PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Tenth Delegated Legislation Committee

DRAFT COPYRIGHT AND RIGHTS IN PERFORMANCES (PERSONAL COPIES FOR PRIVATE USE) REGULATIONS 2014

DRAFT COPYRIGHT AND RIGHTS IN PERFORMANCES (QUOTATION AND PARODY) REGULATIONS 2014

Wednesday 9 July 2014

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£5·00

Members who wish to have copies of the Official Report of Proceedings in General Committees sent to them are requested to give notice to that effect at the Vote Office.

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest 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

Sunday 13 July 2014

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chair: Mr Jim Hood

† Birtwistle, Gordon *(Burnley)* (LD)
† Burley, Mr Aidan *(Cannock Chase)* (Con)
Carswell, Mr Douglas *(Clacton)* (Con)
† Doran, Mr Frank *(Aberdeen North)* (Lab)
† Doughty, Stephen *(Cardiff South and Penarth)* (Lab/Co-op)
† Glindon, Mrs Mary *(North Tyneside)* (Lab)
† Gyimah, Mr Sam *(Lord Commissioner of Her Majesty's Treasury)*
† Loughton, Tim *(East Worthing and Shoreham)* (Con)
† Offord, Dr Matthew *(Hendon)* (Con)
† Sharma, Mr Virendra *(Ealing, Southall)* (Lab)
Simpson, David *(Upper Bann)* (DUP)
† Uppal, Paul *(Wolverhampton South West)* (Con)
† Ward, Mr David *(Bradford East)* (LD)
† White, Chris *(Warwick and Leamington)* (Con)
† Willetts, Mr David *(Minister for Universities and Science)*
Williamson, Chris *(Derby North)* (Lab)
Wright, David *(Telford)* (Lab)
† Wright, Mr Iain *(Hartlepool)* (Lab)

John-Paul Flaherty, *Committee Clerk*

† attended the Committee

The following also attended, pursuant to Standing Order No. 118(2):

Weatherley, Mike *(Hove)* (Con)
Whittingdale, Mr John *(Maldon)* (Con)

Tenth Delegated Legislation Committee

Wednesday 9 July 2014

[Mr Jim Hood *in the Chair*]

Draft Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014

2.30 pm

The Minister for Universities and Science (Mr David Willetts): I beg to move,

That the Committee has considered the draft Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014.

The Chair: With this it will be convenient to consider the draft Copyright and Rights in Performances (Quotation and Parody) Regulations 2014.

Mr Willetts: It is a great pleasure to be here under your chairmanship again, Mr Hood, and to propose these two statutory instruments.

A long process has brought us to this point, going back even before this Government. The Gowers review took place under the previous Administration and the Hargreaves review under us, and both recommended that exceptions to copyright should be updated for the digital age. That is exactly what we are doing. The Government conducted extensive consultation, formal and informal, including more than 250 meetings with interested parties. We published our proposals in December 2012, conducted a further technical consultation on the draft regulations in 2013 and laid the final regulations before Parliament in March.

We are keen to ensure that copyright continues to act as an incentive to creativity and investment in the creative industries. That is why the regulations before us today, as well as the other statutory instruments that the House has considered in recent months, are so important. The UK's creative industries and creators are an important part of the economy and the envy of many countries; we must continue to support and value them. These regulations are carefully and narrowly drafted to ensure that they do not undermine copyright's important role in supporting our creators and creative industries. Parliament has already approved changes to exceptions for libraries, education, research, disabled people and public bodies. The instruments before us today provide exceptions for personal copying and for quotation and parody.

The first set of regulations introduces a new exception to allow the making of personal copies for private use, giving consumers greater freedom to enjoy the creative content that they have bought by allowing them to make copies for their personal use—for example, allowing people to copy a CD that they have bought or been given as a gift in order to listen to tracks on their iPad, or allowing them to copy an electronic document or book that they own from one of their personal devices to another. Consumer surveys show that most people think that this type of activity is reasonable, and we agree. Copyright law should not stand in the way of people being able to use and enjoy their own property. The rule will be that if you lawfully own something, you can copy it, as long as you do not give copies to other people. Provisions of this sort are already to be found in the legal systems of Australia, Canada and some European countries, so under the regulations British consumers will be able to enjoy similar advantages to those enjoyed by consumers in many other countries, but our exemption will be narrow and carefully targeted. It aims to support the reasonable use of copyright materials by law-abiding people.

I recognise that some parties remain concerned about the impact on the livelihoods of creators. Let me be absolutely clear to the Committee: the provision will not allow people to give or sell a copy that they have made to someone else; it will not allow people to obtain a copy from sources they do not own, such as rented copies, broadcasts or on-demand services; and it will not prevent copyright owners from using technology to guard against copyright piracy, such as copy protection for films on DVDs and Blu-ray disks.

