

Title:

Ms

Forename:

Fiona

Surname:

Iglesias

Representing:

Organisation

Organisation (if applicable):

North West Learning Grid

What do you want Ofcom to keep confidential?:

Keep nothing 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:

Introduction:

The North West Learning Grid (NWLG) is a Regional Broadband Consortia (RBC), made up of the 17 North West Local Authorities, Blackburn with Darwin, Blackpool, Bolton, Bury, Halton, Knowsley, Liverpool, Manchester, Oldham, Rochdale, Salford, Sefton, St Helens, Stockport, Trafford, Warrington, Wirral.

As a RBC we are part of the 'internet distribution chain' supplying network connectivity to schools. The RBC procures network services from JANET, the UK's National Research and Education Network, on behalf of its 17 members and allocates IP addresses to those members. Each Local Authority is then responsible for the 'final leg of the internet distribution chain' into schools.

The resulting chain looks like this:

JANET – NWLG – Local Authority - School

The North West Learning Grid and its members are committed to providing a quality service to schools that supports education, innovation and safe and appropriate use of the internet inline with Ofsted's recommendations in their paper published February 2010 'The safe use of new technologies' including the support and enforcement of current copyright law. Measures in place to support these objectives include the use of authentication services, content filtering, data tracking services, acceptable use policies, codes of conduct and educational programmes.

Provision of authentication services, content filtering, data tracking services, acceptable use policies, codes of conduct etc is spread across the 'internet distribution chain'.

Further, the schools community is committed to addressing improvements in digital literacy, supporting online creativity and promoting the government agenda of digital inclusion by nurturing talent and providing opportunities that will develop the next generation of media confident young adults.

The NWLG recognises that in the transformation that is taking place in today's schools, both teachers and learners are increasingly exposed to opportunities to make inappropriate use of copyrighted materials, in response to this concern the NWLG is also the creator and provider of the national digital resource bank, a bank of digital teaching and learning resources which have had their copyright cleared and are made available under a creative commons licence, providing a 'copyright safe zone' for teachers. The NWLG is committed to supporting the digital agenda in schools through the provision of such services along with supporting training and guidance.

General comments on the Code

the NWLG is concerned that the status of itself, its Local Authorities and their schools is as yet undefined under the Code.

The NWLG and its members are confident that we currently have in place measures that deal appropriately with large scale copyright infringement subject to our objectives as stated previously of digital inclusion and educating a next generation of digitally literate young adults. However, due to the nature of the educational policies we aim to support there are particularities to our provision of personal ID's, IP addresses and the use of group logins that we believe will make it difficult if not impossible for our inclusion under the Code to provide the outcome envisaged by the Act.

Should we be defined as a 'Subscriber'

On average a North West Local Authority would be responsible for something in the region of 30,000 users. Whilst we have in place all of the measures previously mentioned to combat copyright infringement it is unrealistic to believe that we will be able to halt all misuse across such numbers of users. Our resulting concern is therefore that we may become subject to actions to restrict or temporarily disable internet access to large numbers of innocent users because of misuse by a small number.

Should we be defined as an 'ISP'

Despite having the measures outlined previously in place to track and monitor internet usage, in order to support our educational agenda we often have in place policies that would make the identification of an individual user, on an individual machine at a specified time very difficult to identify. This would result either in an inability to bring any prosecution to a successful conclusion or the development of costly systems to provide appropriate personal ID's, for example, to very young learners or learners with special educational needs. We believe the cost of development of such systems could potentially divert funds from front-line services during these times of austerity and would be disproportionate to the objectives or outcomes of the Act.

On behalf of our community the NWLG requests that educational institutions and members of the 'internet provision chain' to schools be considered as 'non-qualifying ISP's' or that a quite separate code and set of procedures be developed for our sector under the Act.

Conclusions

We are very concerned about the implications of the DEA and the current Code, as is, for schools.

These measures will impact detrimentally on digital services offered to all users in schools

We receive and supply internet access to thousands of individual users, the complexity of our position in relation to copyright infringements must be taken into consideration. If this is not done, our internet connection as a whole could be jeopardised

We already take rigorous practical measures to ensure that copyright infringement is minimised.

The DEA and accompanying Code risks imposing significant financial and administrative burdens on us relating to appeals, compliance, reporting and dealing with complaints – all of which may not have the desired effect of identifying persistently infringing individuals.

We urge Ofcom to carefully evaluate the costs and benefits of applying such a Code to RBC's, Local Authorities and schools without careful consideration of the potential costs, loss of connectivity, and other serious ramifications.

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.:

Copyright owners should only be able to take advantage of the procedures when they have met their obligations under the Secretary of State's Order.

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.:

Two months is sufficient for a qualifying ISP to plan activity with a Qualifying Copyright owner, however should a Local Authority or school become 'in scope' as an ISP two months will not be sufficient lead time to prepare for activity. Some level of additional activity will be required by any newly 'in scope' ISP, in the case of Local Authorities or schools the amount of time required could vary considerably.

