

FOI Release
Information released under the Freedom of Information Act

Title: Search engines and creative industries anti-piracy agreement

Date of release: 8 March 2017

Information request:

Could you please provide a copy, preferably in electronic form, of :

- the Voluntary Code of Practice signed between "representatives from the creative industries, leading UK search engines, and the IPO" and "dedicated to the removal of links to infringing content from the first page of search results" referred to on this page :

<https://www.gov.uk/government/news/search-engines-and-creative-industries-sign-anti-piracy-agreement>

- preparatory exchanges between government and all prospective signatories (whether or not they signed this code in the end).

Information released:

In answer to your request for a copy of the Code, some of the information it contains is exempt under section 43(2) of the Freedom of Information Act and is therefore being withheld, though we are content to disclose a redacted version of the document, as attached.

Section 43 applies to information, the disclosure of which would or would be likely to prejudice the commercial interests of another person, be it an individual, a company or any other legal entity. Disclosure of this agreement in full would compromise its effectiveness in combatting copyright piracy, resulting in the perpetuation of commercial detriment of legitimate copyright holders. In effect, disclosure of the exempt information could assist persons intent on circumventing an agreed anti-piracy measure.

The redacted information is also exempt under section 31(1) (a), which relates to the prevention or detection of crime. Disclosure of the redacted information could compromise the effectiveness of the Code as a measure to prevent or reduce the likelihood of copyright theft.

The exemptions under sections 43 and 31 of the FOI Act are 'qualified' exemptions, which means that the IPO is required to consider whether the balance of the public interest favours maintaining these exemptions or disclosing the information in full. Having considered this matter the IPO has concluded that the public interest in maintaining the exemptions outweighs the public interest in disclosing the information and has decided therefore to withhold the information.

The redacted information is also exempt under section 41(1) of the FOI Act because it was in part provided to the IPO in the course of confidential negotiations.

The IPO therefore has an implicit obligation to respect that confidentiality. This is an absolute exemption which of itself does not require consideration of the public interest.

I confirm that the IPO does hold a number of documents which fall within the scope of preparatory exchanges between government and all prospective signatories. However, this information is exempt under sections 35(1) (a) and 43(2) of the Freedom of Information Act and is therefore being withheld.

Section 35(1) applies to information relating to the formulation and development of government policy, in this instance discussions concerning the copyright piracy problem which the agreement addresses.

Section 43(2) applies to information, the release of which would be likely to prejudice commercial interests, in this case that of the signatories to the agreement. Disclosure of the records of the preparatory discussions would reveal technical details of the steps taken to reduce piracy, which would reduce the effectiveness of those actions and therefore prejudice the interests of copyright owners. The records also include discussion of the relative performance of search engines with respect to infringing content, which if disclosed would be commercially disadvantageous to some providers in comparison to others.

As already explained the exemption under section 43 is 'qualified', as is that under section 35. The IPO has considered whether the balance of the public interest favours maintaining these exemptions with respect to the preparatory exchanges and has concluded that, on balance, the public interest in maintaining the exemptions outweighs the public interest in disclosing this information.