That narrow and carefully defined scope contrasts sharply with personal copying exceptions in other European Union countries, which allow copies to be shared with families and friends, so people can obtain copies without paying for them. As a result of that much broader exception, those countries have mechanisms to compensate creators for any sales lost as a result of the exception—typically, levies imposed on recording devices and media. We do not believe that British consumers would tolerate private copying levies, which are inefficient, bureaucratic and unfair, and disadvantage people who pay for content. That is why the Government's exception is very narrow in scope and does not require a levy alongside it. The UK exception will not allow people to give or sell copies to others, and as it will not lead to lost sales for copyright owners, there is no need for a levy.

Some have questioned whether the Government have the ability to do this under EU law. I see the hon. Member for Hartlepool nodding, so let me focus on that question, which was touched on by the Joint Committee on Statutory Instruments, among others. The Joint Committee acknowledged that only the European Court of Justice can authoritatively ultimately rule on such a question. The Committee was right to alert the House to that point, but it is for us to make laws and for the courts to interpret them, and our view is that EU law is sufficiently clear that EU member states have a wide margin of discretion in this area. In particular, member states do not need to provide a compensation mechanism where an exception is likely to cause minimal or no harm, or where appropriate payment has already been made. That view is supported by many, including, significantly, the UK's most eminent intellectual property professors, including former Court of Appeal judge Sir Robin Jacob, who said in a recent letter:

> "We agree with the Government that in the light of the narrow scope of the exception envisaged, and the terms of the information society directive and case law of the Court, there is no clear requirement to pay compensation."

We therefore remain confident that these changes can be made with no requirement for a levy.

The new regulation is an important step forward in building respect for copyright law. It will make it easier and simpler for our fellow citizens lawfully to use copyright

material. After years of reviews, we want to get on with it—in so far as anything in this area can be said to move fast, we wish to move fast. I conclude that this is a sensible change that does not require a levy.

The second instrument provides a new exception for caricature, parody or pastiche. British parody and caricature has a long history: from Swift, Hogarth and Pope in the 18th century through to Peter Cook, Gerald Scarfe, "Spitting Image" and "Have I Got News For You"—*[Interruption.]*. I am glad that members of the Committee have vivid memories of those parodies and caricatures. Pastiche features prominently in many works in both our art and our music. Many works made for the purposes of caricature, parody or pastiche involve some level of copying from another work. Other countries, such as France, Germany, Canada and the USA, have laws that allow parody, caricature and pastiche, but creators in the UK currently have no defence in law, even if only a small amount of copying takes place.

Permission may be granted in some cases, but it is often refused or incurs significant costs, and failure to secure the relevant permissions runs the risk of legal action and potential damages. There is a critically acclaimed video installation, "The Clock", by Christian Marclay—the Committee will be familiar with it, so I will not give the details—*[Interruption.]* I will pass over the mischievous suggestion that I describe it, as I am sure that the hon. Member for Hartlepool wants to do that in his contribution. I am reliably informed it is a pastiche of thousands of time-related film and television clips. Galleries that exhibit the installation currently risk legal action for copyright infringement and many simply do not feel that they can take the risk. Creations like this often do not get published, or are quickly removed as a result of action from the original copyright owners. Sometimes campaigners parody a company's own brand or slogans, yet that too involves a risk of legal action, even though we regard this as part of the legitimate freedoms that people should be able to enjoy. For example, in 2011, Greenpeace produced a parody of Volkswagen's "Star Wars" themed adverts, but had to take it down from YouTube because of copyright infringement arguments. That is why we believe it is time to change the law.

Again, our proposed change has wide support from British broadcasters, production companies, creators and performers, and from campaigning groups such as Greenpeace and ActionAid. Centres of learning have also welcomed the change, because the ability to re-edit copyright works in new and experimental ways is seen as an important learning exercise for building creative skills.

I have heard concerns about the potential for this new exception to harm the market for the original work, which might be used as part of the parody, caricature or pastiche. Let me assure the Committee that we understand the concerns, and that is why the exception is framed on the basis of fair dealing, a concept that has been part of UK copyright legislation since 1911.

Mr Frank Doran (Aberdeen North) (Lab): I confess, I had not seen this particular provision before coming to this room today. Is the Minister aware that the contract that the House authorities have with the various broadcasting organisations for broadcasting the proceedings of the House bar any use apart from news programmes and specific reporting on the Parliament channel that we are all familiar with? I think that that provision in the contract was made for very good reasons, because we are the perfect target for pastiche. Has the Minister taken that into account in his consideration of how the measure will impact, and does he think he will be popular with his colleagues if he has?

