

Title: Impact Assessment of draft SI “The online infringement of copyright (Initial Obligations)(Sharing of Costs) order 2011” Lead department or agency: Culture, Media and Sport Other departments or agencies: Intellectual Property Office, Ofcom	Impact Assessment (IA)
	IA No: DCMS032
	Date: 29/06/11
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary Legislation
Contact for enquiries: Adrian Brazier (020 7211 6023)	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The Digital Economy Act 2010 contained measures to address the rise in online infringement of copyright which might reduce the incentive for the creative industries to invest in the development, production and distribution of new content. Implementation of the proposed policy would allow rights holders to better appropriate the returns on their investment. The Act requires for a Code of Practice by Ofcom (for which an IA will be produced) to set out how the provisions will work in practice; this will be underpinned by a Sharing of Costs order (which is the subject of this IA), which sets out how the costs will be apportioned.

What are the policy objectives and the intended effects?

The overall policy objective of the online copyright infringement provisions of the Digital Economy Act is to help ensure that investment in content is at socially appropriate levels by allowing investors to better appropriate the returns on their investment. Failure to set up an effective cost-sharing process will jeopardise the successful implementation of these provisions. Therefore, the Government is proposing this Sharing of Costs statutory instrument which will set out how the costs of implementing the measures should be apportioned between copyright owners and internet service providers (ISPs). The Sharing of Costs SI doesn't introduce any regulations itself, but sets out a clear mechanism by which the regulations in Ofcom's Code of Practice should be paid.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Two options have been considered:

Option 0: Do nothing. In the absence of any secondary legislation, once the Code of Practice is in law, ISPs would need to bear the full costs they incur in carrying out their obligations under the Act, and Government would need to meet the full cost of Ofcom's work in setting up and administering the measures. Insufficient clarity in how the costs should be shared would be a risk to effective implementation of the measures.

Option 1 (Preferred option): Introduce the Sharing of Costs SI; this introduces a cost-sharing mechanism for the costs incurred by ISPs, enables Ofcom to recover costs from industry, and introduces an appeals fee. Ofcom costs will be borne by copyright owners; notification costs and appeals case fees will be shared between copyright owners and ISPs in a ratio of 75:25. A regulatory option is necessary because it provides legal certainty for a cost-sharing mechanism to operate effectively.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 07/2013
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

Ministerial Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.



Signed by the responsible Minister:

Date: 29 June 2011

Summary: Analysis and Evidence

Policy Option 1

Description:

Sharing of Costs order, providing legal certainty for cost-sharing mechanism

Price Base Year 2008	PV Base Year 2010	Time Period Years 1	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£11.5m	£9.5m – 20m	£84m – 164m

Description and scale of key monetised costs by 'main affected groups'

Once the Code of Practice is in force, copyright owners will bear Ofcom costs of enforcing the regulations: £5.8m one-off and £5m recurring costs. Copyright owners will pay a share of ISP costs from notification and record keeping obligations (this is a transfer of costs, generating zero net cost). This could lead to a cost increase for copyright holders of £4.5m - £15m for recurring costs and £5.7m for one-off costs based on applying a 75% share to Ofcom estimates of total costs to ISPs.

Other key non-monetised costs by 'main affected groups'

There will be a cost to copyright owners and ISPs from operation of the appeals process, and to subscribers who choose to access the appeals system and will be required to pay a fee. Robust estimates for these are contingent on future consultation, therefore not known at this point. However, we show for illustrative purposes some scenarios, using a range of estimates for the volume of notifications and appeals ratios in the evidence base section, to demonstrate a possible range of costs.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£11.5m	£9.5m – 20m	£84m – 164m

Description and scale of key monetised benefits by 'main affected groups'

Ofcom will receive payment for its costs of enforcing the regulations of £5.8m one-off costs and £5m recurring costs. ISPs will only have to pay a share of the costs associated with the notification and record keeping obligations (this is a transfer). This could lead to a saving for ISPs of £4.5m to £15m for recurring costs and £5.7m for one-off costs based on applying a 75% share to Ofcom estimates of total costs to ISPs.

Other key non-monetised benefits by 'main affected groups'

The implementation of the SI will help to ensure that the proposals on addressing online copyright infringement will facilitate progress towards the desired outcome of socially appropriate investment in content, thus generating significant benefits for copyright owners, consumers and Government.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

This Impact Assessment should be read in conjunction with the Impact Assessment accompanying the Digital Economy Act 2010.

