



Digital Economy Act 2010

2010 CHAPTER 24

Online infringement of copyright

7 Contents of initial obligations code

After section 124D of the Communications Act 2003 insert—

“124E Contents of initial obligations code

- (1) The criteria referred to in sections 124C(6) and 124D(6) are—
- (a) that the code makes the required provision about copyright infringement reports (see subsection (2));
 - (b) that it makes the required provision about the notification of subscribers (see subsections (3) and (4));
 - (c) that it sets the threshold applying for the purposes of determining who is a relevant subscriber within the meaning of section 124B(3) (see subsections (5) and (6));
 - (d) that it makes provision about how internet service providers are to keep information about subscribers;
 - (e) that it limits the time for which they may keep that information;
 - (f) that it makes any provision about contributions towards meeting costs that is required to be included by an order under section 124M;
 - (g) that the requirements concerning administration and enforcement are met in relation to the code (see subsections (7) and (8));
 - (h) that the requirements concerning subscriber appeals are met in relation to the code (see section 124K);
 - (i) that the provisions of the code are objectively justifiable in relation to the matters to which it relates;
 - (j) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (k) that those provisions are proportionate to what they are intended to achieve; and

- (l) that, in relation to what those provisions are intended to achieve, they are transparent.
- (2) 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; and
 - (c) the required form of the report.
- (3) 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;
 - (b) which of the reports the provider must notify the subscriber of; and
 - (c) requirements as to the form, contents and means of the notification in each case.
- (4) The provision mentioned in subsection (3) must not permit any copyright infringement report received by an internet service provider more than 12 months before the date of a notification of a subscriber to be taken into account for the purposes of the notification.
- (5) The threshold applying in accordance with subsection (1)(c) may, subject to subsection (6), be set by reference to any matter, including in particular one or more of—
- (a) the number of copyright infringement reports;
 - (b) the time within which the reports are made; and
 - (c) the time of the apparent infringements to which they relate.
- (6) The threshold applying in accordance with subsection (1)(c) must operate in such a way that a copyright infringement report received by an internet service provider more than 12 months before a particular date does not affect whether the threshold is met on that date; and a copyright infringement list provided under section 124B must not take into account any such report.
- (7) The requirements concerning administration and enforcement are—
- (a) that OFCOM have, under the code, the functions of administering and enforcing it, including the function of resolving owner-provider disputes;
 - (b) that there are adequate arrangements under the code for OFCOM to obtain any information or assistance from internet service providers or copyright owners that OFCOM reasonably require for the purposes of administering and enforcing the code; and
 - (c) that there are adequate arrangements under the code for the costs incurred by OFCOM in administering and enforcing the code to be met by internet service providers and copyright owners.
- (8) The provision mentioned in subsection (7) may include, in particular—
- (a) provision for the payment, to a person specified in the code, of a penalty not exceeding the maximum penalty for the time being specified in section 124L(2);

- (b) provision requiring a copyright owner to indemnify an internet service provider for any loss or damage resulting from the owner's failure to comply with the code or the copyright infringement provisions.
- (9) In this section "owner-provider dispute" means a dispute that—
- (a) is between persons who are copyright owners or internet service providers; and
 - (b) relates to an act or omission in relation to an initial obligation or an initial obligations code."