

1. Copyright etc (Amendment) Bill 2013 – First Reading approved

Mr Crowe to move:

That the Copyright etc (Amendment) Bill 2013 be read a first time.

The President: We turn to Item 1 on our Order Paper, the Copyright etc (Amendment) Bill 2013. I call on Mr Crowe to take the First Reading.

Mr Crowe: Thank you, Madam President.

The Copyright etc (Amendment) Bill 2013 seeks to make changes to the Island's law in relation to copyright, design rights, 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 for these changes is the importance of intellectual property – or IP, I will call it in abbreviated form – to the Island's economic growth. Intellectual property 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, e-gaming, the space industry, clean tech, software development, and high specification manufacturing are underpinned by intellectual property.

It is in the Island's economic interest to ensure that the IP assets of its visitors are sufficiently protected, and that the Island is seen as a suitable location for the establishment of a company to hold IP. The focus of the modernisation programme is to ensure that our intellectual property laws are in line with those of the UK and the European Union, so that businesses and individuals can expect an IP regime as good as that in operation in those jurisdictions.

Intellectual property law is a complex area, and it may help for me to provide a brief overview for Members.

IP rights can be divided into two categories. The first category, 'registered rights', require 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 right. In the area of registered rights the UK legislation on patents, trademarks, and designs extend 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 Bill today before us is concerned with *unregistered* rights. The basis for the current changes is the consultation document, Intellectual Property Rights in the Isle of Man, which was published in May 2011. Following consultation it was decided to take forward 76 proposals. In addition, the Department identified some additional IP measures being taken through the UK Parliament, and it was decided that these too should be implemented. Madam President, the Department has progressed these changes in a number of ways through subordinate legislation, orders in Council and the present Bill.

Looking at this Bill, the main changes are: 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 can be dealt with appropriately – and that would be on a *commercial* scale, I would just repeat that.

There is new provision to allow publication of works for which the copyright owner cannot be traced. These are known as 'orphan works'. There are many works such as books, photographs, films and music in the collection of libraries, archives, museums and galleries, where the

copyright owner cannot be traced, and therefore the institutions are limited in what they can do to 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 will streamline copyright clearance where copyright is owned by more than one individual. For example in the case of a film, copyright 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 at present all need to opt into the agreement and this can take time. The change would allow licences to be granted on behalf of all the owners of a copyright in a work, except any 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 would change the ownership of commissioned designs from the commissioner to the designer. The UK is making this change too and this will bring the Isle of Man and the UK into line with European Union. There is an increase in the maximum penalties for infringement of performers' rights, on similar lines to the increase in respect of breaches of copyright, and additional powers for forfeiture of illicit recordings.

Finally, the Bill makes 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 for a particular work have been transferred.

You will note that clause 21 of the Bill was not moved in the House of Keys. This is because the clause sought to correct an error made during the 2010 reorganisation of Government, by which a power to make regulations in the Performers' Protection Act 1996 was mistakenly transferred from the former Department of Trade and Industry to the Department of Community, Culture and Leisure rather than to the Department of Economic Development. However, the Transfer of Functions (Dissolution of the Department of Community, Culture and Leisure) Order 2014, which was approved by Tynwald last month, made the required change and now renders the clause superfluous.

I would also like to inform Hon. Members that the Department would like to bring forward some amendments to the Bill during its passage through the Legislative Council, specifically to clause 14. This is to follow amendments that were made in the UK Intellectual Bill, which is completing its progress through Parliament there. I should have the details of the changes in UK legislation at the Second Reading stage.

Madam President, I beg to move that the Copyright etc (Amendment) Bill 2013 be read for a first time.

Mr Downie: I beg to second, Madam President, and reserve my remarks.

The President: If no Member wishes to speak, the motion before the Council is that the Copyright etc (Amendment) Bill 2013 be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.