

**Title:**

Mr

**Forename:**

Paul

**Surname:**

Harrison

**Representing:**

Organisation

**Organisation (if applicable):**

Norfolk County Council

**What do you want Ofcom to keep confidential?:**

Keep nothing 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:**

Norfolk County Council Library and Information Service delivers a public library service for the population of Norfolk. We operate from 47 library buildings across the county and from 13 mobile library vehicles and we served approximately 240000 active users in the year 2009/10 from a population base of 850000 (2008 figure). We have a total of 542 internet terminals in libraries, with a further 7 public terminals in the Norfolk Record Office and 2 in Council information points. Internet access is provided across the corporate network through a managed service provided by BT.

Public data traffic is completely separated from the rest of NCC traffic on its own VLAN and the internet gateway is on its own proxy server. Filtering software is in place on that proxy server and is tailored to the requirements for providing a public internet service. Only standard internet ports have been opened on the corporate firewall, so peer-to-peer connections are specifically inhibited.

Bandwidth to individual libraries varies from a minimum of 2MB, up to 100Mb for the Norfolk and Norwich Millennium Library, where there are 109 terminals.

Access to PCs is controlled through the iCAM Workstation Control application, which means that all customers have to be registered members of the library service in order to use our PCs. As part of the logging on process, customers have to accept our terms and conditions (see

[http://www.norfolk.gov.uk/Leisure\\_and\\_culture/Computer\\_facilities/NCC007539](http://www.norfolk.gov.uk/Leisure_and_culture/Computer_facilities/NCC007539)), which includes an agreement that they will not &ldquo;create, look at, copy, store, send or publish any material which&hellip;would be a breach of copyright&rdquo;.

#### Digital Inclusion

Digital inclusion is supported in a number of ways. According to our E-Plus survey in December 2009, over 75% of our PC users visit a library to log on at least once a week, with the majority of respondents doing so because they have no access to the internet at home.

We have also used Mosaic to look at our customers, and we found that families reliant on the council or living on council estates, and blue collar workers, all of whom commonly would not have access to the Internet at home/work are well represented users of our service accounting for 21.6% of service users and 16.5% of the Norfolk population

We have been running regular ICT learning sessions since public internet access was first introduced in 2001 and in 2009/10, we ran 454 sessions totaling 2350 hours of assistance, reaching almost 1600 people.

All Norfolk Libraries are registered as UK Online Centres. Since 2007 Norfolk Library and Information Service has offered a programme of Internet courses targeted at people over 65. Our aim in providing the Surf&rsquo;s Up courses, which is based on UK Online&rsquo;s MyGuide training courses delivered over the internet, is to enable older people to use the Internet to a sufficient level whereby they can use it to help them retain their independence over the coming years. We designed a programme whereby older people can learn at their own pace, not feel worried about being slow and where they can support each other to learn. In 2009/10 we delivered 62 courses to 380 learners, with attendance rates in excess of 95%, and 70% of those on the courses were still using the internet after 8 weeks.

Learner comments about the course were overwhelmingly positive:

&ldquo;I knew nothing when we went but had very patient teachers and I am now able to surf and enjoy the computer.&rdquo;

&ldquo;I usually do about an hour a day.

I&rsquo;m on Mah Jongg at the moment.

I&rsquo;ve looked up the Autistic Society as my grandson is autistic&rdquo;

&ldquo;I usually do about an hour a day.

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I&#x2014;ve looked up the Autistic Society as my grandson is autistic&#x2014;You have opened a new window in my life and given me a link to the outside world, I care for my husband and rarely get to go out, thank you.&#x2014;I&#x2014;ve got a medical condition which is going to get worse, so I&#x2014;m determined to learn about this now. I&#x2014;m going to have a lot of trouble getting about so this will help me enormously as I&#x2014;ll be able to keep in touch with people and do shopping online&#x2014;

Conclusions

We are very concerned about the implications of the DEA and the current Code as is, for libraries, as well as for HEIs and FEIs.

&#x2014; These measures will impact detrimentally on digital services offered to those who live work or study and use the public libraries provided by Norfolk County Council

&#x2014; We receive and supply internet access to hundreds of thousands of individual users; the complexity of our position in relation to copyright infringements must be taken into consideration. If this is not done, our internet connection as a whole could be jeopardised and the benefits to many could be seriously jeopardised by the activities of a few.

