

Representing:

Organisation

Organisation (if applicable):

ServerCorporation Ltd

What do you want Ofcom to keep confidential?:

Keep name confidential

If you want part of your response kept confidential, which parts?:

Ofcom may publish a response summary:

Yes

I confirm that I have read the declaration:

Yes

Ofcom should only publish this response after the consultation has ended:

You may publish my response on receipt

Additional comments:

The context of the responses below is the protection of the rights of copyright and trademark owners which, in the view of this respondent, the ISP's have been turning a persistent blind eye to. Some recent research we carried out showed a live boxing event had 30 live illegal pirate streams being delivered worldwide to an audience of in excess of 50,000 viewers. The ISP's have an obligation to police their networks and carry the cost of doing so. The WIPO Copyright treaty, Article 8, provides an exclusive right of communications to the public for copyright owners which the ISP's have been ignoring.

Question 3.1: Do you agree that Copyright Owners should only be able to take advantage of the online copyright infringement procedures set out in the DEA and the Code where they have met their obligations under the Secretary of State's Order under section 124 of the 2003 Act? Please provide supporting arguments.:

The obligations under Section 124 are unrealistic and will result in few copyright owners making complaints. In the example of the boxing event with 50,000 viewers the fight card may not have been agreed until the week before the event so estimating the level of infringement would be impossible. The viability of the complaints

procedure can only be judged when the cost model is transparent. If 50,000 CIR's will cost £50,000 or more then this is not viable for the majority of small copyright owners.

Question 3.2: Is two months an appropriate lead time for the purposes of planning ISP and Copyright Owner activity in a given notification period? If a notification period is significantly more or less than a year, how should the lead time be varied? Please provide supporting evidence of the benefits of an alternative lead time.:

The media world is very fast changing and events are planned, re-scheduled and cancelled with a few days notice. The ISP's need to accept the costs of policing their networks and establish protocols for instant response to infringement. In the same way that a Publican is to an extent held responsible for what happens on their premises so should an ISP be responsible for what happens on their networks.

Question 3.3: Do you agree with Ofcom's approach to the application of the Code to ISPs? If not, what alternative approach would you propose? Can you provide evidence in support of any alternative you propose?:

We do not think that Ofcom's approach is appropriate. The code must apply to all ISP's or the infringers will simply switch to unregulated ISP's.

Technical distinctions between fixed, mobile and wireless should also be removed as these will also provide a clear route around the legislation for any pirate. The code should apply across all ISP's via fixed, mobile and wireless.

Question 3.4: Do you agree with the proposed qualification criteria for the first notification period under the Code, and the consequences for coverage of the ISP market, appropriate? If not, what alternative approaches would you propose? Can you provide evidence in support of any alternative you propose?:

See above.

Question 3.5: Do you agree with Ofcom's approach to the application of the 2003 Act to ISPs outside the initial definition of Qualifying ISP? If you favour an alternative approach, can you provide detail and supporting evidence for that approach?:

Broadly yes.

Question 3.6: Do you agree with Ofcom's approach to the application of the Act to subscribers and communications providers? If you favour alternative approaches, can you provide detail and supporting evidence for those approaches?:

Broadly yes.

Question 4.1: Do you agree with the proposed content of CIRs? If not, what do you think should be included or excluded, providing supporting evidence in each case?:

This information seems reasonable to include in a CIR. However it seems to be mainly directed towards on demand not live piracy. In the instance of live streams a URL description is more appropriate than a file name. In addition, the port number should not be a requirement if it is not available.

Question 4.2: Do you agree with our proposal to use a quality assurance approach to address the accuracy and robustness of evidence gathering? If you believe that an alternative approach would be more appropriate please explain, providing supporting evidence.:

This seems reasonable subject to the further burden of cost being imposed on the copyright or trademark owner,

Question 4.3: Do you agree that it is appropriate for Copyright Owners to be required to send CIRs within 10 working days of evidence being gathered? If not, what time period do you believe to be appropriate and why?:

That is entirely reasonable but in addition the ISP should be required to instantly acknowledge receipt as is the case with takedown notice procedures.

Question 5.1: Do you agree with our proposals for the treatment of invalid CIRs? If you favour an alternative approach, please provide supporting arguments.:

The ISP's should be required to have an online form (much like this one) which allows copyright owners to make claims in real time. If required fields are left blank the form will not submit.

Question 5.2: Do you agree with our proposal to use a quality assurance approach to address the accuracy and robustness of subscriber identification? If not, please give reasons. If you believe that an alternative approach would be more appropriate please explain, providing supporting evidence.:

Yes.

Question 5.3: Do you agree with our proposals for the notification process? If not, please give reasons. If you favour an alternative approach, please provide supporting arguments. :

No - the proposals need to be faster moving as the volumes of infringement, in our view, are far higher than Ofcom assume. "Hardcore" pirates will be delivering and viewing materials resulting in hundreds of infringements on a regular basis and will simply migrate to a new ISP on the first notification. If the first CIR suggests infringement of over 100 then the entire process should be shortened to take place within 14 days.

Question 5.4: Do you believe we should add any additional requirements into the draft code for the content of the notifications? If so, can you provide evidence as to the benefits of adding those proposed additional requirements? Do you have any comments on the draft illustrative notification (cover letters and information sheet) in Annex 6?:

An important distinction to make is between the viewers of illegal content and those who illegally publish content, often for financial gain, for others to view. Where an individual is a "first seeder" the process should be swifter and require immediate ISP response.

Question 6.1: Do you agree with the threshold we are proposing? Do you agree with the frequency with which Copyright Owners may make requests? If not, please provide reasons. If you favour an alternative approach, please provide supporting evidence for that approach. :

The threshold, given the volume of piracy occurring, is probably too low. Occasional infringers are not the threat to the creative industries, but the regular pirates are. In the boxing example given 30 live streams provided by 30 "first seeders" were responsible for over 50,000 examples of copyright infringement. Our suggestion would be to raise the level of infringement to 20 per month but require ISP's to respond at any time to questions.

Question 7.1: Do you agree with Ofcom's approach to subscriber appeals in the Code? If not, please provide reasons. If you would like to propose an alternative approach, please provide supporting evidence on the benefits of that approach.:

Yes as long as the costs are not prohibitive.

Question 8.1: Do you agree with Ofcom's approach to administration, enforcement, dispute resolution and information gathering in the Code? If not, please provide reasons. If you favour an alternative approach, please provide supporting evidence on the benefits of that approach.:

Yes subject to cost.