The assumptions underpinning the analysis are based on the best available evidence. Total ISP notification costs are contingent on further consultation - for the purpose of this impact assessment we have used estimates from the DEA impact assessment and from Sweet Consulting (see page 9). The appeals mechanism costs are contingent on future developments, therefore illustrative scenarios based on Ofcom figures are used in this impact assessment (pages 10-11).

A separate impact assessment will be produced to accompany Ofcom's Code of Practice.

Direct impact on business (Equivalent Annual) (£m):			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	United Kingdom				
From what date will the policy be implemented?	01/01/2012				
Which organisation(s) will enforce the policy?	Ofcom				
What is the annual change in enforcement cost (£m)?	Unknown				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: N/A		Benefits: N/A		
Distribution of annual cost (£m) by organisation size (excl. Transition) (Constant Price)	Micro N/A	< 20 N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	Yes	Yes	Yes	Yes	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	13
Small firms Small Firms Impact Test guidance	Yes	13
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

No.	Legislation or publication
1	Digital Economy Act: Impact Assessments http://www.ialibrary.bis.gov.uk/uploaded/Digital-Economy-Act-IAs-final.pdf
2	BIS Impact Assessment accompanying the consultation on the draft instrument “online infringement of copyright (initial obligations) (sharing of costs) order http://www.bis.gov.uk/Consultations/online-infringement-of-copyright?cat=closedawaitingresponse
3	Ofcom consultation on Online Infringement of Copyright and the Digital Economy Act 2010 http://www.ofcom.org.uk/consult/condocs/copyright-infringement/

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	11.5	0	0	0	0	0	0	0	0	0
Annual recurring cost	9.5 – 20									
Total annual costs	21 – 31.5									
Transition benefits	11.5	0	0	0	0	0	0	0	0	0
Annual recurring benefits	9.5 – 20									
Total annual benefits	21 – 31.5									

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

Rationale for Government intervention

An important feature of creative industries like the music, software and film industries is that they are characterised by strong intellectual property rights (IPR). Strong IPR creates an incentive to invest in the development of new and more innovative products since it permits individuals to capture the gains from the new products it creates.

However, with unlawful file sharing, the incentive to invest in new and mainstream artists is undermined because industry cannot capture all the gains generated from its investment. This is because the public goods² nature of file sharing and its spillover effects³ creates a free-riding problem whereby users may enjoy the benefits of file sharing without paying the product's price⁴. The disincentive to invest in artists as a result of free-riding is a particular problem in the music, film and videogames industries because they are characterised by large investment costs and a relatively high risk of failure.

The background to the online copyright infringement provisions of the Digital Economy Act are set out below. Key to achieving the desired outcome of optimal investment in content – through the provisions in the DEA – is the need for clarity on how the ensuing costs on internet service providers (ISPs) associated with these obligations are shared between copyright owners and ISPs, and how Ofcom will recover its costs.

Background

Following consultations in 2008 and 2009, proposals to implement legislation through the Digital Economy Act 2010 (DEA) were introduced to address the rise in unlawful peer-to-peer file sharing, which can reduce the incentives to invest in the development, production and distribution of new content by preventing investors in the creative industries from fully appropriating the returns on their investment⁵. The DEA aims to reduce online infringement of copyright by introducing a system of mass notifications designed to educate consumers about copyright and bring about a change in consumer behaviour⁶. The Government anticipates that these “initial obligations” will complement efforts made by copyright owners to promote lawful access to their content, and to inform and change the attitude of members of the public in relation to the infringement of copyright.

The online copyright provisions place obligations on ISPs to take direct action against users who are identified as infringing copyright through unlawful file sharing. Copyright owners will identify instances of unlawful file sharing and will notify the relevant ISP that an IP address has been connected with unlawful activity, through a Copyright Infringement Report (CIR). On receipt of a CIR from a copyright owner, the ISP will be obliged to notify the subscriber whose account has been identified as involved in infringing activity. The ISP will also need to maintain anonymised records of the number of times an individual subscriber's account has been identified as infringing copyright, and to maintain lists of those most frequently identified in connection with alleged infringements, providing copyright owners with these lists on request.

The subscriber who receives a notification letter can choose to appeal. Under the provisions of the DEA, the subscriber is entitled to appeal each notification and each CIR within a notification. Ofcom is obliged by the DEA to appoint an Appeals Body to determine appeals, and must approve its procedures. The minimum grounds for appeal are set out in the DEA.

