



## **The Mobile Broadband Group**

[www.mobilebroadbandgroup.com](http://www.mobilebroadbandgroup.com)

### **Online Infringement of copyright and the Digital Economy Act 2010**

#### **Response from the Mobile Broadband Group to Ofcom's proposal to make a code for regulating the initial obligations**

1. The Mobile Broadband Group ("MBG"), whose members are Telefonica O2, Three, Vodafone and Everything Everywhere - which operates under the brands of T-Mobile and Orange in the UK- welcomes the opportunity to respond to Ofcom's proposal to make a code for regulating the initial obligations.
2. The MBG supports Ofcom's decision to exclude mobile Internet service providers from the initial group of Qualifying ISPs. We agree that the costs of participation would not be proportionate, bearing in mind the low levels of infringement occurring over mobile connections and the steps that have been taken to manage the situation.
3. Nevertheless, as the possibility remains that mobile ISPs may be included at some later date, the MBG has a continuing interest and thus has a few comments to make on Ofcom's revised proposals.

#### **Review**

4. The MBG notes (in paragraph 3.42) that Ofcom will *"regularly review the level of copyright infringement among non-qualifying ISPs (both mobile and fixed) and the qualification criteria for inclusion in the Code"*, starting six months after the notification scheme comes into force.
5. The MBG would like it noted that inclusion of mobile ISPs on the qualifying list may need review of other aspects of the Code and the notification process, to ensure that its terms fit squarely with the mobile context (for example, whether it is practical to contact customers by post). There will also have to be adequate notice to allow new ISPs to build the relevant systems, together with similar binding volume commitments from rights owners so as to ensure that any set up costs are recovered in accordance with the cost order.

## **Funding**

6. The MBG strongly supports Ofcom's proposal that participating Copyright Owners will have to make firm estimates of the number of CIRs that they will issue and that this will create a legally binding financial liability to pay Ofcom's and Qualifying ISPS' costs. The MBG makes the further suggestion that the relevant funds are paid into a central escrow account, which can be drawn down by Qualifying ISPs against either the CIRs that are sent to them, or within twelve months of the scheme first coming into operation. This will give ISPs certainty that the set up costs will be recovered in the expected time period.

## **Content of subscriber notifications**

7. The MBG supports the new requirement that customer notifications include the number of CIRs held for a given subscriber.
8. This change is important, so that any subscriber can have the opportunity to know about and, if appropriate, appeal any of the CIRs that are recorded against his or her name.
9. However, we believe that a number of other pieces of information still need to be included, in order to aid identification by the customer and the ISP:
  - a. File format of the alleged copied work
  - b. File size
  - c. Both the source and destination IP address and port number
10. We also believe that all CIRs need to be provided in a uniform format across all copyright owners (and not just within each copyright owner).

## **Further infringement list notification**

11. The MBG remains strongly opposed to the concept of 'further infringement list notifications'. The notion of sending three letters or emails to an infringing subscriber was the basis of the proposals on file sharing throughout the passage of the Digital Economy Act and surrounding discussion. It was on this premise that Parliament debated the provisions on file sharing to ensure a fair and balanced approach would be adopted.
12. Once the third Notification Letter has been sent, that should be the end of the ISPs' obligations.
13. And once the subscriber is on the Copyright Infringer List (CIL), it is then the responsibility of the Copyright Owner to proceed with legal enforcement, if that's what they choose to do. There should be an expectation that some legal enforcement does take place. That's why the CILs are being prepared.

14. Furthermore, the MBG does not see how the 12 month time limit for storing data can be reconciled with an obligation to continue to send updates if the ISP has to delete the information relating to the first, second and third Notification Letters.
15. The MBG will be happy to discuss further with Ofcom any of the points raised in this response.