

This Act was pushed through Parliament as one of the last efforts of a dying and discredited government. I have written extensively on my blog about the reasons why this Act is irrevocably flawed. Most importantly it ignores the fundamental tenet of English law: the presumption of innocence. In short, this Act is nothing more than the incumbent government seeking to gain popularity with a business interest whose business model is dying by sucking up to it.

I have told Parliament via evidence to the APCOMMS Committee that government is ignorant of many technical issues and needs to have a presiding committee of ICT experts who are completely independent from government whose findings and conclusions carry considerably more weight than opinions of an ignorant (no offence intended here, if an MP does not have recent knowledge and experience of the ICT sector then they are by definition ignorant of the issues) Member of Parliament. I also echo Lord Lawson's often repeated phrase "the business of government is not the government of business". This legislation is the worst thing to hit the statute books in many years. It should be repealed and a replacement given full Parliamentary scrutiny with no political dirty tactics to push it through the Houses.

In presiding over the hearings involving the now discredited ACS:Law and its tactics of speculative invoicing, His Honour Judge Colin Birss has made his views on such tactics and approaches explicitly clear. HH Judge Birss rejected the claims of Andrew Crossley and made it clear that an IP address cannot be seen as explicitly identifying one particular person.

As an IT professional with 14 years experience in the field I can say that the intended Initial Obligations Code (IOC) in its current form is not an acceptable document. I speak of the area dealing with Wifi provision.

Good law is clear in the requirements it sets out for those it affects and those who enforce it. This IOC does neither. Wifi providers still do not know whether they will be held liable for the behaviour of those using their wifi. The revised Code does not address their situation directly, leaving them unclear as to whether they will be considered 'subscribers' (and therefore subject to allegations of copyright infringement) or not.

The only way they can avoid this is by negotiating with their ISPs, convincing them they are wifi providers. It is complicated and time-consuming, and it is not even certain that this will see them avoid the powers of the Act.

I quote Glyn Moody on this:

"One of these is the position of business, educational establishments and libraries offering wifi to individuals. As things stand, it seems that the institutions will be punished for alleged infringements of their users. The former will be forced either to turn off wifi - hardly an option for many - or to institute constant monitoring of all their users. That approach, however, has been ruled unacceptable by the recent European Court of Justice decision regarding SABAM (see <http://www.bbc.com/news/technology-17060112>). Unless such establishments are exempt, the Digital Economy Act will be impossible to implement in any sane or legal manner."

As someone who uses wifi in airports, stations, coffee shops and other places to keep in touch with colleagues I have to ask why should someone who provides wifi be held responsible for someone else's alleged misuse of it? That's like suing Thames Water after I throw a water balloon at someone.

The area of personal wifi use also needs re-examining. Glyn Moody again:

"Secondly, there is the problem of personal wifi use. If you share your wifi as good neighbours often do, does that mean you are automatically held responsible for everything people do with your connection? What about if you use WEP encryption - which is known to be trivial to break (see <http://news.bbc.co.uk/1/hi/7052223.stm>)? Does that mean you must use WPA encryption in order to avoid being found guilty? Is that really a reasonable thing to demand? And what happens when WPA can be broken just as easily, as is bound to happen soon?"

I am one of several people in my house. We all use wifi. What happens if the landlord receives an alleged infringement letter? As an IP address cannot explicitly identify an individual what is the landlord to do? Evict all tenants for a breach of contract which might not have happened anyway? IP addresses are easy to fake and to map onto other connections.

Wifi is an increasingly important part of the UK's internet infrastructure. That this Government should be putting that at risk so cheaply when it was a previous, discredited government that shoved this Act through Parliament in a disgusting abuse of Parliamentary process is sickening.

Take this code away, revise it in conjunction with independent experts and then come back to the public with something that will work. This IOC is a car crash waiting to happen. OFCOM should recognise this and do the right thing.