

## **Additional comments:**

We welcome this second opportunity to set out our views about the sharing of costs under the Digital Economy Act. In our original submission to BIS dated 25 May 2010, we thought the 3 key guiding principles should be:

1. those who benefit (ie copyright owners) pay;
2. the cost impact on innocent consumers should be minimal;
3. costs should be structured so incentives are in place which encourage constructive behaviour and an effective system.

Principle 1 has been largely met with a cost sharing split on a 75/25 basis, even though we would have preferred 80/20. We remain concerned that the ISPs' 25% share of costs will still lead to higher bills for consumers regardless of whether or not those consumers have been unlawfully sharing files online.

We hope Principle 2 will be met. As noted above, we think Ofcom must keep a careful eye on the financial impact of the notification system on innocent consumers. We have a separate concern about the proposed refundable £20 fee to appeal - we can not support an upfront fee to appeal.

The first part of Principle 3 does not seem to have been uppermost in Ofcom's mind when designing the costs sharing order which has been driven more by the impact on small and large ISPs and how many CIRs copyright owners may send to ISPs. As we understand it, the result is that total cost to copyright owners rises by just £776,000 to £15.195 million if the largest ISPs send 175,000 CIRs per month rather than 70,000 CIRs per month. We hope this funding regime does not militate against constructive behaviour by copyright owners.

Clearly, the work undertaken by Ofcom and by BWCS is designed to achieve an effective system. We can not judge whether it will be but we can state with certainty that the proposed system is extremely complex.

Overall, our main concern is, and always has been, if the decision is made to go ahead with a notification scheme, the consumer interest is as much at the heart of it as the interests of ISPs and copyright owners.

Given that this consultation is of most relevance to ISPs and copyright owners, we do not have detailed comments to make on the substance of this consultation. We do however have a few general points to make from a consumer perspective on some of the consultation questions.

### **Question 3.1: Do you have any comments on the principles set out above, do you consider there are other economic principles to which we should have regard in setting fees:**

We agree with the principles set out but we are concerned at the complexity of the system proposed by Ofcom and that it may encourage copyright owners to submit more CIRs. For example, the total cost to copyright owners rises by just £776,000 to £15.195 million if the largest ISPs send 175,000 CIRs per month rather than 70,000 CIRs per month.

### **Question 4.1: Do you have any comments on the proposed process for establishing CIR estimates and costs, do you have evidence which would suggest that a different process should be adopted?:**

N/A

**Question 4.2: Do you have any comments on the proposed process or timetable for establishing the appeals body:**

We do not have any particular comments on the timetable which seems reasonable to us. Our concern is that the draft order includes provision for a £20 fee to appeal, refundable if an appeal is won. As we noted in our response dated 25 May 2010, if a fee is charged to appeal, this should be after the adjudication on the case and only levied on those whose defence failed. We therefore suggest the removal of paragraphs 6.1 and 6.2 from the Schedule to the draft Statutory Instrument.

**Question 4.3: Do you agree that Qualifying ISPs should have 9 months from the point at which estimates are finalised to prepare for the operation of the DEA scheme?:**

no opinion

**Question 4.4: In light of the evidence above, do you agree that the first notification period should start on March 1st 2014 and end on March 31 2015, do you have evidence which would suggest that a different date is feasible and preferable?:**

We do not have a strong opinion on the proposed notification period. While we note that Ofcom states the notification period could begin sooner than 1 March 2014, we wonder if it would make greater sense to have the first notification period run for a 12 month period as will all subsequent notification periods, i.e. from 1 April 2014.

**Question 4.5: Do you agree with the proposed industry payment schedules for fees in respect of Initial and Qualifying Costs:**

no opinion

**Question 5.1: Do you have any comments on the activities which we anticipate carrying out under the DEA amendments which will give rise to Qualifying Costs in the first notification period?:**

no opinion

**Question 5.2: Do you agree with our proposed approach to the costs incurred by the appeals body during a notification period?:**

no opinion

**Question 6.1: Do you agree that all initially Qualifying ISPs will face the same model of efficient costs in carrying out the Initial Obligations and hence should be treated as having the same Relevant Costs for the purpose of setting a Notification Fee? If not, please provide your reasons for that view.:**

no opinion

**Question 6.2: Do you agree that we should apply the full automated cost model to all Qualifying ISPs for the full range of monthly activity from 2,500 to 200,000 CIRs per month? Do you have evidence that an alternative approach to costs should be adopted for any levels of CIR activity, and any evidence about what costs should be for those levels?:**

no opinion

**Question 6.3: Do you agree that the Relevant Costs for the first notification period should include 100% of ISP relevant capital expenditure?:**

no opinion

**Question 6.4: Do you agree with our assessment of the fixed costs which will be reasonably and efficiently incurred by a Qualifying ISP in carrying out the Initial Obligations? Do you have evidence to suggest amounts attributed to these costs may be incorrect?:**

no opinion

**Question 6.5: Do you agree the proposal that we set two notification fees, one for O2 and Everything Everywhere and the other for the larger Qualifying ISPs?:**

no opinion

**Question 7.1: Do you agree with the proposals for the ISP cost items to be counted as part of the Relevant Costs, do you have evidence to support alternative approaches?:**

no opinion

**Question 7.2: Do you agree our proposals in relation to the activities which give rise to variable Relevant Costs and the proposed values of those relevant cost items? Please provide reasons and evidence to support any different assessment of the variable cost element of Relevant Costs and/or alternative values?:**

no opinion

**Question 7.3: Do you with agree the proposed values for the operational ratios? Can you provide evidence to support alternative values?:**

no opinion

