

23 July 2012

Dear Sir / Madam

Response to Ofcom's Draft Initial Obligations Code – Digital Economy Act

- 1 The Libraries and Archives Copyright Alliance (LACA) is a UK umbrella group convened by CILIP (Chartered Institute of Library and Information Professionals). LACA brings together the UK's major professional organisations and experts representing librarians and archivists to lobby in the UK and Europe on copyright issues which impact delivery of access to knowledge and information by libraries, archives and information services in the digital age.
- 2 We would like to restate our concern that in spite of written assurances from Ed Vaizey, Minister for Culture, Communications and Creative Industries in a letter to the Strategic Content Alliance, JISC dated 12th January 2011, that "libraries and universities will not be within scope of the obligations of the Act", over 4,500 public libraries as well as 33,000 schools, colleges and universities¹ still remain clearly within scope of the obligations as currently drafted.
- 3 We are very concerned at the apparent arbitrary nature in which Ofcom has decided to include public intermediaries such as libraries within the scope of the Act, and yet excluded Mobile telcos and Wi-Fi providers. Not only this, but the rationale given in the interim statement (3.93 – 3.97) for excluding Wi-Fi providers comprises exactly the same points that have been put by public intermediaries to Ofcom and yet we find our institutions still within scope of the Act. That is to say there is little evidence of infringement on public networks, and the technical issues of identifying an individual subscriber on a network that is open and used by many thousands of people can be difficult if not impossible.
- 4 Based upon the draft S.I. as well as the interim statement from Ofcom, we find it unacceptable that public intermediaries are essentially being left in a "no man's land" where we are a subscriber, as well as an ISP, as well as potentially a communications provider. At a time of cuts to public libraries and the educational sector we find the cost burden of having to

¹<http://www.schoolswebdirectory.co.uk/>

legally appeal infringement on our networks by our users, who we have in no way facilitated, to be disproportionate and unfair, particularly given that no evidence as to the level of infringement on these networks has ever been presented.

- 5 According to the definitions of the Act, public intermediaries are subscribers of an ISP, and as the draft S.I. stands an ISP is obliged to send a copyright infringement report to their subscriber. Upon receipt of a CIR this means that a library or educational intermediary will then have to appeal against the CIR to the appeals body presenting gathered evidence in the allotted time.
- 6 It has also been suggested in the interim statement that the circa 37,500 public intermediaries engage with their ISP to assert that they are either a communications provider or an ISP and therefore should not be sent a copyright infringement report. We find the suggestion of essentially “leaving it to chance” with the individual ISP to be unacceptable and extremely disproportionate given the large number of public intermediaries that exist in the UK.
- 7 We would also point out that whereas public intermediaries may also be defined as ISPs or communications providers, they are also subscribers, and the draft S.I. requires a CIR to be sent to a subscriber irrespective of what other status they may have under the Act. We would also note that there are no grounds within the draft S.I. to reject a CIR because of a conflicting or multiple role status so whether Ofcom’s suggestion would actually be permissible under the terms of the Act is extremely unclear.
- 8 The S.I. envisages a 20 day period to appeal the receipt of a copyright infringement report. Whereas this period of time may be acceptable for a household we find the period far too short for a public intermediary. Potentially many different organisations as well as different departments will have to liaise in order to understand the legislation and establish the facts behind the alleged infringement and then appeal in the appropriate manner. We find a period of 20 days to be entirely unsatisfactory and impractical.
- 9 In summary, as Ofcom has used its powers under the Act to create a clear position for Wi-Fi providers and mobile telcos, we urge the government to create a similar clear position for public intermediaries under the Act. We would urge the government to make it clear within the S.I. that our sector acts either as a communications provider, or as a non-qualifying ISP and therefore cannot be the recipient of a CIR.

Yours faithfully

E.A. Goodhand

Emily Goodhand (Vice-Chair)

On behalf of Tim Padfield (Chair)

cc:

Hon. Ed Vaizey MP

Rt. Hon. David Willetts MP