

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: **“Online Infringement of Copyright and the Digital Economy: Draft Initial Obligations Code”**

To (Ofcom contact): **Campbell Cowie**

Name of respondent: **Andrew Bignell**
(Head of Information Services and Lifelong Learning)

Representing (self or organisation/s): **Hertfordshire County Council – Libraries, Culture and Learning**

Address (if not received by email):

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Name **Andrew Bignell**

Signed (if hard copy)

Andrew Bignell

Introduction

Hertfordshire Libraries offer public access to IT and the Internet in 49 service points across the County. We currently have 540 People's Network (fixed line) computers, in addition to which we offer Wifi access in 16 of our libraries. There are 5.6 million visits to Hertfordshire Libraries each year.

Hertfordshire Libraries have a specific role to support and encourage digital inclusion. All our libraries are UK Online Centres, and all are badged as Hertfordshire Local points, providing supported access to county council information and online services. We have a contract with Hertfordshire Adult and Family Learning Service to provide one-to-one taster sessions covering basic computer tasks to develop the skills and confidence of people with little or no IT experience. We delivered 2500 of these sessions last year. Our IT suites also provide venues for the delivery of longer IT courses by local colleges and other learning providers. We are signed up to the Race Online 2012 initiative, in which public libraries across the UK are pledged to support 500,000 people to get on to the Internet for the first time by the end of 2012.

As a public library service, we have long experience in the administration of copyright law in relation to printed and electronic resources. We provide staff training on copyright and prominently display notices to warn our users about copyright infringement. All users of our People's Network and Wifi services have to agree to 'conditions of use' in order to log on, and these conditions prohibit the infringement of copyright. In addition, we attempt to block access to illegal file sharing sites through our Internet filtering system.

In the nine years that I have held my present post, Hertfordshire Libraries have not received any complaints from copyright holders about the infringement of their rights.

I am seriously concerned that unless the definitions in the Digital Economy Act are clarified in relation to public libraries, then compliance with the Act could involve us in disproportionate expense, and seriously jeopardise our ability to fulfil our role as public information providers and champions for digital inclusion. I think it is important that the draft Initial Obligations Code is amended to create a de facto exclusion for public libraries.

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?*

The critical issue for public libraries (and other public intermediaries, such as schools, universities, museums etc) is whether we will be defined as "Internet Service Providers" ("provides an internet access service") "Subscribers" (an entity who "receives an internet access service") or "Communications Providers" for the purposes of the Act.

At present, in the Draft Initial Obligations Code, no public intermediary has been named as a qualifying Internet Service Provider (ISP). However, the code makes it clear that the benchmark for being a qualifying ISP is likely to drop in the future as serial infringers switch ISP and their usage patterns change, so at some point in the future Hertfordshire Libraries could come within scope as a qualifying ISP. If this is the case I am concerned that the significant obligations, and costs envisaged by the Act are simply not appropriate for bodies, such as public libraries, which have a public service remit to educate and promote digital inclusion and make no money from internet provision.

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.

As stated above it is important that the definitions used in the act are made more specific to the realities of internet provision by public libraries. Given the significant obligations envisaged by the Act, and the low levels of infringement across our networks combined with our public service role, I think it is vitally important for Ofcom to create a de facto exclusion for public libraries under the Act.

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 libraries may, at some time in the future, have to collect address details from all IT users is onerous on both library staff and users, and we would incur significant costs in providing the necessary technical infrastructure to ensure compliance. In practice, this may force Hertfordshire, in common with many other public library authorities, to reconsider offering WiFi access and to introduce restrictions on People's Network usage which run contrary to the Government policy of encouraging people to use the Internet and to develop their digital literacy.

3.6 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.

The Act essentially envisages a bipartite relationship of a commercial company giving internet access to a named and contracting householder, who equates often to a single static IP address. Public libraries often form consortia or rely on separate legal entities to contract for bandwidth so the entity who faces the user is not necessarily the contracting party. The Act does not seem to acknowledge the complexities of the neutral intermediary role played by institutions such as libraries – sitting between the ISP and the end user.

As the Draft Initial Obligations Code currently stands, I am very concerned that public libraries could be viewed as "subscribers" by a copyright holder or a qualifying ISP. Complaints about copyright infringement on the People's Network in public libraries are currently very rare, in part due to the work of the sector in implementing practical measures and acceptable use policies to uphold the law. Given these low levels of infringement, I am concerned that being viewed as a "subscriber", and becoming embroiled in the appeals process, is not proportionate to the intentions of government as stated in S.124E(1)k of the Act.

IP addresses for public libraries are also often dynamic, and attributed to a whole building, or bank of computers so identifying infringement by a specific individual can be a difficult process. The appeals process envisaged by the Act requires that an IP address is proved to equate to a specific "subscriber". Given the complexity of linking an IP address to an individual, I am concerned that this will mean that public intermediaries, such as libraries, are more likely to be viewed as the subscriber by a copyright holder for the purposes of prosecution under the Act.

Given the public service role of the public library combined with the fact we act as neutral conduits for internet access, not knowingly facilitating infringement, I think it is most appropriate that libraries should be viewed either as a communications provider, and therefore exempt, or as a non-qualifying category ISP as allowed for by S. 5.124C 3(a).

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 such as public libraries, which serve many customers, could be targeted as serial offenders, if they have several single instances of infringement by different customers. This could have serious and undeserved consequences for the library and the overwhelming majority of law abiding users.

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.*

I think ISPs should have longer than five days to respond to a request by a copyright owner. Ten days would seem more reasonable.

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Hertfordshire Libraries, Culture and Learning
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