

Title:

Mr

Forename:

Adam

Surname:

Minns

Representing:

Organisation

Organisation (if applicable):

Pact

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:

1) Pact is the trade association that represents the commercial interests of the independent production sector. We have more than 600 member companies, involved in creating and distributing television, film and interactive content.

2) The independent production sector creates around half of all new UK television programmes each year, as well as acclaimed UK films. The sector's turnover is £2.2 billion per year and it employs 20,950 people – more than the terrestrial broadcasting and the cable and satellite sectors respectively. The sector is

also a substantial investor in UK content, generating up to £190m per year for the creation of UK television programming.

3) For further information, please contact Pact's director of policy, Adam Minns, at adam@pact.co.uk or on 020 7380 8232.

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.:

Pact is concerned that requiring rights holders to forecast up to 14 months in advance (including the two-month lead period and one-year notification period) is not practicable in terms of the commissioning, making and broadcasting of television content. Television programmes are often commissioned and broadcast in under a year – timescales will depend on the genre, but in extreme cases the entire process from commissioning to broadcast might take only weeks. Furthermore, producers and broadcasters will typically not know in advance how popular a show will turn out to be when it is transmitted, and will therefore face difficulties in accurately estimating the potential level of infringement. In addition, producers, although they are the copyright owners, do not control the scheduling of programming on television services and may not know in advance when content will be aired. We therefore ask for the length of the notification period to be reviewed in consultation with the industry in order to develop a workable timeframe.

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.:

For the same reasons outlined above in response to question 1, we ask that the lead time be shortened to reflect a shorter notification period.

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?:

Pact agrees with Ofcom's proposed approach to apply the Code to ISPs only after the number of CIRs reaches a certain threshold, to be determined by the Code. This should be subject to review in order to examine the number of services that are not captured by this approach, and the level of infringement via those services, as Ofcom suggests later in this review (see response to question 5).

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?:

Pact agrees that, as no CIRs have yet been issued, Ofcom cannot tell which ISPs qualify. We agree with Ofcom's alternative proposal to only apply the Code to fixed ISPs with 400,000+ subscribers, based on Ofcom's assessment that this accounts for 96.5% of the residential and SME business market. However, we stress that Ofcom must monitor whether persistent copyright infringers are migrating to non-qualifying services, in which eventuality Ofcom should, as it proposes, review criteria.

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 that the definition of qualifying ISPs should be subject to review in order to examine the number of services that are not captured by this approach, and the level of infringement via those services. We would welcome further details on the timetable for such reviews.

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 agree with Ofcom's proposal that businesses providing access in public areas and unprotected Wi-Fi networks should introduce protection for their networks, with advice on this provided in any infringement letters.

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?:

Yes.

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, we agree that this will help ensure a credible notification process.

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?:

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.:

There are a range of potential reasons that may cause CIRs to be invalid, as Ofcom has outlined. In some cases, these may be reasonable, but other factors – such as possible difficulties in identifying the precise time an ISP address was allocated – may be outside the control of a copyright owner. It is unclear how widespread such problems will be and we suggest therefore that Ofcom keep the reasons that ISPs may reject invalid CIRs under regular review.

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. :

Yes. We agree that a time-based approach is relatively straightforward, and allows the subscriber time to come into compliance, and avoids disputes over value.

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?:

No.

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. :

Yes.

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, providing there is a cap on the amount of compensation that is payable. We believe that the checks proposed by Ofcom in the form of quality assurance processes for both CIRs and subscriber notifications will effectively limit the amount of inaccurate or frivolous notifications and that any compensation payable to subscribers who have been incorrectly identified should therefore be limited to an appropriate amount.

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.