

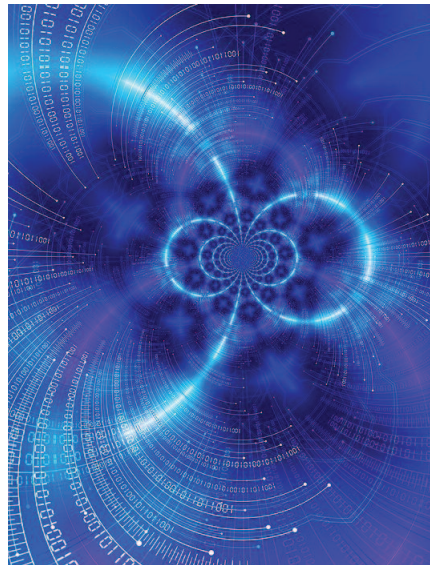
## Digital Economy Act

It appears the progress of The Digital Economy Act is expected to intensify in the coming months. Ministers are driving a “reboot” to complete two pieces of legislation required prior to the Act coming into force.

The draft Cost Sharing Regulations (establishing how much internet service providers will pay towards copyright enforcement) and the Initial Obligations Code (explaining the notifications and appeals process) are expected to be with the European Commission before the parliamentary summer recess. This will enable the government to place the Regulations and the Code before parliament in the autumn, as the three month European Commission consultation period will have lapsed.

The Act, which was passed through Parliament before the 2010 general election, requires internet service providers to liaise with rights holders, in identifying computer users who may have downloaded copyrighted material illegally.

The impetus for the Act came from record companies and film producers who were keen for the government to assist them in pursuing illegal file sharers. The Act obliges internet service providers to notify their customers that their actions are contrary to



the legislation and to cease their illegal activities, if the right holder requests that they do so. Provisions in the Act stipulate that an internet service provider may have to limit the offending customer’s internet access, or even provide personal details to the right holder so that legal action can be taken.

The recent failed legal challenge in the High Court by British Telecom and Talk Talk has played a significant part in delaying the Act. The judicial review brought by the corporations opposed the measures in the Act for not being compliant with EU laws on privacy and commerce and for being disproportionate. Mr Justice Kenneth Parker, in favour of the government, upheld the principle of protecting rights holders from being exploited by the unlawful downloading

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# Digital Economy Act

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of music, films, books and software. Out of the five points put forward by the internet service providers, Justice Parker ruled in their favour on one; he ruled internet service providers could be made to pay a proportion of the cost of operating the mass notification system between rights holders and internet service providers, but not Ofcom's costs from setting up, monitoring and enforcing the system. The government will now have to look at amending the Regulations accordingly but this is unlikely to

significantly delay implementation of the Act.

It has been reported that Ofcom has presented its review of sections 17 and 18 of the Act to the Department of Culture Media and Sport. These sections give reserve powers to enable courts to block websites dedicated to copyright infringement. It is expected the review will be presented to parliament before the summer recess adding momentum to the drive to implement the Act.

It has been suggested that infringement notifications could be hitting doormats as early as January 2012, but should the Obligations Code be subject to judicial review, the Act could be further delayed into late 2012. Any action brought in the European Court of Justice would effectively halt the legislation and significantly delay implementation of the Act, however the signs are that the government is working with a strict timetable in mind.

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## Copyright term extension

It appears highly likely that the EU Council will vote to extend the copyright term for sound recordings from 50 years to 70 years.

As the president of the EU Council has the power to set the agenda, it is crucial that the Hungarian president of the Council allows the issue to be voted upon. It has been suggested that the president has signalled that the issue will be on the agenda in the near future and it is "almost certain" there would be a qualified majority in favour of an extension.

The current UK government now maintains a pro-extension stance, although this has not always been the

case. The Gowers Report of 2006 rejected proposals to extend the copyright term, as it concluded this would be economically and culturally damaging for the UK. This view was supported by the then Chancellor of the Exchequer Gordon Brown.

Previously the Swedish and Danish governments did not agree that an extension was necessary and made up part of the blocking minority in the EU Council for almost two years. The Danish government however has more recently crossed the floor and is now part of the pro-extension lobby.

Should, as anticipated, the vote go ahead and the pro-extension campaigners prevail, the 20 year copyright term extension will be gladly received by the industry across



Europe. Session musicians from the sixties, the heyday of British pop music, will particularly benefit from this as they will see their income restored; for many this is their pension. The early Beatles recordings will also be protected from falling out of copyright in two years.

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