

**Title:**

Ms

**Forename:**

Milena

**Surname:**

Popova

**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:**

You may publish my response on receipt

**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. In addition I would propose that an annual review is undertaken, comparing Copyright Owners' initial estimates of CIRs with the actual number they have submitted throughout the year. The results of this review should be used for cost-

sharing, as well as to help Copyright Holders improve the estimates they provide to ISPs.

**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.:**

**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?:**

**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?:**

**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 am strongly concerned about section 2.23 ("Where a Wi-Fi network is provided in conjunction with other goods or services to a customer, such as a coffee shop or a hotel, our presumption is that the provider is within the definition of internet service provider."). While I understand that initially such providers will fall outside of the framework of Qualifying ISPs, I believe it sets a dangerous precedent for the future. Open WiFi access points really help small businesses thrive. They also enrich the UK's digital and physical economy. Increasingly, open WiFi access is expected as standard by customers of most coffee shops and hotels as well as other small business, and certainly is rapidly becoming standard in other countries.

The above quoted section is likely to strongly discourage proprietors of small business to provide open WiFi access as a feature to their customers. This is in turn likely to damage those businesses by driving customers away, and to have a significant negative impact on quality of life in 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?:**

I believe section 3.30 of the consultation document ("We consider that a person or an undertaking receiving an internet access service for its own purposes is a

subscriber, even if they also make access available to third parties.") potentially directly contradicts section ("Where a Wi-Fi network is provided in conjunction with other goods or services to a customer, such as a coffee shop or a hotel, our presumption is that the provider is within the definition of internet service provider.").

**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?:**

I am concerned about the invasion of privacy which collecting this kind and amount of information about subscribers' communication represents. I do, however, believe that if this kind of information is collected it should be made available to subscribers accused of infringement in its entirety to facilitate the appeals process.

**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.:**

This proposal does not meet the obligations explicitly put on OFCOM by the Digital Economy Act in Sections 7.2.a and 7.2.b with regards to the Initial Obligations Code, namely that "The required provision about copyright infringement reports is provision that specifies (a) requirements as to the means of obtaining evidence of infringement of copyright for inclusion in a report; (b) the standard of evidence that must be included".

Allowing industry self-regulation on this matter risks breaching privacy legislation and does not live up to standards of openness and transparency one would expect in a modern democracy. I believe it is vital for OFCOM to review this section and set out detailed provisions as required by the Digital Economy Act.

**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?:**

**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.:**

**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.:**

Similarly to question 4.2, I do not believe that OFCOM's current proposals are meeting OFCOM's obligations under the Digital Economy Act Section 7.3.a, namely "The required provision about the notification of subscribers is provision that specifies, in relation to a subscriber in relation to whom an internet service provider receives one or more copyright infringement reports (a) requirements as to the means by which the provider identifies the subscriber";

Allowing industry self-regulation on this matter risks breaching privacy legislation and does not live up to standards of openness and transparency one would expect in a modern democracy. I believe it is vital for OFCOM to review this section and set out detailed provisions as required by the Digital Economy Act.

**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. :**

OFCOM has chosen a time-based approach for escalating copyright infringement notifications. In principle I agree with this, however, as I understand the current provisions, they do not foresee an expiry date for any notifications. I believe it is vital for notifications and CIRs to be time-bounded and to be deleted from a subscriber's record after no more than 12 months, and that this should be made very clear and explicit in the Initial Obligations Code.

**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?:**

Any notification should, in addition to the proposed content, include a detailed explanation of how the evidence of copyright infringement was gathered and the subscriber's IP address matched to them; a copy of the detailed evidence from both the Copyright Owner and the ISP; any other data the Copyright Owner and the ISP hold in relation to the incident in question; information on how long this notification will be held on the subscriber's record before it is deleted.

This will help subscribers understand the process better as well as give them some of the data they will require to lodge an appeal if appropriate.

**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. :**

**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 enable subscribers to lodge an effective appeal, they will need access to the detailed evidence (see also my response to question 5.4). Additionally, there is a significant information asymmetry between the subscriber on the one hand and the Copyright Owner and ISP on the other as the latter have significantly more technical expertise at their disposal. It is therefore extremely difficult for subscribers to lodge effective appeals as they may not be able to understand the technical details of the evidence against them and how this information was obtained. This is a very serious concern.

**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.:**