



KCOM Group PLC

Online Infringement of Copyright and the Digital Economy Act 2010 Draft Initial Obligations Code

26 July 2012

KCOM Group delivers communications services to a range of businesses and consumers throughout the UK under a number of different brands all of which offer broadband connectivity to end-users. Kcom provides communications services for national multi-site enterprise and public sector organisations across the UK. In Hull and East Yorkshire, KC provides a range of communications services to businesses and consumers. Nationally, Eclipse Internet delivers a portfolio of internet based communications services with a focus on the SME market.

KCOM responded to the original consultation on the Draft Initial Obligation Code and is pleased to see a number of the points made in that response have been addressed in the latest draft of the Code. This response therefore focusses on a few key issues which we believe warrant further consideration.

Application of the Code to Internet Service Providers

We welcome Ofcom's decision that it would be disproportionate to apply the Code to KCOM given the costs which would need to be incurred and the relatively small number of subscribers who would be covered. There is currently no evidence of a significant issue with levels of infringement occurring on KCOM's network and subscribers in the Hull area account for a very small percentage of total UK broadband subscribers. We accept that Ofcom would want to consider its position as part of any review of the Code but would expect any review to look at the threshold for application of the Code more generally, not just with reference to KCOM.

KCOM remains concerned about calculation of the number of subscriber lines on a Group basis. KCOM Group delivers services through three ISPs Karoo, Eclipse and Kcom allowing us to focus each part of the business on distinct customer segments and geographies. While on a Group basis we remain significantly below the threshold, if the business were to become subject to the Code we see the potential for costs to be increased by the fact that commercially and operationally these business units are run separately. Most significantly they each have their own Customer Services operations. If KCOM were to be caught by the provisions of the Code on the basis of the combined KCOM Group customer base we would incur significant additional costs in establishing the appropriate processes for all of our businesses and ensuring that Customer Services support for the Code is provided across all three businesses. We do not believe that Ofcom has addressed the issues around application of the Code to a Group of companies adequately during the consultation process.

We also question whether Ofcom's concerns about companies restructuring simply to avoid application of the Code are valid. We do not believe that an ISP of sufficient size to meet the 400,000 broadband subscriber lines threshold would make changes to their corporate structure simply to avoid application of the Code. Changes to corporate structure have other significant and far-reaching implications which will be the main drivers in determining whether a company chooses to make those changes.

Review of Application of the Code

We accept that it is appropriate for Ofcom to review application of the Code once it has been operational for a period of time.

Ofcom notes that it will be able to gather the necessary information to determine whether changes are needed to the qualifying criteria for inclusion in the Code using its information gathering powers under the Communications Act. It also anticipates that gathering this information will involve collating data from copyright owner detection processes and corroborating these with independent sources of research.

We would urge Ofcom to exercise caution in how it uses such information particularly in determining whether further ISPs should be included in the Code. As we noted in our response to the original consultation, we anticipate that infringement notifications will continue to be sent by both participant and non-participant content owners to ISPs not required to comply with the Code. Our experience shows that a significant number of the reports of alleged infringement we currently receive are deficient and care should be taken in relying on this as evidence which justifies extension of the Code.

KCOM believes it would be useful for Ofcom to engage at an early stage with stakeholders regarding how it will carry out any review and also the information it intends to use. We also note that we would expect any review and resulting amendment of the Code to be subject to full consultation with all stakeholders, including ISPs, Copyright Owners and Subscribers.

Subscriber Appeals

KCOM remains concerned about the approach being taken to subscriber appeals, in particular the lack of detail. We recognise that Ofcom intends that once appointed the Appeals Body will produce procedural rules but we are not comfortable with the suggestion that the Appeals Body “may well consider it necessary to consult on these before they are finalised.” We believe it is absolutely essential that the appeals procedure is consulted on and suggest that Ofcom should make it a condition of the appointment of the Appeals Body that appropriate consultation is undertaken.

In addition, we continue to hold the view that appeals could generate significant additional work for ISPs, both in terms of collating and providing information to the Appeals Body and more importantly in providing customers with information and guidance in respect of the appeals process. This second point is important – given that the notification regarding alleged infringements has been sent by their ISP we anticipate that a Subscriber’s first port of call for information pertaining to the appeals process will be their ISP. This will place a further burden on ISP Customer Services functions in managing their obligations under the Code and has a direct impact on a Subscriber’s ability to effectively use the appeals process. It is therefore vital that easily understandable and accessible information for Subscribers is made available by the Appeals Body. ISPs would be able to signpost the availability of this information thereby ensuring that customers have access to adequate information without significantly increasing the burden on their own Customer Services functions.