

Representing:

Organisation

What do you want Ofcom to keep confidential?:

Keep name confidential, Keep organisation 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:

Overall I disagree with the DEA and its approach to copyright infringement.

I strongly believe that IP and Copyright Infringement should remain a civil matter and be pursued by the COs through private litigation as is currently the case.

ISPs and the government should not be involved in or responsible for this process in any way.

I also strongly believe that no amount of legislation will ever stop the sharing of files over the network.

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.:

No.

It is unfair that smaller Copyright Owners who may not have the resources (financial or material) should be excluded.

Any Copyright Holder should be able to report infringement at any time.

It is time that the influence and control of the Big Media organisations were brought into check.

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.:

I believe this is irrelevant given my answer to question 3.1.

Notwithstanding that, it is impractical for a CO to make an estimate of how many infringements there will be in any given period, and provision of such an estimate might be construed or treated as a 'target'.

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 comment

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?:

No comment

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?:

Not entirely.

3.22 : I think that people or organisations who provide Open WiFi access should be classed as Communications Providers instead of Subscribers.

3.23 : The same with these providers.

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. See my responses to Q 3.5 relating to the definitions of Subscriber, ISP and Communications Provider and sections 3.22 and 3.23 of the consultation document.

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?:

Yes.

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.:

Not entirely.

4.6 : "it requires Copyright Owners to develop appropriate technical standards" - I don't believe that COs (or indeed anyone) should be involved in developing technical standards of any kind outside their area of competence and experience. e.g. A film company might decide to work on setting a frame rate or aspect ratio standard, but should not be involved in any standard relating to network management or data gathering.

Apart from this, it leaves the door wide open for Big Media to increase its control over the network and its operation.

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?:

Yes.

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.:

Yes.

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.:

Broadly speaking, yes. Although I would like to see the inclusion of a procedure for dealing with disputed identification.

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. :

Not entirely.

I do not believe that notifications should have an unlimited life (they should not stay 'on the record' forever).

There is no mention in this section of when (if ever) a notification expires, nor of any maximum time between first, second and third notifications after which any new notification would be treated as a first notification.

To truly have a time-based process which takes account of a user's actions over time then such an expiry would be desirable.

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?:

I do not think that COs should be able to ask ISPs for a complete list of a Subscriber's past notifications. They should only be able to obtain these details for a specific notification or CIR.

After all, the CO should have this information themselves as they made the original CIRs leading to any subsequent notifications.

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 threshold seems reasonable, but I think it is dangerous that a CO may act on behalf of more than one person or organisation. I can easily envisage a situation whereby a person or company sets itself up as a CIR-handler/issuer and works on behalf of many COs, which has serious privacy implications. Any information obtained through such open access to information could also be used to coordinate (or even initiate) action by groups of COs against particular Subscribers, rather than each CO acting purely on its own to defend only its own copyrighted works.

I'd also give the ISPs ten days to provide any requested lists to provide consistency with the other specified time periods and allow them to act on the requests and produce the lists.

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.:

7.14 : There should be no cost to the Subscriber to initiate the appeal process. Any costs which may be incurred by a failed appeal should also be minimised as much as possible, preferably reflecting the true cost of the time and work involved.

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.: