



OFCOM CONSULTATION ON ONLINE INFRINGEMENT OF COPYRIGHT: IMPLEMENTATION OF THE ONLINE INFRINGEMENT OF COPYRIGHT (INITIAL OBLIGATIONS) (SHARING OF COSTS) ORDER 2012

COMMENTS FROM THE ALLIANCE FOR INTELLECTUAL PROPERTY

The Alliance for Intellectual Property (the new name for the Alliance Against IP Theft) represents 22 trade associations who share a desire to see the contribution IP makes to the UK economy and society valued and its intrinsic role in delivering business success recognised.

We welcome the opportunity to provide some broad comments on the Sharing of Costs Order for the Digital Economy Act 2010. Alliance members, where appropriate and relevant, will be submitting more detailed responses.

1. We remain concerned about the potential for small rights holders to be excluded from participating in the Initial Obligations element of the Digital Economy Act on the grounds of cost. While we acknowledge the requirement for Ofcom's costs and those incurred by the Qualifying ISPs to be recouped in the first notification period, the current formulation for the recoupment of these costs appear to be designed in such a way as to only be able to be met by large copyright owners who are planning and equipped to send CIRs on a large scale.
2. Additionally, a number of copyright owners (who may be classified as 'large') may only wish to send CIRs at particular points in the year, for example around major sporting events or to tie in to launch / premiere dates. The costs regime should allow for lower level, time specific engagement as well as high level, year round involvement.
3. We would like greater reassurance that at no point should the delivery of the Initial Obligations of the DEA become a commercial exercise for the regulator, Qualifying ISPs or Appeals Body. Given the complexity of the costs framework, there is a real possibility that, deliberately or otherwise, this may become the case. In addition, Ofcom needs to be as transparent as possible with regards to its own costs given that these make up a high percentage of the overall cost.
4. Clarification is needed on who pays for the Appeals Body. We understand that, following the recent Judicial Review, copyright owners are now required to pay 100% of the set-up costs of the Appeals Body. However, we are very concerned that this principle is being applied to the costs for handling appeals (the document refers to the fact that the costs of determining an appeal will be met by the copyright owner who submitted the CIR which has been appealed). Given that one of the grounds for appeal is that the report does not relate to the subscriber's IP address at the time of the apparent infringement, a clear reason why this may have occurred is that the ISP 'look-up' was faulty. It is therefore inequitable that copyright owners should have to pay for an appeal where the fault lay elsewhere. The Order should be amended to reflect this.

There also appears to be little analysis as to the manner in which the Appeals Body will actually incur its costs (for example, what level of experience and skill will be required of the personnel assessing appeals, and how much time is envisaged as being required for each appeal). In this regard, the Alliance would appreciate sight of the Pre-Qualification Questionnaire prepared by Ofcom as part of the EU tender process.

5. There needs to be an element of quality control / monitoring built into the calls ISPs handle from subscribers. If Ofcom is to allow ISPs to charge copyright owners for handling complaints (7.16) then in return copyright owners need assurance that subscribers are being given appropriate and accurate information.
6. The Alliance does not support the proposed two-tier costs framework whereby it would be more costly for copyright owners to send CIRs to O2 and Everything Everywhere. A decision has been made for there to be six initial Qualifying ISPs and we believe it is important that there is an equal playing field across these six. To have a different costs regime for the two smaller ISPs may result in there being in actual fact only four Qualifying ISPs as copyright owners shy away from issuing CIRs that are more expensive in an already hugely expensive (for copyright owners) process.

About the Alliance

Established in 1998, the Alliance for Intellectual Property is a UK-based coalition of trade associations concerned with ensuring that intellectual property rights are valued in the UK and that a robust, efficient legislative and regulatory regime exists, which enables these rights to be properly protected. With a combined turnover of over £250 billion, our members include representatives of the audiovisual, music, games and business software, and sports industries, branded manufactured goods, publishers, retailers and designers.

Alliance members

Anti-Copying in Design
Anti-Counterfeiting Group
Authors' Licensing and Collecting Society
British Brands Group
BPI (British Recorded Music Industry)
British Video Association
Business Software Alliance
Cinema Exhibitors Association
Copyright Licensing Agency
Design and Artists Copyright Society
Educational Recording Agency
Entertainment Retailers Association
Federation Against Copyright Theft
Film Distributors Association
Motion Picture Association
Premier League
PRS for Music
Publishers Association
Publishers Licensing Society
UK Interactive Entertainment

Supporters:

British Jewellery, Giftware & Finishing Federation
Video Standards Council