

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL ECONOMY BILL

Seventh Sitting

Tuesday 25 October 2016

(Morning)

CONTENTS

CLAUSES 26 and 27 agreed to.

CLAUSE 28 under consideration when the Committee adjourned till this day at Two o'clock.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 29 October 2016

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The Committee consisted of the following Members:

Chairs: † MR GARY STREETER, GRAHAM STRINGER

- | | |
|---|--|
| † Adams, Nigel (<i>Selby and Ainsty</i>) (Con) | † Mann, Scott (<i>North Cornwall</i>) (Con) |
| † Brennan, Kevin (<i>Cardiff West</i>) (Lab) | † Matheson, Christian (<i>City of Chester</i>) (Lab) |
| † Davies, Mims (<i>Eastleigh</i>) (Con) | † Menzies, Mark (<i>Fylde</i>) (Con) |
| † Debbonaire, Thangam (<i>Bristol West</i>) (Lab) | † Perry, Claire (<i>Devizes</i>) (Con) |
| † Foxcroft, Vicky (<i>Lewisham, Deptford</i>) (Lab) | † Skidmore, Chris (<i>Parliamentary Secretary, Cabinet Office</i>) |
| † Haigh, Louise (<i>Sheffield, Heeley</i>) (Lab) | † Stuart, Graham (<i>Beverley and Holderness</i>) (Con) |
| † Hancock, Matt (<i>Minister for Digital and Culture</i>) | † Sunak, Rishi (<i>Richmond (Yorks)</i>) (Con) |
| Hendry, Drew (<i>Inverness, Nairn, Badenoch and Strathspey</i>) (SNP) | |
| † Huddleston, Nigel (<i>Mid Worcestershire</i>) (Con) | Marek Kubala, <i>Committee Clerk</i> |
| Jones, Graham (<i>Hyndburn</i>) (Lab) | |
| † Kerr, Calum (<i>Berwickshire, Roxburgh and Selkirk</i>) (SNP) | † attended the Committee |

Public Bill Committee

Tuesday 25 October 2016

(Morning)

[MR GARY STREETER *in the Chair*]

Digital Economy Bill

Clause 26

OFFENCES: INFRINGING COPYRIGHT AND MAKING
AVAILABLE RIGHT

9.25 am

Kevin Brennan (Cardiff West) (Lab): I beg to move amendment 92, in clause 26, page 26, line 18, leave out “, or will expose the owner of the copyright to the risk of loss.”

This amendment and amendment 93 is a probing amendment to explore the impact of Clause 26 on account holders.

The Chair: With this it will be convenient to discuss the following:

Amendment 93, in clause 26, page 26, line 35, leave out

“, or expose the owner of the rights to the risk of loss.”

See amendment 92.

New clause 3—*Power to provide for a code of practice related to copyright infringement*—

“(1) The Secretary of State may by regulations make provision for a search engine to be required to adopt a code of practice concerning copyright infringement that complies with criteria specified in the regulations.

(2) The regulations may provide that if a search engine fails to adopt such a code of practice, any code of practice that is approved for the purposes of that search engine by the Secretary of State, or by a person designated by the Secretary of State, has effect as a code of practice adopted by the search engine.

(3) The Secretary of State may by regulations make provision—

- (a) for the investigation and determination of disputes about a search engine’s compliance with its code of practice,
 - (b) for the appointment of a regulator to review and report to the Secretary of State on—
 - (i) the codes of practice adopted by search engines, and
 - (ii) compliance with the codes of practice;
 - (c) for the consequences of a failure by a specified search engine to adopt or comply with a code of practice including financial penalties or other sanctions.
- (4) Regulations made under this section—
- (a) may make provision that applies only in respect of search engines of a particular description, or only in respect of activities of a particular description;
 - (b) may make incidental, supplementary or consequential provision;
 - (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

This would amend the Bill to present an opportunity for the Government to fulfil its manifesto commitment to reduce copyright infringement and ensure search engines do not link to the worst-offending sites. There is an absence of a specific provision in the Bill to achieve this.

New clause 33—*Pre-loaded IPTV boxes*—

“(1) The Copyright, Designs and Patents Act 1988 is amended as follows.

(2) In section 107(1)(d)(ii) after “offers” insert “, advertises”.

(3) After section 107(1)(d)(iv) insert—

(v) installs, maintains or replaces, or

(ii) otherwise promotes by means of commercial communications, or”

(4) In section 107(1)(e) after “article” insert “, device, product or component”.

(5) In section 107(1)(e) after “work” insert “or which is, and which he knows or has reason to believe is, primarily designed, produced, adapted or otherwise used in a manner described in this section whether alone or in conjunction with another article, device, product, component, or service supplied by or with the knowledge of the same person for the purpose of enabling or facilitating the infringement of copyright”.

This new clause allows the Government to fulfil its commitment in the IPO’s Enforcement Strategy to ensure that UK business and rights holders have the necessary legal means to protect their IP. It brings in language to cover the supply of IPTV boxes clearly being marketed or sold for the purpose of enabling or facilitating copyright infringement, recognising that many devices may not, themselves, infringe copyright, but are supplied in conjunction with information which enables users to infringe copyright.

Kevin Brennan: Good morning, Mr Streeter. We now move to part 4 of the Bill. May I say first that it is a pleasure to serve under your chairmanship? I thank you and Mr Stringer for all the work that you have done so far in helping us to get through and scrutinise the Bill.

New clause 33 stands in my name and that of my hon. Friend the Member for Sheffield, Heeley. Although she is not in her place at the moment, I am sure that the rest of the Committee would want to join me in congratulating her on her efforts so far as a first-time Front Bencher. I only hope that I can come close to matching her assiduous scrutiny of—[HON. MEMBERS: “Here she is!”] Right on cue, she makes an entrance so that I can complete my compliments for her efforts so far on our behalf and on behalf of the whole Committee in scrutinising the Bill.

New clause 3 is in the name of the hon. Member for Selby and Ainsty, but we have added our names to it because we think it a very good one. I hope that we can have a substantial debate about it this morning, because there are some real issues that we need to discuss.

This is quite a chunky clause. Amendments 92 and 93 are probing amendments. We just want to explore with the Minister the meaning of clause 26 and to clarify its implications. I should say at the outset that Opposition Members support the principle that there should not be any distinction between physical and digital copyright infringement, and therefore support the proposal in the clause to equalise the penalties for that kind of infringement.

For the benefit of the Committee, I point out that the penalty for digital copyright infringement will be increased, to equalise it with that for the physical world, from a maximum of two years’ imprisonment to a maximum of 10 years. That makes sense if we are to support the principle of there being no distinction between the two, although in supporting that principle we want to ensure that the penalty is used appropriately. Obviously, we want to hear about that from the Minister in his response.

It could be said that elsewhere in the Bill, because of its unevenness, is the implication that there is some kind of binary between the digital and the non-digital world.

That, of course, is not true when we get into the real world. My hon. Friend the Member for Sheffield, Heeley, in her excellent scrutiny of the Bill from the Front Bench, has argued that we should have had a properly thought through digital future Bill, given all the issues in play, and that that would have done away with the false division that tends to exist between the digital economy and the general economy.

Instead, we have a bit of a Christmas tree Bill, on which the Government are hanging various vaguely related issues. That is what is in front of us, so that is what we must scrutinise, but the levelling of the law on copyright infringement is, I think, a partial acknowledgement of the point about the false division between the digital and the non-digital worlds. However, in increasing the penalty as the clause proposes, we must be sure that we do not leave a window cracked open for unscrupulous operators to be able to intimidate and take advantage of consumers, whom I do not believe the Government intend to target in the clause. I do not think that the Minister intends to target consumers, but he will tell us that in his response.

The issue is largely a matter of wording. Whenever we scrutinise legislation, however, we have to make sure that no aspect of the law is left unclear by muddled phrasing, so it would be helpful to the Committee—this is the purpose of our probing amendments—if the Minister explained the distinction made in clause 26 between

“the owner of the copyright”,

in line 18 and

“the owner of the right”

in line 35. What do the Government intend by the distinction?

9.30 am

Likewise, stakeholders have expressed concerns to all members of the Committee about the potential interpretation of the phrase in clause 26: “the risk of loss”. The Open Rights Group has expressed concern about the Government’s insistence that there needs to be “reason to believe” that infringement will cause loss or “the risk of loss”. Its fear is that that phrase, “the risk of loss”, could capture quite a wide range of behaviour, perhaps beyond the scope of what the Government say they intend. In particular, its concern is the extent to which that phrase will capture file sharing.

By its very nature, file sharing means that shared music, films or books can be further shared. The Open Rights Group’s fear is that the phrase “the risk of loss” could be said to occur by definition from the activity of file sharing. It fears that, unless there is further clarification on that point, the Bill could be used to pursue individual file sharers. The Minister will know that that is not what the creative industries, which obviously have a concern about any infringement of copyright, say that they want. Rather than pursuing low-activity individuals, the creative industries have opted for a more joined-up, voluntary approach in co-operation with ISPs.

The Minister will be very aware of the “Get it Right from a Genuine Site” initiative, which seems to have been quite successful in beginning to change people’s minds and behaviour as individual consumers by taking an educational approach. That has generally been the

preferred approach; the legal approach has generally been reserved for the prosecution of criminal networks and businesses seeking to make a profit out of the infringement of copyright. We know from the “Get it Right from a Genuine Site” campaign that the industry prefers that kind of approach. I think that that is what the Government want—again, the Minister can confirm that—but we want to make sure that that is what clause 26 actually achieves.

If the clause’s intended focus on networks is left unarticulated, there is a fear that so-called copyright trolls could use that fact to intimidate vulnerable consumers. That is why we are exploring the meaning of the clause in these amendments. Copyright trolls specialise in detecting the sharing of online content and sending legal threats to the potential infringers. These speculative and threatening letters are sent in bulk to thousands of account holders after detecting alleged copyright infringement.

Copyright trolls get their profits when a certain number of people are scared enough to respond to those notifications and pay up. Frequently these accusations are incorrect, misleading and sent to account holders who did not sanction any such further file sharing. However, as I understand it, sending that kind of speculative threat to consumers is, unfortunately, perfectly legal. Some are concerned that if the Bill retains the concept of risk of loss, it could aid the trolls by enabling them to argue with more credibility that account holders may face criminal charges and a 10-year prison sentence.

In the Chamber on 8 September, in a debate opened by the hon. Member for Solihull (Julian Knight), we heard all about scamming and vulnerable individuals. All parties agreed that the elderly and the vulnerable are a high risk group and that scams threaten

“their financial, emotional and psychological well-being”.—[*Official Report*, 8 September 2016; Vol. 614, c. 507.]

Last month, in the House of Lords, a special Intellectual Property (Unjustified Threats) Bill Committee was appointed and it has started to hear evidence. When that Bill was being considered, Lord Lucas, a Conservative, said:

“I applaud the Government for helping our businesses avoid unjustified threats but I would like to know what they intend to do to help the granny in the Clapham nursing home who is being threatened by their smaller, nastier cousins with allegations that she has been downloading pornography illegally.”—[*Official Report*, *House of Lords*, 15 June 2016; Vol. 773, c. 16.]

I do not know how real his example was, but this is obviously a topical issue about the danger of copyright trolls being able to exploit the provisions in the clause. Clearly, there is cross-party agreement that trolls and scammers target and exploit vulnerable individuals and that that deserves robust condemnation.

I hope the Minister will also clarify what is meant by “the risk of loss” in the clause and put on the record that the law is written to prosecute networks and businesses rather than individual file sharers and that the Government will continue to pursue profiteering copyright infringers while doing something to deprive trolls of their leverage over the vulnerable. In short, will the Minister clarify what is meant by “risk of loss”? Why does line 18 say

“the owner of the copyright”

and line 35 say

“the owner of the rights”?

Is the intention of clause 26 to prosecute individual file sharers or not? If the Minister can make that clear for the Committee, that will save further debate on the issue.

I turn to new clause 3, also part of the group; it stands in the name of the hon. Member for Selby and Ainsty, in my name and in the name of my hon. Friend the Member for Sheffield, Heeley. It is appropriate that we should have added our names to the hon. Gentleman's excellent new clause because the issue is of great importance to the music industry in particular—as the hon. Member for Selby and Ainsty will know: he is chairman of the all-party music group. It is entirely appropriate that we should be singing in harmony, from the same song sheet.

I apologise if I go on to say some of the things that the hon. Gentleman is likely to say later in his speech; I am sure he will speak much more eloquently than I. Nevertheless, it is important that the Opposition put on the record our support for the new clause. There is an adage in the music publishing business that he will know: “add a word, take a third” in terms of copyright. In this case, we have added our names to his new clause and stolen the lead vocal. I apologise to him on that score.

The new clause offers a way for the Government to enforce a code of conduct for search engines in relation to sites that infringe copyright. Of course, the issue was in the Conservative party manifesto, which has been much quoted during this Committee; it has become a seminal document for the Digital Economy Bill. We are very grateful that the Government wrote this down, even if they are not carrying it out in the Bill for some reason or other. It is right that we should explore why that is the case. They said:

“We will protect intellectual property by continuing to require internet service providers to block sites that carry large amounts of illegal content, including their proxies... We will work to ensure that search engines do not link to the worst-offending sites.”

Provision of that kind has not been included in the Bill. Everything else has been hung on it, yet that important statement from the Conservative party manifesto does not seem to feature very prominently within the Bill. I suspect that is why the hon. Member for Selby and Ainsty tabled the new clause in the first place. We will probably return later to blocking in relation to the issues we discussed regarding age verification earlier on in the Bill.

We have an incredibly successful creative industry sector in the UK; it is one of the most successful in the world. It is growing at almost twice the rate of the wider UK economy, and in a post-Brexit Britain—if that is, in my view, the unfortunate direction that we are taking as a country—the creative industries are obviously going to be even more vital and will make a huge contribution towards our being a strong exporting nation. They will also play a huge part in projecting our presence as the United Kingdom to the rest of the world. They are hugely important.

The new clause laid by the hon. Gentleman would help reinforce the creative industries' prominent international position and encourage more inward investment by providing a means of combating piracy more robustly. In other words, if the Minister opposed it, he would be unpatriotic. That is absolutely clear, because the issue is

very important to our export industries. I do not think he will oppose it, but it will be interesting to hear what he has to say.

A variety of stakeholders are concerned about this issue, representing many different types of content, but, as I said at the outset, the issue concerns the music industry in particular. I should probably declare an interest at this point: I earned £10.60 last year from PRS for Music for my song writing, on which I have paid the 40% income tax—so whatever net figure we come up with as a result of that.

Christian Matheson (City of Chester) (Lab): Now we're listening, Mr Streeter. Does my hon. Friend know what that represents in terms of sales?

Kevin Brennan: I shall stick strictly to the amendment, but I think it is mainly in relation to live performances, rather than through physical or online sales.

The impact of copyright infringement is very difficult to quantify precisely because not every copy of a music track that is illegally shared necessarily represents a lost sale. Nonetheless, the scale of illegal downloading and streaming of music remains significant and it continues to undermine the economic health of the UK's music industry. The Ofcom Media Tracker survey, average retail prices and academic evidence taken together all suggest that the losses from piracy to the UK recorded music industry are between £150 million and £300 million a year. That is a significant loss of value to the UK economy and legitimate music-related businesses.

9.45 am

In recent years there have been a lot of industry initiatives trying to solve the problem, which have got the Government interested and involved. Baroness Neville-Rolfe, the Minister for Intellectual Property, has chaired a series of roundtable discussions and meetings between representatives of the creative industries, including the British Phonographic Industry—the record companies' trade body—the Alliance for Intellectual Property and the publishers, as well as representatives of leading UK search engines Google, Bing and Yahoo. The meetings were convened to discuss practical steps to be taken on a voluntary basis to reduce the risk of consumers being led to copyright-infringing material by means of search results.

The rights holders proposed a voluntary code of practice, acknowledging that search engines play a valuable role in guiding consumers to sources of legitimate content online and are well placed to work with content owners to reduce the prominence in search results of known infringing websites by methods such as demoting them in search results and delisting. Those tactics are already widely used by search engines in connection with a range of other illegal material.

The guiding principles for the voluntary code of conduct would have been that in the top three results, fewer than 1% link to illegal sites; in the top 10, fewer than 5%; and in the top 20, fewer than 10%. Achieving these objectives would improve the quality of search results and resolve disadvantages that limit the visibility of legitimate sites on which consumers can buy or stream copyrighted works.

Rights holders would play a role too. Stakeholders such as the BPI are very conscious of the need to educate the public, in which they have a role to play, as well as the need to turn people away from pirate enterprises and reduce the effectiveness of criminal online behaviour. Their aim is to remove the consumer base so that as criminal behaviour is reduced, so is the burden of the legal process. They may be able to influence search listings through a range of different channels, including through the reporting of content-infringing URLs through DMCA notices. If the code of practice were agreed, consumers would benefit from higher quality search results—[*Interruption*] I see the Minister is searching for illegal content now on his handheld device—as well as clear signposting to legal content and reduced exposure to malware, viruses and types of deceptive advertising which studies have shown to be more prevalent on infringing sites.

In essence, rights holders want search engines to do what ISPs already do—work co-operatively to take action against sites that have been identified by the High Court as pirate sites—but despite numerous efforts, search engines will not co-operate or agree to the code of practice. They continue to take little responsibility for the fact that listings can overwhelmingly consist of illegal content—the equivalent of the “Yellow Pages” refusing to take responsibility for publishing the details of crooked traders and fraudsters.

Google changed its algorithm in 2014, claiming that the change would take greater account of notices sent about particular sites in its listings, and that if the site had received a large volume of notices from rights holders to remove content it would be deprioritised in their search listings. I remember talking to them about this at the time. Despite an initial dip after the algorithm was changed, the problem eventually came back and has since worsened. Research by the International Federation of the Phonographic Industry shows that in 2015, 94% of take-down requests were for repeat notices related to links to the same content on the same sites; the URLs had been tweaked slightly and Google gave them a clean slate every time.

Given the difficulties in negotiations, the new clause would provide a legal backstop to prevent search engines from refusing point blank to co-operate in discussions. The Bill’s professed ambition to expand superfast broadband needs to be matched by an ambition for a legal marketplace. While the code of practice remains a voluntary dream, search engines can refuse to collaborate, as they have for many years.