² Public goods are those goods which are non-rival and non-excludable in consumption. Non-rival in consumption means that one person's consumption of a good or service does not reduce the amount which can be consumed by another person, and non-excludable means that it is not possible to prevent another person from consuming it.

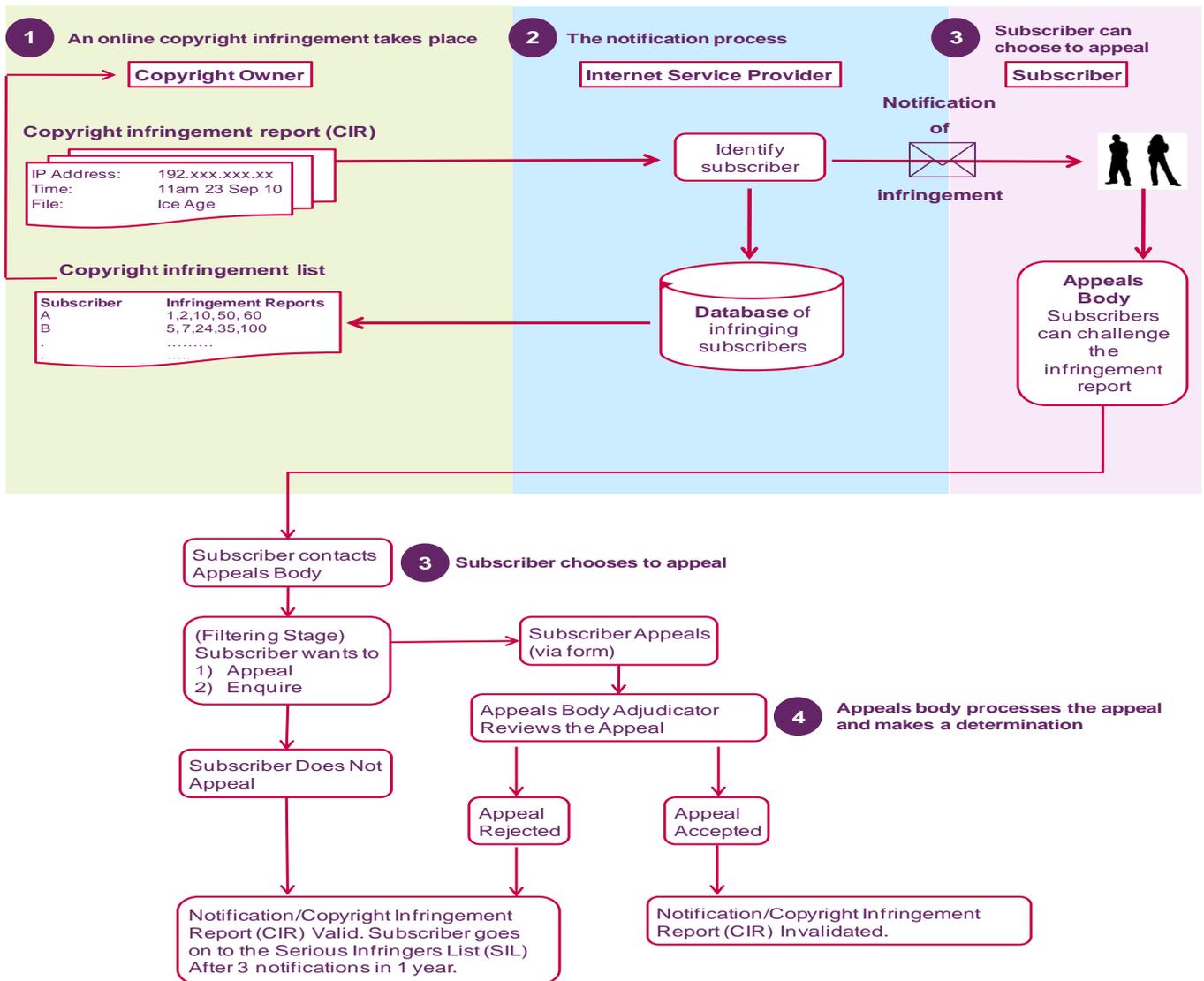
³ Spillover effects arise when one person's actions have an impact on a third party.

