



Network Operators' Guide to *Digital Economy Act 2010*

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Obligatory Disclaimer

- I'm not a lawyer
 - This isn't legal advice
 - Neither I nor my employer take responsibility
- This is **very** new law (passed April 8th)
 - Significant parts had little/no debate
 - Much of it is “left to the Codes”
 - Only looking at copyright infringement part
 - I may have missed things: please shout...

Outline

- What is clear
- What isn't clear
- How to get involved





What is Clear

- Role of “ISPs”
 - NOT policemen, judge or jury
 - Messengers
 - (maybe in future) Prison guards
 - Enforcing punishments ordered elsewhere
- Succession of legislative powers
 - Some now, some later



Stage 1: Messengers

- Now: once Code is adopted by Ofcom
 - Planned “soft launch” with EC approval Jan 2011
- Rights owner to ISP: Copyright Infringement Report
- ISP to relevant subscriber: graduated response
 - 1st report: send information message
 - Including advice on securing systems, lawful sources, etc.
 - ~10th report: send warning message
 - ~30th report: send severe warning message
 - NB Gov’t believes you can always find subscriber



Stage 1: Messengers

- Serious Infringers list/database
 - Group CIRs by subscriber/rights-owner
 - Rights owners can request list of *their* CIRs
 - Probably a minimum threshold for “serious”
 - Rights owners note some notices worse than others
 - Owner then uses *Norwich Pharmacal* process
 - Ask court to order ISP to disclose infringer identity
 - Owner sues infringer for damages



Stages 2: Prison Guards

- 2012 or later, if Government decides
- Add “Technical measures” to graduated response
 - E.g. ~50th report: throttle, filter, suspend, ...
 - Subscriber can appeal
 - Otherwise ISP applies specified measure mechanically
- Some future date, if Gov’t decides to create power
- Rights owner can ask Court to make order (injunction)
 - Service provider must block “internet location”
 - Court must consider effect on 3rd party interests
 - Impact on criminal/terrorist investigations
 - ISP cost? Over-blocking? Effectiveness?



What isn't clear

- Definition of “ISP”
 - Consumer? B2B? VISP? Transit?
 - Universities? Public libraries? Businesses? Cafes?
 - Gov't reckons there may be 5, 20 or 450 in scope!
- Thresholds
 - For graduated response + infringers list
 - May be a small/good ISP threshold
- Content of notice
 - Gov't suggests source IP address + time ☹



Getting Involved

- Cost-sharing consultation closes 25/5 (DBIS)
 - Cost of ISP measures + Ofcom + Appeal body
 - Gov't thinks you should pay at least 25%
- Code discussions (launched 15/4), including
 - Definition of “ISP” and “Subscriber”!
 - Thresholds (for subscribers and ISPs)
 - Process (e.g. CIN format; e-mail or snail-mail)
 - Payment (e.g. Pre-registration? Pre-payment?)
 - NB NOT Technical measures code yet
- What advice to give to subscribers?



Extra slides



Definitions

- “ISP” not defined in previous law, so
 - Define Internet Access Service comprising
 - Connectivity and IP address allocation, and
 - Provided under an agreement, and
 - Main purpose of connectivity is internet access.
 - “ISP” is provider of IAS
- “Subscriber”
 - Person who receives IAS
 - Unless they are a communications provider
 - Responsible for all traffic on connection



Problem Definitions

- “Person” = Andrew, JANET(UK), or...
- Camford University. Which makes them...
 - A Subscriber?
 - Aren't they a communications provider?
 - An ISP?
 - Isn't the purpose employment/education?
 - Do they receive an IAS anyway?
 - Or is their IP allocation from RIPE/IANA?
 - DBIS: “every university must decide for itself”
 - Which could add 1000 more ISPs to regulate ☹️



References

- Digital Economy Act 2010
 - <http://www.opsi.gov.uk/>
- DBIS Costs consultation
 - <http://www.bis.gov.uk/Consultations/online-infringement-of-copyright?cat=open>
- OFCOM
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