

Title:

Mr

Forename:

John

Surname:

Hicklin

Representing:

Organisation

Organisation (if applicable):

Logica UK Limited

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:

You may publish my response on receipt

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.:

Placing the onus of proof onto the Copyright Owner will ensure that the process is not abused and that cases worth pursuing become the focus of any investigations. However, there is the danger that ISPs who are reluctant to invest time into the notification process could seek to exploit Copyright Owner obligations and block legitimate claims by following a pedantic interpretation of the detail of the code. Ofcom may need to have a complaints procedure for such situations.

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.:

Logica hosts many website services but does not itself operate as an ISP. Our experience as a supplier to other regulators and to many telcos is that this would need to be the minimum period allowed, given the monthly cycle of activities. The internal investigative resources required for the notification activity will need, on a monthly basis, to be primarily focused on billing/operational issues and problems. Therefore, it would be unreasonable to expect them to respond in a manner which would undermine their business efficiency.

In our view, therefore, the lead time should be a minimum of two months but three or even four months should be considered.

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?:

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?:

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?:

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?:

There needs to be pragmatism in application of the code and the approach appears to make sense. The potential result of taking a subscriber view of qualification, however, is acknowledged in section 3.16, namely that the determined

“infringers’ will seek to stay “under the radar’ and move to non regulated ISPs. We are not aware of a viable alternative, other than the caveats that have been noted in the consultation paper. As the code is adopted it would be possible to monitor trends and identify patterns using data analytics leading to the “professional’ infringer being identified and then these could be alerted to all ISPs as advice to deny service. We have experience in this area and could advise further if required. Clearly ignoring that advice could lead them to be included within the code, so there would be an incentive for an ISP to comply.

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?:

The content appears to be comprehensive. Some flexibility around providing an “additional comments’ field to help an ISP identify the subscriber could be useful.

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.:

This is a reasonable approach. It could be strengthened by an appeals process, by which an ISP or Copyright Owner could raise what they see as breaches of the code to Ofcom and these would be investigated as part of the QA process.

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?:

As we are unlikely to be a Copyright Owner as defined by code we cannot comment in detail. However, this appears to be a rapid turnaround given that the ISP will currently have 2 months to begin the notification process. There may need to be some flexibility allowed between the Copyright Owner and the ISP in addressing a potential problem, as the 10 working day rule could impose an unacceptably high administrative burden on the Copyright Owner.

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.:

The reasons for refusal are valid. However, we would question if an ISP could necessarily respond within 10 days for all eventualities. Some of the issues may only arise as the notification process proceeds within the organisation.

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.:

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. :

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?:

Wherever possible this should reflect the style of the ISP, as suggested, but with clear guidance as to essential content.

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. :

Frequency stipulations appear reasonable. Copyright Owners may wish to have the opportunity to apply for an increased threshold to Ofcom in the first year, given there may be a backlog of issues or the level of infringements may be running higher than anticipated.

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.:

These seem appropriate to us.

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.:

These seem appropriate to us.