

Coventry University response to Ofcom consultation on Copyright Infringement and the Digital Economy Act - July 2010

This is Coventry University's response to Ofcom's consultation "Online Infringement of Copyright and the Digital Economy Act 2010: Draft Initial Obligations Code".

Coventry University is a recipient of Internet service from JANET(UK), the operator of the UK's National Research and Education Network JANET, which connects universities, research establishments, colleges and regional schools networks to each other and to the Internet. Currently we have a user base of approximately 20,000 users, comprising both staff and students, who have access through our own networks to the JANET service.

One of the key considerations is how the University might be classified under the terms of the Act.

We understand that JANET(UK) consider themselves to be a communications provider within the meaning of the Communications Act 2003 (and therefore the Digital Economy Act 2010) and their customer organisations to be either communications providers or ISPs.

We agree with this assessment as the only possible other classification of the University is as a "subscriber" which would be totally unsuitable and inappropriate, imposing obligations on us to deploy further compliance measures which in a University context would be unrealistic. For example, under this classification it would be possible for 3 different users each infringing once, to result in the University being regarded as the most serious type of infringer. This would lead us to consider re-configuring our networks to block any application, protocol or site, no matter how useful for education or research that might be, in fear of receiving copyright infringement penalties.

We therefore believe we should be classified as a "Non qualifying ISP" because the provision of Internet access is NOT the principal reason for connection of our students and staff to our networks; this being for day to day teaching, learning and research activities.

As further justification, the measures already adopted by Coventry and other universities, including through the use of the JANET Acceptable Use Policy, have been recognised by rights holders and others as being very effective in

managing and reducing infringement of copyright by users of our network. Such measures include:

- regulations governing ICT use incorporating acceptable use policies
- policies linked to disciplinary action for offenders
- authenticated access preventing unauthorised use
- rapid and effective procedures for dealing with copyright infringement
- blocking inappropriate or unacceptable web sites
- suspension of individuals' access to network services.

One of the objectives of the Act is to introduce measures in proportion to the risks of copyright infringement. In view of those measures already adopted at Coventry and by others in the sector, it is not appropriate to bring Universities within the scope of measures that would apply to fully "qualifying ISPs". This would impose the requirement to follow the legal requirements of the Act, share any cost leading from an infringement and introduce the possibility of a fine of up to £250,000. This potential increase in our costs may lead to us to consider diversion of funds from front line teaching; particularly unwelcome given our mission and the current difficult funding climate.

We very much support and endorse the submissions made to this consultation process by JANET(UK) and UCISA. Our own responses to the specific questions in the consultation are as follows.

Q 3.1 Do you agree that Copyright Owners should only be able to take advantage of the online copyright infringement procedures set out in the DEA and the Code when they have met their obligations under the Secretary of State's Order under Section 124 of the 2003 Act?

Yes, this seems sensible.

Q3.2 Is two months an appropriate lead time for the purposes of planning ISP and Copyright Owner activity in a given notification period? If a notification period is significantly more or less than a year, how should the lead time be varied?

Two months seems reasonable for this except in the case of a move from a non-qualifying ISP to a qualifying ISP, where implementing new processes and network changes may well be involved.

Q 3.3 Do you agree with Ofcom's approach to the application of the Code to ISPs?

Yes and as explained earlier, we believe that Coventry and other universities should be treated as "non-qualifying ISPs".

Q3.4 Do you agree with the proposed qualification criteria for the first notification period under the Code, and [are] the consequences for coverage of the ISP market appropriate?

Yes.

Q3.5 Do you agree with Ofcom's approach to the application of the 2003 Act to ISPs outside the initial definition of Qualifying ISP?

We generally agree but would comment that a range of different approaches, from technical prevention to accountability and education, can be successful in reducing copyright infringement. We therefore consider that it is not sensible to prescribe precisely the measures that an ISP or subscriber must take.

Q3.6 Do you agree with Ofcom's approach to the application of the Act to subscribers and communications providers?

No, we do not consider that this is correct. Paragraph 3.30 states that any organisation that receives connectivity both for its own purposes and to provide to others will be a "subscriber" – that would include Coventry University which we believe is wrong and is not meant by the purpose and spirit of the Act, which is to educate individuals not to breach copyright. This can only be done if the organisation responsible for those individuals receives the CIRs concerning them. Organisations providing network access to others therefore need to be treated, as the wording of the Act states, either as "ISPs" or "communications providers" depending whether or not the principal purpose of the network connection is to access the Internet.

Q4.1 Do you agree with the proposed content of CIRs?

Yes.

Q4.2 Do you agree with our proposal to use a quality assurance approach to address the accuracy and robustness of evidence gathering?

Yes.

Q4.3 Do you agree that it is appropriate for Copyright Owners to be required to send CIRs within 10 working days of evidence being gathered?

Yes.

Q5.1 Do you agree with our proposals for the treatment of invalid CIRs?

Yes.

Q5.2 Do you agree with our proposal to use a quality assurance approach to address the accuracy and robustness of subscriber identification?

Yes.

Q5.3 Do you agree with our proposals for the notification process?

Yes if applied to domestic subscribers. However, this would be highly inappropriate for organisations classified as "subscribers" with a risk of being categorised as a high level infringer because of the actions of three users. We would suggest that different processes are developed for domestic and organisational incidents.

Q5.4 Do you believe we should add any additional requirements into the draft code for the content of the notifications?

No.

Q 6.1 Do you agree with the threshold we are proposing? Do you agree with the frequency with which Copyright Owners may make requests?

Yes.

Q7.1 Do you agree with Ofcom's approach to subscriber appeals in the Code?

Yes.

Q8.1 Do you agree with Ofcom's approach to administration, enforcement, dispute resolution and information gathering in the Code?

Yes.

END