

**OFCOM CONSULTATION ON:
ONLINE INFRINGEMENT OF COPYRIGHT AND THE DIGITAL
ECONOMY ACT 2010: DRAFT INITIAL OBLIGATIONS CODE**

**RESPONSE OF THE BRITISH HOSPITALITY ASSOCIATION,
BRITISH BEER AND PUB ASSOCIATION, AND
BRITISH HOLIDAY AND HOME PARKS ASSOCIATION**

July 2010

INTRODUCTION

1. The members of the three associations listed below are likely to be affected by the provisions of the Digital Economy Act with regard to internet and wi-fi services made available to customers.
2. The British Hospitality Association represents the hotel, restaurant and catering industry. Our members operate some 40,000 establishments with a turnover of around £25 billion and employ an estimated 500,000 people.
3. The British Beer and Pub Association (BBPA) represents brewing companies and their pub interests, and pub owning companies, accounting for 98% of beer production and around two thirds of the 52,000 pubs in the UK. The pub sector contributes over £22 billion to the economy and employs in the region of 600,000 people. Over 80% of pubs (i.e. around 45,000 outlets) are small businesses which are independently managed or run by self-employed licensees.
4. The British Holiday and Home Parks Association is the national trade body representing developers and operators of holiday, caravan and chalet parks and residential home parks in the UK. The Association represents an industry which accounts for a tourist spend of some £2.6 billion each year, accommodating some 20 per cent of all holiday bed nights in the UK. The industry comprises holiday chalets, caravan holiday homes, lodges, touring caravans, tenting and all types of self-catering accommodation. The BH&HPA membership owns and manages an estimated 80 per cent of the total licensed caravan and self-catering 'on-site' pitches in the UK.

5. The Association estimates that there to be some 3500 holiday parks geographically dispersed to the coastal and rural areas that are attractive to holiday makers. The industry includes well known brands but the majority of the 3500 businesses in the sector are SMEs or micro-enterprises, usually independently owned and managed as a family concern.

THE DIGITAL ECONOMY ACT

6. Our central concern about the Act is the threat to members' businesses where Copyright Infringement Reports, issued following illegal actions by customers, could lead to internet access being restricted or suspended. There are an estimated 500,000 plus hotel bedrooms in the United Kingdom, an ever-increasing percentage of which enjoy internet access, made available to guests either free or for a fee.

7. Hotel bedrooms and holiday caravans and lodges are private places and hotel and park operators are not in a position to monitor whether guests are breaking copyright law when using the provided internet facilities. Hotels and parks are, in effect, innocent parties, potentially caught up in the bureaucracy proposed in the consultation.

8. The same applies to the provision of wi-fi in public areas whether in hotels, restaurants or pubs, though the capacity to download copyright material in such areas is probably more limited. The provision of wi-fi services has, however, proved very popular with pub customers, at a time when the pub sector as a whole has experienced unprecedented closures and has sought to diversify across a number of areas in order to survive the economic downturn.

9. Busy pubs, bars and coffee shops, which have high levels of passing trade, would find it impossible to identify customers who have breached copyright laws on their premises.

10. In the case of holiday and residential parks, in response to consumer demand, an increasing number now offer a wi-fi service of some sort and therefore the Code may have an impact. Large parks, some offering over 1500 pitches and accommodating around 6000 customers a night at peak season, will seek to offer as fast a broadband speed as possible.

DEFINITION OF INTERNET SERVICE PROVIDER

11. The consultation attempts to be helpful, indicating in paragraph 3.23 that “where a Wi-Fi network is provided in conjunction with other goods or services to a customer, our presumption is that the provider is within the definition of internet service provider” and thus, under the proposed 400,000 subscriber threshold, likely to be exempt from the relevant provisions of the Act (though presumably then subject to other regulations affecting ISPs).

12. However, the consultation also indicates (paragraph 3.22) that open access Wi-Fi networks where there is no payment from, or agreement with, users would not be exempt internet service providers, and (paragraph 3.30) that an undertaking receiving an internet access service for its own purposes is a subscriber, even if access is made available to third parties. (There is also an issue about whether a hotel could be an internet service provider if the IP addresses have been allocated by the original ISP.)

13. The first of these paragraphs (3.22) would appear to bring many businesses, such as pubs, coffee shops and restaurants, within the scope of the Act, because there is generally no agreement with, or payment from their customers for this service. The second of these paragraphs (3.30) may be sufficiently widespread to bring most hotels, parks, pubs and restaurants within its scope, simply because most of them use a (single) internet access service both for business traffic (for example, online booking of rooms and holiday caravans) and to provide guests with internet facilities. It appears that this would make them “subscribers” subject to sanctions rather than “communications providers” who, it would appear, though this is not specifically stated, would not be subject to sanctions.

14. In short, we are none the wiser about which hospitality businesses are exempt and which are at risk from restriction or suspension of internet access. This is an unacceptable situation.

COPYRIGHT INFRINGEMENT REPORTS

15. It is impossible to predict how many Copyright Owners will participate in the scheme and how many Copyright Infringement Reports will be issued. At the extreme, if every infringement were to be reported and if just one guest per thousand bedrooms was to infringe copyright, that would indicate around a quarter of a million infringements and reports a year, or four or five for the average hotel.

16. We fear that a very high proportion of accommodation providers could find themselves on copyright infringement lists, with serious commercial consequences, unless the exemption described above does generally and clearly remove them from the scope of the Act.

17. It is therefore imperative that the position of hotels and other hospitality establishments is clarified as a matter of urgency.

CONCLUSION

18. Fixed line internet and wi-fi services are increasingly provided in response to customer demand as our members seek to enhance the range and quality of their offering in a challenging business environment.

19. As a matter of principle, it is wrong to hold businesses, which are providing internet and wi-fi services to the vast majority of law abiding customers, responsible for the illegal actions of a small minority because they take place on their premises.

20. If the Act is eventually implemented in full, many of our members are likely to withdraw internet/wi-fi facilities, a retrograde step given the technological age in which we live, work and socialise.

21. Our three associations would welcome the opportunity of early discussions with Ofcom about these matters.

22. I confirm that we have no objection to this response being made publicly available.

**MARTIN COUCHMAN
DEPUTY CHIEF EXECUTIVE
BRITISH HOSPITALITY ASSOCIATION**

ON BEHALF OF THE BHA, BBPA AND BH&HPA.