

Ultimately my concern here is around respect of due legal process and (more importantly) human rights. Points in brief:

- The £20 fee for appealing a CIR disrupts the individual right to a fair defence by imposing a barrier to contesting what is ultimately an accusation. It is important to highlight that to date no techniques have been created which identify infringers without a significant margin of error. Therefore this approach seems to presume guilt where considerable uncertainty exists and then charges the accused for the right to appeal. The legality of this approach is questionable, and indeed bears a disturbing similarity with extortion. See the court case involving ACS: Law for an example of a similar approach.

- The rights of the accused seem severely restricted in this process. While a respective copyright holder can provide possible evidence of infringement to prompt warnings and (eventually) penalties someone who is accused appears to bear very little right to information on how a decision has been reached. By government order the process gives no confirmation that evidence of infringement was collected fairly and in line with the Data Protection Act. No process exists to allow the accused to obtain and review the evidence used against them, potentially jeopardizing their ability to appeal. And the accusation itself may only be contested on restricted grounds. This gives disproportional benefit to copyright holders over the wider public, which in turn would appear to infringe human rights. You are accused/found guilty, given no access to the evidence of guilt and may only contest on restricted grounds (at cost). Again, the legality of such a process is in question.

- The issuance of CIR's via first class post means there is no evidence of delivery of these notifications. As a result penalties may be applied to individuals who have received no record of any infringement and have had no right to appeal. If a court were to challenge an ISP/copyright holder on this point they would be unable to prove the correct process had been followed, rendering any penalties levied invalid. Therefore both a human rights violation may exist, by punishing an individual on the basis of an accusation he is unaware of, and a legal flaw exists, as no ISP could prove punishments have been fairly applied.

- There appear to be no protections in place for those sharing their internet connection, such as flatmates using one wireless router. As a result all users of an internet connection can be found guilty of infringement regardless of actual guilt. There is no example in law of multiple individuals being found collectively guilty due to the potential infringement of one party by virtue of them sharing a single lawful service. Without protections against this the innocent can be unfairly punished. Once more this raises questions over legal due process and human rights.

Overall in order for this guidance to work inside the framework of existing law and human rights drastic changes will be needed, greatly improving the rights of the accused. These should include no fee to contest an accusation, full right of the accused to all evidence relating to their case (at cost to the accuser), confirmation as part of any CIR that evidence has been collected legally and in line with the Data Protection Act, the right to appeal on any reasonable grounds, CIR delivery via registered post and greater protections for 3rd parties sharing connections. Without these changes it is unlikely the process will survive for long before being declared illegal.