Christian Matheson: Do not many of the search engines make their money by prioritising businesses and organisations that have chosen to advertise with them? It is therefore easily within their power to change their algorithms at will to meet the requirements that my hon. Friend suggests.

Kevin Brennan: My hon. Friend is absolutely right: it is within search engines’ ability to change the algorithms. I had always thought that the problem might eventually solve itself, because when advertising is placed next to the results of an online search, the companies whose products and services are being advertised appear next to websites that are run in the shadows, often by criminal networks. Surely reputable businesses with statements

of corporate social responsibility would not want their advertisements to appear next to a search that turned up an illegal website run by some gangsters somewhere in Russia. However, it turns out that search engines do not solely or even principally make their money from advertising; it is data that are valuable to them. As one of my hon. Friends said earlier, data are the new oil. It is the data acquired on individuals through search engine practices that are so valuable and that enable companies to put product placement in their advertising and search engines to tailor searches to individual consumers online. Embarrassingly, that fact once resulted in a Conservative Member criticising a quote of mine on the Labour party website because the advertising content that appeared next to it was to do with dating a certain type of person. The Member in question subsequently found out that the advert had been placed there not because the Labour party was short of money but because that advert was tailored to his personal search activities. Members should beware when making such criticisms.

My hon. Friend the Member for City of Chester is absolutely right that it is perfectly within search engines’ power to solve this problem. Some efforts have been made by Google, and they worked for a short time, but a search engine search for widely available music by some of the most popular artists in the UK will still return a lot of illegal results. The hon. Member for Selby and Ainsty may wish to cover that point in his remarks, so I will not go into further detail, but BPI research certainly indicates that.

The voluntary approach is not working. We have seen this movie before; we have downloaded it many times, and it always has the same inconclusive ending. New clause 3 would provide it with an ending to match one of the best last lines in the movies, which is “Shut up and deal.” Any offers from Government Members? It is from Billy Wilder’s great film “The Apartment”; Shirley MacLaine says it. The new clause would enable the Government to say to the search engines, “Shut up and deal,” because there is no incentive for search engines to do so at the moment. We are being helpful to the Minister, as is his colleague. We are trying to put a bit of lead in his pencil, and he should welcome this cross-party effort to ensure that progress is made.

One further point: I have a sneaky feeling that the Minister actually agrees with the new clause, although he will not agree with it today, and will want to make this change to the Bill but to do so in the House of Lords. If my prediction is wrong, I will take it back in due course. The only thing that I would say is that it does not do this House’s reputation any good when Governments behave that way. I accept completely that all Governments do it: they know that they want to make a concession on a Bill, but they decide to do it in the House of Lords rather than the Commons. Ultimately, although we hear all the talk about the House of Lords being such a wonderful revising Chamber, the Government should accept once or twice that hon. Members, including those of their own party, come up with amendments that are perfectly sensible and should be incorporated into a Bill. It would help the reputation of this House if the Government were prepared to behave in that manner.

One fundamental aim of the e-commerce directive was to identify clearly which practices fall within and outside safe harbour defences. Part of the legislation—

[Kevin Brennan]

article 16, to be specific—encourages member states and the Commission to draw up a code of conduct at community or national level. However, no such code of conduct has ever been drawn up due to resistance by the search engines. They should not be allowed to avoid parts of legislation at the expense of UK creative industries just because they find it inconvenient. The new clause would end the wasting of Ministers' time in chairing meetings that go nowhere, the repetitive process of rights holders producing proposals and the practice of search engines consistently refusing to comply to combat piracy, thus ensuring that the digital economy continues to benefit both the UK creative industries and the British public.

New clause 33 is the last amendment in the group. Last month, the Government released their annual intellectual property crime report. Some of the trends are quite startling: they reported 33% more illegal TV programming downloads in March to May 2015 than in the same period in 2013—a rise from 12 million to 16 million. The report highlights as a major concern the proliferation of internet protocol TV, or IPTV as it is known, which offers viewers increasingly easy access to pirated digital content. Technological changes have led to exponential growth in this new form of piracy. Android-based IPTV boxes are being loaded with software linking thousands of streams of infringing entertainment, movie and sport content. The boxes are sold on mainstream marketplaces such as Amazon and eBay, and through Facebook.

The Copyright, Designs and Patents Act 1988 has yet to be updated to reflect the new technology. It offers no effective remedies to copyright owners, who at present can rely only on laws that are not particularly tailored to copyright infringement. The new clause would help prosecute those who pre-load and distribute such devices and make it easier to work with online marketplaces to remove listings by wholesalers of such products.

10 am

A central pillar of the Government's intellectual property enforcement strategy, which was launched earlier this year, states:

“We will comprehensively review all existing methods of legal recourse for IP infringement to ensure they are effective, consistent and proportionate across all IP rights. We also want to ensure that UK business and rights holders continue to have the necessary legal means to protect their IP, as well as ensuring that effective action can be taken against criminality.”

The Government also said that they would consider

“what legislation would be effective in addressing the growing problem of illegal streaming via set top boxes”

and that they would investigate

“the scope for legislation to take action against search engines, ISPs and platforms that facilitate or otherwise support those involved in infringement and counterfeiting.”

That was followed by the IP Minister, Baroness Neville-Rolfe, launching the enforcement strategy in May this year. She set out how the Government were

“looking at new areas where we might need to create new legal tools to tackle new modes of infringement...we will look at the legislation around set-top boxes, and whether we have enough effective remedies to tackle their misuse.”

She stated that the issue of IPTV and set-top boxes accessing infringing broadcasts was well understood by the Government, as was the scale of manufacture and distribution, and she went on to describe how

“these set-top boxes have entered the mainstream consumer market” and how they are used on a massive scale. She also explained that

“as technology has developed and broadband speeds have increased, it is now entirely possible to receive programmes in high quality over the internet avoiding the use of decoders entirely. Quite simply the original broadcast is captured at illegal data centres that can be located anywhere and is then re-transmitted as streamed signals over the internet. Set-top boxes...are then supplied pre-loaded with apps that can either be used to subscribe to an illegal site or get content for free whilst the site operator generates income from advertising.”

So the IP Minister herself said that something needs to be done about the issue that the new clause addresses. Her conclusion was that

“it is clear that we need some new thinking in this area. The satellite and cable industries and broadcasters continue to invest in better security and enforcement, but it is also clear that the criminals are serious and this sort of organised crime generates huge profits.”

She is absolutely right.

The Copyright, Designs and Patents Act 1988 is an unfit vehicle for the prosecution of offences that involve the supply of IPTV devices designed to pirate content. Supply of devices carrying third-party content can be prosecuted but only via much more complicated routes: normally only the police can investigate and prosecute it, under legislation such as the Fraud Act 2006, the Proceeds of Crime Act 2002 and the Serious Crime Act 2015. As the Committee knows, police resources, especially IP specialist resources, are extremely limited. The law should be developed to give other bodies, such as trading standards offices, clearer abilities and obligations to prosecute such offences.

New clause 33 would amend section 107(1) of the Copyright, Designs and Patents Act 1988 to create the new offence of supply of devices primarily used to infringe copyright. It is entirely logical to amend that section, which is concerned with

“criminal liability for...dealing with infringing articles”,

but which currently focuses only on physical copies of work and on communication to the public. The new clause would bring trading standards offices into the picture, empowering them to make investigations and to enforce the rules on such devices under section 107(1) of the 1988 Act. To minimise the risk of new and uncertain legal tests, concepts or unintended consequences, the drafting adopts for the most part language used elsewhere in that Act.

Our proposal has a long list of supporters in the industry. We are interested to know whether the Minister thinks it is a good idea, and whether he will consider adopting it. If he is unable to do so, perhaps he will give a much clearer picture of the Government's intentions and why they believe that the Bill is not the right place to introduce these proper restrictions on the use of new IPTV devices.

Nigel Adams (Selby and Ainsty) (Con): I rise to speak to new clause 3. It is a pleasure to follow the hon. Gentleman, who knows an immense deal about this area, having been a huge recipient of earnings from

rights over the past few years. I am not entirely sure whether all that income was derived from him buying presents for his family, but it is great to see that we genuinely do have talented musicians in this place.

The new clause would create a power that allowed the Secretary of State to consider introducing a code of practice between search engines and rights holders on copyright infringement, which we have heard about. This power could be used only in the absence of a voluntary code between the two parties; it would not automatically create new legislation. Instead, as has been said, it acts as a backstop power if all other attempts to get an agreement between the producers of creative content and those who facilitate access to infringing material fail.

According to the latest estimates from the Department for Culture, Media and Sport, the UK creative industries amount to £87.4 billion in gross value added, and have an export value of £19.8 billion. These are incredibly large sums. Industries such as the music sector contribute immensely to those figures. Last year, five of the top 10 biggest selling artists in the world were British. One in six albums sold globally is from a UK artist. Those are staggering figures, and they demonstrate the appetite for UK music content here and abroad. According to “Measuring Music”, a report developed by UK Music, the industry body, the sector grew by 17% over the past four years and is worth £4.1 billion to the UK economy; it generates exports of £2.2 billion.

