

Dear Sir/Madam

I write on behalf of the University of Warwick in response to the Ofcom consultation regarding **Online Infringement of Copyright and the Digital Economy Act 2010**. Our response below seeks to articulate the real areas of concern for higher education institutions like the University of Warwick in light of the Act.

Our primary concern is the current lack of clarity within the Digital Economy Act as to whether universities will be classified under the Act as ISPs, Subscribers or Communication Providers. There is thus uncertainty for universities as to what their responsibilities under the Act will be. We envisage there is even a risk that they could be classified as both ISP and Subscriber. The level of bureaucracy and monitoring attached to each classification vary and if incorrectly classified, the burden of unnecessary reporting and scrutiny would be damaging to the role of universities and their ability to communicate effectively using digital media with students, colleagues and the global community.

The Act indicates that whilst “qualifying ISPs” will initially be restricted to those with over 400,000 subscribers this threshold could be reduced in future, thereby bringing universities into its scope. That would place significant additional administrative demands and costs on universities when, historically, it can be demonstrated that the level of copyright infringement notices across the sector has been extremely low due to the range of policies (e.g. Acceptable Use policies) and educational practices (e.g. library induction/training sessions) which the sector has introduced. These work well and, on the very rare occasions when infringements have been occurred, individual institutions respond quickly and effectively. Locally, for example, there has only been one case in the last few years that the Library is aware of in relation to subscription resources. Current mechanisms, which involve collaboration between individual institutions and publishers or their agents, work well for detecting and clamping down on the few infringement cases that do occur demonstrating there is no need to introduce costly new measures when effective policing and action already occurs. Nor do we believe such new measures would be appropriate given the declared aim that the Ofcom Code must be proportionate to what it is seeking to achieve. Other types of infringement experienced by the University since June 2009 total 57, with 90% of these relating to video download and again we were able under current processes to deal with these effectively and quickly at a local level. In an institution with c. 5000 members of staff, over 21,000 students and over quarter of a million visitors each year, this figure is disproportionately low.

If universities were to be classed as “subscribers” they could be left exposed to the range of unspecified “technical measures” any Secretary of State chooses to implement. Transgression of such technical measures could lead to the wholly disproportionate situation where a university might have to restrict or even suspend internet access which would clearly impact on its ability to deliver on its teaching and research activities. Again, this potential situation is clearly disproportionate and would not be in the interests of public policy.

A further public policy issue relates to the requirement in the draft Code to require proof of identity before internet access is provided. Whilst this would not affect universities significantly – since all our users have to register and have to individually authenticate to gain access to the internet – there would be implications for organizations such as public libraries which offer significant walk-in access. Again, this seems to conflict with broader public policy intentions as expressed, for example, through “Digital Britain” policy initiatives.

We would be happy to discuss any of this submission further should Ofcom feel this would be helpful.

Yours sincerely

Jon Baldwin
Registrar