



Online Infringement of Copyright: Implementation of the Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2012

18 September 2012

About UK Music

UK Music is the umbrella body representing the collective interests of the UK's commercial music industry, from songwriters and composers to artists and musicians, studio producers, music managers, music publishers, major and independent record labels, music licensing companies and the live music sector.

UK Music exists to represent the UK's commercial music sector in order to help drive economic growth and to promote the benefits of music on British society. The members of UK Music are listed as an annex.

Introduction

1. UK Music welcomes the opportunity to respond to the Government's consultation on Online Infringement of Copyright: Implementation of the Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2012.
2. As set out in our submission to the code for regulating initial obligations, dated 26th July 2012, UK Music considers the laying before Parliament of the Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2012 on 26th June as a positive development. UK Music seeks the swift Parliamentary approval of this measure.
3. As also mentioned in our submission to the code for regulating the initial obligations, we have never viewed the Act as a magic bullet. UK Music has consistently argued for commercial solutions alongside consumer education campaigns.

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4. The UK music industry has made great progress in embracing the opportunities presented by the digital revolution. The UK has more licensed legal digital services than any other country in the world. As announced in the initial response to the Government's Consultation on Modernising Copyright, UK Music is working with the Intellectual Property Office to develop a strategy for including improved IP content within secondary education courses.
5. UK Music supports the Digital Economy Act as a mechanism to facilitate the growth of the legitimate online digital market place.
6. The fundamental principles contained within the Order we support. An individual Copyright Owner's share of the costs should be in proportion to the number of Copyright Infringement Reports (CIRs) it proposes to send during a term of operation of the Code.

Timetable

7. UK Music agrees with the proposed timetable as set out in the relevant consultation document whereby ISP systems will be built during 2013 in time for the first notification period to begin on 1st March 2014.

Subscriber Fee

8. Significantly, the subscriber fee of £20 is very important. It requires a subscriber to pay a fee so that they can appeal against a report of infringement. This requirement will give the new system integrity and will act as a disincentive for vexatious appeals. Current music industry estimates indicate the burden on rights holders of appeals costs could amount to £1.5 million for each of the first three years of the scheme. The subscriber fee is therefore at a reasonable level, considering the financial and administrative costs born by copyright holders for setting up the appeals process and the case fee which also forms part of it.
9. The Government has conceded in their evidence to the House of Lords Secondary Legislation Scrutiny Committee that removing or reducing the subscriber appeal fee would increase the impact on copyright owners, consequently increasing the risk that they decide not to participate in the system. Removal or reduction of the fee would therefore be in direct conflict to the Government's aspirations of the effectiveness of the notification process UK Music highlights the protection to the subscriber which is built into the subscriber fee. The fee is refundable on successful appeal, strengthening the process as it safeguards the innocent from being penalised.

Ofcom Costs

10. Ofcom's costs that must be charged to copyright owners at the beginning of the first notification period are extremely high. Based on estimates listed on page 2 of the consultation document they amount to £10.5 million in total. Pages 25 to 28 of the same document set out further what these qualifying and initial costs, as incurred by Ofcom, actually are. However, the information presented in the document is not adequate for UK Music to determine whether these levels of costs are reasonable. UK Music demands more transparency in this regard.

Paragraph 5.9 on page 26 concerning initial costs should, for example, be accompanied by details of the costs for each specific activity for every relevant financial year. A similar breakdown for paragraph 5.12 on page 27 for the further estimates on qualifying costs would also be necessary. This breakdown should be presented within the public domain in time for the Parliamentary approval of this Order. The stated activities of Ofcom are necessary, yet further correspondence between the general copyright owning sector and Ofcom is required to ensure the future qualifying costs do not spiral out of control.

Small Copyright Owners

11. Concern has been expressed that the high costs could present a barrier for some copyright owners to participate in the scheme, specifically owners of a smaller number of copyright protected works who may not have the financial resources available to participate in the scheme in an effective way in the short and longer term. It would be disappointing if the scheme creates a divide between copyright owners who can access the scheme and those who cannot. The high costs for the first notification period could be prohibitive and will not help in this regard.
12. UK Music believes that small-scale copyright owner participation can only be guaranteed if the economic principles which underpin the Initial Obligations are as straightforward as possible. Following the conclusion of this consultation and the Parliamentary approval of the Order, Ofcom has committed to publishing the fee tables setting the charge that each CIR will incur, giving different total volumes of CIRs, on which basis copyright owners will then make estimates. UK Music asks that Ofcom works as closely as possible with small-scale copyright owners who would like to participate in the scheme during these estimate rounds in order to avoid complexities, factoring in small-scale copyright owners anticipated resources during the administration of this process.

Sharing of Costs

13. UK Music notes the legal process which has taken place beyond Royal Assent of the Act on the issue of the proportion of copyright owner's share of the qualifying costs and case fees. The Order presented to Parliament now takes into account the result of the legal ruling. UK Music strongly supports the principal that ISPs will pay 25% towards the relevant costs of the scheme. In a similar way to the subscriber fee, it will ensure the scheme has integrity as those involved in establishing the systems have a particular financial stake in making it work which will enable Government to meet its objectives. Concerning qualifying ISP activities which generate variable costs, UK Music agrees with Ofcom's assessment that "save" calls, opportunity costs of lost customers and manual matching where an automatic match fails should be disallowed from relevant costs.

Review of Scope

14. UK Music accepts the proposal that there should be two notification fees set for ISPs – one for the largest ISPs and another for the smaller ones. This said, UK Music reiterates the position in the 26th July statement that Ofcom should

continually monitor ISPs that fall outside the scope of the Code for levels of online infringement via Ofcom's standard reviewing mechanisms. Similarly, the general ISP costs should continue to be overseen and reviewed during the first notification period.

Conclusion

15. To conclude, whilst seeking more transparency from Ofcom in terms of upfront costs and small copyright owner involvement, UK Music supports the Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2012 as a means of underpinning the Initial Obligations Code and for ensuring that the process set out in the Digital Economy Act gets underway.

Annex

UK Music's membership comprises of:

- AIM – Association of Independent Music - representing over 850 small and medium sized independent music companies
- BASCA - British Academy of Songwriters, Composers and Authors – with over 2,000 members, BASCA is the professional association for music writers and exists to support and protect the artistic, professional, commercial and copyright interests of songwriters, lyricists and composers of all genres of music and to celebrate and encourage excellence in British music writing
- The BPI representing over 440 record company members
- MMF - Music Managers Forum - representing 425 managers throughout the music industry
- MPG - Music Producers Guild - representing and promoting the interests of all those involved in the production of recorded music – including producers, engineers, mixers, re-mixers, programmers and mastering engineers
- MPA - Music Publishers Association - with 260 major and independent music publishers in membership, representing close to 4,000 catalogues across all genres of music
- Musicians' Union representing 30,000 musicians
- PPL is the music licensing company which, on behalf of 50,000 performers and 6,500 record companies, licences the use of recorded music in the UK
- PRS for Music is responsible for the collective licensing of rights in the musical works of 85,000 composers, songwriters and publishers and an international repertoire of 10 million songs
- UK Live Music Group, representing the main trade associations and representative bodies of the live music sector