



# Online Copyright Infringement - Customer Protection Principles

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The Communications Consumer Panel recognises that following Parliamentary approval of the Digital Economy Act measures to curb online infringement of copyright are to be implemented. The Panel considers it essential to ensure that this occurs in a way that protects citizen interests. It also recognises that the measures that are proposed are likely to be subject to legal challenge. This makes it important that these measures are particularly proportionate and balanced and meet accepted standards of due process.

The following principles have been developed by the Communications Consumer Panel, Consumer Focus, Which?, Citizen's Advice and the Open Rights Group. These principles are a guide to protecting the citizen interest in a proportionate way when developing an initial obligations code and appeals mechanism as part of the implementation of the new framework for online copyright infringement.

These principles are therefore intended to help Ofcom and other policymakers as they develop and implement the new framework for sections 3-16 of the Digital Economy Act 2010 (sections 124A-124N of the Communications Act 2003). They are not exhaustive and do not contain reference to technical measures. The parties who have signed up to these principles will deal with technical measures if or when the Secretary of State orders them to be imposed at any time after the first 12 months of the initial obligations code coming into force, in accordance with the Act.



In the view of the signatories to these principles, protection of the customer interest in this context requires the following:

1. Rights holders should have to provide cogent evidence of wrongdoing to the ISP before beginning the notification process, and this should be provided to the alleged infringer on notification.
  - This evidence must connect the customer to the alleged copyright infringement.
  - The systems used to collect this evidence must be independently verified by Ofcom or bodies authorised by Ofcom and meet a prescribed high standard of accuracy and reliability.
  - Evidence should not be withheld from customers and subscribers should be notified of every copyright infringement report received by the ISP in relation to their internet account.
2. We strongly believe that customers will best be served by receiving uniform information on the nature and consequences of being included in a “copyright infringement list” of suspected repeat infringers. If different customers receive different letters from their respective ISPs, there will be legal uncertainty. It is important that letters from ISPs are clear, short and to the point. Letters from ISPs should therefore be accompanied by a standard information pack that explains the details of the notification and appeals process. This could be supported by advice and information about legal downloading services.

Notification should be educational and positive and should meet standards for plain English. The pack should not include partisan information on the impact of online copyright infringement.

We believe that it would be a disproportionate reaction to suppress open WiFi networks operated by individuals or organisations at this stage. Since the Act does not mandate that networks be closed, the initial obligations code and notification information should be designed to avoid such an unintended consequence.

- The notification pack should explain clearly the implications and potential implications of being included in a “copyright infringement list”, including all other possible consequences, such as prosecution. If this information is to be used in any future process this should be made clear to the customer now.
- Notifications should explain clearly what data has been collected on a customer, how it has been collected, and how that data will be stored and used in future.
- Notifications should explain clearly the opportunity to appeal, including the grounds on which an appeal can be made and the consequences of not appealing at this stage.

- Notifications should explain the process involved in bringing an appeal.
  - Notifications should not advise customers to secure their Wifi. But they should provide information to customers about how they can, should they choose to do so.
  - Notifications should acknowledge that the recipient may not be personally responsible for, or even aware of, the alleged copyright infringement.
  - Notifications should explain clearly that that legal liability rests with the infringer or with the person legally responsible for the infringer.
  - Notifications should let recipients know who they can contact for advice about protecting their internet connection and for guidance on the appeals process.
  - Notifications should not contain any ambiguous or threatening language likely to cause customers undue worry.
  - The notification pack should advise the customer of an Ofcom nominated information provider that can provide further independent information and advice on the appeals process.
- 3. Customers should have fair and reasonable opportunity to defend themselves against a copyright infringement report.**
- Customers should be able to defend themselves or appeal accusations on any reasonable grounds.
  - There should be at least one independent third party that can provide guidance on the appeals process and on how to gather evidence to refute an allegation.
  - The appeals body should make it as easy as possible for customers to make an appeal, if they meet any of the predefined grounds.
  - Appeals should be, quick, simple and free. Costs should not be imposed on the customer as they may cause a barrier to accessing an appeal.
  - Any customer with a case that meets any of the predefined grounds of appeal should be able to appeal a copyright infringement report without bearing any costs.
  - Customers should receive compensation if their appeal is upheld.
- 4. Customers should be provided with information outside the notification and appeals process about the existence of legal providers of online content services.**
- Rights holders should do more to develop attractive, easy-to-use and affordable alternatives to online copyright infringement.

- Rights holders should use marketing campaigns to inform customers about the existence of legal services.

## 5. The appeals process, and the appeals body, should be:

- Independent and impartial, particularly independent from ISPs and Rights holders. This is essential if the process is to enjoy legitimacy and should be reflected in a majority lay membership, including members that are completely independent of industry, security of tenure for chair and board members and budgetary independence;
- Transparent; maintaining a website containing detailed public information including membership of appeals body, budgeting, numbers of appeals, numbers of adjudications, and nature of adjudication;
- Expert; the appeals body should include independent membership with expertise in: (i) the value of evidence likely to be served relating to ISP logs, IP addresses and other technical matters (ii) copyright and media law relating to fair use and peer to peer networks, and freedom of expression (iii) media use, and media literacy of internet users;
- Representative; the appeals body should, in addition, include lay consumer members similar to the model used by the Food Standards Agency and the National Health Service; and,
- Accountable; to the general public, Parliament and Ofcom.

The **Communications Consumer Panel** was established by the Communications Act 2003 to protect and promote the consumer and citizen interest in matters relating to communications services. <http://www.communicationsconsumerpanel.org.uk>

**Consumer Focus** is the statutory organisation campaigning for a fair deal for consumers in England, Wales, Scotland, and, for postal services, Northern Ireland. <http://www.consumerfocus.org.uk>

**The Open Rights Group**, founded in 2005 by 1,000 digital activists, is the UK's leading voice defending freedom of expression, privacy, innovation, consumer rights and creativity on the internet. <http://www.openrightsgroup.org>

**Which?** is an independent, not-for-profit consumer organisation with around 700,000 members and is the largest consumer organisation in Europe, is independent of government and industry, and funded through the sale of Which? consumer magazines, and other subscription services. <http://www.which.co.uk/>

The **Citizens Advice** service is a network of independent charities that helps people resolve their money, legal and other problems by providing information and advice and by influencing policymakers. For more information in England and Wales see <http://www.citizensadvice.org.uk>