&#x2014; We already take rigorous practical measures to ensure that copyright infringement is minimised. These measures are highly effective and have been recognised as such by major rights holders. As well as requiring users to accept the Acceptable Use Agreement on every occasion, access to peer-to-peer file sharing sites is prevented at the firewall. In addition, sites can be added to the denied list of the filtering software on a case by case basis on request, as we are informed about them being an issue.

&#x2014; The DEA and accompanying Code risks imposing significant financial and administrative burdens on us relating to appeals, compliance, reporting and dealing with complaints &#x2014; all of which may not have the desired effect of identifying persistently infringing individuals.

In summary, Norfolk Library and Information Service believe that the current access arrangements that are in place, through a combination of filtering and firewall controls, pc access controls and internet use logging facilities, already minimise the risk of copyright infringement taking place, and we have had no reports of any infringements from rights holders since public internet access was introduced. Accordingly any requirement in the code for Norfolk Library and Information Service and/or Norfolk County Council, as either subscribers or ISPs would lead to unnecessary and costly constraints being imposed on the provision of public internet access, which would be entirely disproportionate to what they are intended to achieve.

We urge Ofcom to carefully evaluate the costs and benefits of applying such a Code to public intermediaries, such as libraries, universities, schools, local authorities, museums etc without careful consideration of the potential costs, loss of connectivity, and other serious ramifications.

**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.:**

Copyright owners should only be able to take advantage of the procedures when they have met their obligations under the Secretary of State's Order.

**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.:**

Two months is sufficient for a qualifying ISP to plan activity with a Qualifying Copyright owner, but will not be sufficient for an ISP not currently covered by the Code if Ofcom changes its rules to include that ISP.

**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?:**

A critical issues for public intermediaries (schools, universities, local authorities, public libraries and museums etc) is whether they will be defined as "Internet Service Providers" (provides an internet access service) "Subscribers" ( an entity who receives an internet access service) or "Communications Providers" for the purposes of the Act.

Currently as the Ofcom consultation is envisaged at this point no public intermediary has been named as a qualifying ISP. We are nevertheless concerned that the benchmark for being a qualifying ISP may drop in the future as serial infringers change ISP and their modus operandi and therefore at some point in the future our organisation comes in scope as a qualifying ISP. If this is the case we are concerned that the significant obligations, and costs envisaged by the Act are simply not appropriate for bodies as varied as schools, museums, local authorities, universities and public libraries.

However at this point in time we are very concerned that public intermediaries could be viewed as a "subscriber" by a copyright holder or a qualifying ISP upon approval of the Ofcom codes by parliament. Public intermediaries have public policy goals to educate, as well as promote the digital inclusion agenda. Also levels of infringement across public networks are currently very low, in part due to hard work by the sector in implementing practical methodologies and acceptable user terms aimed at minimising online copyright infringement.

Given these low levels of infringement across our networks we are very concerned that being viewed as a

“subscriber” and becoming embroiled in the appeals process, is not proportionate to the intentions of government as stated in S.124E(1)(k) of the Act. The Act also essentially envisages a bipartite relationship of commercial Telco giving internet access to a named and contracting householder, who equates often to a single static IP address. Public intermediaries often form consortia or rely on separate legal entities to contract for bandwidth so the entity who faces the user is not necessarily the contracting party. IP addresses are also within the sector often dynamic, and attributed to a whole building, or bank of computers so identifying infringement by a specific individual is often impossible, or at best an expensive manual process. Given the complexity of linking an IP address to an individual, we are concerned that the appeals process envisaged by the Act which requires in order for infringement to be proved that an IP address is proved to equate to a specific “subscriber”, will mean that public intermediaries are more likely to be viewed as a subscriber by a copyright holder for the purposes of prosecution under the Act.

Given the public service role of the public library combined with the fact we act as neutral and “mere conduits” for internet access, not knowingly facilitating infringement, we believe they should be viewed either as a communications provider, and therefore exempt, or as a non-qualifying category ISP as allowed for by S. 5.124C 3(a).

**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?:**

Whilst it is obviously sensible to include the biggest ISPs in the code, until the criteria for what is an ISP and what is a subscriber are clarified, it is impossible to judge whether Ofcom’s general approach is sensible or not. As stated above it is important that the definitions used in the act are made more specific to the realities of internet provision by public intermediaries. Given the significant obligations / liabilities envisaged by the Act, and the low levels of infringement across our networks combined with our public service role, we believe it is of vital importance for Ofcom to create a de facto exclusion for public intermediaries under the Act.

