

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?:

Name and contact details should be kept confidential.

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:

It is absolutely critical, above all else, that the general public are protected from poorly evidenced false allegations of illegal file sharing and particularly from attempts to extort money using this device as leverage. This practice is becoming increasingly widespread and is unacceptable. The Government's Department for BIS ignored the responses of the general public in writing the Digital Economy Bill (now Act). The public (by far the highest proportion of the respondents to their consultation) raised this single issue as their primary concern. The problems created through the actions of these firms may be expected to multiply and diversify if the Code of Practice is not carefully and sensibly constructed. I would urge Ofcom to ensure that they keep prevention of such problems at the very front of their minds in deliberating on the wording and standards of the Code.

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 view.

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.:

No view.

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 view.

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 view.

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 view.

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 view.

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 CIR should state how the infringement was identified (eg. the evidence collector participated in a download of data from the infringing connection, having obtained a .torrent file from a public tracker site). It should give a brief description of the nature of the 'monitoring' software. It should also identify the portion of the work which was downloaded / retained as evidence by the monitor. Any system used to verify that

the data in question was actually a part of the copyright work should be described and the outcome of such testing stated.

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.:

With regard this question (Q4.2) I wholly and completely support and endorse the views of BeingThreatened.com as stated in their response to the consultation.

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?:

Absolutely, 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.:

I do agree with these proposals.

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.:

With regard this question (Q5.2) I wholly and completely support and endorse the views of BeingThreatened.com as stated in their response to the consultation.

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. :

I agree with the trigger points for the first and second notification. Given that the third is to be the final notification I would advocate a more substantial trigger level and/or longer period between the second and third 'trigger' CIRs. I would propose that the third notification would be triggered EITHER BY (a) the first CIR received on or after three months from the date of the second notification, OR BY (b) the fifth CIR received on or after one month from the date of the second notification. The third notification would be triggered by whichever was the first of these (a or b) to occur. This would be useful in ensuring that infringers were legitimately 'determined' and would lead to a reduce instance of appeals. The timescale and cumulative levels of infringement required to reach the stage of a final notification are too short and too low

so as to avoid final notifications being sent to a great many subscribers that had no intention to commit or 'allow' infringement.

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?:

Where there are less than ten CIRs being cited in a letter all of these should be included. Where more than one copyright owner / monitoring company is claiming infringement, details must be provided of every one of these companies.

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. :

No view.

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.:

It would be useful to clarify the standards required to demonstrate that a subscriber had taken 'reasonable steps to prevent other persons infringing copyright by means of the internet access service' or that they had not carried out 'the act constituting the apparent infringement to which the CIR relates'. These would often seem, certainly in the case of the latter, to require proving the unproveable. As a related matter, in the formation of the appeals body it is worth noting that I consider that this (the body) should be subject to the Freedom of Information Act. As part of its creation it should take steps to approach the ICO and ensure that this is the case.

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.:

No view.