

Response to Ofcom consultation on online copyright infringement and the Digital Economy Act

July 2012

About Citizens Advice

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. It values diversity, promotes equality and challenges discrimination.

The service aims:

- to provide the advice people need for the problems they face
- to improve the policies and practices that affect people's lives.

The Citizens Advice service is a network of nearly 400 independent advice centres that provide free, impartial advice from more than 3,500 locations in England and Wales, including GPs' surgeries, hospitals, community centres, county courts and magistrates courts, and mobile services both in rural areas and to serve particular dispersed groups.

In 2011/12 the Citizens Advice service in England and Wales advised 2 million people on nearly 7 million problems. Debt and welfare benefits were the two largest topics on which advice was given.

Response to Ofcom's proposed code for initial obligations

Citizens Advice has maintained an interest in this policy area over the past few years as a number of clients have reported receiving letters from solicitors for alleged copyright breaches they knew nothing about and were not responsible for. The haphazard and unregulated system which has developed up to this point was causing consumer detriment and appeared at times to involve speculative 'fishing trips' by unscrupulous organisations.

A CAB in the South East reported a case in which a client had received numerous letters alleging that he had illegally downloaded computer games and pornographic films and seeking a settlement of £475. The client denied any involvement in downloading games or films but noted that his home wifi network was not protected by a password, suggesting that a third party may have been responsible. His ISP was refusing to speak to him on the issue or offer any help identifying when the alleged copyright infringements had taken place so he could attempt to demonstrate he was not behind the downloads. The client was extremely stressed by the potential financial loss as well as the potentially defamatory nature of the allegations.

While the new system will be a significant improvement on what has gone before, the requirement to pay a £20 fee to challenge an accusation of copyright infringement is worrying on a number of levels.

Firstly, on receipt of a Copyright Infringement Notice from a subscriber's ISP, the allegation remains just that – an allegation, not a judgement. The wording of the notices reflects this in reference to “apparent infringements”. It makes no sense to levy a charge to challenge an accusation.

Given that there is a very real risk of threats of legal action from copyright owners for subscribers who receive three or more Copyright Infringement Notices, it is against the principles of both justice and fairness that an accused individual must pay money up front to challenge an allegation of copyright infringement.

Similarly, we agree with the arguments put forward by a number of organisations in response to the 2010 consultation that on this basis challenges to Copyright Infringement Notices cannot reasonably be called “appeals” and to do so gives the notices an implied status as a judgement which they do not deserve. The implied status of the notices may deter some recipients from challenging them.

Secondly, while £20 may seem like a small, token fee to discourage vexatious disputes or organised campaigns, it poses a substantive barrier to access to justice for people on the lowest incomes. We would note that £20 represents almost 30% of the weekly amount of Job Seekers Allowance for someone aged over 25. By way of illustration, bureaux frequently advise clients who are unable to afford the £40 court fee required to suspend a warrant of eviction (and who often struggle to apply for remission of court fees despite their low income), despite the risk of homelessness facing them.

A CAB in the South East reported a case in which a client on a very low income could not afford the £40 court fee to suspend a warrant of possession on his home. Although working part time, the client had mental health problems and partial financial capacity which led to budgeting difficulties. Even though the case was an emergency – the client faced eviction unless he paid the court fee – he was unable to afford to pay the fee.

A CAB in Yorkshire and Humber reported a case where a client with three children was unable to afford the £40 fee to suspend a warrant of possession on her home. The client and her partner were unable to gather the necessary information for remission of fees and so faced potential homelessness as a result of a relatively low court fee.

The long-term consequence of going ahead with the proposals as they stand will be people who have been wrongly accused of copyright infringement being subject to legal action from copyright owners because they could not afford to challenge the notices they received from their ISP. Publicity of cases of this nature could undermine the legitimate efforts to safeguard the rights of copyright holders.