



Coadec's response to Ofcom's

Online Infringement of Copyright and the Digital Economy Act 2010 consultation

1. Introduction

1.1 The Coalition for a Digital Economy (Coadec) is an independent, non-profit organisation that works to give UK digital startups and entrepreneurs their own voice in policy discussions and support legislation and other government policies that foster a vibrant, innovative and sustainable digital economy for Britain. We are made up of a wide range of members of the UK innovation community, including entrepreneurs, leaders of tech-driven startups and SMEs, inventors and developers, and many others who believe that the future of Britain lies in the success of its digital economy.

1.2 Although section 403 of the Communications Act 2003 Ofcom must give at least one month for representations to be made, we are disappointed that the bare minimum option has been taken considering the developments in Government's wider policy aims since the bill was passed, the growing number of legitimate digital services and increased Wi-Fi provisions.

2. The Wider Context

2.1 While it is not the consideration of the consultation on the Initial Obligation Code (IOC) we want to formally reiterate our concern about the Digital Economy Act. There remain many unanswered questions over the role of narrow special interests in drafting the Digital Economy Act and rushing it through the last Parliament in the wash-up, as well as the lack of transparency and evidence behind the proposed measures and the collateral damage it could cause to artists, public services, businesses and consumers. Targeting ordinary users of the Internet through an arbitrary "three strikes" law through the imprecise technology of IP addresses rather than the small number of sites promoting infringement is an ill-thought out approach that will do little to protect artistic creativity and innovation, but will disproportionately affect innocent members of the public and legitimate businesses operating online.

2.2 We have been heartened by the Government's announcement that they are seeking to repeal the web-blocking provisions of sections 17 and 18 of the act. These were particularly egregious measures that threatened to violate the principles of due process and evidentiary standards on which the British legal system is based, and we applaud the Government for eliminating them from the statute books once and for all.

2.3 We were also encouraged by the Government's commissioning of the Hargreaves Review and their accepting all of the review's recommendations, which goes some way to attempt to redress the balance of copyright law so that it allows for innovation to occur. The Government has committed to implementing the recommendations and we look forward to contributing to seeing these recommendations in place as soon as possible.

2.4 The IOC as it currently stands looks set to bring to life some of the concerns we had around the Digital Economy Act. Particularly in the provision of Wi-Fi by small businesses, and its subsequent affect upon entrepreneurs who rely upon Wi-Fi. This response outlines these affects that are not accounted for in the IOC.

info@coadec.com | www.coadec.com | +44(0)2071936176

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3. Internet Provision

3.1 One of our fundamental concerns regarding the Digital Economy Act since it was first discussed in 2009 was the impact upon shared internet and free Wi-Fi providers.

3.2 We applaud Ofcom for introducing an exception to providers with under 400,000 subscribers. This is important for maintaining competition in the market, particularly when considered in conjunction with the Government's aims regarding open internet and improving provision and speeds.

3.3 There appears to be some conflicting statements within the consultation document as to what is considered a internet service provider and what is considered a subscriber. Section A5.40 of Ofcom's consultation document indicates that a hotel or cafe providing Wi-Fi will be an ISP, however section A5.53 indicates that those receiving internet access and making it available to third parties should be considered a subscriber. As we understand the code, the responsibility falls upon ISPs to ensure the correct clarification however the conflicting interpretations offered by Ofcom only serve to exacerbate the affects of these measures.

3.4 We are particularly disappointed that the draft Initial Obligations Code fails to address the fundamental problem of SME businesses making their internet connection available to others, most commonly through Wi-Fi in small business locations. Using Wi-Fi at work, at university, during conferences, in hotels, cafes and libraries is a vital part of any entrepreneur's career path to building a successful digital business. The fact that Ofcom proposes only to exempt the largest pay-as-you-go Wi-Fi providers (like Virgin Media on the Tube), rather than the places Wi-Fi is used most by small businesses, is deeply unfortunate. Access to free Wi-Fi is particularly important to entrepreneurs at the very early stages of their development before they have grown enough to require office space.

4. Impact on SME internet providers

4.1 We have been made aware that the accepted model that has already been discussed with ISPs will be to treat all customers as subscribers, should infringements occur on any connection they will issue a CIR, and it is up to the SME to repeal the letter, contact the ISP, submit a letter on 'headed notepaper', and then become correctly identified. This process will not only cause distress to a business owner, who may decide to cease providing internet access whether that is fixed or through Wi-Fi, but will also incur a significant cost and effort for the business to determine their clarification.

4.2 While it may be possible to repeal infringement notices once they have been sent, without having legal clarity of protection or an exemption, businesses will be reluctant to provide free Wi-Fi, and from our discussions with businesses during this consultation period, receiving a letter will undoubtedly scare many businesses who provide an internet connection on a complementary basis to customers into cutting off their connection. They provide this extra to customers actively managing networks would involve significant investment in technical training, a large amount of staff members time, and ultimately invading customers privacy.