**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?:**

The suggestion that public intermediaries such as universities, libraries or schools will have to collect at some point in the future address details from all users is onerous on those organisations and users, and is contrary to the Government policy of encouraging people to use the Internet and to develop their digital literacy. This appears to be a major policy shift, and one that has not been approved by Ministers or debated in Parliament. This, together with the potential costs of implementing new measures to remain within the DEA, and technical measures to reduce risks of

infringement, as well as potentially 25% of costs associated with potential infringements could lead to some libraries or education institutions no longer offering wifi or other types of Internet connections to their patrons, which totally defeats the Government's intention of a Digital Britain.

**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.

As outlined above from implementation of secondary legislation it is likely that we will be viewed as a "subscriber" by ISPs and copyright holders and therefore be subject to copyright infringement reports and the appeals process. Potentially also in the future will be the imposition of technical measures aimed at slowing or potentially temporarily disconnecting "subscribers" from the internet. Given our educational role, combined with our role as a "mere conduit" not knowingly facilitating infringement, brings us to the conclusion that being classed as a "subscriber" is wholly inappropriate.

At the same time the lack of clarity in the definitions of the Act as applied to Norfolk County Council and Norfolk Library and Information Service will mean we have to plan for at some point potentially being classed as a "qualifying ISP". This will have significant cost and overhead implications for the organisation, ranging from legal advice, policy decisions, through to workflow and technical systems alterations. As stated in the introduction, all access to the internet is controlled and authenticated against our library customer database, customers have to acknowledge that they have read and accept the terms of our Acceptable Use Agreement prior to the commencement of each session, which includes acceptance that they will not "create, look at, copy, store, send or publish any material which would be a breach of copyright".

All internet access is logged and transactions on a given domain can be traced back to individual IP addresses on the internal network on request. However, to date, we have received no notifications from any copyright holder about possible copyright infringements.

Consequently we believe that the measures in place are sufficient to have prevented wide spread copyright abuse so far. Any requirement for us to add extra levels of management overhead in terms of both hardware, software and staff resources in order to address something that is not currently an issue anyway is not an efficient use of limited public resources

**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?:**

We suggest that the following wording is added to the CIRs  
&“and that to the best of the  
owner’s knowledge the copying is of a substantial part of  
the work, and that the copying does not fall under any of the exceptions to copyright  
as provided for in the Copyright, Designs and Patents  
Act.”; This change is to ensure that the copyright owner  
considers the question whether the copying, even if unauthorised, might be covered  
by one of the exceptions in the law.

We further recommend that the owner is required to provide supporting evidence that  
it is the owner of the copyright in the material in question, and that it provides an  
indemnity to the ISP and to any subscribers affected that should it turn out that it is  
not, in fact, the owner of the copyright in question, it will refund all costs incurred by  
the ISP and/or subscribers as a result of its complaint.

**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 are content with the quality assurances procedures outlined.

**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 are content with the time period proposed.

**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.:**

No. It is important that one reason for not processing a CIR is that the network upon which an infringement is alleged to have taken place is the network of an excluded category / not a 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.:**

We are content with the proposed quality assurance approach on subscriber 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. :**

Subscribers that are institutional or organisational, such as public intermediaries are likely to be targeted if they have several employees or customers who have been infringing copyright across their networks. This risks serious harm to public intermediaries which may find themselves being inappropriately viewed as “in scope” of the Act for the activities of their users – activity which they have no knowledge or responsibility.

In Norfolk libraries, we are attempting to raise awareness of copyright through our requirement that customers have to acknowledge that they accept the terms of the Acceptable Use Agreement before they are permitted access to the desktop, each time they log in, and we have stringent staff policies in place concerning inappropriate use of the internet. We have attempted to minimise risks of high volume copyright infringement through blocking access to peer-to-peer file sharing facilities at the firewall level and in addition we can add individual site URLs to the denied list of the filtering software once they have been deemed to be unsuitable.

However, we do not feel that we have the resources to be proactive in maintaining any list of sites that should be on that denied list because of their involvement in copyright infringement, although we would be more than happy to receive a regularly updated list from an organisation operating on behalf of copyright holders from which we can maintain that list.

**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 recommend that Ofcom ensure that public intermediaries cannot be the recipients of such codes.

**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. :**

We recommend that ISPs have longer than 5 days to respond to a request by a copyright owner.

**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.:**

We believe that the appeals process might be helped by giving in-scope subscribers more information about their grounds for appeal and their rights under the Data Protection Act.



**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.:**

We have no problems with the proposed approach to administration, enforcement and dispute resolution as long as they are proportionate and make a de facto exclusion for public intermediaries who are a crucial conduit for online learning and access to knowledge in the digital world.