

Cover Sheet for response to an Ofcom consultation

Basic Details

Consultation title: Online Infringement of Copyright and the Digital Economy Act 2010

To (Ofcom contact): Campbell Cowie

Representing (self or organisation/s): self

Confidentiality

Please tick below what part of your response you consider is confidential, giving your reasons why

| | | |
|---------------------------------|---|---|
| Nothing | N | |
| Name/contact details/ job title | | Y |
| Whole response | N | |
| Organisation | N | |
| Part of the response | N | |

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

Y

Declaration

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

N

Dear Mr Cowie,

I'm including in this response some more detailed comments on the bill which are given below. However, my two biggest concerns are related to the definition of a clear standard of evidence upon which to base a claim of infringement (and the possibility for abuse that this will create) and the threat to the very existence of public free WiFi networks, which I, and many many other freelance professionals absolutely rely upon

for my daily work - i.e. earning a living and paying taxes.

The first issue, relating to sections 3.5 to 3.7 is that it fails to provide a clear definition of what constitutes evidence of infringement. This gives immense and unjustified power to those who claim to own the copyright of any content under dispute. This will create a chilling effect in favour of the powerful, (who can afford lawyers) against those who may be publishing, highlighting or sharing material which might embarrass or otherwise challenge the powerful. This is deeply undemocratic. Two perfect examples have come to light in recent days: The leak of confidential documents on Afghanistan by those wishing to legitimately question the way the war is being prosecuted, and the creation of sharing via Bittorrent of a list of 100m unsecured Facebook profiles as a way raising legitimate concerns about that organisation's erosion of privacy within its social network. In both cases, powerful organisations could seek to intimidate those who share this information. In both cases this would be an inappropriate use of copyright law.

The second issue which concerns me, as a freelance user experience professional, earning my living entirely in the online/digital world, is the way the document deals with WiFi. Partly, I fear anything that will make it more difficult for me to obtain free, fast Internet access in the various places that I like to work. I don't rent an office but I work all over London, in places like the British Library and other public libraries, coffee shops, cafes, bars etc. Uncertainty and the fear of getting into legal hot water will, without doubt, deter small organisations and public organisations from continuing to provide this valuable (if free) service. Making it harder for me to work wherever I like will make it harder for me to earn a living and to pay the taxes which contribute to all our public services.

A further concern about WiFi relates to a specific service I subscribe to, called "Fon". As I understand it, we will, under the Code, be divided into "subscribers" and "ISPs". Ofcom may not be aware of the existence of Fon (www.fon.com) but this system allows me to share my home WiFi connection with other Fon members and, in exchange, to access other Fon members' home WiFi connections anywhere else in the world. It's not at all clear how the Draft Code would deal with this, but presumably I will be both subscriber and ISP, since I provide access to others via my own network, but I receive "payment" for doing so, in the form of access to other Fon networks. I also own a small MiFi 3G dongle, which creates an ad hoc wifi LAN with internet access for me to share with colleagues when we are working together. It's entirely unclear what status this would have under the code.

Based on these concerns, I believe it's clear that the code does not comply with the Digital Economy Act and I therefore ask Ofcom to set up a new consultation round.
Yours