[GB] Online Infringement of Copyright and the Digital Economy Act 2010

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The Digital Economy Act 2010, Section 3, concerning 'Online infringement of copyright', has amended the Communications Act 2003, Section 124. The Explanatory Memorandum for Section 3 of the 2010 Act states that the Act imposes duties on Internet Service Providers to (a) "notify their subscribers if the internet protocol ("IP") addresses associated with them are reported by copyright owners as being used to infringe copyright" and (b) "keep track of the number of reports about each subscriber and, on request by a copyright owner, compile on an anonymous basis a list of those subscribers who are reported on by the copyright owner above a threshold set in the initial obligations code [...] After obtaining a court order to obtain personal details, copyright owners will be able to take action against those included on the list."

Prior to such obligations coming into force, the UK communications regulator, Ofcom, its mandate having been extended by the Digital Economy Act, is required to draw up a Code which will set out "how and when Internet Service Providers (ISPs) covered by the code will send notifications to their subscribers to inform them of allegations that their accounts have been used for copyright infringement." The code of practice is called 'The Online Copyright Infringement Initial Obligations Code'.

Initially, Ofcom proposes that the Code will be applied to the "larger" ISPs, meaning fixed-line ISPs with over 400,000 subscribers, specifically, BT, Talk Talk, Virgin Media, Sky, Orange, O2 and Post Office. As regards subscribers, Ofcom proposes a "three stage notification process for ISPs to inform subscribers of copyright infringements and [...] that subscribers which have received three notifications within a year may be included in a list requested by a copyright owner." An appeal procedure is also contemplated: the establishment of "an independent, robust subscriber appeals mechanism for consumers who believe they have received incorrect notifications, arrangements for enforcement and dealing with industry disputes, as well as sharing the costs arising from the code."

Finally, the Code also envisages consumer education; the promotion of lawful alternative services; and targeted legal action against serious infringers.

The Code is expected to come into force in early 2011, not later than eight months after the Act received the Royal Assent. There is now to be a period of

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consultation, from 28 May 2010 until 30 July 2010. Also, the draft Code has to be approved by the European Commission.

Digital Economy Act 2010 Section 3

http://www.opsi.gov.uk/acts/acts2010/ukpga_20100024_en_1#pb2

Explanatory Memorandum, "Topic 2: Online infringement of copyright"

http://www.opsi.gov.uk/acts/acts2010/en/ukpgaen_20100024_en_1#div5-sub2

Online Infringement of Copyright and the Digital Economy Act 2010: Draft Initial Obligations Code

http://www.ofcom.org.uk/consult/condocs/copyright-infringement/

Draft code of practice to reduce online copyright infringement

http://www.ofcom.org.uk/media/news/2010/05/nr_20100528

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