⁴ A similar case arises with Research and Development (R&D) whereby a company cannot capture all the benefits of its R&D activity because it cannot fully retain the knowledge that it creates. Knowledge spills over to other companies through various mechanisms, including personnel changing jobs or copying.

⁵ File sharing – the exchange of content files containing audio, video, data or anything in digital format between users on a computer network.

⁶ The Digital Economy Act inserted sections 124A to 124N into the Communications Act 2003 relating to online infringement of copyright.

The initial obligations process can be broken down into four principal components (see diagram below).



Source: Ofcom

The Government intends for the online copyright infringement provisions of the Act to be enacted through two pieces of secondary legislation: a Code of Practice to be published by Ofcom, which will set out the details of how the provisions will work in practice – and for which a separate impact assessment will be published; and a Sharing of Costs statutory instrument (SI) which will set out how the implementation of the provisions is to be paid for and which will be replicated within the Code of Practice. The Sharing of Costs SI is the focus of this impact assessment. This SI does not introduce any regulations itself – obligations on industry will only come into force with the Code of Practice.

Sharing of Costs order

In order to assist the Parliamentary debates on the Digital Economy Bill relating to measures on online infringement of copyright, a draft Statutory Instrument was prepared which set out the proposed format and structure for cost allocation. It set out the working assumption that the notification costs should be shared between copyright owners and ISPs in the ratio 75:25⁷.

The implementation of the Sharing of Costs SI was consulted on publicly between March and May 2010, and the Government response along with a Final Stage Impact Assessment was published in September

⁷ <http://www.bis.gov.uk/Consultations/online-infringement-of-copyright>

2010. The Government decided that relevant costs incurred should be shared between copyright owners and ISPs in the ratio 75:25. The draft order, reflecting this decision, was notified to the European Commission under the Technical Standards Directive and then laid in Parliament. Since then, a judicial review ruling and Ministerial decisions have led to some amendments in the SI.

Following judicial review of the DEA, the Government seeks to make an amendment to the sharing of costs. The judge ruled that ISPs cannot be made responsible for the costs incurred by Ofcom or the Appeals Body in setting up, administering and enforcing the initial obligations. This does not apply to the costs incurred by ISPs in performing their own duties under the DEA, or to appeals case fees. The proposed cost-sharing mechanism is set out below.

The Government also seeks to amend the Sharing of Costs SI to require subscribers to pay a £10 fee to access the appeals system. It is envisaged that such a fee would deter individuals from appealing casually, with the intent of disrupting the system, but would be sufficiently modest not to have a disproportionate effect on those with legitimate reasons to appeal. A range of potential costs of the appeals mechanism are set out below.

Costs incurred by ISPs through the notifications scheme

The Sharing of Costs SI will enable Ofcom – following further consultation with stakeholders – to set a flat fee based on the costs which an ‘efficient operator’ would incur in processing a CIR. This fee would be payable by copyright owners for each CIR sent to an ISP. It would include the costs of:

- Receiving a copyright infringement report and matching the IP address to an individual subscriber’s details;
- Generating and sending notification of an alleged infringement to that subscriber according to the rules set out in Ofcom’s Code of Practice;
- Retaining records of CIRs and notifications sent, for the purposes of preparing lists of repeat copyright infringers (Copyright Infringement Lists), and providing these to copyright owners as required;
- Managing subscriber identification information and handling enquiries from and providing information requested by a subscriber about notifications received about that subscriber.

Costs incurred by Ofcom

In implementing the online copyright provisions of the DEA, Ofcom will incur costs relating to:

- The development and making of a Code of Practice;
- The establishment of the Appeals Body to be used for subscriber appeals.

The Sharing of Costs Order enables Ofcom to recover these costs from qualifying copyright owners.

Costs incurred by the appeals mechanism

The operation of the Appeals Body will generate costs through the processing of appeals cases.

Policy Options

Option 0: Do nothing

In the absence of secondary legislation to set out how the costs incurred under the DEA should be shared by industry, it is not likely that a voluntary arrangement would be made, leading to a lack of clarity which would challenge the successful implementation of the online copyright infringement provisions in Ofcom’s Code of Practice. Once the Code of Practice is in force, in the absence of a cost-sharing mechanism, ISPs would bear their full costs in implementing the measures rather than sharing these costs with the principal beneficiaries of the provisions. Furthermore, neither Ofcom nor the independent appeals body would be able to recover costs from industry, meaning that these costs would fall to Government.

