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Organisation

Organisation (if applicable):

National Education Network

What do you want Ofcom to keep confidential?:

Keep nothing confidential

If you want part of your response kept confidential, which parts?:

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Yes

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Yes

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Additional comments:

This is the National Education Network's response to Ofcom's consultation on "Online Infringement of Copyright and the Digital Economy Act 2010: Draft Initial Obligations Code". The National Education Network (NEN) is the UK collaborative network for education, providing schools with a safe, secure and reliable learning environment.

The NEN serves over 28,000 schools and their communities throughout the UK

including all the English regions and the devolved administrations of Scotland, Wales and Northern Ireland. Schools includes nursery, primary, secondary and special schools and their Local Authorities from very small primary schools with 20 pupils to large secondary schools serving over 1,000 students. Partners include JANET (UK) who provide the national interconnect to the school's education networks.

The NEN is recognised for providing a safe and secure network environment with effective network management and with proven procedures to ensure the government's policy for e-safeguarding of young people. Acceptable Use Policies (AUPs) are co-ordinated between schools, wide area network provision and JANET and apply to pupils, the workforce and those visiting school sites. A range of approaches are taken to prevent online copyright infringement in schools including: user education; enforcement of acceptable use policies (AUPs); filtering and monitoring mechanisms; and firewalls and other security technologies configured to prevent access to websites and other vehicles that are used for the distribution of materials and infringe copyright.

The NEN has an on-going programme of 'copyright education' and is working with partners in industry (film and music) and with national organisations to raise awareness and develop good practice in all aspects of IPR, copyright, licensing and 'digital literacy'.

The NEN shares with other 'public intermediaries' concerns about the application of regulations based on a home/supplier model and the possible unintended consequences when applied to organisations such as schools, those in the NEN who support them in the delivery of online services and the wider agenda in the education sector for 'inclusivity'.

In a recent survey of 50% of the education networks no instance of copyright infringement by mass down/uploading through filesharing applications has been reported in the past three years. The NEN believes that there is no substantial problem of online copyright infringement through filesharing applications in schools and that applying the Code to schools would be entirely disproportionate.

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.:

We agree with this proposal as it maintains the framework of notification and time requirements that will be needed to make the Act workable.

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.:

We agree that two months should be sufficient in implementing the proposed thresholds for Qualifying ISP and Copyright Owners. However, we believe that two months is not sufficient notice for an ISP to move from non-qualifying to qualifying status, since this will involve implementing new processes and may well also involve changes to the ISPs equipment and architecture.

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?:

We agree that in the long term, as envisaged by the Act, the Code should be applied to those ISPs where there is a substantial problem of copyright infringement.

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 the main impact on reducing copyright infringement is most likely to come from applying the Code to larger ISP and there would be little benefit in including smaller ISP.

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?:

We agree to the approach to interpreting "ISP". However we strongly disagree with the conclusion reached by paragraph 3.28 that libraries, pay-as-you-go wifi and mobile providers will in future have to collect address details from all users before allowing them to access the Internet. In schools the identity of users is known for both pupils and workforce and "single sign on" for access management is being implemented to common standards throughout the UK. However, we would support those in the education sector - such as libraries, museums and colleges with whom schools work closely - who have concerns that these requirements could reduce the drive to "inclusiveness" and life-long learning and also impact on schools' community activities without impacting on reducing online copyright infringement in regard of which school networks already have other, proven, measures in place to deal with.

The NEN considers that more flexibility is required. The experience the NEN and its connected organisations is that a wide range of different approaches, from technical prevention to accountability and education, can be successful in reducing copyright infringement. We therefore consider that the Code must not, either explicitly or implicitly, prescribe the measures that an ISP or subscriber must take and, in particular, that non-traditional models of Internet provision must have the flexibility to determine the most appropriate mix of measures for their particular circumstances.

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. The interpretation contained in paragraph 3.30 does not reflect the wording of the Act and, if implemented, would seriously damage both the Act's purpose and the UK's ability to benefit from the Internet.

When dealing with organisations, classing them as 'subscribers' also defeats the purpose of the Act, which is to educate individuals not to breach copyright. This can only be done if the organisation responsible for those individuals receives the CIRs concerning them. Organisations providing network access to others therefore need to be treated either as 'ISPs' or 'communications providers' depending whether or not the principal purpose of the network connection is to access the Internet.

We consider that treating organisations as 'subscribers' would be particularly damaging for their use of the Internet now that the threshold for classification as a 'serious infringer' has changed from thirty CIRs to three CIRs in three months. For a domestic property this is a much better measure of seriousness.

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?:

In general we agree with the proposed content of CIRs.

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.:

We welcome the use of a quality assurance approach which should permit the circumstances of different types of organisations to be addressed.

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?:

We agree that there should be a requirement on Copyright Owners to send CIRs within a stated period of time as consequential action will be difficult even impossible to track after any lengthy period of time has elapsed in the circumstances of school communities with interchanging classes and group work practice. We would also note, however, that schools have extended holiday periods that could impact on communications and responses if temporal frameworks are set too tightly.

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.:

We agree with the proposals. However, we are aware from our experience of developing managed networks over 10 years that technical processes will from time to time intervene and produce misleading report evidence. This needs to be recognised with an opportunity to identify it and communicate with the Copyright Owner. We believe it is important to allow this type of problem to be detected and resolved between the Copyright Owner and the ISP, without requiring a falsely-accused “subscriber” to make an appeal.

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.:

We welcome a quality assurance approach.

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. :

Schools range in size from 20 in some rural locations to large secondary schools with over a thousand pupils and a substantial workforce. It seems disproportionate that the same level of notifications that is set for a family unit could affect a whole community of learners with impact on their learning, attainment and their effectiveness as an organisation. Making impact on school networks might reduce the small risk of further infringing activity but could also reduce the effectiveness of the measures in place to ensure quality learning and internet safety for young people. It could conflict with other government policy for education and care.

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?:

We believe that a different process is required for schools and that applying a domestic process without due modification will be damaging to how “copyright” and IPR are seen, to infringement enforcement and to the digital citizenship agenda that all schools support.

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. :

Copyright Owners are allowed to wait a fortnight before sending a CIR, so ISPs should have a longer period than five days to respond to a request for the Infringement List.

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.:

Yes. However the Code must also state that the effect of a notification is suspended while it is being appealed. For example if a first notification is appealed then neither a first nor second notification may be sent to the Subscriber until after the appeal process has concluded.

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.:

Yes.