

Title:

Mr

Forename:

Mark

Surname:

Jackson

Representing:

Organisation

Organisation (if applicable):

ISPreview.co.uk

What do you want Ofcom to keep confidential?:

Keep part of the response confidential

If you want part of your response kept confidential, which parts?:

Email address.

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:

Responses to Q6.1 and 7.1 only.

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.:

No reply.

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.:

No reply.

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 reply.

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 reply.

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?:

No reply.

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 reply.

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 reply.

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.:

No reply.

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 reply.

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 reply.

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 reply.

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 reply.

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 reply.

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. :

No and No.

The threshold needs to be higher, perhaps 5 or 10 CIR's before the first warning is issued, otherwise there is a very real danger that people who accidentally and unknowingly engage in the download of an unlawful copyright file could feel unjustly threatened.

We all make mistakes and with the ambiguity of internet content being what it is you could quite easily start a download for something unlawful without even knowing it. Issuing notifications for a single CIR would also prove highly costly for all parties involved and it could also become an administrative nightmare.

There needs to be some flexibility and balance within the system so that only people who appear to be abusing copyright content for real are faced with notifications. This cuts down on the costs and makes the possibility of incorrectly targeting innocent users far less probable due to a supporting weight of evidence.

Furthermore it is unclear whether the methods used to track unlawful downloading/uploading have the capability to recognise if the full copyright content has been 100% transferred (completed download/upload) or not. I therefore pose a simple question - if you, as an example internet user, accidentally started an unlawful p2p transfer and stopped after 1% of the process (for example, after recognising that it was not a legitimate file), would it still be justifiable to issue a CIR? ISPReview.co.uk says no.

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.:

No.

Put simply, we believe that the appeals process would only be effective in a minority of cases due to the evidence less nature of the supposed unlawful activity in any defence. It is therefore unworkable and without solution. To explain:

Ask yourself one very simple and obvious question; if you know you're innocent, how do you prove it (the assumption in this system is that you are guilty until proven innocent)?

For example, how would a non-technical person (pensioner etc.) defend themselves or even know if their wireless network had been hacked and used to download copyright material? There is rarely ever any practical evidence for an effective defence, it's just your word against theirs.

Imagine if a child visiting somebody else's home used the connection, without the

owners knowledge or consent, to do the same; what then? Rights Holders will claim that the connection owner has committed copyright infringement but you have no way of knowing what happened.

Given that IP addresses can also be so easily abused, spoofed, faked and redirected, it's also quite worrying to consider the impact that incorrect data might have. If you are using a legitimate P2P service (Steam, product updates etc.) at the same time as somebody has spoofed your IP for an unlawful P2P download then the ISP simply could not tell the difference. You would look guilty.

Until there is a way to solve these dilemmas than we cannot see the system being workable unless it begins after a large bulk of CIR's have been accumulated. See our response to Q6.1.

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.:

No reply.