

Creative Coalition Campaign response to 'Online Infringement of Copyright and the Digital Economy Act 2010'

1. Overview

- 1.1. The CCC welcomes the opportunity to respond to the Ofcom consultation on '*Online Infringement of Copyright and the Digital Economy Act 2010*'. We believe that the publication of the draft Initial Obligations Code and the Sharing of Costs Statutory Instrument represent an important step forwards in the fight against online copyright infringement.
- 1.2. By way of introduction, the CCC is a partnership comprising trade unions representing workers in the creative industries, representatives of copyright creators and businesses in the music, video, film, TV, publishing and sports sectors. We have come together to articulate our member organisations' shared view of the threat that online copyright infringement poses to jobs in the creative industries.
- 1.3. The Digital Economy Act is a crucial tool in the fight to protect jobs and investment in the creative industries. It has been recognised by the High Court as a legal, proportionate way to tackle the enormous damage caused by online copyright infringement.
- 1.4. It is important that the system put in place by the Initial Obligations Code delivers a workable scheme that enables rights holders to participate at a viable cost and ensures consumers are educated, treated fairly, and provided a system of redress. We acknowledge that the Government and Ofcom have put in considerable work in order to achieve this aim and we broadly welcome the resultant revised Code.
- 1.5. However, there are some points which we believe Ofcom should consider further in order to ensure the Code is as flexible and practical as possible.

2. Appeals

- 2.1. We welcome the introduction of a refundable £20 fee for appeals. We believe this strikes the right balance between protecting the system from abuse by vexatious appeals whilst remaining at an affordable level for subscribers whose accounts have allegedly been used for infringement. We also welcome the tightening of the grounds for appeal.

3. Evidence gathering

- 3.1. We welcome the change to require Ofcom to pre-approve the evidence gathering processes of rights holders and the development of a publically available specification sponsored by Ofcom. We believe this measure will build trust in, and enhance the integrity of, the notice sending system as a whole.
- 3.2. In particular, this will have the welcome effect of distinguishing the process from other, less robust, examples of copyright related letter sending by organisations such as ACS:Law.

- 3.3. This change also sets a clear standard for other rights holders who may want to participate in the process in future. It should be particularly helpful for organisations with little or no previous experience of such evidence gathering procedures, such as small or independent rights holders.

4. Scope of the Code

- 4.1. CCC members are concerned about the decision to exclude mobile operators from the DEA provisions. Whilst the Code focuses on fixed line broadband services, which currently account for the majority of infringing activity, it is important to take into account the changing nature of consumer behaviour and technology and the likely resultant impact on infringing activity.
- 4.2. Online infringement of music is already a significant problem on mobile networks. Following the 4G spectrum auction, scheduled for late 2012, mobile operators will be able to offer much faster internet services. This, combined with fast rising ownership of tablet devices¹, is likely to lead to an increased level of infringement of other types of content such as films, TV programmes and live sport. The rise in ownership of e-readers and e-books is also likely to contribute to increased infringement on mobile networks.²
- 4.3. We note that as currently drafted the Code states that Ofcom will begin a review of the scope of the Code six months after it begins, specifically considering the merits of extending its scope. However, there is currently no fixed timescale for such a review, although Ofcom has stated it 'will look to publish' a consultation on any suggested revisions alongside their first annual progress report to the Secretary of State. We urge Ofcom to set out a clear timetable for the review, including a fixed deadline for publication, and to commit to include other providers within the Code's scope, should this be found to be necessary.
- 4.4. We understand that the only way in which additional providers could be brought within scope would be to re-draft the Code, requiring the process of public consultation, parliamentary and European Commission approval procedures to be repeated all over again. In our view this, combined with the length of the review Ofcom has committed to undertake, will lead to a substantial delay to extending the provisions of the Act to cover a sector that is likely to see rapid increases in infringing activity.
- 4.5. Ofcom should explore the possibility of inserting a mechanism into the Code that would trigger or speed up the process of bringing mobile operators within scope, should infringement on their networks substantially increase. This mechanism should avoid the need to rewrite the Code and subject it to consultation and parliamentary approval all over again.

5. Content of Notifications

- 5.1. Our other principle concern relates to the content of the notifications sent to consumers. We note that Ofcom cannot give directions to the ISPs as to the form of the notifications sent to their customers. Whilst we understand Ofcom's position on this issue, we believe that the tone and content of notifications is a critical element of ensuring the success of the Act.

¹ Tablet ownership rose to 11% of UK households in, up 9pp year on year, between Q1 2011 and Q1 2012: Ofcom Communications Market Report 2012

² One in ten (10%) UK adults now have an e-reader; up from 3% in 2011: Ofcom Communications Market Report 2012

5.2. As such, we urge Ofcom to play an active role in discussions between rights holders and ISPs regarding the content of notifications. Furthermore, we recommend Ofcom should use its enforcement powers to their full effect should ISPs send notifications which bring into question the credibility of the process or disparage the actions of the legislation or the actions of rights holders. To this end, we believe it would be helpful for Ofcom to publish guidance on how it intends to use its enforcement powers in such a situation in advance of negotiations between rights holders and ISPs.

6. Summary

6.1. Overall we welcome this revised version of the Code as an important step towards implementing the Act which is vital for promoting the continued success of the creative industries in the UK. We hope that all stakeholders, including ISPs, will now focus their attention on implementing the Act as quickly and effectively as possible.