

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

**Consultation title:** Online infringement of Copyright and the Digital Economy Act

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

**Name of respondent:** Aileen Boyd

**Representing (self or organisation/s):** Scottish and Southern Energy plc

**Address (if not received by email):**

### CONFIDENTIALITY

**What do you want Ofcom to keep confidential?**

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Whole response	No	Organisation	No
Part of the response	No	If there is no separate annex, which parts?	

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Name Aileen Boyd

Signed (if hard copy)



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Dear Campbell

### **Online Infringement of Copyright and the Digital Economy Act 2010**

As you may know, SSE is primarily an energy company. We do have interests in the communications market and, in particular, have developed a retail telephony business over the last few years, based on the available wholesale products such as wholesale line rental (WLR). We have also started to provide a retail broadband service relatively recently and at this stage of product development, numbers of subscribers are very small on a national scale.

We have been very concerned about the debate in recent months about the potential for copyright infringement by customers of internet service providers (ISPs) and the role of those ISPs in the process of enforcing copyright holders' rights. This is a debate that has played out nationally and through parliament in the development of the Digital Economy Act (DEA) itself and, we understand, is still subject to significant dissent on the proposed way forward. For our part, we do not agree with the principle that retail service providers in one industry should bear material administration and costs associated with protecting the rights of participants in a different, albeit related, industry.

We also see significant issues with the final proposed sanction of removing broadband access for persistent offenders. This specific matter interacts with Human Rights legislation and is complicated by the developing political stance that a "broadband" communications link is an essential digital utility, to be used for the provision of a range of services supporting the functioning of society – potentially including health monitoring, smart metering and online government. Will it be acceptable for the offence of online copyright infringement to remove a customer/premises from access to these services? In our view, the resolution of this matter lies in separating out the use made by different service providers of the communications link to an end-user premises. In a situation where multiple different contractual customer relationships can co-exist over a single broad bandwidth communications link to an end customer premises – a "multi-channel" model –

the continuing availability of “society” services could be maintained in the event of any need for commercial restriction of, say, entertainment-based services. We have argued for the multi-channel approach to the development of next generation access capability in other contexts – for example, the promotion of a thriving market for the provision of services over next generation access links – and believe that this way of looking at the provision of services over a broad bandwidth link may help to clarify government and regulatory objectives in the debate on online copyright infringement.

Rather than comment specifically on all the detailed questions in the above consultation, we would like to make two further points.

Firstly, we support the intention that the regulatory measures envisaged are proportionate for ISPs. The likely administrative overhead and ongoing cost of the proposed measures appear likely to be significant even for national players with hundreds of thousands of customers. We therefore welcome Ofcom’s approach, following the intention of the enabling legislation in the DEA, to set out a threshold number of subscribers below which the proposed code would not apply and are content with the threshold of 400,000 customers proposed.

Our second observation relates to the administrative requirements on both Ofcom and the major players in the ISP market in order to carry out the legislative provisions relating to copyright infringement and the proposed Code. It is evident that significant coordination will be required between Ofcom and those to whom the Code applies on matters such as:

- The content of letters and information to customers;
- The making and validation of copyright infringement reports;
- The escalation process in relation to individual customers;
- The maintenance of copyright infringement lists;
- The establishment and management of a customer appeals process;
- General administration of the Code;
- Dispute resolution between parties subject to the Code;
- Enforcement of Code obligations; and
- The administration of funding matters.

On other communication market matters – such as the management of customer switching processes – we have advocated the development of a market body, funded by and responsible to the relevant companies providing services in the market, whose purpose is to provide transparent governance of the relevant market processes. An important part of the ongoing governance would be to allow for changes to be made to the switching processes to cater for new developments in products and/or technology. We have envisaged this being set up on a co-regulatory basis, such that Ofcom has an input to the high-level direction of development of the market switching processes and the ability to enforce their provisions as necessary.

It occurs to us that if such a body had already been in existence, it would be a useful starting point for the development of the required coordination on copyright infringement Code matters listed above. Many of the matters above (such as dispute resolution, funding and general administration) would already have been addressed on a market-wide basis, forming a template for these new measures. Conversely, if these measures are to be



developed for administering the proposed new Code, we would hope that Ofcom would bear in mind the potential extension of the administrative model to other areas where market coordination would enhance the experience of end customers – such as the switching processes we have mentioned.

I hope these comments are helpful.

Yours sincerely

Aileen Boyd  
Regulation Manager.