



# **Online Infringement of Copyright and the Digital Economy Act 2010 – Notice of Ofcom’s proposal to make by order a code for regulating the initial obligations**

26 July 2012

## **About UK Music**

UK Music is the umbrella body representing the collective interests of the UK’s commercial music industry, from songwriters and composers to artists and musicians, studio producers, music managers, music publishers, major and independent record labels, music licensing companies and the live music sector.

UK Music exists to represent the UK’s commercial music sector in order to help drive economic growth and to promote the benefits of music on British society. The members of UK Music are listed as an annex.

## **Digital Economy Act**

1. UK Music supports the Digital Economy Act as a mechanism to facilitate the growth of the legitimate online digital market place. The Judicial Review of the Act made clear it is a proportionate process whereby copyright owners can work alongside Internet Service Providers (ISP) to discourage infringement and encourage consumers to migrate from unlicensed to licensed services.
2. We have never viewed the Act as a magic bullet. UK Music has consistently argued for commercial solutions alongside consumer education campaigns. The music industry has also made great advances since the Act became law towards licensing more digital services. The UK now has the most legal digital music services of any country in the world. This has been of great benefit to both music fans and those who create and invest in music.
3. The legal processes which followed the Act becoming law have unfortunately delayed the continued implementation of the Digital Economy Act over the past two

UK Music  
British Music House

26 Berners Street  
London, W1 3LR

T. 020 7306 4446  
F. 020 7306 4449  
E. [contact@ukmusic.org](mailto:contact@ukmusic.org)

[www.ukmusic.org](http://www.ukmusic.org)

years. It is regrettable that the benefits of this piece of legislation are still some way off from becoming a reality.

4. Now the legal challenge to the Act has come to an end, UK Music welcomes Ofcom's publication of the Initial Obligation Code and the laying before Parliament of the Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2012 on 26<sup>th</sup> June as a positive development.

### **The Initial Obligations Code**

5. UK Music participated in the consultation on Ofcom's previous draft Initial Obligations Code ("the May 2010 consultation"). In this response we supported the overall thrust of the draft Code whilst wanting to ensure that it does not produce disincentives for small copyright holders to participate in the enforcement process.
6. The revised Code, which is the subject of this response, has made some significant steps in resolving a few of the concerns that we highlighted during the May 2010 consultation.
7. Significantly, we warmly welcome the change in the Code to enable copyright owners to request an infringement list every month. UK Music believes that this will be an effective measure to achieve the objectives of the Act, particularly in the first year of implementation.
8. Measures to make it harder for ISPs to avoid the Code being applied to them by changing their corporate structure are also a step in the right direction.
9. The new code stipulates that advance payment of fees is no longer a qualifying condition in order to send a Copyright Infringement Report (CIR) to an ISP. This improves on the original draft of the Code in that it will enable smaller copyright holders not to see the process as an obstacle. If it were possible to predict the volume of CIRs smaller copyright holders might need to send in a 12 month period, cash flow would dictate that paying for these CIRs in advance would be unfeasible. This is far more pronounced for smaller rights owners, reliant on revenues generated from a specific artist or release, and who need these revenues to invest in the careers of other creators.
10. Whilst no advance payment of fees is welcome, the potential benefit to small rights holders is however offset by ISP's not being required to send a notification until the fees have been paid in full. UK Music asks specifically that Ofcom continues to review the capacity of small copyright holders to access the notification process fully and that any extension of scope for the Code must take into account measures to make it easier for small copyright owners to participate. Such a review must take place as part of the general review of the scope of the Code which we believe should be completed within a six month period.
11. Despite the new Code tightening up the requirement for what a qualifying ISP can be, UK Music urges Ofcom to continually monitor ISPs that fall outside the scope of the Code for levels of online infringement via Ofcom's standard reviewing mechanisms. Any revision to the Code once the Code is operational ought to take into consideration online infringement on non-qualifying networks and make provision for the threshold to be amended should there be an increase. This should also be part of the general review of the scope of the Code. Ofcom must consult on any proposed changes alongside the first progress report to the Secretary of State.

12. UK Music recognises the Digital Economy Act does not allow Ofcom a general power to direct ISPs on the content of the notification letters to consumers. That said, we believe that the letter is the single most important element in the whole process so it is essential that ISPs consult closely with other stakeholders to strike the right balance on the tone and content.
13. UK Music is keen to work with consumer groups and ISP's on the wording of letters. We remain convinced the tone of the first notification should be educational in order to support our overriding objective to switch users behaviour from unlicensed music services to legal licensed alternatives. The letters should not be an opportunity for ISPs to include general marketing information with the notification letter. We believe that most people want to act lawfully and we need to help them to do so, pointing them to legitimate services and educating them as to how they can secure their internet connection with parental controls, and preventing anyone else from using it without their permission.
14. UK Music would prefer to see a cost efficient and modern mode of communication for notifications letters to be sent to subscribers and welcomes that the third notification will now be sent via first class mail as opposed to recorded delivery. UK Music urges Ofcom to work with ISPs to improve systems for matching active email addresses to subscribers with a view to making the earlier notification process even more cost efficient in the future.
15. Overall, UK Music supports the revised draft Code and wishes to see its endorsement under the Technical Standards Directive and subsequent Parliamentary approval at the earliest possible opportunity.

#### **Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2012**

16. UK Music supports the appeals process as set out in the Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2012, as a way of preventing vexatious claims. The subscriber fee is a crucial element in dissuading vexatious appeals whilst not penalising the innocent.
17. Whilst supporting this Order receiving approval in Parliament, UK Music feels it may place a disproportionate cost on small rights holders. Ofcom costs are a very high proportion of both set up and ongoing costs. This produces a disproportionate burden on rights holders.
18. UK Music will further outline their response to the Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2012 on the separate consultation on this Order.

#### **Annex**

UK Music's membership comprises of:

- AIM – Association of Independent Music - representing over 850 small and medium sized independent music companies
- BASCA - British Academy of Songwriters, Composers and Authors – with over 2,000 members, BASCA is the professional association for music writers and exists to support and protect the artistic, professional, commercial and copyright interests of songwriters,

lyricists and composers of all genres of music and to celebrate and encourage excellence in British music writing

- The BPI representing over 440 record company members
- MMF - Music Managers Forum - representing 425 managers throughout the music industry
- MPG - Music Producers Guild - representing and promoting the interests of all those involved in the production of recorded music – including producers, engineers, mixers, re-mixers, programmers and mastering engineers
- MPA - Music Publishers Association - with 260 major and independent music publishers in membership, representing close to 4,000 catalogues across all genres of music
- Musicians' Union representing 30,000 musicians
- PPL is the music licensing company which, on behalf of 50,000 performers and 6,500 record companies, licences the use of recorded music in the UK
- PRS for Music is responsible for the collective licensing of rights in the musical works of 85,000 composers, songwriters and publishers and an international repertoire of 10 million songs
- UK Live Music Group, representing the main trade associations and representative bodies of the live music sector