

3.1. Copyright Etc (Amendment) Bill 2013 – Second Reading approved

The Speaker: Item 3 on our Order Paper, Bill for Second Reading – the Copyright Etc (Amendment) Bill. I call on the mover, Hon. Member for Rushen, Mr Skelly.

Mr Skelly: Gura mie eu, Loayreyder.

The Copyright Etc (Amendment) Bill seeks to make changes to the Island's law in relation to copyright, design right and rights in performances.

The Bill is very much part of a wider programme of intellectual property modernisation currently being undertaken by the Department of Economic Development. The driver to these changes is the importance of intellectual property – commonly abbreviated to 'IP' – to the Island's economic growth.

IP rights exist to encourage the creation of intellectual property by allowing the creator to control its exploitation and to benefit financially from such exploitation. Such diverse areas as e-business, including e-gaming, the space industry, clean technology, software development and high-specification manufacturing areas are all important to the Island's economic prosperity and are all underpinned by intellectual property. It is in the Island's economic interest to ensure that the IP assets of all its businesses are sufficiently protected and the Island is seen to be a suitable location for the establishment of companies that hold IP.

The focus of the modernisation programme is to ensure that our intellectual property laws are in line with those in the UK and the European Union so that businesses and individuals can expect a regime of IP protection at least as good as in those jurisdictions.

Intellectual property law is a complex area and it would probably be helpful for me to provide an overview for Members.

IP rights can be divided into two categories. The first category, registered rights, requires registration with an institution. This covers patents, trademarks and designs. The second category, unregistered rights, are rights that exist from the moment a work is produced and covers copyright, performance rights and design rights.

In the area of registered rights, the UK's legislation on patents, trademarks and designs extends to the Island with modifications. A separate registry would increase bureaucracy and costs and would offer no significant advantages over the Island remaining part of the UK system of registration.

For unregistered rights, Tynwald passes its own legislation, the principal Acts being the Copyright Act 1991, the Design Right Act 1991 and the Performers' Protection Act 1996. The last IP Act passed by Tynwald was the Copyright (Amendment) Act in 1999.

As regards registered rights, few changes have been made in the last 10 years, whereas in the UK and the EU there have been many significant changes. With this in mind, in 2011 the Department undertook a review of the Isle of Man's IP laws, the purpose of which was to ensure that the Island's legislation was up to date and offered an appropriate level of protection.

The basis for the current changes is the consultation document 'Intellectual Property in the Isle of Man', which was published in May 2011.

A review of consultees' comments was subsequently published in February 2012. The consultation paper put forward 81 proposals for modernisation of the Island's IP regime.

Following consultation, it was decided to take forward 76 of those proposals. In addition, subsequent to review, the Department identified some additional IP measures that would be progressed by the UK Parliament and it was decided that these too should be implemented. The Department is progressing these changes in a number of ways through subordinate legislation, Orders in Council and the present Bill.

The Bill before us today deals with unregistered rights and amends the Copyright Act 1991, the Design Right Act 1991 and the Performers' Protection Act 1996. It should be noted that some

revisions of these Acts have already been made this year through the Copyright (Amendment) Regulations 2013, the Performers' Protection (Amendment) Regulations 2013 and the Design Right (Amendment) Regulations 2013, all of which were made under the European Communities (Isle of Man) Act 1973. The Bill implements those changes which are outside the enabling powers conferred by the 1973 Act and require primary legislation.

The main changes that this Bill makes include an increase in maximum penalties for infringement of copyright and additional powers for forfeiture of infringing copies. Normally, breach of copyright is only a civil wrong, but the increase in maximum fines and custodial sentences will ensure that copyright piracy on a commercial scale is dealt with appropriately.

There is a new provision to allow publication of works where the copyright owner cannot be traced – what is known as 'orphan works'. There are many works – such as books, photographs, films and music, in a collection of libraries, archives, museums and galleries – where the copyright owner cannot be traced and therefore institutions are limited in what... they can make the works available to the public without threat of legal action. The provision will allow the Department to make regulations to enable the licensing and commercial exploitation of these works with appropriate safeguards.

A further provision is to streamline copyright clearance where copyright is owned by more than one individual – for example, in the case of a film copyright, it may be owned by the screenwriter, the producer, the director and the composer of the soundtrack. The agreement of all is required before a public performance can take place. As all need to opt into the agreement, this can take time. The change would allow a copyright owner or licensing body, subject to safeguards, to grant licences on behalf of all owners of the copyright in a work except those who opt out.

There is a new right giving protection to the first publisher of an out-of-copyright work, allowing the commercial exploitation of such works.

A further provision will allow the ownership of commissioned designs... from the commissioner to the designer. The UK is making this change too and it will bring the Isle of Man and UK in line with the European Union.

There is an increase in maximum penalties for infringement of performers' rights, on similar lines to the increases in respect of breaches of copyright, which I have just touched upon, and additional powers of forfeiture of illicit recordings.

Finally, there is a provision for performers' moral rights. Moral rights are independent of a performer's economic rights and so they remain with the performer even when economic rights of a particular work have been transferred. The rights are, firstly, to be identified as the performer; and secondly, to be able to object to derogatory treatment of the performance.

These rights were introduced by the World Intellectual Property Organisation's Performances and Phonograms Treaty in 1996. They were put into effect in the UK in 2006 and this Bill will introduce these rights to the Isle of Man for the first time.