This option is included to serve as a theoretical baseline against which to assess the impact of Option 1 – the proposed statutory instrument – which is the Government’s preferred policy option.

Option 1: Enact the Sharing of Costs order (preferred option)

Under this option, the draft Statutory Instrument would be laid in Parliament, addressing the following issues:

- The recovery of costs incurred by Ofcom as a result of set-up, monitoring and enforcement activities;
- The requirement for the payment of a flat fee by copyright owners to ISPs for processing each report submitted. This fee should be set by Ofcom, based on the costs which an efficient operator would incur in processing a CIR;
- The recovery of costs incurred by the Appeals Body;
- A requirement on subscribers to pay a fee to access the appeals system.

Non regulatory options such as guidance – as cited in the Principles of Regulation – have not been considered given the specific nature of the problem under consideration: that cost sharing between ISPs and copyright owners and the recovery of Ofcom’s costs require the certainty that only a regulatory option can provide. In the absence of legislation, we do not expect that ISPs and copyright owners would be able to come to an agreement on cost sharing, jeopardising successful implementation of the provisions which will come into force with Ofcom’s Code of Practice.

Assessment of costs and benefits

Costs from ISPs operating the notifications scheme

It is not possible at this stage to provide a comprehensive quantitative assessment of the costs which will be incurred by ISPs in setting up and running the notification system and their record keeping obligations. The precise costs will depend both on the number of ISPs included in the scope of the obligations, and the scale of notifications system which they will be required to operate: the threshold criteria for qualifying ISPs will be set out in the Code of Practice; and the scale of the notifications system will be determined by the number of CIRs sent by copyright owners to the qualifying ISPs.

Once the Sharing of Costs SI has been made into law, Ofcom intends to consult on the level which should be set for the flat fee, to establish a tariff (or tariffs). Since the Sharing of Costs SI sets out the methodology that Ofcom must apply in setting the CIR tariff, Ofcom cannot commence its costs consultation while the SI is subject to amendment through the Technical Standards Directive notification process. Furthermore Ofcom will only have the power to set the CIR tariff once the SI has completed the Parliamentary process and is in force.

Although the final costs will not be known in advance of further consultation, for the purposes of this impact assessment we apply the assumptions used in the DEA impact assessment of £3 - £10 per letter, which stemmed from earlier consultation with industry (*Consultation on legislative options to address illicit peer-to-peer file sharing* July 2008, BERR). This estimate takes account of expected operational costs including sending notifications to subscribers, technical support for the infrastructure required and consumer support lines.

On the further assumption - again from DEA impact assessment, based on previous consultation - that 2 million notification letters are sent annually from ISPs to subscribers, we estimate that the annual costs of notification will be £6m - £20m.

For the purposes of this impact assessment, we have used an estimate for the one-off capital costs to ISPs from Sweet Consulting, which Ofcom consider to be realistic. This suggests that the capital costs for ISPs will be £7.6m. Expected capital costs to fall within this estimate include the ISP infrastructure build required to operate the notifications system – including the secure processing and storage of data – as well as the establishment of technical and consumer support mechanisms.

Table 1: Costs to be shared between ISPs and copyright owners

Type of cost	Amount
One-off capital cost to ISPs	£7.6m

Source: *Impact Assessment for the Digital Economy Act published in April 2010*

Costs from Ofcom

The current proposals allow the costs incurred by Ofcom in setting up, monitoring and enforcing the initial obligations to be recovered from qualifying copyright owners, including their work on establishing the Code of Practice. Total Ofcom set up costs are likely to amount to £5.8 million with on-going costs of £5 million per annum.

Costs from the appeals mechanism

Subscribers will be able to appeal against every notification letter that they may receive from their ISP, and against every CIR for which the subscriber's account has been identified as being used to infringe copyright. Work has been carried out by Ofcom to assess the likely costs of the appeals system and the possible options for keeping these costs to a reasonable minimum. It is clear that a large volume of casual, or 'vexatious' appeals claims – potentially driven by a campaign against the Act – could drive up the cost of the appeals system by a substantial degree. The impact of appeals costs being driven too high would be that the whole notifications system becomes unworkable.

If Government introduces a subscriber fee for appeals, this is likely to have an impact on the aggregate cost of the appeals system. However, robust evidence with which to estimate the level of this impact is contingent on information not yet known. The main unquantified driver of this impact is the elasticity of demand for appeals associated with introducing a fee at any particular level. Ofcom analysis carried out for illustrative purposes sets out some scenarios which show the level of cost reduction which might be achieved by the introduction of a £10 fee, on the assumption that an appeals fee will deter a proportion of casual or 'vexatious' appeals.

