

Title:

Mr

Forename:

Roy

Surname:

Spearman

Representing:

Self

Organisation (if applicable):

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:

Yes

Additional comments:

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.:

Yes. I feel that should the reporting process be available to all and sundry, this could then be abused by individuals and corporate bodies with agenda's against other users.

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.:

A lead time of two months should be sufficient for all purposes including budgetary measures. I feel that should an ISP require longer to review data, etc, then there should be a mechanism to allow that variation to be implemented - for example it may well be that introduction of new technologies for internet connectivity may cause issues with IP address recording needing further time to plan for the implementation of this unnecessary legislation.

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. I feel that the application of the Code should be phased initially over a period of 3 years, beginning with the largest ISP (BT) being trialed for a period of 1 year. At the end of the year, I feel that the whole of this legislation should be reviewed to see whether it has been effective in the case of the trial ISP and what effect it has had on Copyright Infringement and the Internet marketplace as a whole. Blanket implementation I feel will harm various sectors within the internet field (certainly new and emerging music artists firstly) and implementation of the Code will drastically reduce the following of such performers, harming this sectors economic growth.

Additionally, I feel that this may well harm the whole internet market as users who were previously purchasing online will now be concerned that they will end up on the wrong end of a CIR or it may well be that some users will dramatically reduce or stop thier use of the internet entirely, thus impacting on the Governments stated aim of getting the Country "online".

It is impossible to give imperical evidence of such an effect as no legislation like this has been enacted previously and I feel it would be GROSSLY dispropotionate to impliment this Code in this way without first trialing it in a controlled programme to see what effect it would have.

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. Again I feel that an initial trail of ONE ISP should be done over the course of a year - as OFCOM say in the documentation themselves, they are completely unable to guess the volume of CIR's that may be generated. Therefore it woudl be prudent - especially in the current

financial climate, to run a controlled trial of the Code for a one year period to be able to plan for the expected volume of CIR if statistically expanded to cover the seven identified ISP's.

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?:

I have no issues with this element.

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. OFCOM's stance in this matter with regards to bodies providing internet access is naive and unworkable. In order for - as an example - a coffee shop offering WI-FI to its customers to implement measures to prevent copyright infringement would be at best prohibitive and would result in a lot of these facilities being withdrawn on cost basis. This would greatly harm both internet markets and that of the local businesses who to a point rely on the free-WI-FI users trade to remain financially lucrative. I feel this part of the Code is wholly disproportionate compared to the perceived problem of piracy and needs to be re-thought by qualified people, not just by those looking at the fictional evidence provided by the music industry.

Far better would be a scheme where such bodies were given exemption from such draconian actions if they adopted a scheme whereby users voluntarily agreed to abide by a User Code of Practice as endorsed by the suitably qualified trade body - not a Government department.

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?:

No. A description of an apparent infringement is too loose a term to be evidentially valid for the purpose of a report which may, theoretically, lead to a user's connection being throttled or suspended. The Code needs to be considerably tighter in this respect as as it stands a copyright owner could claim an infringement based on a file's title, a description of the content and a hash code. Nowhere does it require that the file is verified as actually containing the copyrighted work by an independent person or body. This means that a file called Titans (for example) containing an AVI could be reported as an infringing file without being verified as such. The file could just be a school football team's game but there is no requirement on the copyright holder in this Code for confirmation of breach.

Additionally, the CIR reporting leaves matters wide open for abuse by copyright holders should a dispute between themselves and an online content loan library occur. Innocent users of, say, Blockbuster Online could find themselves on the receiving end of this legislation when they have

acted legally, but the copyright owners are having issues with Bloackbuster directly or haven't bothered to check that the work hasn't been obtained legally.

It also assumes that all alledged infringing files have been fully and completely downloaded. If a file is only started to download and then cancelled or the download not fully completed for whatever reason, this draft code would allow that activity to result in a CIR. The Act speaks of uploaders specifically, but the nature of file sharing software means that a downloader automatically becomes an uploader - but this Code takes no account of incomplete files which by definition cannot contain infringing material as they would be unplayable/unusable prior to completion.

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 - although I feel that any audit of systems put in place should be conducted by a suitably qualified and experienced independant party not connected with either OFCOM or the copyright owner/their acting agent. Failure to ensure this could lead to allegations of unfairness or bias.

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?:

No - I feel that this should be reduced to no more than 5 working days. If copyright holders are so concerned about online infringement, they (or thier agent) should be able to get themselves organised to send these reports on the day of the discovery - giving them 5 days to account for the postal service is more than adequate bordering in generous.

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.:

Yes. This is proportionate and workable.

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.:

No - I disagree that the measures suggested are sufficiently flexible to allow for technological change. It may well stunt technological advances in this area by requiring internet technologies to continue using the IP address system which may in time become unworkable. Indeed, IP conflicts today are legendary and the international nature of the internet makes reliance on one system of identification impractical. This section needs to be altered to allow for changes in the basic way the internet works rather than being so prescriptive.

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. :

No - I feel that your proposed system would be wholly unfair on those people who have accidentally downloaded infringing material. It means that a user who downloads one file a month within three months will appear on an infringement list even though the files may not have been downloaded fully.

I would far prefer to see the BIS's initially system with the second notification sent either when the 30 CIR's have been received, not when a single CIR has been sent after a one month gap.

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?:

Not at this time.

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. :

Absolutely not - and I believe that the proposed threshold is illegal within the wording of the Act. The Act specifies that Copyright Owner may make requests for a List of those that have reached the threshold in regards to their CIRs, not that have reached the threshold of ALL CIR's made against them. I feel that this threshold of the 3rd notification in 12 months in relation to all CIR's is against the spirit in which the Act was drafted and could well be illegal within its phrasing. This is a ridiculously low threshold and is counterproductive in preventing online infringements as those targeted in this way will find ways to hide their activity making enforcement and detection impossible. This threshold surely is ridiculous and should be in line with the BIS's original thoughts of 50+ CIR's within a 12 months period, centric on the Copyright Owners own CIR's and not accumulative.

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.:

To a point, yes, however the presumption of guilt which is the backbone of this whole Act should require that the costs of any appeals process be borne entirely by the Copyright Holder and not parcelled out to the ISP or an unsuccessful appellant. Where the victims of this Act will

be normal end-users, it is only fair that costs being legislatively impinged on this system should be borne 100% by the industry looking to gain from this Governmental boon.

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