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## Digital Economy, Copyright and You

### What's this all about?

The UK Digital Economy Bill is seen by many image producers as a free-for-all in the copyright / intellectual property market – but how is it likely to affect you: publishers, broadcasters, museums and corporate communicators?

### Why should I care?

Previous Zoid white papers have discussed

- changes in law regarding Intellectual Property (IP)
- exercising of Due Diligence when clearing rights
- copyright dangers when sourcing cheap assets
- 'licensing' of "orphan" assets
  - all of which directly affect how your source and license content.

Now we come to a seismic shift in legislation.

If you licence copyrighted assets, or publish images of any kind online, or occasionally need content whose owner is untraceable (orphan assets), the proposals will directly affect your operations – whether, publishers, museum or corporation.

The Bill seeks to address the question: should we encourage innovation through a free flow of data, or shall we enforce copyright regardless of the intended use of copyrighted material?

In the Digital Economy Act 2010 (repeatedly delayed, anti-piracy measures were intended to protect copyright holders from peer-to-peer websites and file sharing, through having the likes of BT and TalkTalk police their users - or, in the best case scenario, be fined.

Ofcom's role would be to implement and administer measures aimed at significantly reducing online copyright infringement, from March 2014, when they are supposed to be sending letters to service providers and permit only 'three strikes' of infringement. Little wonder then that the implementation of the Act has been delayed by at least 2 years, and that service providers are lobbying strongly against its implementation altogether - and this is merely viewing the most superficial of the Act's potential effects.

The question is still open on the legitimacy of the Act and whether online piracy should be tackled through punishing those who supply the means for it - while supplying the means for perfectly legitimate exchanges.

Pretty much everybody who has a say in the world of copyright took position either for or against the Act, with endless reports and campaigns popping up to either back up or discourage the various provisions.

Most relevant is the LSE's report, according to which the Act had "focused on efforts to suppress the use of technological advances to protect out-of-date business models" and suggested "providing user-friendly, hassle-free solutions to enable users to download music legally at a reasonable price" instead. Or the Stop43 campaign, that succeeded in having Clause 43 on the free use of orphan works removed from the Act.

### **Conclusion**

Anyone with responsibility for licensing third party content is likely to be affected by any Act that results from the Digital Economy Bill.

The removal of the infamous Clause 43 (which would permit third parties to gain a license to use any orphan work without its copyright owner's permission provided it had done a "diligent search" for the copyright holder), might be both good and bad news for image professionals:

- Can you, or can you not, use orphan works commercially, provided that you've done a diligent research for the copyright owner?
- DACS and BAPLA welcomed the report, which currently stands as being the only clear decision made in the context of the DEA 2010.
- However, a new Directive on Orphan Works has just been approved by the EU, and the UK will inevitably be affected.
- Maybe we'll see the deleted provision come back in force with the blessing of Europe?
- And can we hope with this to have clear guidance on how to treat orphan works in the digital age?

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Other related Zoid papers:

Copyright and IP + Due Diligence, Orphan works and Cheap Stock

- Zoid white paper 090323

Taking Care of Orphans

- Zoid white paper 090717

Demonstrating Due Diligence

- Zoid white paper 090731

Legacy & Integrity

- Zoid white paper 090801

Outsourcing, Offshoring & Outlaws

- Zoid white paper 090810

Orphan Works – new parents?

- Zoid white paper 120816

Illustration Pitfalls

- Zoid white paper 121201

Please call me on +44 20 7267 9990 if you would like to discuss any of the above

Richard Philpott

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