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?:

A critical issues for Local Authorities and schools is whether they will be defined as 'Internet Service Providers', 'Subscribers', 'Communications Providers' or something else for the purposes of the Act.

Currently as the Ofcom consultation is envisaged at this point no public intermediary has been named as a qualifying ISP. We are nevertheless concerned that the benchmark for being a qualifying ISP may drop in the future as serial infringers change ISP and their modus operandi and therefore at some point in the future our organisations come in scope as qualifying ISP's. If this is the case we are concerned that the nature of the 'internet distribution chain' would make the application of the obligations extremely difficult. For a variety of reasons it is common for a single IP address to cover an entire institution or an entire suite of computers, group logins are allocated to support young learners and learners with special educational needs. The application of measures to support the code could have two clear effects, firstly, access and use of the internet may have to be restricted having a detrimental effect on the development of the next generation of media confident entrepreneurs and technicians thus disadvantaging our own creative industries and contrary to recommendations in Ofsted's report 'The safe use of new technologies' Published February 2010 it could create users less able to assess and manage risk for themselves and stay safe. Secondly, putting measures in place ranging from legal advice, policy decisions, through to workflow and technical systems alterations in order to avoid a 'lock down/restrictive' approach could result in a cost implication that is disproportionate to the benefits achieved.

Public intermediaries have public policy goals to educate, as well as promote the digital inclusion agenda. Also levels of infringement across public networks are currently low, in part due to hard work by the sector in implementing practical methodologies and acceptable user terms aimed at minimising online copyright infringement.

Given the public policy role of our institutions combined with the fact we act as neutral and "mere conduits" for internet access, not knowingly facilitating infringement, we believe our institution should be viewed either as a 'communications provider', and therefore exempt, or as a non-qualifying category as allowed for by S. 5.124C 3(a).

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?:

Whilst it is obviously sensible to include the biggest ISPs in the code, until the criteria for what is an ISP and what is a subscriber are clarified, it is impossible to judge whether Ofcom's general approach is sensible or not.

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?:

The suggestion that public intermediaries such as universities, libraries or schools will have to collect at some point in the future address details from all users is onerous on those organisations and users, and is contrary to the Government policy of encouraging people to use the Internet and to develop their digital literacy. This appears to be a major policy shift, and one that has not been approved by Ministers or debated in Parliament. This, together with the potential costs of implementing new measures to remain within the DEA, and technical measures to reduce risks of infringement, as well as potentially 25% of costs associated with potential infringements could lead to some libraries or education institutions no longer offering wifi or other types of Internet connections to their patrons, which totally defeats the Government's intention of a Digital Britain.

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?:

No. As outlined above from implementation of secondary legislation it is likely that our organisations will be viewed as "subscribers" by ISPs and copyright holders and therefore be subject to copyright infringement reports and the appeals process. As a 'subscriber' an individual Local Authority could be responsible

for on average 30,000 users, we believe that levels of copyright infringement within our organisations is low however, when being responsible for large numbers of users we are concerned about the potential for the future imposition of technical measures aimed at slowing or potentially temporarily disconnecting “subscribers” from the internet. Given our educational role, combined with our role as a “mere conduit” not knowingly facilitating infringement, brings us to the conclusion that being classed as “subscriber” is inappropriate.

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?:

We suggest that the following wording is added to the CIRs “and that to the best of the owner’s knowledge the copying is of a substantial part of the work, and that the copying does not fall under any of the exceptions to copyright as provided for in the Copyright, Designs and Patents Act.” This change is to ensure that the copyright owner considers the question whether the copying, even if unauthorised, might be covered by one of the exceptions in the law.

We further recommend that the owner is required to provide supporting evidence that it is the owner of the copyright in the material in question, and that it provides an indemnity to the ISP and to any subscribers affected that should it turn out that it is not, in fact, the owner of the copyright in question will refund all costs incurred by the ISP and/or subscribers as a result of its complaint.

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.:

We are content with the quality assurances procedures outlined.

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?:

We are content with the time period proposed.

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.:

It is important that one reason for not processing a CIR is that the network upon which an infringement is alleged to have taken place is the network of an excluded category / not a subscriber.

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.:

We are content with the proposed quality assurance approach on subscriber identification.

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. :

Subscribers that are institutional or organisational, such as public intermediaries are likely to be targeted if they have several employees or students who have been infringing copyright across their networks. This risks serious harm to public intermediaries which may find themselves being inappropriately viewed as “in scope” of the Act for the activities of their users – activity which they have no knowledge or responsibility.

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?:

We recommend that Ofcom ensure that public intermediaries cannot be the recipients of such codes.

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. :

We recommend that ISPs have longer than 5 days to respond to a request by a copyright owner.

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.:

We believe that the appeals process might be helped by giving in-scope subscribers more information about their grounds for appeal and their rights under the Data Protection Act.

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.:

We have no problems with the proposed approach to administration, enforcement and dispute resolution as long as they are proportionate and make a de facto exclusion for public intermediaries who are a crucial conduit for online education and access to knowledge in the digital world.