4.4 Given the short time period for the consultation we were unable to undertake a quantitative analysis of the response to the draft code, however we felt it important for the consultation to take into account the response of ordinary businesses and entrepreneurs. On the following page are examples of the reactions from small businesses who provide free Wi-Fi. Their sentiments are echoed by many we communicated with who were unable to formally respond to the consultation due to being busy with their businesses.

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4.5

Providing free Wi-Fi is one of the core components of our member spaces and cafes. Its a basic hygiene factor of business in todays world. It needs to be accessible, fast and it needs to work. We engage weekly with hundreds of businesses who require a reliable Wi-Fi connection to operate - which we are pleased to provide. We support businesses and help them grow and Wi-Fi is the conduit to making this happen. James Bellini the futurist described internet access as the next industrial revolution, you can't limit the resource that people rely on for business.

If we were to become legally responsible for any copyright infringement that may occur over our network, even guests or members of the public, this would create a massive technical, and administrative burden upon our business and staff. It would also put us at a disadvantage to the larger chains who are able to purchase Wi-Fi from hotspot providers and thereby being anti competitive. Small business and SME development is the future for economic growth within this country. Thats what this Government has stated and we agree with it wholeheartedly.

We were unaware that this Digital Economy Act would impede growth and operations of businesses such as ours, and as such we believe the majority of other businesses similar to ours would also be unaware. They, and us, would be shocked if they received a letter about infringement on their connection and quite correctly would be confused as to what actions they can take as a business to stop it occurring again. Hub and collaborative working is the future of growth within the UK it relies on Wi-Fi to make it happen. Don't create barriers to limit business."

Steve Pette, Founder and Managing Director of Central Working

4.6

I was completely unaware of the code and its possible impact upon my business. It will be impossible for me to check everyone and I'm concerned this will not only mean invading my customers privacy but will also mean I will have to employ extra staff. Most importantly I think this will be bad for my custom as our Wi-Fi connection is necessary to retain business.

Manager of Salvation Jane (55 City Road, London)

info@coadec.com | www.coadec.com | +44(0)2071936176

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5. Impact upon digital businesses

5.1 Digital startups and entrepreneurs have their plates full trying to create exciting new innovative businesses. They are concerned with raising investment, finding team members, and developing their ideas into growing businesses. The increase in Wi-Fi providers has proved a life line in the early stages of a business prior to obtaining office space.

5.2 Should the IOC lead to a decreased amount of small businesses offering free Wi-Fi this will have a significant impact upon the growth of early stage startups.

5.3 Again, due to the short consultation period we were unable to provide quantitative analysis, however below are examples of the reactions from digital entrepreneurs who rely on free Wi-Fi at small businesses. Their sentiments are echoed by many we communicated with who were unable to formally respond to the consultation.

5.4

We use free Wi-Fi spots every day and have done so from the first day we came up with the idea of the business through to our upcoming launch. As a pre-investment startup, we don't have the capital to spend on office space so free Wi-Fi is vital to companies ability to operate and grow. If our local Wi-Fi was shutdown, we would either have to go work out of one of our homes, though as no one lives centrally it would be a huge burden on the team as no one has a home that is properly set up to be a working environment. Or we would have to split up and all work from home separately. This would be very detrimental to our business and put undue strain on the team.

Jody Orsborn, Founder of The Back Scratchers
(www.thebackscratchers.com)

5.5

I am the Managing Director of a small social enterprise. Our team often works remotely using free Wi-Fi connections where most convenient, including cafes and B&Bs. We rely on this type of provision and are worried about the impact that the Initial Obligation Code for ISPs would have on our ability to work remotely without incurring in additional costs.

Alessandra Tosi, Managing Director of Open Book Publishers
(www.openbookpublishers.com)

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6. Other considerations

6.1 Some possibly unforeseen circumstances of making it more difficult for businesses to share their internet with customers

6.2 While we feel the Digital Economy Act as a whole does not serve to encourage innovation, by not exempting Wi-Fi this will particularly reduce the possibility of innovation in internet provision, which is vital to increase business and citizen access to this vital communication tool. There have been discussions into the possibility of making home hubs available as a public Wi-Fi spot, potentially linking up every populated area of the UK with Wi-Fi connections, but any explorations into this technology will now inevitably face questions over obligations under the IOC and potentially stunt any innovations in this area.

7. Conclusion

7.1 As indicated by the Secondary Legislation Scrutiny committee, the wider policy context has changed since the act was passed. In the UK the Internet contributes 8.3% to our economy, which is a larger share than any other EU economy. In 2010 it was worth £121 billion.¹ Making it bigger than the healthcare, construction and many other sectors. **In a time where we are looking to this vital source of growth exacerbating a barrier to entry would seem to counter the Prime Minister's aim to make "the UK the best place in the world to start, run and grow a hi-tech company".**

7.2 In order to take advantage of this clear British strength and develop growth in digital businesses, we would hope to see a revised draft of this code that would include an exemption for all businesses who provide Wi-Fi to their customers. The content of the letters and the process of appeal must also be extremely clear and simple to complete and we will be contributing to discussions in this area.

¹ Boston Consulting Group, 2012

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