



English Association of Self Catering Operators

PO Box 567, Hayes, UB3 9EW
Tel: 020 7078 7329

Campbell Cowie
Development Director
Ofcom
Riverside House
2a Southwark Bridge Road
London
SE1 9HA

ce@englishselfcatering.co.uk
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Dear Mr. Cowie

Online Infringement of Copyright and the Digital Economy Act 2010 Consultation

This letter is a formal response to the consultation.

EASCO is the trade association in England representing the self-catering holiday industry. Our members are small businesses who are engaged in the provision of holiday accommodation directly or agencies whose role is the marketing and sometimes management of properties.

Many self catering operators provide Wi-Fi Internet access for the use of their clients. Clients expect a full range of domestic facilities to be available in a holiday home and that now includes the provision of Internet access, usually with wireless technology. No special equipment is used; the same types of ADSL or cable modem combined with a wireless access point as widely used by consumers, is employed.

Self Catering businesses are mostly managed by people who have limited technical skill and experience. They do not have advanced skills that equip them to set up and manage complex technological solutions to access control problems.

www.englishselfcatering.co.uk

Section 1.6 / 3.14

EASCO strongly supports the proposal that fixed ISPs with more than 400,000 subscribers should initially be subject to the Code. We believe that it would be an unfair, unrealistic and excessively burdensome requirement for small ISPs with only a few dozen temporary subscribers over the course of a year to be subject to the full provisions.

Section 2.6

EASCO objects to the proposal that ISPs should have in place effective technical systems to match IP address allocation to subscribers. This is a perfectly valid proposal when applied to the “classic” ISP operating servers providing services to subscribers each of whom is allocated a fixed or dynamic IP address. This is not practical when the ISP is in effect a reseller such as a small Internet café, public house, or self catering operator. It is absolutely beyond the technical ability of such small providers to record all access and match allocated IP addresses to individuals.

We would not object to a requirement for small reseller ISPs to keep records of the clients who have occupied their accommodation so that it would be known which party was in occupation on any given date. This would be more difficult for cafes and public houses. Most domestic routers do not provide for the recording of IP allocations on a local network and there is no mechanism available to reseller ISPs to log on individuals and record their use of the Internet. This expectation is way beyond the “reasonably practical”.

We suggest that the code should recognise “reseller ISP” as a specific status where the ISP is a small business offering Wi-Fi access to its clients and where the business has no effective individual control over the allocation of IP addresses or ability to register and record individual users. The code should recognise that it is not reasonably practicable for these small reseller ISPs to meet the same requirements as a classic ISP offering services such as ADSL Internet connections.

Section 3.23

Most self caterers fall within the definition of an ISP because the service is one of a bundle of services (others being for example electricity, linen, provision of a washing machine etc) that are provided under contract to the

client. They are not open access operators – use of the Wi-Fi is for clients only. Businesses such as our members really fall in between the ISP and the subscriber. They are neither. Again we need a definition of “reseller ISP” with obligations that are reasonable, practical, and possible in the circumstances of a café owner, public house landlord, or holiday accommodation provider.

Section 3.27

The circumstances to which allusion is made are those of small Reseller ISP businesses offering Wi-Fi to clients. It is not true however to say that the function of IP allocation is performed by the upstream provider; it is not. The upstream provider allocates a single IP address to the reseller and the reseller’s router allocates local IP addresses to end users without recording or retaining that information.

The final sentence of 3.27 is altogether too vague. We have been unable to identify any such processing services available from major ISPs and it would appear that this section is an aspiration rather than something that can be implemented. It would be invidious and unfair to give small ISPs an obligation when they have no practical way of carrying it out.

Section 3.30 and 3.31

Here again the draft needs to be clarified and the position of reseller ISPs properly thought through. Simply acknowledging the challenge faced by those who provide free community access does nothing to provide such operators with the certainty that need about their legal position. Section 3.30 appears to contradict other sections of the code in which it is made clear that resellers are considered ISPs, by stating that they are subscribers.

The failure of the code to properly deal with the obligations of small reseller ISPs who are from a technical point of view subscribers to a larger classic ISP, but who provide Wi-fi to their clients in turn, as part of a bundle of services, or free to the community, is a major failing.

EASCO proposes that “Reseller ISP” be recognised as a specific status and a clear set of practical obligations should be drawn up for these businesses rather than leaving them as now partly considered subscribers and partly ISPs.

Section 4.4

We believe that a subscriber or Reseller ISP subject to a CIR should be entitled to see the evidence on which the allegation is based. Whilst we have no objection to the quality control mechanism, it is insufficient. A person accused of a copyright infringement is potentially under threat of having to defend litigation in court, for which the cost, disruption to life and livelihood, and inconvenience could be enormous. Such persons must have an entitlement to see and scrutinise all the evidence that supports the allegation.

Section 5.3

We strongly support this section of the code. Our members will frequently be in a position of inability to identify reliably the individual who was responsible for the alleged copyright violation. This will generally be because the perpetrator of the misdeed was one of a party and the ISP cannot identify which of the several guests in the accommodation perpetrated the copyright infringement.

Section 5.6

The application of this section to small businesses, were it to be proposed, would be wholly impractical.

Yours sincerely

A handwritten signature in black ink, appearing to be 'MS', written in a cursive style.

Martin Sach
Chief Executive