

[News story: Open Rights Group campaign](#)

A large number of emails have been received about government plans to equalise the maximum sentence for online and physical copyright infringement at 10 years. This measure is contained within the [Digital Economy Bill 2016](#) which is in its final stage of the Parliamentary scrutiny process.

The Open Rights Group (ORG) campaign focuses on two areas. Firstly that an increased sentence may result in an increase of so called 'copyright trolls' threatening court action. Secondly, that the copyright clause within the Bill criminalises minor copyright infringement.

Infringement of another person's copyright in the circumstances covered by the redrafted criminal offences is already covered by existing criminal offences. The proposed measures in the Digital Economy Bill clarify the existing offences and take into account concerns that the ORG raised with government during consultation. The revised offence is designed to deter and deal with deliberate infringement, while protecting innocent or unwitting infringers.

Copyright trolls

Copyright owners are entitled to enforce their rights. On occasion this may include contacting members of the public who are alleged to have infringed their rights. Such approaches are entirely legal. However if done in a threatening or harassing way, members of the public can report the solicitors in question to the Solicitor's Regulatory Authority (SRA). The SRA has taken action in previous such cases.

It is important to note that the criminal offences apply to making material available to others, not to those just downloading material to their computers. Anyone seeking to enforce their rights for the downloading of material would be unlikely to refer to this legislation.

The Intellectual Property Office has published [guidance](#) for members of the public who have received such approaches.

The risk of an increase of 'trolling' is considered to be low but the government will periodically review and respond to any concerns.

Minor infringement

The criminal offences penalise communicating a copyright work to the public and infringing a performer's 'making available' right. Both of these acts are considered criminal where a person knows, or has reason to believe, that they are infringing the right and either intends to make a monetary gain, or knows or has reason to believe that they will cause loss or expose the rights holder to a risk of loss in money. These offences focus on those causing harm either for monetary gain or a monetary loss or risk of loss to the rights

holder. A mental element has been introduced which requires an intention to make a gain or knowledge or reason to believe that the copyright owner will suffer loss or be exposed to a risk of loss.

Ten year sentences would only be applied in the most serious of criminal circumstances. It is highly unlikely that small, unintentional infringement would be caught by this offence. A person who believed that their acts fell within a copyright exception, such as that relating to criticism or review or quotation, would not be guilty of an offence.

It would not be practical for the government to set a specific level of loss or gain at which infringement becomes a criminal offence. This is because the circumstances of each infringement needs to be taken into account.