Although the UK creative industries are much in demand, copyright infringement remains a significant challenge. It not only has negative economic consequences for our businesses and industries by driving consumers to illegal markets, but seriously undermines the respect for, and value placed on, the creativity and effort that go into producing content—music and films in particular. According to the latest Kantar Media copyright infringement tracker, commissioned by the Intellectual Property Office, 78 million music tracks were accessed illegally between March and May 2016. The same research indicated that 20% of internet users participated in some form of illegal music activity online during that short period. These are very worrying figures, and they remind us that despite the growth in access to legal streaming sites, such as Spotify for music and Netflix for films, piracy remains a significant problem that needs to be tackled.

If we are to ensure a prospering commercial market for UK music that benefits rights holders and creators, it is essential that the main method of discovering music and artists directs consumers to legitimate sources. Search engines are one of the key means by which consumers discover music and artists. However, the prevalence of search results linking to infringing content, particularly on the first few pages of a generated search result, as we heard from the hon. Member for Cardiff West, indicates that more needs to be done. Furthermore, search engines incorporate auto-complete functions that can provide access to terms associated with the discovery of illegal content even before an internet user has finished typing their search terms.

For example, I am sure that you, Mr Streeter, are aware of the artist James Arthur, who was at No. 1 with “Say You Won’t Let Go” until he was knocked off the top spot, as I am sure you are aware, by Little Mix, which caused great excitement in the Adams household.

When searching on Google, all I need to do is type in “James Arthur say y”, and I am given an option of clicking “James Arthur ‘Say You Won’t Let Go’ download”. This takes me to a series of search results, and the only legitimate link allowing me to access that track legally is at the bottom of the page. It is not acceptable that search engines allow such ease of access to infringing content.

Some searches involve wading through several pages of results before getting to the first legal site. That is clearly wrong. The effectiveness of Google making changes to its algorithms—an infringement solution that that particular search engine advocates—remains to be seen. In reply to a written parliamentary question that I tabled on 2 September, the Government admitted on 26 September that it is “not possible to say exactly how” an algorithm change “equates to changes in infringement”. In response to a separate question, they said that it was “not...possible to analyse the...effectiveness” of measures to decrease auto-complete suggestions that provide access to stream ripping and other illegal converter technologies via search results.

In the 12 months up to September 2015, the British Phonographic Industry—the representative body for the recorded music industry, which does much vital work in the pursuit of anti-piracy measures—submitted almost 66.5 million infringing URLs to search engines for removal from search results. The ability of search engines to link to legitimate websites should be straightforward. For example, pro-music.org identifies legal online services. The site identifies that the UK has over 50 legitimate music websites—28 download, 19 subscription and 14 supported through ad services.

Creating a legitimate marketplace increases industry’s capacity for growth and supports overall economic wellbeing. Consumers also stand to benefit from higher-quality search results, clear signposting to legal content, and reduced exposure to malware, viruses, and other types of deceptive advertising. Studies demonstrate that these risks to internet security are sadly prevalent on infringing sites.

Dealing with copyright infringement requires co-operation; the problem can be addressed through positive initiatives. We have seen success in website blocking and, as we have heard from the hon. Member for Cardiff West, from the “Get it Right from a Genuine Site” campaign. UK Music developed an app, aimed at young people, called Music Inc. in partnership with Aardman Animation and the IPO. It raises awareness by simulating the mechanics of the music industry and showing the impact of copyright infringement on business decision making. The app has attracted over 600,000 users since its launch. We have also seen positive results from activities by advertisers and payment providers, and from the work of the police intellectual property crime unit to take advertising and payment services away from illegal sites.

Recognising the challenges, the Government have facilitated a round-table process so that rights holders, industry bodies such as the BPI, and representatives from search engines can discuss the problems of copyright infringement. This process has yet to result in agreement on how infringing content should be tackled. Rights holders are trying to negotiate a voluntary code of practice. We must take this opportunity to ensure that that happens. A code of practice for search engines

[Nigel Adams]

would result in the reduced prominence of known infringing websites in search results, through demotion and delisting. Search engines already use such practices with regard to a range of illegal activities. The demotion of illegitimate websites would be attractive, in that verified artist websites would benefit in the same way that licensed retail stores do. This is because they will be promoted in the rankings at the expense of infringing sites.

Nigel Huddleston (Mid Worcestershire) (Con): Is my hon. Friend aware that rankings are vital? For some search terms, up to 90% of clicks can come from the top three results. Certainly more than 90% of people do not look past page 1, so being at the top is vital to clicks and activity.

10.15 am

Nigel Adams: My hon. Friend speaks with great knowledge on the subject. That is absolutely vital. Consumers searching are not necessarily aware of which sites are legal and which sites are not, so being in the top few search results is crucial. Much more needs to be done to ensure that genuine sites are recognised when people use search engines.

A code of practice should recognise that its scope includes legitimate artists' websites where appropriate. The Bill presents an opportunity for the Government to fulfil their manifesto commitment to reduce copyright infringement and ensure that search engines do not link to the worst offending sites. At this stage, there is no specific provision in the Bill to achieve that. Although it is not my intention to push the new clause to a vote, I am keen to hear the Minister's response, and his ideas about how to ensure that its intentions are delivered.

The Chair: It may help the Committee to know that we will not reach votes on new clauses today; that will come at the end of our proceedings, in case anyone is getting terribly excited.

Calum Kerr (Berwickshire, Roxburgh and Selkirk) (SNP): I am sure that the Minister will be glad to hear that I will not be quite as thorough, because everything has been covered already. He was looking somewhat exasperated. I do not know what he was googling; "How to make this Bill go quicker", perhaps.

Christian Matheson: Does the hon. Gentleman not agree that one way to make the Bill go quicker would have been for the Minister not to have tabled so many Government amendments?

Calum Kerr: That is an excellent point. I think that the ambition is to make the amendment paper longer than the Bill. If the Bill is a Christmas tree, the baubles must be hollow, with a little note inside saying "IOU a lot more detail, or an apology." It has made my first Bill Committee an interesting experience.

Of course we support clause 26 and the spirit behind it. It is important that copyright be protected. Our creative industries in these isles are a huge success story, and they should be fully supported. The hon. Member for Cardiff West gave a thorough and excellent overview of the issues; I know that my hon. Friend the Member for Perth and North Perthshire (Pete Wishart) was

delighted to hear that he was on the Bill Committee, as the subject is close to his heart. I would hazard a guess that he has made more than £10.60 from his past efforts. Before I come to the substance of what the hon. Member for Selby and Ainsty said, I put on record my appreciation and admiration for his contribution last Friday. That day showed the worst and best of democracy in this place, and he was part of the best.

On the new clauses, I have been sitting here messaging my staff asking, "Why didn't we add my name to these?". We need to learn how things operate a bit better. We fully support the amendments. New clause 3 is an essential addition. As the hon. Member for Cardiff West said, I am sure that the Government will add something at some point, because that is a logical step to take. As has been outlined in some detail, there are millions of sites flagged to the search engines by the relevant bodies. It is not as though they have to go and find them themselves; it is the process by which the search engines do or do not take the sites down that needs to be brought into sharp focus. Clearly, there are efforts at a voluntary approach, but this is the perfect opportunity to put into legislation something that might drive the right outcome and behaviour without the need for follow-through. Past experience supports that idea. We must see some movement in that area.

We support new clause 33 on IPTV boxes. It is necessary to move with the times. This Christmas tree of a Bill has a lot of aspects to do with the broader digital economy, but people will continue to innovate and find new ways of delivering content, and IPTV is one example. Someone in this place recommended an IPTV box to me for my London flat because it is quite a cheap way of accessing content, but I did not follow that advice because I would not want to access any illegal content. These boxes come pre-loaded, and there should be no pretence about it: they are designed to give people a way of avoiding paying for content that they know they should pay for. There is no excuse for that. New clauses 33 and 3 are essential additions to the Bill, and we are delighted to support them both.

Rishi Sunak (Richmond (Yorks)) (Con): New clause 3 is about protecting content owners from copyright infringement. Most of the discussion we have heard today has centred on online platforms and their particular abuse of music content. However, has the Minister considered the connected issue of the newspaper industry? Historically, newspapers used revenue from advertising to help support their news-gathering operation, and to provide a vital service, especially in regional and local communities—I am sure that Members on both sides of the Committee will have experienced that service in their constituencies. Today, there is a concern that some online platforms are benefiting from such news-gathering, but are not always paying for it in the most appropriate way. That raises questions about the sustainability of the newspaper industry and the vital service it provides. Has the Minister considered the connected issue of newspapers? Will he share any thoughts with the Committee?

Thangam Debbonaire (Bristol West) (Lab): I rise to speak in support of these amendments and new clauses, and to add a bit of colour and flavour to some of the arguments that have already been made. We often talk

about rights holders, but we need to be aware that behind those rights holders are individual artists, musicians and technical people. It is not just about my hon. Friend the Member for Cardiff West; it is about the technical people involved in any recording, film or e-book. Many people are involved in those processes, and every time we deny their right to be paid, we are denying them the right to continue working in the way that we would want them to work.

Which of us here has not skipped gaily around the Palace of Westminster, at least in our imagination, with a song in our heart or a tune in our head? Maybe that is just me. Most of us have a favourite film, and we have music at special family occasions. A poem will be read at a funeral and a song will be danced to at a wedding, and all the people involved in producing them need to be paid properly for their work.

