informed...!)
I presume you are referring to the Copyright and Related Rights Regulations of 2003.
These implemented (albeit badly, the UK were sued by the EC) Directive 2001/29/EC - on the harmonisation of certain aspects of copyright and related rights in the information society.

These UK regulations (2003) were implemented only because of the 2001 Directive (and not otherwise). They were also enacted in accordance with the permitted legislative process (i.e. permitting the Stat Instrument) - under s.2(2) of The European Communities Act 1972. They would have not been implemented by Stat Instrument but for the fact that they were implementing the Directive and in accordance with the 1972 Act, so your ill-placed support of the new (and old) s.17 proposals (and your ranting twaddle here) in fact just goes to show your ignorance, not that of the ORG.

s.17 and ACTA and Three Strikes will be decided in Europe as Dunstone and his clan are well aware.

It may in fact turn out that the rights organisations, UK Music, BPI, Film Council etc. are the ones that have wasted inordinate amounts of their members’ money and time (fiduciary duties anyone??) pushing forward this fascist legislation to back up their retarded business models.

Just my tuppence.

Recommend? (10)

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**Errr**

4 Mar 2010, 1:13PM

From rhinocero's post above

Uh-oh. Lib Dem sleaze. Lord Clement-Jones takes £70k p/a from copyright lawyers:

I'm a Lib Dem supporter but this needs to be publicised. Shocking stuff. Guardian please pick it up and run with it.

Recommend? (10)

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**rhinocero**

4 Mar 2010, 1:28PM

@errr

Tweets about it have been picked up now by Doctorow, and hence by wider Twitter, and eventually the Guardian will arrive. Followed by the BBC a few hours later. That’s how journalism works now...

Recommend? (4)

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Its funny that they think they can control content like this, for every money grabbing politician there are a thousand brighter hackers and programmers.

Recommend? (2)

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I think I need to rethink my intentions of voting Lib Dem when the time comes...

Recommend? (6)

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I fail to see a problem. One argument in favour of the House of Lords is that it contains people with specialist knowledge and experience who could bring more informed scrutiny and perspective to a particular piece of legislation.

Clement-Jones, presumably a copyright lawyer in a previous life, has argued in favour of copyright holders. He has also fully declared his relationship with DLA Piper. You might not like that he's arguing against your viewpoint but there's nothing sleazy or conspiratorial about it.

Get over it and grow up.

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Does this mean I cant download pron via youtube anymore?

Recommend? (0)

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4 Mar 2010, 2:44PM
gratefully pron will always be free...except in China.
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MikeRichards
4 Mar 2010, 5:57PM
Just how many politicians have been on Geffen's yacht?
Is there one Lord or MP who actually understands the effects this idiotic bill could have on all of us?
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deepfield
4 Mar 2010, 6:18PM
Ah!! Lib-Dem. I get it, it means illiberal and non-democratic.
Recommend? (2)
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aTao
4 Mar 2010, 6:56PM
Web sites hosting copyright material? I thought peer to peer was the biggest problem.
And heaven forbid that someone would use a proxy
From a copyright point of view its bloody pointless, but as a censorship tool, well thats a whole different kettle of fish.
Recommend? (0)
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