The Chair: Order. That was an interesting speech, but I suggest it was not an intervention. If there are going to be other interventions, they must be a lot shorter than the one we have just heard.

Mr Willetts: Perhaps I can touch on that in a moment. We have special arrangements in the House, but of course, they cut both ways: on the one hand, we have special arrangements to protect parliamentary proceedings from parody; on the other hand, there are special arrangements to protect our ability to quote within the House of Commons. We can freely quote without having to secure agreement from the people who originally made the remarks or created the works that we are quoting from. In some ways, we are trying to extend to other institutions across the UK the rights that we have given ourselves in this House.

I was making a point about fair dealing acting as a limitation. In almost all cases, fair dealing will mean that copying a whole work without changing it will not be allowed—for example, it would not be considered fair to use an entire musical track on a spoof video. That means the market for the original work should be unaffected.

Mr John Whittingdale (Maldon) (Con): Bearing in mind your guidance, Mr Hood, may I extend the argument of the hon. Member for Aberdeen North and ask the Minister whether he can give an example of an attempted parody that has been prevented by the existing copyright law?

Mr Willetts: I gave an example—the 2011 incident when Greenpeace's parody of the Volkswagen "Star Wars" themed adverts was taken down from YouTube because of copyright infringement.

My hon. Friend has expertise in this area, and I have great respect for him and his position on the Culture, Media and Sport Committee. We are simply trying to establish for new media, where there is a wider range of cross-reference, use of material, new types of video and other installations, a basic framework in which quotation and parody are permitted. There have been clear examples when it has not been permitted, and I have given one, but there may be other cases where an exhibition has not happened or an art form has not been presented because of those concerns. We are trying to remove a concern without radically changing the freedom or the regime. There has to be a fair dealing requirement, so that whole works cannot be used, and there are important protections for copyright owners.

The exception for quotation sits in the same instrument as the exception for parody. The importance of being able to quote from the works of others has long been acknowledged, and the debates in this House would be much poorer if we were unable to quote the words and wisdom of others. I have even quoted the hon. Member for Hartlepool; I am not sure if that is covered by these exemptions, but my speeches have greatly benefited.

[Mr Willetts]

The right to quote is a crucial freedom in a modern democracy and many countries allow fair quotation from copyright works—indeed, the Berne copyright convention requires all countries to allow fair quotation. Current UK copyright legislation allows quotations and extracts only for the purposes of criticism or review, meaning that a range of activities that are considered reasonable risk infringing copyright because they fall outside the current criticism or review exception. For example, I have had raised with me the case of an academic paper that quotes the title of a journal or film, or uses a short extract from a book to ensure proper citation; and small theatres and record companies have complained to us that they can be prevented from using quotes from newspaper reviews in their own promotional material. We believe that our proposed changes will remove that limitation and permit all types of fair quotation as long as there is sufficient acknowledgment of the source. In our view, there should be no obstacle to fair and honest quotation, and that is what the provision secures.

It is the responsibility of Government to ensure that the law achieves an appropriate balance between protecting the exclusive rights arising from copyright and serving the wider public interest. We must also take account of important principles such as freedom of speech and expression and the legitimate expectations of creators and consumers. We believe that the two instruments achieve that balance and that is why I commend them to the Committee.

2.48 pm

Mr Iain Wright (Hartlepool) (Lab): I join the Minister in welcoming you to the Chair, Mr Hood; it is a pleasure to serve under your chairmanship. I note that the hon. Member for Hove is in the room, although he is not a formal member of the Committee, so may I put on record how well I think he has put forward the intellectual property agenda in the House and changed it for the better, and how sorry I and all Opposition Members are that he will not be standing at the forthcoming general election? He will be sadly missed, especially when we are considering such matters.

The measures have been a long time coming. It has taken two and a half years, with numerous false starts and unplanned withdrawals, but we are finally considering copyright exceptions on private copying and parody. I fully agree with the Minister that the creative industries are an essential element of a modern, successful and prosperous British economy. The UK music industry generates about £3.5 billion a year in global sales and is second only to the US in music exports. The UK publishing industry is estimated to be worth £10 billion to our economy and generates 40% of that value through exports. These are successful, growing, attractive, innovative and, in every sense, creative sectors of our economy. They generate wealth and employment prospects for this country, and are growing at a faster pace than the general economy. Perhaps even more profoundly, they project an image of Britain to the world that enhances our global standing. Given the importance of the creative industries, the Government should collaborate closely with them to identify opportunities, to open up creative potential for all, to overcome any barriers and to promote the breadth of talent and excellence in the industries. I therefore warmly welcomed last week's launch of Create UK, the creative industries strategy, and I will try to avoid being churlish by saying it has been a long time coming—it has been almost as long as the copyright exceptions. A proper industrial strategy for Britain, which should identify our country's comparative advantages and global market opportunities, must include the creative industries.

