

**Representing:**

Self

**Organisation (if applicable):**

**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:**

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.:**

Yes. And I believe that rights owners should bear the full cost of implementation. In the physical (non-online) world, you don't expect the owners of shopping malls to contribute towards the costs of rights owners investigating reports of rights violations at shops inside the mall? why is it different online?

**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.:**

Yes, for making payment (allows ISPs to staff up etc), but i believe that planning should be completed 3 months out i.e. after agreeing a plan, they have 1 month to agree funding and pay.

**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?:**

No. An allegation of infringement is not the same as demonstrated infringement. On top of this, the number of reports does not necessarily reflect the proportion of communication that is infringing. The qualifying level should be based on the % of traffic through the ISPs network that the RIGHTS HOLDER has identified as infringing AND which has been validated as such through the appeals process (i.e. not revoked).

**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?:**

Yes. Ofcom has taken a pragmatic approach here.

**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?:**

No. Two points: 1) offering free public wifi with no expectation of compensation does not make you a subscriber. It makes you generous.

2) I wonder how the supplier (e.g. BT) would know about whether the person they're sending the bill to is offering public WiFi (e.g. a coffee shop) - especially as most would probably use a cheap consumer ISP, not a commercial grade one.

**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?:**

No. I believe that this undermines a fundamental economic right - if i buy a product i am free to give it away. If I leave a car with keys in it for anyone to drive, am i liable if they crash it? I may have to replace it, but i'm not liable for their accident. So no, so why is the same principle not applied here?

**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?:**

No. I believe that it must also include:

1) the details of where the data was being sent to i.e. show that it was being shared

with others, and how many people etc

2) a clear and reasonable calculation of the true economic impact of the action i.e. show specifically what losses have been incurred and how. Not a random number, but a clear, defensible calculation.

3) a detailed technical explanation of the technique, algorithm, method etc used to determine infringement to allow proper analysis and review by the subscriber or their advisers (i.e. ensure traceability).

4) detailed information relating to the specific right allegedly being infringed such as the original media or format it was released on, release date in the UK etc to demonstrate that it is indeed subject to protection under UK 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.:**

It's a good start, and I support requiring the rights holder to subject their process or tools to improvement as directed by Ofcom, but I believe there is more needed. The processes, technology etc must be sufficiently publicly documented so that they can be subject to similar scrutiny as one would expect from any forensic investigation - this is necessary to allow the accused to properly defend themselves e.g. when investigating the processes, methods and tools used for DNA analysis in court.

**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?:**

I believe that the CIR must be delivered to the subscriber within 10 days. For example, using special delivery. If it is not signed for on receipt within 10 days, it is invalid.

**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.:**

1) the copyright owner may not be using an approved technology, process, tool etc. the ISP must check this too

2) the rights holder may not be entitled to the protection it claims etc

3) the ISP must also inform the subscriber that a CIR was received, but that it was rejected. they should include the CIR and their rejection notice so that the subscriber is aware.

4) There should be a one month period after issuing an CIR (valid or not) before the copyright holder can issue a further CIR for the same subscriber

**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.:**

Yes

**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. :**

No. I believe that CIRs should expire after 1 year. So, if a subscriber receives 1 CIR in January, one in February and one the following January, they would have 2 on record. This is not clear in your process.

**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?:**

Yes, I believe that it must also include:

- 1) the details of where the data was being sent to i.e. show that it was being shared with others, and how many people etc
- 2) a clear and reasonable calculation of the true economic impact of the action i.e. show specifically what losses have been incurred and how. Not a random number, but a clear, defensible calculation.
- 3) a detailed technical explanation of the technique, algorithm, method etc used to determine infringement to allow proper analysis and review by the subscriber or their advisers (i.e. ensure traceability).
- 4) detailed information relating to the specific right allegedly being infringed such as the original media or format it was released on, release date in the UK etc to demonstrate that it is indeed subject to protection under UK law
- 5) details of all other CIRs issued against this subscriber, including details of any appeal etc

**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. :**

yes

**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.:**

- 1) the appeals body must be free to the subscriber. all costs must be met by the rights holder.
- 2) If the appeal is upheld, the subscriber must be entitled to compensation equal to the money that the rights holder indicated that the infringement caused (see answer 4.1 and 5.3)
- 3) I do not believe subscribers must protect their networks e.g. when offering free public wifi
- 4) the appeal must be automatically upheld if there are any technical breaches e.g. the ISP or rights holder failed to follow process correctly etc

**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.:**

I don't know. I can't find "section 10" of the draft code.