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What do you want Ofcom to keep confidential?:

Keep nothing 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:

The National Library of Wales (NLW) is one of Wales's leading cultural institutions, and its principal source of recorded knowledge. It is a body of international standing, and contributes to a worldwide network of knowledge

providers by providing both access to physical printed, archival and audio visual collections and a range of online digital resources.

The Library is a provider and user of Internet services as well as a copyright owner. As a result, this response represents a view from both ends of the spectrum.

Whilst many of the technical provisions (or ‘reasonable steps’) which would be required by the Act are already in place within the Library, a great deal of work would be required to implement and manage the monitoring arrangements for Staff and the Public that are required for ISPs which qualify under the code. We have grave concerns that the initial level of 400,000 subscribers may be reduced over time – thus bringing NLW under the code.

We are also concerned that the code may be applied to types of infringement which cannot easily be blocked using technical measures (such as downloading from the Web) and that this could require the NLW to block access to material which may be of genuine research interest.

In addition, we are concerned that the open Internet services currently provided may be restricted by our own service providers in order for them to comply with the act. This in turn undermines both the Library’s role as a research institution and its role in supporting digital inclusion in Wales.

Finally, we feel that the terms of the Act are overly general in their application and that the burden for organisations such as the Library is disproportionate to the level of infringement that may take place. We feel that the Act is written for domestic ISPs and large copyright holders and, as a result, is poorly tailored to the requirements of public service organisations such as Libraries.

We therefore strongly support the Libraries and Archives Copyright Alliance (LACA), of which NLW is a member, in urging ‘that libraries and archives and similar institutions offering public internet access should be clearly classified in the Code as ‘Communications Providers’ for the purposes of the DEA, and therefore be exempt from the Code, or they should be classified as a non-qualifying category (e.g. ‘non-qualifying ISP’) as provided by DEA s.5(3)(a).’

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.:

NLW agrees with this proposal.

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.:

Whilst two months should be sufficient for an ISP which qualifies under the suggested OFCOM terms (400,000+ subscribers), the NLW strongly feels that this period is not sufficient for an ISP not currently covered by the code to plan this activity. If the scope of ISPs is expanded beyond the level outlined in the consultation document then ‘smaller ISPs’ would require a significantly longer period of time to develop processes and systems to undertake this work.

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?:

The NLW is supportive of the principle of limiting the application of the Code to ISPs which are both more capable of dealing with the burden of regulation and more likely to be the source of copyright infringement. However, we support the JISC recommendation that Copyright Owners are required to provide statistics as to the level of copyright infringement by ISPs and that only those ISPs with the ‘most intense infringement activity’ qualify under the Code.

We are concerned with the lack of clarity within the Code as to the roles of ISP and Subscriber and in particular feel that the Code may limit the potential of the NLW to provide services to all the people of Wales. As the remit of the National Library is to serve the population as a whole it is possible that, in the future, a ‘general registration’ scheme may exist whereby all citizens within Wales are automatically made members of the NLW. This could bring about circumstances whereby the NLW has far in excess of 400,000 ‘potential’ users of our services (including Internet Access) but many fewer ‘active’ users.

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?:

NLW feels that it is reasonable that the proposed criterion for an ISP at this stage is set at 400,000 subscribers as it covers such a large proportion of the ISP market

However, greater clarity is needed regarding the definition of an ‘ISP’ and a ‘Subscriber’. We are very concerned that the initial criteria may be changed over time, which could bring NLW under the code. It is felt that the Act is written for domestic ISPs and large copyright holders and, as a result, is poorly tailored to the requirements of public service organisations such as Libraries.

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 feel strongly that the criteria for ISP, Communications Provider and Subscriber must be clarified before the approach can be fully evaluated. Many Libraries and Research organisations such as the NLW offer Internet Access in a 'controlled environment which dramatically reduces the potential for copyright infringement through peer-to-peer and other mechanisms.

We also feel that the Code will prevent the Library from, in the future, offering a more open WiFi or Internal Access service to the general public and that this is a particular concern for those who are 'Digitally Excluded' due to skills, finance or rural location.

We feel that the Code is overly general and that Libraries, Museums and Archives and for HE and FE institutions should be explicitly excluded from the terms of the act, with separate guidance drawn up to take account of the specific nature of these organisations and their services.

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?:

The NLW feels that the lack of clarity as to the role of an ISP, Subscriber and Communications Provider will likely mean that many organisations (including the NLW) will fall across the three roles. In addition, the NLW's Internet connectivity is provided through a number of partner organisations (including JANET) and we are concerned that a mis-application of the Code to these infrastructure providers could bring about technical measures outside of the Library's control, despite our own internal access controls being adequate to prevent copyright infringement. These could themselves have a negative impact on the NLW's role as a principal research organisation in a digital age.

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?:

NLW agrees that the proposed content of CIRs should be based on the standard of evidence required by the courts in relation to civil proceedings by Copyright Owners for copyright infringement.

However, we also agree with JISC's response that 'the Qualifying Copyright Owner may not have a registered address, so it might be better to state 'registered address, or some other UK address for correspondence'. Similarly, the work allegedly infringed may not have a formal title, though usually of course it will have. Under the bullet point which starts 'a statement that...', the following extra words should be added to the end: 'and that to the best of the owner's knowledge the copying is of a substantial part of the work, and that the copying does not fall under any of the exceptions to copyright as provided for in the Copyright, Designs and Patents Act.' This change is to ensure that the copyright owner considers the question

whether the copying, even if unauthorised, might be covered by one of the exceptions in the law.’

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.:

NLW supports the proposal to use a quality assurance approach to address the accuracy and robustness of evidence gathering and feel that Ofcom should also actively make recommendations as to best practice.

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 support the recommendations of the JANET response: that calendar days (rather than working days) be used to determine the length of time required for keeping accessible log information.

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.:

NLW agrees with the proposals for the treatment of invalid CIRs.

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.:

NLW supports the proposal to use a quality assurance approach to address the accuracy and robustness of subscriber identification and feel that Ofcom should also actively make recommendations as to best practice.

We also feel that Ofcom should provide guidance for situations whereby essential work might be required on systems or processes which are involved in subscriber identification which in themselves prevent the collection or reduce the accuracy of logging, recording or monitoring data.

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. :

We are concerned that the notification process may be overly simple and based on the assumption that subscribers will generally be ‘domestic users’. As an

organisation that provides access to several different groups (both staff and public) the NLW would suggest that if it were to be classified as a subscriber, the notification process would be extremely cumbersome.

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?:

We feel that the notifications should include information both about the specific item (including any relevant descriptive metadata available) judged to have been copied and the copyright owner. We strongly support the JISC response which suggests that the notice should include evidence that the correspondent is the copyright holder and that a genuine infringement has taken place.

We also feel that any and all communications should be made in the language of the respondent's choice and in particular that information should be communicated in both Welsh and English.

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. :

The NLW feels that a 5 day response period is unfeasibly short and that a period of at least a month should be allowed for organisations to respond to such a request.

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.:

The NLW fully supports the recommendations of the JISC response in this area.

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.:

NLW agrees with Ofcom's approach to administration, enforcement, dispute resolution and information gathering in the Code. A set of guidelines with regard to the enforcement and dispute resolution regime (as mentioned in 8.6) would be helpful.