There should not be this wild west of a shopping mall where people can access whatever they want for free, without proper provision for reimbursing those involved. Unfortunately, search engines in particular, but also other providers, are allowing that illegal shopping mall to exist, and so artists, writers and others involved in the creative industries are not getting their proper deserts. That is important.

The hon. Member for Selby and Ainsty and my hon. Friend the Member for Cardiff West both mentioned economic value. I emphasise that according to the Government's own website, the creative industries are contributing £9.6 million an hour to the UK economy. Since we sat down to work, the creative industries have contributed £9.6 million. UK music alone contributes £4.1 billion each year, which is something to think about. The creative industries are growing at twice the rate of the UK economy, at 8.9%, and we want them to continue to grow. We do not want to deny them part of their income—admittedly the minority, but it is still significant.

We tabled these amendments because we need to harmonise copyright and ensure that licensing laws work across the online and offline world. We want to help Conservative Members to fulfil their commitment in the Tory party manifesto, and new clause 3 would help

“the Government to fulfil its manifesto commitment to reduce copyright infringement and ensure search engines do not link to the worst-offending sites.”

We seem to have a degree of cross-party unity on the value of that measure. I look forward to hearing what the Minister has to say, because there is otherwise an absence of a specific provision in the Bill to achieve this.

I want us to make sure that the good examples, such as Get it Right from a Genuine Site, are taken up and followed, to avoid the unfortunate misdemeanours of others, such as search engines that can remain nameless—we can all guess who they are and others may have already mentioned them. It is not okay for search engines to drive—wittingly or unwittingly, but they should reasonably have known—towards illegal sites.

Consumers do not want musicians, film makers and others to be robbed of their just deserts. Mostly, we want to be able to be sure that when musicians have made a piece of music we love, they get properly paid for it. It is incumbent on search engines and others to make sure that that happens, and to use the power we

know they have to create their algorithms to work properly in this respect. We would not tolerate a shopping mall in which signs and property space were given to illegal shops selling illegal goods. This is the equivalent.

I am absolutely convinced that the Minister would want to honour the commitment in the Tory party manifesto to rectify that. On Second Reading, the former Secretary of State, the right hon. Member for Maldon (Mr Whittingdale) said,

“there may well be a case for including a legal provision encouraging providers to establish a voluntary code.”

He also said:

“we cannot allow Google and other search providers to go on allowing people access to illegal sites.”—[*Official Report*, 13 September 2007; Vol. 614, c. 785.]

I am convinced that the Minister will want to take up the mantle he has been thrown by the former Secretary of State and I urge him to do so.

The Minister for Digital and Culture (Matt Hancock):

What a pleasure it is finally to stand to respond to the long interventions and speeches from Labour Members. It is a joy to hear that at least some of them understand and believe in property rights. Conservative Members certainly do.

The discussion has turned into a debate not only on amendments 92 and 93 and new clauses 3 and 33 but essentially on clause stand part. I therefore hope that Committee members will understand if I explain the whole clause in my response.

Kevin Brennan: The Minister is seeking to chair the Committee now as well as being the Minister.

The Chair: And he is doing it extremely well but it will be my decision.

Matt Hancock: It is a team effort.

The amendments are to clause 26, which increases the maximum sentence for online copyright infringement from two to 10 years, which is equal to the sentence for physical copyright infringement. The case for this has been made powerfully by Government and Opposition Members and it is an important change. Whether online or offline or a combination of the two, copyright infringement is IP theft and it is right that the maximum sentence is the same.

This sends a clear message that copyright infringement of either kind will not be tolerated and affirms that creators who produce the content that we all enjoy are valued. Furthermore, enforcement agencies will now have proportionate sanctions to tackle this serious criminality, whether offline or online.

We recognise that the maximum sentence of 10 years, even if only for the most serious cases, must be carefully targeted. Consequently, clause 26 also makes changes to the existing offence of online copyright infringement to make it clearer when that offence is committed and who should be considered liable. The amendments speak to some of those points.

The concept of prejudicial effect in the existing legislation will be replaced with a requirement that the infringer intends to make a monetary gain for themselves or knows or has reason to believe their actions will expose

[*Matt Hancock*]

the rights holder to a loss or risk of loss in money. I will come to the debate around definition of that in more detail.

The point of this clarification is to act as a safeguard to ensure that the increased maximum penalty is applied only to serious criminals who deserve it and will not apply to those who share material accidentally or without knowledge of the consequences.

Turning to the points made by the hon. Member for Cardiff West, or at least the ones that were pertinent—

Kevin Brennan: On a point of order, Mr Streeter. Am I right in saying that as the Chair of the Committee, had I made any points that were not pertinent, you would have ruled me out of order?

The Chair: I can certainly confirm that you were in order all the way through your comprehensive speech.

Matt Hancock: Undoubtedly in order and sometimes very broad ranging. A person who accidentally shares a single file without the appropriate licence, particularly when the copyright owner cannot demonstrate any loss or risk of loss, is not expected to be caught by this offence. I hope that gives the hon. Gentleman assurance on that point. However, of course, criminal infringement will be dealt with on a case-by-case basis and a court must be satisfied beyond reasonable doubt that all elements of the offence have been made out.

10.30 am

Kevin Brennan: We are getting to the crux of the matter: the words the Minister uses are very important. All joking and jibing aside, which he enjoys, there is a serious reason for laying these matters firmly on the record in Committee—that is our serious purpose here and our constitutional role. He said, “is not expected to be caught by this offence”. I fear that that is not really strong enough in response to my points. We need to understand whether it is possible for individual consumers to be captured by it. If so, the Minister should tell the Committee.

Matt Hancock: As I said, it is for the courts to decide about criminal infringement on a case-by-case basis, but I am making clear that that is unlikely and not the expected outcome in the case of a person who accidentally shares a single file without the appropriate licence. The reason I do not go further and make it absolute is to ensure that the court can make a fair judgment on this, rather than be bound. I want to go further, because there is another important point here about the impact of this on activities that are currently lawful. We do not expect things that are currently lawful to be caught by this change. This is a change in the scope of the sentence rather than in the definition of the offence. I want to make that very clear.

On the second point that the hon. Member for Cardiff West made about the legal distinction between “owners of copyright” and “owners of the rights”, “owners of copyright” relates to the offence of communicating to the public, whereas “owners of the rights” relates to the performer’s right of making available. This is a legal

distinction: they are two separate offences but there is no substantive difference in the meaning of the two. The reason has to do with the legal drafting of the offence rather than the lay understanding of the meaning of the two.

The hon. Gentleman also raised the issue of trolls. I want to be clear that while we understand that some people may receive threatening letters from so-called trolls, we are not aware of any successful court case by these so-called trolls in this area. We do not endorse such aggressive tactics and we understand that this tactic is not widespread, but we will keep it under review.

Going more broadly into the debate that we have just enjoyed, since 2002, when the maximum custodial sentence for copyright infringement was changed, this has clearly been wrong. I am glad that there is all-party agreement on the change to 10 years, but in addition to increasing the maximum sentence, we have recast the relevant offences to include an additional element to the offences, which must be proved before an offence is made out, namely that the infringer intends to make a monetary gain for themselves or another person, or knows or has reason to believe that their actions will cause loss to the rights holder or a risk of loss in money. Amendments 92 and 93 would remove this additional element, but there are several reasons why it should be retained. We should remember that serious incidents of online copyright infringement or infringement of a performer’s making available right already fall within the scope of criminal law, as I mentioned.

It is right that the courts should be able to apply serious sanctions where they are warranted and apply the equivalent sanction to that available for physical copyright infringement, but it is our view that it is important to include the words, “risk of loss” to capture cases where the loss has not yet materialised. We believe that these same scenarios would fall within the current drafting of the offences, which relies on the prejudicial effect, but we have tightened the notion of prejudicial effect following consultation, to be more precise and targeted in the wording being examined today. I hope that satisfies the understandable request by the hon. Member for Cardiff West for clarity to be put on the record as to the intent of clause 26.

I now wish to turn to new clause 3 on search engines. We had a serious debate on the impact of search engines. We come from a position of being strong believers in the protection of property rights, and we want to ensure that the UK retains one of the best IP regimes in the world. Without content, there is no IP to protect, so I pay tribute to the BPI’s work: to support take-downs and to make the eloquent case for stronger IP protection. I also pay tribute to Get it Right from a Genuine Site, which does important work in making sure that culturally it is unreasonable—and seen as unreasonable—to take IP without paying for it.

I turn to my hon. Friend the Member for Richmond (Yorks) who made an important point on newspaper articles that appear in search engines. We support fair remuneration and we encourage content providers and online platforms to work together on this. This is an issue that has been raised with me directly, and it is pertinent to the debate. We want to encourage investment in new content, and we support returns for investigative journalism and other kinds of journalism, and I hope

we come to a resolution on fair remuneration between content providers and online platforms, in the first instance. However, my hon. Friend's intervention is noted.

In relation to clause 3, as the Committee knows from the discussion, the Minister for Intellectual Property, Baroness Neville-Rolfe, has been working closely with search engines and representatives of the creative industries. We are fulfilling our manifesto commitment to ensure that there is a fair return, and the group is currently considering a voluntary code of practice. I agree with the thrust of the arguments made by my hon. Friend the Member for Selby and Ainsty, who put the case strongly. Our intention is for the voluntary negotiations and the voluntary code of practice to come to a successful fruition, and the people involved in those negotiations will doubtless have heard the argument and understood the strength of feeling on this Committee. Given this ongoing work and the existing remedies for removing or blocking infringement content, I hope that hon. Members will agree that now is not the right time for a broad reserve power.