It is difficult to benchmark the level of fee against comparable systems, because of the weak parallels between the appeals mechanism outlined here and, for example, the systems used to appeal decisions on traffic offences, public examinations and planning applications. However, it is the Government's view that a fee of £10 will be sufficient to deter casual appeals, but is not of a level which will disproportionately affect those subscribers with legitimate cause for appeal.

The final design of the Appeals Body which will deal with the appeals is yet to be determined. Ofcom will consult on the criteria which will define the approach to the appointment of the body – such as due process, expertise, transparency and accountability. Therefore, at the current time, costs incurred in setting up and operating the appeals mechanism are subject to uncertainty. However, the two scenarios below, taken from Ofcom's analysis, provide estimates based on a range of potential volumes of notifications and a range of appeals ratios.

Scenario 1 - no subscriber appeals fee

Letters	CIRs	Appeals / CIR	No. appeals	Fixed costs (£m) A	Variable costs (£m) B	Net appeals fee income (£m) C	Total costs (£m) A+B-C
400,000	1,000,000	5%	50,000	0.7	20	-	20.7
400,000	1,000,000	10%	100,000	0.7	40	-	40.7
400,000	1,000,000	20%	200,000	0.7	80	-	80.7
2,000,000	5,000,000	5%	250,000	0.7	100	-	100.7
2,000,000	5,000,000	10%	500,000	0.7	200	-	200.7
2,000,000	5,000,000	20%	1,000,000	0.7	400	-	400.7

Source: *Ofcom estimates*

The table above shows that in the absence of a subscriber fee, total appeals costs could vary from £20.7m for a 5% appeals rate on 1 million CIRs, to £400.7m for a 20% appeals rate on 5 million CIRs. We make an assumption that the appeals ratio would be at this level in the absence of an appeals fee. Three things stand out from these figures:

1. First, this is a very wide range. At the top end of this range, appeals costs alone are close to the Government's estimate of the total industry loss of £400m arising from displaced sales as a result of online copyright infringement (see DEA impact assessment, April 2010);
2. Appeals costs are directly driven by the volume of CIRs sent;
3. Fixed costs (including set-up) of the Appeals Body seem likely to form a very small component of the total costs of appeals. Even under the lowest cost scenario, over 96% of total appeals costs are driven by the variable costs of the case.

Scenario 2 - Government imposes a £10 subscriber appeals fee

Letters	CIRs	Appeals / CIR	No. appeals	Fixed costs (£m) A	Variable costs (£m) B	Net appeals fee income (£m) C	Total costs (£m) A+B-C
400,000	1,000,000	0.5%	5,000	0.7	2	0.0	2.7
400,000	1,000,000	1.0%	10,000	0.7	4	0.1	4.6
400,000	1,000,000	3.0%	30,000	0.7	12	0.2	12.5
2,000,000	5,000,000	0.5%	25,000	0.7	10	0.1	10.6
2,000,000	5,000,000	1.0%	50,000	0.7	20	0.3	20.4
2,000,000	5,000,000	3.0%	150,000	0.7	60	0.9	59.8

Source: Ofcom estimates

The table above examines the possible cost impact of Government imposing a £10 subscriber fee for appeals. For this table we lower the range of appeals ratios from 0.5% - 3%, on the assumption that a £10 will deter some casual or 'vexatious' appeals.

The table shows a range of total appeals costs of £2.7m for a 0.5% appeals ratio on 1m CIRs, rising to £59.8m for a 3% appeals ratio on 5m CIRs. Under these scenarios the contribution to total costs made by the net revenue generated from the appeals rises marginally, although still accounts for just £29k of the £2.7m (1.1%), and £870k of the £59.8m (1.5%). However, the fixed and start-up costs of the Appeals Body start to have a material impact at the lower end of the range, accounting for 26% of the £2.7m costs, declining to 1% of the £59.8m costs.

Impact on ISPs and copyright owners

The Government seeks to make a 75:25 apportionment of ISP notification costs in order to recognise the principle that the main beneficiaries – in this instance, the copyright owners – should pay for the majority of costs, whilst giving a clear incentive to internet service providers to develop efficient and effective systems to implement the measures. Under the 75:25 cost ratio, qualifying copyright owners will pay 75% of the cost of processing CIRs and issuing notification letters incurred by ISPs, as well as 75% of appeals case fees. The remaining 25% of ISP notification costs and appeals case fees will be met by qualifying ISPs.

