

Powers to disconnect internet users should not be lightly delegated

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From Prof Martin Kretschmer.

Sir, Peter Mandelson's digital economy bill (report, November 20) contains major legislative innovations in the treatment of copyright law. For the first time, a regulatory rather than a property rights approach is used, both for enforcement and access issues in the digital environment. Under the traditional approach, the state grants copyright as a property right but then leaves transaction and enforcement to private parties. Under the regulatory approach (commonly used for utilities) market access, price control and contractual supervision remain prevalent long after a franchise has been awarded.

The digital economy bill gives the communications regulator Ofcom and civil servants (under delegated powers to the secretary of state) an unprecedented role in copyright law, in determining whether copyright infringers will be subject to internet speed limits or even disconnection, and in regulating the use of copyright works whose owners cannot be traced (so-called "orphan works").

This is a significant conceptual innovation, and a welcome recognition that intellectual property rights shape the infrastructure of a knowledge-based society. If a regulatory approach is used, however, it is imperative to create a truly independent basis for regulation, using verifiable evidence. Here, the record of the New Labour government is dismal.

Certain sectors of the entertainment industry appear to have privileged access to ministers. This has led to proposals for tackling downloads and file-sharing that affect fundamental rights, and are likely to have anti-innovative consequences (for example in driving traffic further underground, throttling legitimate streaming services, and imposing costs on internet service providers). Powers to disconnect internet users should not be lightly delegated, certainly not in the sweeping manner of the digital economy bill that will allow future ministers to change the scope of copyright law without proper scrutiny.

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