

## **Response to Ofcom consultation on Online infringement of copyright and the Digital Economy Act: draft initial obligations code**

Representing: Hampshire Library and Information Service

### **Introduction**

Hampshire Library and Information Service, part of Hampshire County Council, provides free access to the internet for customers in its 54 libraries and Discovery Centres. This is part of its policy to:

- help counteract the disadvantages faced by people who do not have access to the online world
- ensure access to online content for library customers
- support learning in libraries

Internet access is provided in a number of ways:

- 570 fixed computers for individual use (the People's Network system)
- wifi in 8 libraries, allowing customers to use their own equipment
- IT training suites in 7 libraries, either permanently set up or learning areas with allocated laptops

Usage of the internet through Hampshire libraries, therefore, ranges from formal learning by people registered on a tutored course, through to one-off use of the wifi system by individuals who are temporarily working in the area. For this reason, the amount of information collected about each user and what they are doing and the restrictions on usage vary considerably depending on the system and the situation in which it is being used.

The set-up and management of these systems also varies, although the network infrastructure and internet feed for all of them are provided by Hampshire County Council.

The internet provision is heavily used by customers. Over the three years to March 2010 the People's Network alone was used for an average of 900,000 sessions per year, equating to more than half a million hours of use per year. Recent analysis shows that the proportion of People's Network users in social groups with the lowest income greatly exceeds the proportion of these groups in the county's population.

In 2009/10 over 700 ICT-based learning events took place, resulting in over 3,300 hours of learning. Much of this learning is targeted at people with minimal computer skills, or who need to improve their employment-related skills.

Due to the ambiguity over the definitions of 'communications provider' 'internet service provider' and 'subscriber', Hampshire libraries might be defined as each of these in relation to different users of their systems. This would mean having to make changes to the systems to allow for each eventuality. If it is decided that the legal agreement for internet provision is actually between an individual using one of the library computers and Hampshire County Council, as the ISP, then none of the categories may be appropriate for the Library Service.

Against all these points is the fact that, to the best of my knowledge, Hampshire Library Service has not been the recipient of any infringement reports from copyright holders in the last three years.

## Specific questions

**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?*

**3.1** Agree.

**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?*

**3.2** Two months is acceptable for existing ISPs but would need to be longer for the first time that an ISP was included under the code.

**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?*

**3.3** For Hampshire Library Service, as for other libraries, museums, educational institutions etc, the key issue is how public intermediaries of this type will be defined. The application of the Code to ISPs seems reasonable in relation to commercial telecommunications bodies but is much less appropriate for other organisations.

Although the draft code suggests that no public intermediary will come into scope as an ISP initially, it is obviously possible for this to change in future. In particular, as people infringing copyright try to find ways around ISP blocks, there is an increased risk that organisations providing public internet will come into scope. However, there are significant obligations and costs attached to this which are disproportionate for organisations such as libraries.

For example, at present Hampshire uses dynamic IP addresses for both public and corporate internet, thus making it difficult to identify an individual user (who would be categorised as a subscriber) from an IP address. The People's Network is the only system which automatically records who has been using a particular computer at a particular time but the internet logs are separate and relate to the computer rather than the user. Technical changes to the systems would therefore be needed, along with changes in recording usage. Policy changes may also be needed, for example, possibly requiring anyone who wanted to use the internet to join the library and provide proof of identity, which would go against the current policy of reducing barriers to use. The cost of these changes would certainly run into tens of thousands of pounds. In the current economic climate this could mean reconsidering whether the library service could continue to provide public access to the internet, despite its importance to customers.

**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?*

**3.4** It is logical to start with the biggest ISPs but libraries and other public intermediaries provide internet access in a very different way from a commercial telecommunications company and this has to be acknowledged in the Code. As a large county Hampshire Library Service is likely to be providing internet access to more individuals than some of the smaller commercial ISPs. Given the role of public libraries in supporting learning and promoting digital inclusion we would prefer to see public intermediaries specifically differentiated from standard ISPs.

**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?*

**3.5** The suggestion that public intermediaries such as libraries will have to record personal and internet usage details from all users, in case this is required in future, is onerous on those organisations and users. As already mentioned this could lead some libraries to stop offering Internet access, which would appear to be contrary to the Government policy of encouraging people to use online services and to develop their digital literacy

**Question 3.6:** *Do you agree with Ofcom's approach to the application of the Act to subscribers and communications providers?*

**3.6** No. It appears likely that public libraries will be viewed as 'subscribers' and thus be subject to Copyright Infringement Reports relating to infringements that have taken place on library premises, along with the appeals process. As noted above, libraries have policies to provide access to information and to support learning, as well as promoting digital inclusion. However, we mainly provide the facilities for people to use and do not routinely monitor the sites and services that customers are accessing. Monitoring would be costly in terms of technology and staff time and would move into grey areas regarding data protection when there is no indication of an individual having committed an offense. By categorising libraries and other public intermediaries as 'subscribers', therefore, those organisations are at risk of being penalised for activities of their users, activities of which they have no knowledge or for which they have no practical responsibility.