IP is an important means of encouraging creators to create. If someone has created something, it is right that they have control over what is done with it and that they derive some benefit from its use by others. As the creative industries strategy document boldly states at the top of page 19:

"to change the basis of copyright…would erode the ability of rights holders to exploit their works".

It will be interesting to find out whether, in the spirit of joined-up government, the Minister agrees with that statement.

Equally, consumers want convenient access to products. If they have purchased something, they want to be able to utilise it in a way, and on a device, that is relevant to their circumstances. The purpose of the copyright exception on private copying is to ensure that legislation provides the right balance, so I will start with a question based on recent personal experience: is an exception really necessary in the first place? In the past month, I have bought a couple of CDs—I am quaintly old-fashioned, and I still like CDs—and I was given a code for a legitimate MP3 copy of those albums. I understand that if someone buys vinyl from certain record labels, such as Domino or Universal, they automatically get an online code for an MP3 copy of those albums. The marketplace is therefore already dealing with consumer demand by allowing the purchasers of music to play it on other devices. Similarly, if a customer buys a DVD, they can watch that legally bought content on other devices through UltraViolet and share it with five other people—that is beyond the scope of this exception. Does not that demonstrate that the market is already adapting to new technology and consumer demand, and does it not make the exception on private copying somewhat obsolete in the 21st-century marketplace?

The creative industries strategy clearly states:

"Before the Government introduces legislative proposals that substantively alter the Intellectual Property Framework, it should require the IPO to…look for market methods of licensing and/or non-legislative solutions as the starting point for remedies."

That does not seem to have happened here, so will the Minister comment on that?

It is important to show clearly that customers have the right to make copies for personal use, and that they should not be criminalised for doing something that seems like common sense and for which they probably believe they have paid. That is particularly true for copying legitimately bought music on to iTunes. The difficulty for the Government—the Minister alluded to this in his opening remarks—is the narrowness or otherwise of how the exception has been drafted. Should remuneration be provided to the right holder in respect of the exception to recognise the harm and the loss of potential income that it may produce?

Article 5(2)(b) of the information society directive says that member states may provide exceptions

"in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation"—

that is the key point, but the Government have not taken it into account. They stated that compensation schemes are unnecessary when the private copying exception is narrow in scope—the Minister said that this afternoon—and does not cause harm to right holders, or when right holders have received payment in another form, such as a licence fee.

The Government have also said that any compensation is already factored in at the point of sale. However, the IPO's report on private copying states clearly, with regard to music:

"We did not find any evidence in support of a widely-held view that stores are including in their price the permission to copy…However as private copying for personal use is widespread and allowed in the UK, it is plausible that private copying is already largely or fully priced in the UK market."

There are two things to say about that. First, I did not think private copying for personal use was allowed in the UK, which is the whole reason why we are here discussing the exception. Secondly, the use of the word "plausible" does not fill me with confidence that evidence has been properly sought and that rigorous analysis has been undertaken. UK Music has estimated that the exception of private copying will result in a possible loss of revenue to the music industry of £58 million a year. Will the Minister comment on that? Does he accept that figure, and if not why? We have been here before, as the Government's whole approach to IP reform and copyright exceptions has been based on flawed empirical evidence. They do not know whether fair compensation is factored in at the point of sale because they do not have sufficiently robust evidence to make that claim. Will the Minister respond to that point and address UK Music's claim that the industry will be adversely affected?

There are significant doubts about the claims made during the Hargreaves review regarding benefits to the economy. "Modernising Copyright" said that measures could contribute over £500 million to the UK economy over the next decade. The impact assessment for the private copying exception identifies a total benefit to the economy of £258.7 million over the next 10 years, with no costs to the economy or to stakeholders. It is right that we express scepticism about those figures. I am pleased that we have the esteemed Chair of the Culture, Media and Sport Committee in the room, because his Committee produced an excellent report about the role of the creative economy in which it was sceptical about that suggestion, stating:

"We are not persuaded that the introduction of new copyright exceptions will bring the benefits claimed and believe that generally the existing law works well."

Has the Minister taken that into account? Has he reviewed and scrutinised the evidence about impact? It is clear that he has not taken into account the £58 million cost identified by UK Music, which would be a significant cost to a key part of the creative industries.

The Minister mentioned the Joint Committee on Statutory Instruments, which last week took the unusual step of highlighting doubt about whether it would be intra vires to introduce this copyright exception without also providing for a compensation scheme. He brushed that away as being largely irrelevant or something that happens all the time; my understanding is that this is only the third time since 2010 that such a conclusion has been made regarding an instrument subject to the affirmative procedure. Will he confirm that that is the case? It is clearly significant that the Committee expressed reservation about whether the Secretary of State has the power to introduce such a measure.