Kevin Brennan: Surely now, when we have a legislative vehicle in front of us that could not have been better designed for this very purpose, is exactly the right time. Committee members would have a right to be annoyed if, in making this broad assertion that now is not the right time, the Minister were subsequently to concede on this point at a later stage in the Bill's progress, in another place and in an unelected House. Will he tell us truthfully what the Government's intentions are on this point?

Matt Hancock: I care about the substance of getting this Bill through right. There are, of course, important parts of parliamentary process both here and in the other place. Given that the round-table discussions are ongoing, including a meeting next week, now is not the right time for the broad reserve power.

New clause 33 seeks to expand the criminal liability to include the supply of IPTV boxes for criminal infringement. As hon. Members will understand from the tone of my remarks, as a strong believer in property right protection, I understand the concern. The hon. Member for Cardiff West referred to the Copyright, Designs and Patents Act 1988 and the fact that the Minister for Intellectual Property had committed to making sure that we looked at this, and we have done so. This activity is already covered by criminal law under the Fraud Act 2006 and the Serious Crime Act 2015. The City of London police force is investigating cases. It seized over 500 set-top boxes earlier this year and arrested a man for fraud and IP offences.

There is a danger in the digital world of legislating for a specific technology as opposed to legislating for the offence in a technology-neutral way. I strongly prefer the latter. As the law is already in existence in the two Acts that I mentioned, the best thing to do is to prosecute under the existing Acts, rather than try to chase a particular technology, which may well be out of date. Our strategy for tackling IP crime includes a specific commitment to developing an understanding of the challenges posed by IPTV. We now need an approach that tackles the problem, rather than just current IPTV set top-box technology, which will no doubt be superseded in due course by future technologies. The existing criminal

offences provide a legislative framework that is broad enough to protect our creative industries. However, I will of course keep this area under review.

I hope Members have been reassured of the work we are doing to make sure we apply the existing criminal law and make sure that intellectual property is protected. I concur with all the remarks made by Committee members about the importance of the creative industries, the importance of supporting content providers and the importance of intellectual property. I hope that with these explanations, the hon. Member for Cardiff West will feel able to withdraw the amendment.

The Chair: Before I call Mr Brennan, it may help the Committee to know that it is not my intention to allow a wider debate on clause 26. We have had a good old canter around the course.

Kevin Brennan: Thank you, Mr Streeter, for letting us know your decision—not influenced at all, I am sure, by the efforts of the Minister to chair the Committee as well as leading for the Government. I will take into account in my response that you are including clause stand part in this part of our debate.

I made it clear at the outset that amendments 92 and 93 were probing amendments and I am very grateful for Minister's explanation of the meaning and intention of the wording. As I have made clear, it is not our intention to push the amendments to a Division, but I think we need to cogitate a little further before Report and the latter stages of the Bill and perform a more careful exegesis of what the Minister said when he used the phrase "not expected".

Matt Hancock: I can go yet further on that. The reason this is rightly done on a case-by-case basis is that we are talking about an existing offence. It is important to remember that. We are not making something illegitimate which is currently legitimate; we are adding to what is required to make out an offence. We are not making something that is currently legitimate now illegitimate. That is why it is reasonable to proceed on that basis, with the language that I used.

Kevin Brennan: I am grateful for the further clarification and for the Minister engaging in the discussion. We will think further about what he has said. I think it has been a very helpful exploration of the issue. I am not sure that he is right when he receives advice that the trolling issue is not widespread, which was the phrase he used. Obviously we can dig into that a bit further as we progress with scrutinising the Bill, but I welcome the fact that he said he would keep that under review. This is a very real issue and the fact that there may not be many prosecutions around it is often related to the fact that such activity is not necessarily illegal—the point I made in my contribution. Nevertheless, it can bring great distress to vulnerable individuals. We all know that the issue of vulnerable individuals being targeted by unscrupulous individuals, organisations and networks online is growing.

Matt Hancock: The challenge, though, is to ensure that reasonable protection of intellectual property is not ruled out by stopping any such speculative activity.

[*Matt Hancock*]

There is a genuine policy challenge in how to support the protection of intellectual property. We are not aware of any successful legal cases by the trolls. People should therefore be reassured.

10.45 am

Kevin Brennan: Quite the opposite, actually. The fact that there have not been any successful legal cases indicates that people are being very successfully scammed out of money because they are too afraid to resist the trolls who come to them saying, “You have infringed copyright.” The fact that there have not been legal cases should be a cause for concern, not complacency. The Minister might like to give that further consideration.

As we have made clear, our intention with the amendments is absolutely to support the protection of those whose intellectual property has been infringed. That is our aim, but as ever there is a balance to be struck. We want to ensure that the most vulnerable in society are not easily targeted by unscrupulous people using the fact that members of serious criminal networks engaged in copyright infringement can go to prison for 10 years under clause 26 to frighten them. Those vulnerable people may not always completely understand the law around intellectual property when they are online, and they could get a notice that could scare them into parting with some of their money. Such cases are a real problem across society in general, and this is just one area of these activities. We should be aware of the problem and be concerned about it. We should not be complacent.

As I have outlined, it is extremely unlikely that any such cases will come to court, because the people claiming that copyright infringement may have taken place are not interested in taking anyone to court. They are only interested in sending out enough notices to get a small number of people to respond and hand over their cash.

It is the same as when scammers send out millions of text messages and phone calls saying that a relative is stranded in some other country and asking for money to be sent immediately. They may say, “We have a wonderful investment that you should participate in,” or, “You as an elderly person should put your money into something, because then you can provide for your children and grandchildren. It’s a sure thing.” All those sorts of activities have become much more prevalent because of the internet, and this issue around copyright infringement is just one area of that. That is the point we are making.

I urge the Minister to go away with his officials, to think a bit more about this issue and to consider how we might be able to reduce the possibility of it becoming an even bigger problem in the future, with the 10-year sentence being used to frighten people even more than they are already being frightened by these scammers and so-called trolls.

Obviously we will not be voting on new clause 3 at this point, because that always happens at the end of Committee proceedings, as you rightly reminded us, Mr Streeter. The hon. Member for Selby and Ainsty made it clear that it is not his intention to divide the Committee on his new clause when we reach that stage, but I say to the Minister that saying simply that it is not

the right time for such a measure is not good enough as a response to the range of serious issues raised by Members of all parties.

Thangam Debbonaire: I wish to ask the Minister whether he will give us some idea of the criteria by which he will assess when the right time is. I have no way of knowing for sure when that will be without an understanding of his reasoning and the reasons there might be for changing his mind in future.

Kevin Brennan: Obviously I cannot speak for the Minister, but he is free to say something after I have sat down. He is free to intervene now if he wants to clarify that point for my hon. Friend. It would be helpful if he did so, because I think this is exactly the right time for the measure. That is the purpose of new clause 3 and the thinking behind it. The talks have been going nowhere. As I have said, we have seen the movie several times before, and we know how it ends.

Christian Matheson: My hon. Friend makes a good point: talks are going nowhere. Would an indication from the Minister that there is an intention to bring the proposals forward into legislation perhaps aid those talks in going somewhere?

Kevin Brennan: In a nutshell, that is the reason for new clause 3, and I am sure that was exactly the thinking of the hon. Member for Selby and Ainsty when he tabled it.

It might help if the Minister indicated when he expects the talks to conclude. He says he hopes there will be a positive outcome to them and that this is not the right time for new clause 3. He likes to talk softly; if new clause 3 were incorporated into the Bill, he could carry a big stick while talking softly about this matter. If he is not prepared to amend the Bill, perhaps he could tell the Committee when he believes the talks should conclude, as that would help to focus minds a bit. Perhaps he could put it on record that he is not happy to allow the talks to drift on and on inconclusively, as they have for many years.

We are not satisfied with the Minister’s response on new clause 3, and I repeat that it is my belief that at some point during the progress of the Bill the Government will concede on that point. It would be a terrible shame if they did not concede to the hon. Member for Selby and Ainsty—one of their own elected Members here in the Commons, who has tabled a sensible amendment—but did so in another place, giving the credit, yet again, to the unelected House for being a wonderful House in revising legislation. There is plenty of expertise right here in the Committee and in this House, among elected Members who know about the subject and know that this is the right thing to do. I urge the Minister to change his mind about new clause 3, if not now, perhaps on Report, when we will no doubt return to the issue.

Finally, I hope it is helpful to you, Mr Streeter, to be aware that it is not my intention to divide the Committee on new clause 33. As for the Minister’s response, I think I referred to the shortcomings of the current offence. I did not say we did not think that people could currently be prosecuted, under the Fraud Act 2006 or the Serious Crime Act 2015; in fact, I specifically mentioned those

Acts—it might have been while the Minister was searching for something online. I also mentioned why the Acts were inadequate, and the Minister did not respond. First, they require a great deal of expertise in the area on the part of the police, which is not necessarily a resource that is sufficient to meet the growing size of the problem. Secondly, by amending the Copyright, Designs and Patents Act 1988, my new clause would have not just allowed but compelled trading standards to get involved and would have allowed the body to take action.