Copyright owners will also be responsible for 100% of costs incurred by Ofcom in setting up, monitoring and enforcing the initial obligations, including setting up the independent Appeals Body.

Impact on consumers

The Government believes that introducing an appeals fee will have a significant impact on reducing the cost of the appeals process, by deterring casual appeals. For this reason, the Government is seeking to require subscribers to pay a £10 fee to access the appeals system, which will be refundable if the appeal is successful. As stated above, it is envisaged that such a fee would deter individuals from appealing casually, with the intent of disrupting the system.

Summary of transfer of costs impacts

If the 75:25 ratio is applied to the DCMS estimates this would suggest a transfer of recurring costs from ISPs to copyright owners of £4.5m to £15m (=0.75*(£6m to £20m)) and £5.7m of one-off costs (=0.75*£7.6m), once the Code of Practice is in force.

The copyright owners will bear the £5.8m set up costs and the £5m recurring costs associated with Ofcom's activities.

Benefits

If the Sharing of Costs SI is implemented in a timely manner, then the regulatory framework for addressing online copyright infringement will be able to operate efficiently. This will help to ensure that the Government's proposals on addressing online copyright infringement will facilitate progress towards the desired outcomes of socially appropriate investment in content, thus generating significant benefits for copyright owners, consumers and Government.

Competition Assessment / Small Firms Impact Test

This statutory instrument will not have any impact on competition or small firms in itself – the impact will follow once the Code of Practice is in force. Therefore, the impact of the online copyright infringement provisions stemming from the Act on competition and small firms will be assessed in the impact assessment accompanying the Code of Practice.

Other specific impact tests

Other specific impact tests have been considered including Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, and Rural Proofing. After initial screening it has been deemed that no significant impact is anticipated in any case.

We have also considered the potential effects of these proposals on protected groups under the Equality Act 2010. Again, after initial screening it has been deemed that no significant impact is anticipated in any case.

The One In, One Out Rule

The Sharing of Costs statutory instrument falls out of scope of the One In, One Out rule, because the SI does not introduce any regulation by itself – the obligations on industry only come into force once Ofcom's Code of Practice has been made into law. We will publish an impact assessment for the Code of Practice in due course, and will take the One In, One Out rule into consideration at that point.

Post Implementation Review

It is expected that a post implementation review details of which are included in Annex 1, which will be accompanied by a post implementation stage Impact Assessment, will be carried out within two years of the Statutory Instrument being laid in Parliament.

There is a range of activities taking place on online copyright infringement including consumer education, the promotion of lawful alternative services and targeted legal action against serious infringers. Ofcom will be monitoring how these develop and, in accordance with its obligations under the Digital Economy Act.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

The basis of the review is statutory as it is derived from section 8 of the Digital Economy Act 2010 which requires Ofcom to provide a full report 1 year after the initial obligations code come into effect.

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

The objective is to provide advice to the Secretary of State for Culture, Media and Sport on the impact on internet access services by measures addressing the infringement of copyright by subscribers.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

The approach would use a number of techniques including an omnibus study, online panel and in-depth interviews and additional economic analysis to cover the following aspects as required by the Digital Economy Act.

- (a) an assessment of the current level of subscribers' use of internet access services to infringe copyright;
- (b) a description of the steps taken by copyright owners to enable subscribers to obtain lawful access to copyright works;
- (c) a description of the steps taken by copyright owners to inform, and change the attitude of, members of the public in relation to the infringement of copyright;
- (d) an assessment of the extent of the steps mentioned in paragraphs (b) and (c);
- (e) an assessment of the extent to which copyright owners have made copyright infringement reports;
- (f) an assessment of the extent to which they have brought legal proceedings against subscribers in relation to whom such reports have been made;
- (g) an assessment of the extent to which any such proceedings have been against subscribers in relation to whom a substantial number of reports have been made.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

This would be determined by Ofcom, and would correspond to the "Do Nothing" option in the Impact Assessment accompanying the Digital Economy Act.

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

This is based on an overall target to reduced online infringement of copyright by 75%, through a range of policy measures.

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]

Ofcom would introduce relevant processes as required by the Digital Economy Act 2010.

Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]

N/A