I want to draw the Minister's attention to the European Court of Justice's judgment in relation to case C-467/08 Padawan, which involved a number of questions to be taken into account. The first was:

"Does the concept of 'fair compensation' in Article 5(2)(b)…entail harmonisation, irrespective of the member states' right to choose the system of collection which they deem appropriate for the purposes of giving effect to the right to fair compensation of intellectual property rightholders affected by the adoption of the private copying exception or limitation?"

A second point was:

"Regardless of the system used by each member state to calculate fair compensation, must that system ensure a fair balance between the persons affected, the intellectual property rightholders affected by the private copying exception, to whom the compensation is owed, on the one hand, and the persons directly or indirectly liable to pay the compensation, on the other, and is that balance determined by the reason for the fair compensation, which is to mitigate the harm arising from the private copying exception?"

The Court ruled:

"The concept of 'fair compensation', within the meaning of Article 5(2)(b) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, is an autonomous concept of European Union law which must be interpreted uniformly in all the member states that have introduced a private copying exception, irrespective of the power conferred on the member states to determine, within the limits imposed by European Union law in particular by that directive, the form, detailed arrangements for financing and collection".

The Joint Committee states that it will ultimately be a matter for the courts, and particularly the European Court of Justice, to determine whether a private copyright exception can be introduced without the inclusion of a compensation scheme, but it seems that the Court has already pronounced on this. Does that make the Minister pause and reflect and perhaps think again? Has he factored in the costs of such a legal route in terms of time, impact and uncertainty to the industry and the taxpayer? What happens if there is, as seems quite likely, a legal challenge?

I want to discuss the development of cloud-based services. The SI provides for an exception

"for the purposes of storage, including in an electronic storage area accessed by means of the internet or similar means which is accessible only by the individual (and the person responsible for the storage area)."

Some really interesting business models are emerging for the raising of revenue from cloud-based services for creative industries, and I do not think we have even scratched the surface when it comes to the evolution of this type of business model. There will need to be greater innovation and, frankly, greater disruption, but ultimately creators will need to be remunerated for their work that goes into the cloud. Britain has the potential to lead the world in creating creative businesses in this field, further strengthening our UK base, but there is a risk that, with this exception, the Government will cut them off before they have a chance to grow. Will the

[Mr Iain Wright]

Minister say something about how the provision may stop Britain from developing innovative new models that will enhance our creative industries?

The Minister will have seen the letter in *The Times* yesterday, in which leaders within the creative industries highlight the "legal doubt". I suspect the Minister knows there is a risk in this copyright exception; that is why it was rapidly withdrawn when the previous exceptions were tabled and discussed earlier this year. The creative industries have offered to work with the Government to find a solution that works in practice for consumers and creators and that takes into account those concerns. That seems very reasonable to me. Will the Government think again and take up the industries' offer?

I turn to the exception on parody. It seems the instrument is somewhat imprecisely defined, stating that:

> "Fair dealing with a work for the purposes of caricature, parody or pastiche does not infringe copyright in the work."

How are the terms defined, because that seems very imprecise? Wikipedia, which I understand may not be a wholly definitive legal authority on the subject, states, for example:

> "A pastiche is a work of visual art, literature, or music that imitates the style or character of the work of one or more other artists. Unlike parody, pastiche celebrates, rather than mocks, the work it imitates."

So may I ask the Minister how this will fit in with existing contract law? In the field of music, for example, how does this exception impact on sampling? In a similar way, to show how modern and up to date with the hit parade I am, let me cite a great work from 25 years ago: the Happy Mondays' "Bummed" album. There are numerous references from other bands on that album, but "Lazyitis" has the lyrics

> "I think I did the right thing by slipping away, yeah
>
> And the ache that's making me ache has gone for the day"

to the very obvious tune of "Ticket to Ride" by the Beatles. It is two lines in a song, so is that classed as minor? The track was produced in 1988. Would that be relevant now for this exception? It is obviously a pastiche and obviously celebrating the work of the Beatles, but Lennon and McCartney had to get a songwriting credit on "Lazyitis". Would that happen now? Would that be covered?

In the main, I think the SI is an important part of the future shape of the British economy, and we have to get it right. I hope the Minister will pause and reflect still further to see what can be done.