It would be useful to hear from the Minister why he does not think it a good idea that trading standards should be brought into play in that way, rather than simply relying on a police force that is under pressure and has many things to investigate—an ever-growing problem. Is it the Government's position that is it wrong that trading standards would be the right body to involve? It would be extremely useful if the Minister felt able to clarify that. He said that he would keep the matter under review. I welcome that, and I hope he will be able to tell us more about the issue at a later stage, but if he told us at this stage why trading standards is not the right body to involve, that would be helpful.

We have had a fairly comprehensive debate. I do not think I need to add much on clause stand part, apart from that the latest data, published by the IPO, demonstrate the need for Government action. The research found that 15% of internet users—6.7 million people—still access copyright-infringing content, so it is absolutely right that the Government should act. I hope that the Minister feels able to add a bit more, in light of what I have said.

Matt Hancock: Very briefly, I mentioned that one of the meetings in the negotiations with search engines is next week. We expect the meetings to conclude over the next few weeks, and that is why the timing is appropriate.

Kevin Brennan: Perhaps I am speaking against what I said earlier, but if the Government do not give way on that point and the talks conclude unsatisfactorily before Christmas, while the Bill is still before Parliament, will they consider amending the Bill at a later stage?

Matt Hancock: I do not want to get into answering conditionals that are dependent on some future action. I have made the case for why now is not the right time and I have given the hon. Gentleman the timeframe over which discussions are taking place.

The hon. Gentleman made the case against new clause 33 very well. These are criminal activities, and it is the police's role to police them. There are increased resources for the police in this area and I look forward to their taking it on. Our principle is not to legislate for specific offences based on an individual technology when offences already exist that can be used to prosecute the illegal activity.

For instance, many IP TV boxes are sold without any software on them; some have it inbuilt and some do not, and the ones that do not can be used for legitimate and illegitimate purposes. It is far better to have an in principle criminal measure on the statute book and to prosecute with that. Everybody can see the united strength of purpose to ensure that such IP theft does not go unpunished.

Calum Kerr: I thank the Minister for his explanation. I know that he and the Government are not fans of amendments that would oblige them to do a report to see how they are doing in the area. However, is there a way of looking at it on an ongoing basis, so that progress can be monitored and we can see how many prosecutions are actually occurring under the current legislation?

Matt Hancock: That would be an excellent idea, if the Culture, Media and Sport Committee chose to take it up. That is what Select Committees are for; I know the hon. Gentleman does not like them, but I think they are excellent at scrutinising the Government and everything that is going on. With that response, I ask the hon. Member for Cardiff West to withdraw his amendment.

Kevin Brennan: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 26 ordered to stand part of the Bill.

Clause 27

REGISTERED DESIGNS: INFRINGEMENT: MARKING
PRODUCT WITH INTERNET LINK

Question proposed, That the clause stand part of the Bill.

Kevin Brennan: I hope that we can dispose of clause 27 more briefly than clause 26; I am sure we will, because it does not contain such controversial matters. By including an internet link in the ways in which a designer can indicate to consumers that their design is registered, clause 27 will remove the excuse that a potential or actual infringer did not know that a design had been registered. Like clause 26, it will do away with the false binary in law between online and offline by offering a digital means of checking design right protection. As I understand it, in addition to or instead of including the design registration number on the product itself or on the product packaging, the designer may include details of or a specific link to a website, with the important caveat that that website must be available at no cost to the visitor and must clearly associate the product with the number of the design. That ought to make it easier for designers to update and communicate design registration and other information about the rights associated with products without constantly having to change their packaging or their products. That will, in turn, make registering design cheaper for the designer.

11 am

Clause 27 could also act as a deterrent to the copying of designs by demonstrating and reminding people that design right protection exists. At face value, it seems like a welcome clause to include in the Bill. We certainly hope that it will lead to significant reductions in the cost of design registration, making it easier for designers to protect and enforce the registration of their work.

Can the Minister confirm in his response whether that assessment of the clause's purpose is reasonably accurate? Has any assessment been made of the impact on the costs of design registration? Can he give us any

practical examples of how the current law is causing problems—in other words, the problems that the clause seeks to rectify? Practically, how could the clause have prevented such problems, and how will it prevent them in future if approved by the Committee?

Matt Hancock: First, that was an extremely good and unusually succinct description of the clause. The hon. Gentleman asked about costs; we think that it will reduce costs to business. In terms of the current problems, physically changing the required registration details on products imposes a cost. For instance, some businesses produce labels that must be applied to every single product. Such costs are unnecessary if a single label or web address can be built into the design and the update can then be done digitally rather than physically. It is, after all, illegal to claim that a product is registered when it is not. Therefore, the changes are required by law, and it is far cheaper for everybody if they are made on a website that is referenced on the physical product, rather than on labels, or sometimes labels stuck over labels. I am glad that there is cross-party understanding of and agreement on the clause, and I commend it to the Committee.

Question put and agreed to.

Clause 27 accordingly ordered to stand part of the Bill.

Clause 28

COPYRIGHT ETC WHERE BROADCAST RETRANSMITTED
BY CABLE

Nigel Adams: I beg to move amendment 63, in clause 28, page 27, line 31, leave out subsections (3) to (5).

This amendment, together with Amendment 64, are probing amendments to identify a timeframe for the repeal of section 73 of the Copyright, Design and Patents Act 1988 as it is not clear when the repeal will come into force. The amendments would mean that repeal of section 73 of the CPDA would come into force as soon as the Bill receives Royal Assent.

The Chair: With this it will be convenient to discuss the following: amendment 189, in clause 28, page 27, line 36, at end insert—

“(6) The Secretary of State shall—

- (a) produce a report on the implication of the repeal of section 73 of the Copyright, Designs and Patent Act 1988, and
- (b) undertake a comprehensive consultation on the future of television content distribution and public service broadcasters.”

Amendment 64, in clause 82, page 80, line 2, at end insert—

“(a) section 28;”

This amendment, together with Amendment 63, are probing amendments to identify a timeframe for the repeal of section 73 of the Copyright, Design and Patents Act 1988 as it is not clear when the repeal will come into force. The amendments would mean that repeal of section 73 of the CPDA would come into force as soon as the Bill receives Royal Assent.

Amendment 94, in clause 82, page 80, line 14, at end insert—

“(h) section 28.”

This amendment would mean that repeal of section 73 of the Copyright Designs and Patents Act of 1988 would come into force two months after the Royal Assent of the Bill.

Nigel Adams: These are probing amendments to clauses 82 and 28 in order to establish a timeframe for enacting the provisions in clause 28, which repeals section 73 of the Copyright, Designs and Patents Act 1988. I warmly welcome those provisions, but from the clause as it stands, it is not quite clear when we can expect this important measure to come into force. The amendments would mean, instead, that repeal of section 73 of the 1988 Act would come into force as soon as Royal Assent is granted. That would involve consequential amendments to clause 28 to delete subsections (3) to (5), as Royal Assent would remove the need for them. Otherwise, in the Bill as drafted and as stipulated in clause 82, clause 28 would come into force on whatever day the Secretary of State appoints in regulations made by statutory instrument, which could mean further delay.

As I pointed out on Second Reading, online service providers such as TVCatchup use section 73 to make money from public service broadcaster channels by re-transmitting their content while selling their own advertising around it. That undermines the public service broadcasters’ own online streaming services and on-demand catch-up services, affecting the audience, advertising and sponsorship revenue of commercial PSBs. Furthermore, none of that money is being paid to the public service broadcasters, the underlying talents and the rights holders, and none is flowing back into original UK content production.

I have an important film studio in my constituency, so I take this issue very seriously. We want to see more great productions, such as “Victoria”, which was filmed largely at Church Fenton in my patch. The UK television sector is at the heart of the UK creative industries. It is a vibrant and dynamic sector, providing outstanding world-class content that is the envy of the world. Such programmes are also hugely popular internationally, and the UK is the second-largest exporter of TV in the world as a result. It is therefore vital that we do all we can to help protect investment in the programmes that viewers around the world love. For those reasons, it is important that the provisions in clause 28 to repeal section 73 of the 1988 Act are enacted as soon as possible.

The PSBs first wrote to the Intellectual Property Office asking for a repeal of section 73 eight years ago; since then they have spent a lot of time and money in litigation. Meanwhile, TVCatchup has made millions on the back of the PSB content. The only reliable way to stop that exploitation and ensure that people who make and own the programmes that viewers love gain a return on their investment is to repeal section 73. The public service broadcasters have been in litigation with TVCatchup for many years, and until section 73 is repealed those parasitic websites will be able to profit from the PSB content without any of the payment going back to the public service broadcasters.

Section 73 also allows cable platforms to profit from PSBs that invest in content, which means that the PSBs are effectively subsidising global cable giants. It prevents the commercial PSBs from negotiating with cable platforms for their PSB channels. In a normal situation, they would be able to negotiate freely, as they do for their digital channels such as ITV2 and E4, but section 73 currently prevents that.

Cable platforms make money out of PSB content while still benefiting from a regulatory regime designed for a different era, under which no payments go back to the PSB or any other holders of rights to the content.

Christian Matheson: The hon. Gentleman talks about a different era. Does he think that it was right to introduce section 73 at the time, because it allowed cable platforms to develop, but that things have moved on quite a bit since then?

