

Law and Sausages: How Not to Legislate for The Digital Economy

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After Bismark..

- “There are two things you never want to see being made: law and sausages”



Copyright and “3 strikes” laws

- **The Digital Economy Bill:** introduced November 2009, passed April 2009; long debate preceding eg Gowers Report on IP; highly polarised
 - rights holders vs users, public interest?

What this debate IS about

- HOW artists are to be compensated (levy schemes?)
 - HOW intermediaries are to reframe their business models in the digital age (legal services; ads? ; disintermediation)
 - HOW copyright is to be enforced against *domestic civil infringers* ie downloaders (not “pirates”)
 - HOW this is to be made compatible with basic human rights
- What this debate is NOT about
 - Denying that artists have a right to a return on their labour
 - Abolishing intellectual property law
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1st issue: Substantive problems with the DEBill

- Two main controversial sections
 - **“Technical measures”** ie traffic slowing, disconnection (“suspension”), blocking access to sites by subscriber
 - **Blocking of websites to all** by court order
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“*Technical measures*”

- **Legal problems:**
 - Sanctions by *accusation*? =>lack of due proces
 - *Proportionality* of sanction? => protection of copyright vs impact on human rights, like freedom of speech, association; rights to work, education, access to knowledge, e-government
 - *Collective* punishment
 - *(Un?)intended consequences*
 - Death of public wi fi
 - Impact on small businesses eg cafes, pubs, hotels
 - Universities and libraries
 - Digital exclusion?
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Website blocking clause

hequered history – introduced by Lib Dems from BPI draft to replace “do anything by SI” power in cl 17 – later opposed it themselves!

problems – encouraged ISPs to block without court order, for fear of costs against them if actual court invoked by rtholder

changes made – still very wide eg any “online location” “likely” to host or be route “via” which (c) infringement takes place (eg Google, YT?)

no control of non court blocking eg notice, “stay up” (cf

Meanwhile elsewhere in the forest..

"trapped in a second tier of citizenship, denied what I increasingly think of as a fundamental freedom in the modern world: to be part of the internet and technology revolution".

Gordon Brown, March 2010

2nd issue: Democratic deficit? L Whitty, 3^r Reading HL on lobbying

_I regret to say that during the course of our consideration of the Bill, we have seen one of the worst examples in my memory of the political parties being captured by a producer interest. That applies not only to the Government and the bringing forward of the Bill, but to the opposition Front Benches as well. .. despite a few ameliorations, this is still a bad Bill. It is bad for the digital rights holders to press their interests in this way, when there are alternatives, and it is bad for the Government to risk alienation of a very significant part of the population by enforcing these measures.

Grassroots opposition to #debill

- Biggest trending topic on Twitter worldwide for several days
 - 20,000 + emails sent to MPs cf 6K re Radio 6 – “biggest postbag for many years”
 - Lib Dem conference passed emergency motion against, forcing front bench to reverse support
 - Many backbench MPs of all parties publicly unhappy..
 - .. But Bill pushed into “wash up” - abbreviated process on last day of Parliament before election + heavy whipping => almost no scrutiny in HC
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Results



The new sousveillance?

Twitter... NS Get ready f... apc Top 10 mo... What do w... Behind the... Behind the... "The wises... Get Oper

1 Digital Economy Bill

24545 Tweets

20000 Letters written

7152 Twitterers

643 Members of Parliament

227 Voted

189 Said yes



47 Said no



4 Couldn't vote

The future for representational democracy?

- Emerging issues from DEB/DEA debacle:
 - Lack of understanding by politicians c >40 of **importance** of Internet – not just for games..!
 - Lack of **technical** understanding for drafting – eg Timms : IP “Intellectual Property” address
 - Heavy **lobbying** by partisan interests, lack of access to front benches by consumers/users
 - Lack of understanding of the “back channel” (cf Tom Watson MP)
 - *“Once every five years we vote to forget what we’ve learned – democracy in action.”*
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Positive aspects?

- “I’m also feeling positive personally about all this. I genuinely enjoyed spending two evenings watching the House of Commons. I found it interesting and would like to do that more. For the first time in a long time, after months and years of my opinion of politics and MPs and government withering away I’m interested and want to get involved somehow. Even if that just means paying more attention, a fraction of the attention we paid to this bill, that’s an improvement.”
 - What next?
 - More single issue online campaigns?
 - More attention on individual MPs, less on parties?
 - Virtual constituencies?
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