3.4 pm

Mike Weatherley (Hove) (Con): I rise to support the SI. It is important that I explain why, because I am sure many in the industry will find it surprising that I do so. For me it is all about the protection of intellectual property and what is best for society and the creative industries, and the two are inextricably linked. By criminalising format shifting, we are potentially criminalising 20 million people around the country who, as the hon. Member for Hartlepool said, probably think they can do that already. As I have mentioned the hon. Gentleman, may I thank him for his kind words earlier? I thank other colleagues for their comments as well.

It is counter-productive not to allow format shifting. People think they already have licence to do it. For example, if I bought a CD five years ago I was able to play it in every room in my house, in my car and wherever I took it. It was my licence to listen to that for life. Now, in my car there is no CD player. That is not my fault; it is no one's fault; it is the way technology moves on, but why should I have to pay again to listen to something that I thought I could listen to everywhere? No one really gets that. To say that I should pay for it again makes the industry seem greedy.

Following on to levies, the next thing people say is, "Let's have some compensation." I consider that I have bought that licence already, as do many other people. If we are going to criminalise people on this minor thing, they are going to start saying, "Maybe we should just throw everything out and start downloading anyway, because whatever we do seems to be wrong." Europe has got it wrong on levies. I agree with the Government that levies are a lazy way of licensing. I have a phone on which in Europe, for an extra €10, I could put as many tracks from my friends and family as I want for as long as I have it. If I have it for five years, it will be €2 a year to copy from my friends and family. That has to be a good deal; I would take it instantly. The music industry and others have been short-sighted, grasping at levies to try to get early money rather than address the real issue of licensing.

Why is that important? The wording in the statutory instrument is very good; it specifies the copy is for one's own private use, whereas in Europe the private use terminology covers friends and family. Now, who are friends and family? For family, we could probably accept people could copy from their wife, kids or whatever, but friends is another definition entirely. Is it all my friends on Facebook? No. In Sweden they have tried to identify that, saying 10 friends is probably okay. Really—10 friends? I have friends who have huge collections, and I would love to have them all for nothing or for €2 a year. It is important that we do not slide down the route of a quick, easy fix of levies because the industry wants to have immediate money. We should look far closer at how we can get proper licensing in place.

The wording of the measure is robust and specifically focuses not only on individuals, but on where the industry has found a solution—such as the film industry, where there is a commercial solution—that takes precedence. The film industry has done well in having a 12-licence product and that sort of thing and, if it wants to do that, this wording helps. One concern the industry has is if a consumer puts their music into the cloud: how can it be clearly restricted to their own personal use?

I will finish by talking a little bit about parody. I do not think that parody should be included as an exception. I do not really understand why, just because it is making fun of something or has a comedy element, it suddenly becomes something that should not be licensed. There are many examples where the parody becomes more famous than the original. Whether the people doing the parody get money from it or not is a moot point, because quite often they are building on its reputation; therefore, they are using it. We have to be careful in taking parody to the levels we have here. I would like to see a far stronger definition but it is important to say that, in my view, the private copying exception is a good thing. We can start to develop education to say that

people can copy, providing it is for their use only and they must pay for everything else. It is a good step forward.

3.9 pm

Mr Whittingdale: I begin by joining the hon. Member for Hartlepool in paying tribute to the work that my hon. Friend the Member for Hove has done. In the short time that he has been in the House, he has elevated the importance of recognising copyright in our discussions. It was with great sadness that I heard of his decision to step down. He will be sorely missed but he will leave a legacy, in that in our debates we are much more conscious of the importance of intellectual property rights.

IP is something that my Select Committee has spent a great deal of time on. That is because, as has been recognised by the Minister and the Opposition spokesman, the creative industries are incredibly important to this country. They generate an enormous economic contribution, provide a huge number of jobs, and are an area in which this country is extraordinarily gifted. British musicians, filmmakers and writers are beating the competition around the world. This is something we are very good at, and to ensure that we continue to benefit from it, intellectual property rights are central. I therefore start from the belief that we need to be careful about tinkering with existing law, which has proved to be so successful in allowing our creative industries to develop and generate so much wealth for our nation.

Having said that, I welcome the Government's decision to amend the law on private copying and agree with what my hon. Friend the Member for Hove. In the report the Culture, Media and Sport Committee produced in 2007, we said,

> "We recommend that the Government should draw up a new exemption permitting copying within domestic premises for domestic use."

Looking at my own behaviour, a long time ago I started transferring music that I purchased on one antiquated format—vinyl records—on to another antiquated format—cassette tapes—which I then played in my car. I was technically in breach of copyright law. Subsequently, I moved into the new age and transferred CDs that I had bought on to my iPod. I was still in breach of copyright law. The reason my Select Committee made that recommendation six years ago was because I was doing what huge numbers of people across the country were doing—this is the end of my admission of criminality. It was clearly daft, particularly when the music industry came to us and said, "Of course we are never going to prosecute anybody for doing that, of course we know that everybody does it, and it's fine." Our view at that time—it remains my view—is that it is not good for the respect of law to give a message to consumers that it is fine to break some laws and not others. If the law is outdated and being widely ignored then it needs to change. That is why I welcome the private copying exception.

