

Representing:

Organisation

Organisation (if applicable):

ITV Network Limited

What do you want Ofcom to keep confidential?:

Keep name confidential

If you want part of your response kept confidential, which parts?:

Ofcom may publish a response summary:

Yes

I confirm that I have read the declaration:

Yes

Ofcom should only publish this response after the consultation has ended:

Yes

Additional comments:

Question 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 where they have met their obligations under the Secretary of State's Order under section 124 of the 2003 Act? Please provide supporting arguments.:

Although we understand the need to prevent all of the financial burden falling on ISPs, the requirement for Copyright Owners (COs) to both accurately predict the number of CIRs (for each ISP) and to pre-pay is likely to put smaller COs off participating. Given that some of these smaller COs may suffer proportionately more from any on-line piracy this would be an unfortunate outcome.

If pre-paying for CIRs remains the chosen route we would like it to be made clearer that a CO is not prevented from requesting further CIRs during the course of the relevant notification period if they exceed their "quota", but will be able to top-up their contribution. This will be particularly important in the early years when it is going to be virtually impossible for COs to accurately predict the level of CIRs, especially when they are required to do so for each ISP.

Question 3.2: 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? Please provide supporting evidence of the benefits of an alternative lead time.:

We are concerned that the more rigid the process is the greater the risk of it not being as effective as it could be.

As an example, assuming a notification period of a calendar year, planning would need to be complete by the end of October of the preceding year. A CO might have a new television programme launching in May, for which he has no idea of its likely popularity (both legitimate and illegitimate). Accordingly little account can be taken of it for the purposes of estimating CIRs. If it becomes an overnight sensation with pirates that CO needs to be able to revisit its CIR estimate, otherwise you run the risk of having a popular programme outside of the system.

Question 3.3: Do you agree with Ofcom's approach to the application of the Code to ISPs? If not, what alternative approach would you propose? Can you provide evidence in support of any alternative you propose?:

We broadly agree with the approach, but as OFCOM itself recognises, constant review, flexibility and speed are needed to allow gaps to be plugged as they may occur.

Question 3.4: Do you agree with the proposed qualification criteria for the first notification period under the Code, and the consequences for coverage of the ISP market, appropriate? If not, what alternative approaches would you propose? Can you provide evidence in support of any alternative you propose?:

As per Question 3.3 above.

Question 3.5: Do you agree with Ofcom's approach to the application of the 2003 Act to ISPs outside the initial definition of Qualifying ISP? If you favour an alternative approach, can you provide detail and supporting evidence for that approach?:

We agree with the approach.

Question 3.6: Do you agree with Ofcom's approach to the application of the Act to subscribers and communications providers? If you favour alternative approaches, can you provide detail and supporting evidence for those approaches?:

We agree with the approach.

Question 4.1: Do you agree with the proposed content of CIRs? If not, what do you think should be included or excluded, providing supporting evidence in each case?:

We do agree, but believe it is important to keep reviewing the requirements.

Question 4.2: Do you agree with our proposal to use a quality assurance approach to address the accuracy and robustness of evidence gathering? If you believe that an alternative approach would be more appropriate please explain, providing supporting evidence.:

We broadly agree, but we are not convinced that it will be practicable for the smaller COs.

We also think the QA should confer some benefit such as a presumption of validity, which for example on appeal would mean the burden was placed on an appellant to prove the information was incorrect.

Question 4.3: Do you agree that it is appropriate for Copyright Owners to be required to send CIRs within 10 working days of evidence being gathered? If not, what time period do you believe to be appropriate and why?:

We think 10 working days might prove tight if you factor in time for internal communication, absences (such as holidays) and communication with an agent. Taking into account the differing size and scope of potential COs we think 20 working days is more realistic.

Question 5.1: Do you agree with our proposals for the treatment of invalid CIRs? If you favour an alternative approach, please provide supporting arguments.:

Again we broadly agree, but to reiterate we would be concerned if COs had no opportunity to top-up their contributions.

Question 5.2: Do you agree with our proposal to use a quality assurance approach to address the accuracy and robustness of subscriber identification? If not, please give reasons. If you believe that an alternative approach would be more appropriate please explain, providing supporting evidence.:

We agree.

Question 5.3: Do you agree with our proposals for the notification process? If not, please give reasons. If you favour an alternative approach, please provide supporting arguments. :

Although we think the time-based approach might be a good one, the length of time between each stage (especially between 2 and 3) is too long and could itself lead to the ‘free-hits’ that OFCOM is keen to avoid in rejecting a volume-based approach.

We think 2 weeks is more than sufficient between Stage 2 and Stage 3.

Question 5.4: Do you believe we should add any additional requirements into the draft code for the content of the notifications? If so, can you provide evidence as to the benefits of adding those proposed additional requirements? Do you have any comments on the draft illustrative notification (cover letters and information sheet) in Annex 6?:

There are none at this stage.

Question 6.1: Do you agree with the threshold we are proposing? Do you agree with the frequency with which Copyright Owners may make requests? If not, please provide reasons. If you favour an alternative approach, please provide supporting evidence for that approach. :

We think the threshold is acceptable at the outset, but if it becomes apparent that it is not sufficient OFCOM needs the ability to change it quickly.

We think once a month is a more appropriate limitation. One element of our thinking here is that we might want to act quickly to prevent piracy of particular television series, but with few series running as long as 3 months we could lose the necessary urgency.

We also believe COs should be able to see all CIRs, not just their own. This has potential benefits for both subscribers and COs in that COs might co-ordinate themselves either in taking joint action or indeed avoiding the same (and accordingly a subscriber may avoid multiple actions). More visibility might also allow us to see the serial pirates who are the ones we might need to consider taking legal action against.

Question 7.1: Do you agree with Ofcom’s approach to subscriber appeals in the Code? If not, please provide reasons. If you would like to propose an alternative approach, please provide supporting evidence on the benefits of that approach.:

We think the catch-all of ‘any other ground’ is far too broad and will only increase the number and likelihood of spurious appeals.

Question 8.1: Do you agree with Ofcom’s approach to administration, enforcement, dispute resolution and information gathering in the Code? If not, please provide reasons. If you favour an alternative approach, please provide supporting evidence on the benefits of that approach.:

We think it is fine, but would reiterate our belief that QA should carry with it a presumption of validity.