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ONLINE INFRINGEMENT OF COPYRIGHT AND THE DIGITAL ECONOMY ACT 2010 OFCOM'S PROPOSAL TO MAKE BY ORDER A CODE FOR REGULATING THE INITIAL OBLIGATIONS RESPONSE FROM THE SPORTS RIGHTS OWNERS COALITION (SROC)

INTRODUCTION

The Sports Rights Owners Coalition (SROC) is pleased to offer its thoughts on this consultation on OFCOM's proposal to make by order a code for regulating the initial obligations linked to the Digital Economy Act 2010 (DEA).

SROC is an informal group of representatives of international, European and national sports bodies, operating as a forum through which sports can share information and experiences. Individually and collectively, we represent a majority of UK leading and most popular sports and competitions, attracting millions of spectators, with many of our events available to consumers across a growing variety of broadcast platforms.

As rights owners subject to a growing volume of infringements, we are particularly concerned about effective enforcement and we therefore welcome the long awaited publication of the Initial Obligations Code. We strongly support the measures to address online copyright infringement contained in the DEA and believe they are of crucial importance if rights and content are to be respected and valued in the digital environment.

We would also like to draw OFCOM's attention on the studies published by the French High Authority for the distribution of works and the protection of rights on the internet (HADOPI) which show that the measures implemented in France have been very efficient¹. 71% of peer-to-peer users explain that they would stop downloading illicit content when receiving an HADOPI communication. In 2011, the illegal uploading of AV works almost halved in France (-43%). The audience for various legal platforms increased by 20% in the meantime.

¹ <http://www.hadopi.fr/actualites/actualites/hadopi-1-apres-son-lancement>

SPECIFIC COMMENTS

1. Scope and application of the Code

SROC members are concerned by the lack of evaluation of infringement over public Wi-Fi and through mobile communications. We also believe that the Code should adapt to technological advancements and changes in user behaviour, in particular, a) the increasing prevalence of smart phones and other mobile devices with internet access and b) the fact that 4G is round the corner.

A recent Ofcom survey highlighted this growing dependency on smart phones for internet access. 42% of smartphone users agreed with the statement “my phone is more important to me for accessing the internet than any other device” and with smartphone users representing 43% of mobile users and increasing (take-up rose 27% in 2011 to 39% in 2012), this will become more prevalent.

As the value of our events is mostly in their live broadcast, more and more people will watch their favourite sports events on their smartphones or tablets and we therefore consider that all services providing access to the internet should be bound by the Code.

2. Notifications

It is disappointing that Ofcom cannot mandate the content of the notification letters. We believed this was important to reduce consumer confusion, maintain a consistent tone and ensure nothing in the letters distracts from, or seeks to undermine, the purpose of the legislation.

There is a potential for ISPs to include general marketing material with the notification letter. That would be inappropriate and may detract from the important message the letter is designed to communicate. It is also not something that, given the split of costs, rights holders should be subsidising.

We urge Ofcom to address this issue in the Code and it should be clear that Ofcom will use its enforcement powers should it be found that ISPs are sending letters which do not abide by the letter and spirit of the law.

3. Appeals

SROC supports Ofcom’s decision, on advice from Government, to limit the grounds for appeal to those contained in the DEA and to include a fee, refundable on success. This latter point is particularly important in order to deter vexatious appeals and ensure the system is able to work effectively and fairly for all.