However, the Select Committee then said that the exemption needed to be very narrowly drawn. We need to be sure that in legitimising perfectly reasonable behaviour by private consumers, we are not creating loopholes that can be exploited to allow people to copy works without paying for them or that they have not originally purchased. That is where I have some concerns.

The private copying exception stems from, as I suspect most people in the room already know, the report of Professor Hargreaves, who was commissioned early in this Government to examine copyright law. He suggested that the private copying exception could generate anything up to £2 billion in benefits. When he appeared before my Committee, we cross-examined him on where that figure had come from, and I have to say that we were profoundly unconvinced that any benefits would flow from it; indeed, we were deeply concerned that it could lead to a loss of revenue for the creative industries. That was reflected in our report, in which we said that the Government should proceed extremely cautiously in that area and listen to the concerns expressed by those industries.

The hon. Member for Hartlepool has articulated one or two of those concerns, particularly in relation to cloud-based services. The Minister says that the exception is very narrowly drawn. It is my understanding that the UK, in including cloud-based services, is the only country to introduce that as a private copying exception. If that is the case, it does not strike me as being very narrowly drawn. The inclusion of cloud-based services is one of the areas causing most concern to our creative industries. There is also the question of whether it is actually in accordance with European law. My Committee's finding was certainly similar to that cited by the hon. Member for Hartlepool: we could discover almost no evidence that the pricing of CDs or DVDs had built into it the expectation of copying, yet that seems to be the defence of the Government for why the provision does not breach European copyright law.

I end by saying that I feel the Government should be worried. Since they themselves believe and accept that the creative industries are hugely important to this country, it must ring an alarm bell when representatives of every single major creative industry in this country write an open letter saying, "Please do not do this. Come back and talk to us." We need to clarify it, draw it more tightly and be absolutely confident that we are not opening the door to copyright infringement, which will do serious damage to our creative industries.

The letter in *The Times* represents a cross-section of all those involved in the music industry. I know that those involved in other creative industries such as the film industry are equally concerned. Our Committee went on a visit to Hollywood, where we had an hour's lecture from the film studios on the potential damage this one measure would do. Although I think the Government have done something to take account of those concerns, I am worried that they have not done enough. I hope they will consider the fact that so many representatives of some of the most important industries in Britain have openly said that they are deeply concerned about what the Government are doing, and that they would like to talk further to them about this before proceeding.

3.17 pm

Mr Willetts: Let me briefly respond to the debate. The hon. Member for Hartlepool seemed to be trying to ride two horses at the same time. On the one hand, we were told, "Don't worry. The market can deliver these arrangements,"—an argument to which I am often rather susceptible—and on the other, we were told, "There's no evidence that the pricing in the marketplace actually

[Mr Willetts]

takes account of the copying that may be going on." Let me be clear: I welcome the innovative arrangements of markets and the special arrangements they make for consumers. However, that is not the same as a general arrangement that provides simple, straightforward protection. It is very important that we provide that genuine security for individuals, but we see this approach as complementary to innovation in marketing arrangements. There is a host of different marketing devices, and we are happy to see them.

The hon. Gentleman asked about fair compensation in EU law. Again, my view is that the provisions on private copying in the copyright directive give member states the flexibility to implement different approaches. We have a large amount of discretion. We have followed the wise advice of my hon. Friend the Member for Maldon and East Chelmsford—

Mr Whittingdale: Just Maldon now.

Mr Willetts: There has clearly been some monster bust-up with East Chelmsford; I will not ask for the gory details. Because the provision is narrowly and tightly drawn, there is, at most, minimal harm, which is why the requirement to have a levy does not arise. That is the logic of our position. It is the logic of my position and that of my excellent colleague in another place, Lord Younger, and it is a view supported by 12 leading experts on IP. I quoted one of them earlier: when the harm is minimal, the issue does not arise.

The hon. Member for Hartlepool asked whether I recognise the figure of £58 million as the loss to the music industry. I can tell him that the figure is based on assumptions that we do not recognise. It seems to assume there will be a large behavioural change, but does not acknowledge that we know a large amount of copying for personal use already happens—we heard an example from my hon. Friend the Member for Maldon, in confessional mode. That is why do not accept the figure of £58 million.

The hon. Member for Hartlepool went on to ask what happens if there is a legal challenge. Of course we recognise that ultimately the ECJ is the relevant legal authority in this case. We would deal with any judicial review through the normal process, but we have taken careful legal advice. The general view of the legal experts is that something drawn as tightly as this does not require a levy. It is very different from the approach taken on the continent. Our approach is much closer to that taken in countries such as Australia.