It therefore appears wholly inappropriate to class libraries as 'subscribers', when this category appears to have been drawn up with the intention of relating to a single household and a static IP address. Hampshire is not unusual among libraries in using dynamic IP addresses, attributed to a whole building which could have up to 40 public computers and three wireless points, allowing for over 100 simultaneous public internet users. This means that at best it is a complex manual process to identify the specific user who has infringed copyright and in some cases it could be impossible.

Any legal or technical measures taken against the library service as a 'subscriber' would cut across the aim of supporting digital inclusion by disrupting access for a large number of users who had not been infringing copyright.

Hampshire Library Service already has measures in place to reduce the likelihood of public IT customers infringing copyright:

- acceptable use policies which have to be 'clicked through' in order to log into the People's Network or onto the wifi. This includes a specific requirement to abide by legislation "including copyright legislation".
- Referring to copyright in all guidance on downloading from the internet
- Links to sites for legal downloading of music etc
- Blocking of resource-sharing sites

As mentioned in the introduction, Hampshire Library Service has not received notification of any copyright infringements in the last 3 years.

Given the public service role of libraries, combined with the fact we act as neutral conduits for internet access, not knowingly facilitating infringement, we believe they should be viewed either as a communications provider, and therefore exempt, or as a non-qualifying category ISP.

**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?*

**4.1** We suggest that a reference is added to the CIR to ensure that the copyright owner considers whether the copying might be covered by one of the exceptions in law. The Society of Chief Librarians suggests the wording "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."

In addition we would like the owner to be required to provide supporting evidence that it is the owner of the copyright in the material in question and to provide an indemnity to the ISP and subscribers affected, that it will refund all costs should it turn out that it does not, in fact, own the copyright in question.

**Question 4.2:** *Do you agree with our proposal to use a quality assurance approach to address the accuracy and robustness of evidence gathering?*

**4.2** Agree with the quality assurances procedures proposed.

**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?*

**4.3** Agree 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.*

**5.1** There needs to be a further reason for not processing a CIR: that the network upon which an infringement is alleged to have taken place is the network of an excluded category.

**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.

**5.2** Agree with the proposed approach on subscriber identification.

**Question 5.3:** Do you agree with our proposals for the notification process?

**5.3.** The notification process is acceptable for commercial ISPs contacting individually identifiable subscribers but it must be remembered that public intermediaries such as libraries may be targeted if they have several customers who have been infringing copyright across their networks. As noted in 3.6, above, this risks libraries being put onto a copyright infringement list for activities about which they had no knowledge.

**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?

**5.4** No additional requirements appear necessary .

**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?

**6.1** The threshold and frequency seem acceptable but ISPs should 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?

**7.1** The appeals process appears acceptable but it there should be some reference to ensuring that all involved give subscribers full 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?

**8.1** 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 learning and access to knowledge in the digital world.

## **Conclusions**

We are very concerned about the implications for public libraries of the DEA and the Code as currently drafted. These centre around the impact on libraries and their users:

- Tens of thousands of people each year use the public internet provided by Hampshire Library Service in many different ways. The complexity of this provision by must be taken into account when considering copyright infringement. If public intermediaries are treated in the same

way as commercial ISPs or individual subscriber households the services offered by libraries could be jeopardised.

- There is a risk of imposing significant and disproportionate financial and administrative burdens on public libraries, relating to compliance, reporting and appeals. This would also have an impact on the public IT that we can provide.
- If access to the internet in public libraries is reduced due to the requirements of the DEA and the Code it will most seriously affect those people who are already digitally excluded i.e. those being targeted by Government policies to get everyone in Britain online by 2012.
- Hampshire Library Service already takes steps to minimise the likelihood of copyright infringement by users of their computers and to record, where practical, who is using the computers.

With the Society of Chief Librarians we urge Ofcom to carefully evaluate the costs and benefits of applying the Code as it stands to public intermediaries, such as libraries, local authorities and museums without careful consideration of the potential costs, loss of connectivity, and other serious ramifications.