Nigel Adams: The hon. Gentleman is yet again spot on. It clearly is of its time. The idea was to try to help a nascent cable industry, and the legislation has done that; we have a healthy TV industry across all broadcast platforms, including cable and satellite. That legislation has done its job.

On pay TV platforms, such as Virgin and Sky, up to 50% of some of our most valuable content, such as drama, is viewed via subscription personal video recorder, from which the pay TV platforms derive substantial benefit. That undermines the commercial PSBs' ability to secure a return from advertising, because much of their advertising is skipped, and materially reduces as critical opportunities to generate secondary revenue—for instance, from on-demand services or box sets—because libraries of valuable drama content can be built up for free on the PVR. I therefore urge the Government to ensure that repeal of section 73 is delivered at the earliest opportunity. That would mean that those who wish to re-transmit or otherwise use PSB services in the future will have to negotiate to do so, which seems only fair. They should be able to negotiate within the must-offer regime in the Communications Act 2003. That would enable those who create the content to make a return on their investment and continue to make the programmes that viewers love, which are the envy of the world.

There has been extensive consultation on the issue so there is no need for further delay. I will therefore be very grateful if my right hon. Friend the Minister can provide more detail on the timeframe for the repeal of section 73 of the 1988 Act, as included in clause 28.

Kevin Brennan: I rise to speak to our amendments 189 and 94. I note the well-informed and cogent points made by the hon. Member for Selby and Ainsty, and I understand why the Government want to repeal section 73 of the Copyright, Designs and Patents Act 1988, as he laid out. Clearly apps such as TVCatchup cannot be allowed to profit from public service broadcasting content without making any sort of contribution to its creation, either by paying for it or in some other way; without agreeing some kind of licence for its use; and without abiding by public service broadcasting standards for its distribution. It is entirely logical to repeal the section and we support the intention to prevent TVCatchup from doing what it does, but the Government need to explain the knock-on effects on the market.

Calum Kerr: The SNP also supports and welcomes the repeal of the section 73 of the 1988 Act. I agree with supporting original drama, but I wonder about how Virgin in particular is affected, because Virgin is also rolling out broadband and helping the Government in their other targets. Perhaps the Minister can assure us that that has been considered and that pricing will not prohibit meeting other Government objectives.

Kevin Brennan: I am sure the Minister has heard what the hon. Gentleman said and will want to address it in his response. The hon. Gentleman is quite right to point out that Virgin in particular will be affected.

The Government's reform is well meaning, but they need to explain how it will not put further pressure on the public service broadcasting compact. They need to answer questions about their long-term plans for television distribution and how this part of the Bill affects that. Public service broadcasters exist for a reason, as an intervention in the market and as part of public policy. We need to ensure that they do not accidentally drift out of existence or into insignificance, and we need to know the Government's intentions.

In their response to the consultation on the repeal of section 73, the Government said that they do not expect or want to see charges from public service broadcasters to cable operators for their main channel content. If that is so, I ask the Minister in a genuine spirit of inquiry whether there is an argument for the Government to make it clear in legislation that they do not want to see such charges, because at least some of the public service broadcasters do not share that view. None of us believes that a dispute between a major public service broadcaster such as ITV and a major TV platform such as Virgin is in the viewer's interest.

The amendments are intended to explore whether the Government are sure that they are not risking those viewers ultimately having to pay more than they should for what should be a free public service broadcast. What is the Government's view on the risk that those viewers could lose that service, at least for a period of time, if a major dispute of that kind arose as a result of the repeal?

11.15 am

Even if the Government can establish that the cashless trade of carriage for content between cable operators and public service broadcasters will continue, other questions still need to be answered. Following the tabling of the amendment, we noticed that the Government have taken our advice on board and launched a 24-page technical consultation, which came out yesterday, on possible transitional arrangements for the repeal of section 73. That consultation acknowledges the possible effects of the repeal on performers' rights and the potential need for a rights mechanism, which reinforces the point made earlier by my hon. Friend the Member for Sheffield, Heeley in her extremely able contributions: that the Bill was simply not ready for discussion when it was introduced. This sort of thing really should have been done before the Bill came to Committee.

When all that is taken together with all the other reports that my hon. Friend listed in her contributions and the Government amendments that have been published alongside the Bill, one gets the clear impression that the Minister is making it up as he goes along. It is a bit like that Wallace and Gromit film, "The Wrong Trousers", when Wallace and Gromit are on the rail track and Gromit has to lay the track as they are proceeding, rather than the track already being laid before embarking on the journey. That is the problem with the Bill: the track has not been properly laid and the Bill has been introduced far too quickly, no doubt for some obscure business management reasons buried within the Whips Office. It is unfair of me to mention that because the

hon. Member for Beverley and Holderness cannot respond, but there is undoubtedly some reason of that kind behind why the Bill has been introduced when it is not even ready.

Given that the Government seem to be taking inspiration directly from our amendments by publishing the technical report, and knowing how closely they follow our advice, I will take this opportunity to give them a few more pointers on topics to consider through the consultation process that we called for in our amendments. There are currently four different distribution mechanisms for television: there is digital terrestrial television, which is used by Freeview, TalkTalk and BT, via YouView; there is cable, which has already been mentioned, in particular around Virgin Media; there is satellite, which is used by Sky and Freesat; and, as we discussed earlier, there is now IPTV, which can be, and is, used legitimately by BT for its own channels.

Each of those four distribution mechanisms operates under a different legislative and regulatory regime with a different basis of carriage of must-carry public service broadcast channels. At the moment, public service broadcast is paid for digital terrestrial television distribution on one basis, and satellite distribution on another, but not for cable or IPTV distribution. Looking back, it is easy to see how that distinction arose. Earlier Governments sought to try to support a variety of platform levels to enable technological innovation—multi-channel TV was only possible in the 1980s via satellite; it had not been previously possible—or to create competition, or both.

Not so long ago, when I was growing up—this will be within the memory of many of us on the Committee—people would ask, “What’s on the other side?” when watching television. My wife is from the United States of America, and when I first said that to her, she said, “What do you mean, ‘What’s on the other side?’ Do you mean on the other side of the television?” She had no understanding of the concept because they had multi-channel platforms much earlier in the United States than we did in this country.

The world has changed radically but those different regulatory regimes exist, which is why our amendment asks the Government to investigate, produce a report on the implications of the repeal and undertake a comprehensive consultation on the future of television content distribution and public service broadcasters. Does the Minister think that there is any danger that in doing this, although it is something to be supported, the Government are just tinkering around the edges, as they have done recently with the technical platform services or TPS regime, which applies only to Sky?

Although the previous Government recognised the problem, rather than having a formal review and update of the regulation, they merely applied some pressure, which, short of legislation, did result in a slightly better deal for public service broadcasters, but the problem is that the terms of that type of deal remain opaque, so it is impossible for us to judge whether it is truly fairer for public service broadcasters. Does the Minister believe that this approach is equitable compared with distribution arrangements on the other platforms? Should that be subject to the report that we are asking the Government to consider producing?

The Secretary of State has had in this area not just powers, but duties. Since the Communications Act 2003, she has been required

“from time to time to review...the terms on which”
must-carry PSB services

“must be broadcast or otherwise transmitted.”

Those duties do not appear to have been exercised properly recently. The TPS regime has not been reviewed by either Ofcom or the Government in a decade. Why not, especially as it was obvious a few years ago that that regime was no longer fit for purpose? When considering section 73 of the 1988 Act, why have the Government ignored the question of PSB distribution arrangements over all distribution platforms? The Bill was a good opportunity to consider all these issues in the round, rather than trying to treat section 73 as an isolated issue, so I hope that the Minister will be able to explain his thinking on that to the Committee.

All this is occurring in the context of viewers changing their habits. They are watching more online and more on catch-up. Those are growing trends, so distribution over the internet—both live, via multicast IPTV, and on catch-up, via unicast—is growing. In its 2015 review, Ofcom framed that as a “threat” to public service broadcasters. It is certainly a change and certainly a challenge to the Government and to regulators to consider how they can best support and enable that shift, to be a success both for public service broadcasters and for platforms.

These days, watching television is like the old Martini advert that many of us remember: “Any time, any place, anywhere, there’s a wonderful dream you can share”. That is exactly the way people are now consuming television: any time, any place, anywhere. That is the present, not the future. How do we ensure that viewers can watch the public service broadcast content that they want to, when they want to and how they want to? How can we ensure that public service broadcasters continue to have reach and prominence, which enables them to fulfil their obligations and appropriately reflect their funding? What opportunities are there to draw more people online, perhaps for the first time, to find the high-quality television content available via public service broadcasters?

Online viewing is not a problem; it is how viewers are choosing to watch, and that will continue to be the case. What is a problem is if there is no strategic thought by the Government on these issues at this time of enormous technological and behavioural change. The particular issues in relation to distribution raised by the repeal of section 73 connect to wider and now pressing questions about the public service broadcast compact. Thirty years ago, the terms underpinning the public service broadcasters were clear: they were reserved access to valuable spectrum and prominence on that spectrum. That created valuable and well-funded monopolies, either from advertising revenue or from the licence fee. However, the Committee knows that we have to consider that every aspect of that regime is undergoing rapid change, and the repeal of section 73 allows us to think about that and to consider the possibility that the Government need to do the strategic—

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.