Loayreyder, I beg to move that the Copyright Etc (Amendment) Bill be read for the second time.

The Speaker: Hon. Member for Middle, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.
I beg to second.

The Speaker: Hon. Member for Onchan, Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

I was just intrigued with some of this information and I just wonder whether the Member... He quotes a lot of the documentation, and actually, if he does have links, would his Department then pass them on to Members who require them for all the Acts that were done?

Just a general enquiry regarding the enforcement or investigation when a complaint was made, if the Member could maybe respond, to say who is going to do that and what sort of resources his Department or other Departments are going to have to tool up to.

The Speaker: Hon. Member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, it was very nice of the Shirveishagh to say that he was not going to have a presentation, if I remember rightly, but that Members could go to the Department.

I do feel that, whilst obviously this Bill will almost certainly be a vast improvement on the existing legislation, copyright is a major arterial flow if we are to try and look to new areas as far as the Manx economy is concerned, and I think that that is very important.

My concern – which worries me, and I have made it quite clear over the years about the issue of the Royal Assent – is whether this Bill will facilitate certain new markets to be developed, but by the Royal Assent maybe stop the flexibility, as far as this jurisdiction is concerned, to take on the opportunities of trying to bring copyright to the Island. I would ask that the mover reassures this House that there will not be any problem as far as that is concerned.

One of the things that I am concerned about is the fact of whether many of these proposals should be developed on secondary legislation, which gets around the position as far as Royal Assent is concerned, so that we can move swiftly and effectively when opportunities arise as far as copyright opportunities as far as the Manx economy is concerned, and whether the Department has thought about the issue of whether it needs to have a more flexible approach.

I think, as I moved in another place many years ago – and basically it was killed off because it did not come from the right section as far as the other place was concerned – the issue of the patents office... We have briefly discussed it with the mover the other day about the issue of the patents office. One of the issues, when it comes down to patent offices, is the fact of being able to protect your patent. I do feel that there is an opportunity there, where people would be able to lose part of their patent's profit in order that there was a more progressive patents office that actually would fight to protect patents in other jurisdictions and might be a way of creating an engine in this jurisdiction, which we are going to need with the fact that the party is over, as far as the economy is concerned, that we have had for the last 25 years, which has been fantastic... that we are now going to have to look for new engines.

One of the things that does interest me, Vainstyr Loayreyder, is the fact that, if you pay someone for an item, you do not own the copyright as far as that item is concerned. It is interesting to see that... Maybe that is something that needs to be clarified at the clauses stage by the Hon. Member on that position, because it does seem rather bizarre that you pay for something yet you do not own the copyright, and that might be something that could be clarified at the clauses stage.

The final point that I wanted to raise is the issue of safeguarding of new developments in health. I notice that many Third World countries now have taken the unilateral decision as far as not allowing certain drugs which will have a major health implication on their people if they are allowed to be used, but because of the cost of patents have stopped that. I just think that this is something that maybe the hon. mover can clarify.

I think all of us in this House, as far as the Copyright Bill is concerned, applaud any initiatives that are going to bring us into the vanguard as far as creating money to try and keep the tremendous social improvement that we have seen over the last 30 years. But I do think that maybe the Minister or the mover should be considering whether they should be doing the presentation to Members because, at the end of the day, we can all want services – like I have

been on about my chlamydia testing for people, and all these other wonderful services that we need – but we have to earn the money to do so. I just think maybe it was a missed opportunity not to have a presentation as far as this Bill is concerned.

The Speaker: Mr Skelly to reply, please.

Mr Skelly: Gura mie eu, Loayreyder.

First of all, thank you very much, Mr Quirk, for raising the issue with regard to enforcement. It is an important issue to consider and I am delighted to say that the Office of Fair Trading will be that enforcement vehicle. They have been consulted, as I am sure he knows, so they will be appraised of the situation going forward.

Mr Karran raises quite a few points there, the first one being will this make us competitive: absolutely, it will make us competitive and that is what this Bill is all about.

Intellectual property is a complex area and it does cover a number of different industries, and particularly the emerging industries. I did mention it in my briefing notes, but he did raise it there, and that is health – biomed – a very new industry that is emerging for us here on the Isle of Man. There are significant opportunities, significant markets that we can actually hopefully take advantage of and make the Isle of Man an attractive place to do business.

The patents office – he picked up a point there. I did say in the briefing notes that a separate registry would increase bureaucracy and costs and would offer no significant advantages over the Island remaining part of the UK system of registration.

It is worth noting that the Isle of Man does not have its own register but it does have access to the Patents Acts 1949 and 1977 in Westminster that extend to the Isle of Man; and accordingly, those patents registered in the UK Intellectual Property Office or the European Patents Office are thus protected under Manx law for 20 years from application for registration.

This is particularly advantageous for the Island as it allows Manx companies to enjoy the benefits of key intellectual property treaties. That, in effect, means that the UK Intellectual Property Office performs all the functions of a domestic patent and trademark registry for the Isle of Man and its businesses, and therefore provides the resources and expertise that are needed with regard to this particular Bill.

He did raise another point on the clauses factor and we will bring that up.

I do apologise to Members that we did not do a presentation if there was significant interest there. There was an opportunity to come forward and speak to us independently, but I do take his point on board.

Gura mie eu.

The Speaker: Thank you. I put the question, under Item 3, that the Copyright Etc (Amendment) Bill be read for the second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.