I shall now turn to some of the issues around parody—

Mr Wright: Before the Minister moves on, can he address a point that I and the Chair of the Culture, Media and Sport Committee expressed concern about? It is about cloud-based services and making sure that we do not restrict the evolution of that new and exciting business model.

Mr Willetts: That is a fair point and I have it in my list of issues. I shall respond to that very fair intervention. As the hon. Gentleman says, the matter was also raised by my hon. Friend the Member for Maldon. The legal point is the same: regardless of the technology that is used, if the content is for personal use and only accessible by you, it is covered by our exception. If material is stored in a way that allows it to be shared with other people, such as friends or family, that does not satisfy the conditions of the exception. What matters is not whether it is on the cloud, but the way in which it is on the cloud. The Government see no difference between someone storing lawful content on their hard drive and storing it on the cloud if they have an arrangement for private cloud access, which many people have. If, however, when they store something on the cloud, it is also accessible to their family and friends, at that point the exception does not kick in. It is not the technology but the accessibility to friends and family that is the crucial issue.

On parody, I confirm what I said in answer to an earlier intervention: special parliamentary arrangements protect us from parody—thank heavens. There are restrictions on using parliamentary procedures in a parody. These are deep waters and I shall not stray further into them, but those arrangements exist.

There were several questions, including from the hon. Gentleman, about what constitutes parody. We have made the deliberate decision not to get into a set of new legal definitions of caricature, parody or pastiche. We have left them with their ordinary dictionary meanings. There will of course be issues of interpretation, and that in turn is covered by the principle of fair dealing. We have deliberately eschewed trying to define parody in legislation. I dread to think what a hash we would make of it if we sat down and said, "Let's write a definition of parody," but we think that fair dealing will cover that point. As in so many of these areas, one of the reasons it has taken so long is because we have been consulting our leading IP law professors. They advised us to not attempt any further definition of those concepts because there is emerging European law in those areas.

I was asked by the hon. Member for Hartlepool for examples of the problems around parody. I gave one of the YouTube clip that was a parody used by a campaigner. Another example is an artist who incorporates a picture of a starving child from Darfur holding a designer Louis Vuitton handbag into their work. Legal action was threatened by the owners of the brand, but the view was that it was an example of individual artistic expression and should be permitted. It is hard for us to get into exact case law, but that is the kind of artistic freedom we are trying to protect with the exceptions.

I have covered the main points made by the hon. Member for Hartlepool, so I will now touch briefly on the excellent speeches from my hon. Friends the Members for Hove and for Maldon. Neither of them is a voting member of the Committee, so the fact that they turned up specifically to participate in the debate despite not having been summoned by the Whips is evidence of their personal commitment and interest in the subject, and I congratulate them. All of us regret that we are to lose my hon. Friend the Member for Hove, and I personally appreciate his contributions on this important subject over the months and years. Of course, we all respect the enormous expertise of my hon. Friend the Member for Maldon.

I appreciate what my hon. Friend the Member for Hove said and I repeat that we have tried to define the exceptions tightly. The last thing we want to do is

jeopardise the finances and the success of the cultural industries. I offer the same assurance to my hon. Friend the Member for Maldon, who asked about the letter to *The Times*. I have read that letter and there are people who would regard almost any exception as going too far. Basically, the only purpose of the exception is to make sure that the junior Whittingdales are not caught lawbreaking as their criminal father has been. That is all it is trying to do. It would terribly embarrassing if my hon. Friend's children went into politics and had to stand up and give a similar apologia in 30 years' time. The exception is tightly defined and limited to personal use in the circumstances I have described. We are trying to remove a considerable injustice without disrupting the finances of an industry. We could not have been much narrower or tighter in our definition.

Mr Wright: May I utter a phrase that I never thought I would? Will the Minister respond to my point about Happy Mondays' "Bummed" please?

Mr Willetts: It is a pity the hon. Gentleman did not sing that. It is dangerous to comment on individual cases. My instinct as a layman is to say that that is exactly the type of thing covered by our exceptions, but that is an individual decision, which could be disputed. The intention of our reform is that so that sort of provision should be okay.

On that basis, I hope the sensible regulations command their support and I commend them to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014.

DRAFT COPYRIGHT AND RIGHTS IN PERFORMANCES (QUOTATION AND PARODY) REGULATIONS 2014

Resolved,

That the Committee has considered the draft Copyright and Rights in Performances (Quotation and Parody) Regulations 2014.—*(Mr Willetts.)*

3.29 pm

Committee rose.