

**Title:**

Dr

**Forename:**

Glyn

**Surname:**

Moody

**Representing:**

Self

**Organisation (if applicable):**

**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:**

Yes

**Additional comments:**

**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.:**

There seems to me to be a danger that copyright owners might feel obliged to "use up" all their estimates if they must apply for them and pay for them in advance: might it not be better to charge them \*after\* they have used them?

**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.:**

**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?:**

**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?:**

**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?:**

Yes: a key issue is the exemption for providers of Wifi access. Bringing them into the scope of the Act will have a devastating effects on a vast swathe of industries.

**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, this is neither fair nor workable. It is not reasonable to expect ordinary businesses or users to police the use of their Wifi networks, for example. The onus must be on the copyright holders to show exactly who was allegedly infringing on their content: narrowing it down to an unspecified user on a Wifi network is not good enough.

**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?:**

**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.:**

No, it is not "credible, effective and fair for consumers" when the copyright owners can self-certify in this way. Things are made worse by what looks

like a total absence of penalties for inadequate standards, failure to meet reasonable ones or even outright fraud here: it gives content providers what is effectively carte blanche &ndash; hardly acceptable. It is clearly Ofcom's role to establish credible, independent standards, and to enforce them.

I find it extraordinary that Ofcom can write &ldquo;it does not involve the setting of arbitrary standards that we are not in a position to understand.&rdquo; Does Ofcom throw up its hands in despair over telephone technology? Hardly, it acquires the necessary skills and addresses the problem; it must do the same here too. This kind of competence lies at the heart of Ofcom: if it feels unable to cope with new technologies like the Internet perhaps it is time to create a new body to do so.

**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?:**

**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.:**

**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.:**

**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. :**

**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?:**

**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. :**

**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.:**

There is one crucial element missing there: the ability of accused subscribers to examine the process whereby their alleged infringement. For that to be possible, copyright holders must detail how that was done, either by themselves, or their agents. In particular, it must be possible for experts appointed by subscribers to examine the precise technical methodology in order to establish its reliability. Without this, it would simply be a matter of accusation on the word of copyright holders and/or their agents &ndash; hardly fair.

**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.:**