

Title:

Mr

Forename:

Ian

Surname:

Griffiths

Representing:

Organisation

Organisation (if applicable):

Nottingham Trent University

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:

Nottingham Trent University currently has in place effective policies and procedures for reducing copyright infringement. All users of institutionally provided systems are bound by conditions of use. We work closely with JANET(UK) the national supplier of the education wide network. It is an area that the University takes very seriously.

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 the proposal laid out in the draft Code; ISPs will need to have sufficient notice in order to implement the policies and procedures required to ensure Copyright Infringement Notices (CIRs) are processed efficiently and accurately. The volume of infringement in the higher and further education sector is low. NTU already has procedures in place for processing copyright infringement reports which have been recognised as effective by rights holders. It may be that a light touch version of the Code is required to standardise arrangements across the sector;

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.:

This period would seem a little tight

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?:

The emphasis within the Code to focus on those ISPs where there is a substantial problem of copyright infringement is correct. However it does not appear to be possible for a Qualifying ISP to move to a non-Qualifying status. This offers no incentive for an ISP to reduce 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?:

It seems sensible to start with the main domestic ISPs

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 welcome attempts to clarify the definitions of ISP, communications provider and subscriber. However we do not believe that the definitions are sufficiently clear to allow the University to determine its status.

The conclusion that libraries will have to collect address details from all users before

allowing them to access the internet appears to contradict the initial purpose of the Digital Britain paper and other policies on widening internet access and does not appear to have been considered in either the impact assessment of the Bill or in the Parliamentary debate. The assertion made that the implications of the interpretation will be “challenging” for community broadband schemes is correct and goes against the stated Government desire to widen access to the internet. It could result in educational establishments no longer offering wifi or other types of internet connections to clients which again 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?:

We do not agree with Ofcom's approach. The Code states that an organisation that receives internet access for both its own purposes and to provide access to others will be a subscriber. Since the University both receives internet access and provides access to our staff, students and others we would appear to be classed as subscribers by this definition. We believe that this is contrary to the draft Code which states that “attention must focus on the provider of the final leg of the internet distribution chain, i.e. the point at which information about subscribers may be gathered”.

Treating the University as a subscriber presents a significant risk that we may be placed on the highest scale of copyright infringement, particularly now the threshold for classification as a serious infringer has been reduced to three CIRs in three months. The risk is particularly acute at the start of the academic year when the volume of new users means that it is not possible to educate all individuals before they have access to computing resources and the internet.

Universities and colleges should be regarded as either ISPs or communications providers. This would allow the higher and further education sector to continue the effective practices currently employed to reduce copyright infringement in educational institutions. We recognise the desire expressed in the Parliamentary debate that the sector should not be exempt from the provisions of the Act. In the Parliamentary debate on the Bill, Lord Young stated that there was “scope for proportionate, pragmatic solutions to help universities and libraries to comply with the provisions and minimise any administrative burden”.

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 agree with the proposed content of the CIRs but timestamps must be synchronised to an international standard time source to reduce the possibility of investigative work being carried out against an incorrect time.

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.:

Yes

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?:

This should be an absolute maximum. We believe the definition should be within 10 working days from the alleged infringement.

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 but would also suggest that the ISP and Copyright owners be allowed to resolve any anomalies between their records.

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.:

yes

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. :

While a time based notification process is appropriate for domestic subscribers such a system is not sensible when applied to those organisations classed as subscribers under the terms of the Code. There is a risk that the University may be placed on the highest scale of copyright infringement as a result of three unrelated infringements. This to be contrary to the original purpose of the Act and to other Government policies promoting increasing access to the internet for individuals. A 'one size fits all' approach is not appropriate and different processes to address internet copyright infringement in domestic and organisational contexts are required.

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?:

The requirements within the draft Code are appropriate for domestic subscribers. However different processes are required for those organisations, if any, that are classed as subscribers. Attempting to apply the same process to both domestic and business internet connections risks damaging copyright enforcement and the wider use of the internet as promoted by a number of Government policies.

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 agree with the proposed threshold and the proposed frequency with which Copyright Owners may make requests but feel that the timescale for ISPs to respond should be ten working days.

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

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