

**Response to Consultation by Department for
Business, Innovation and Skills regarding
Online Infringement of Copyright (Initial
Obligations) Cost-Sharing**

UK Film Council

May 2010

1. Executive summary

The UK Film Council is the Government-backed lead agency for film in the UK ensuring that the economic, cultural and educational aspects of film are effectively represented at home and abroad.

We strongly support the provisions in the Digital Economy Act aimed at significantly reducing online copyright infringement. A reduction in such infringements will benefit the UK's creative economy by safeguarding existing jobs, creating new jobs through the development of legal services, and incentivising investment across the digital content businesses, including film.

With regard to the issue of costs-sharing in relation to initial obligations which is the subject of the current consultation we wish to make the following key points:

- The 75:25 split between rightsholders and Internet Service Providers (ISPs) proposed by the previous Government is wrong. The UK Film Council does not believe that the rightsholders should bear the majority of the costs. The ISPs will reap significant benefits from a reduction in illegal traffic across their networks and costs should therefore lie where they fall.
- We urge the new Coalition Government to revisit the proposed split of costs as a matter of urgency.
- Ofcom's costs in relation to its statutory duties should be borne in equal measure by ISPs and rightsholders, since both will be beneficiaries of Ofcom's actions.

2. Responses to questions

Question 1

Is the list of included cost items correct? What items should be added or removed? Please give reasons.

Given that the scope of the consultation is explicitly limited to those costs associated with processing notifications and those of Ofcom and appeals, the list of costs above appears broadly correct. However, we believe that the new Coalition Government should revisit the issue of what costs are in scope and take a view as to whether other costs, such as those of detection, should fall within scope.

We are mindful that the consultation relates only to the initial code, and that technical measures are out of scope and if introduced will involve additional costs for rightsholders.

Question 2

Do you think this is the right approach to the sharing of notification costs? If not, what should it be? Please give reasons and any supporting evidence

Please see answer to Question 3 below.

Question 3

Do you think the 75:25 ratio is the correct one? If not, what should it be? Please give reasons and any supporting evidence

The UK Film Council believes that the 75:25 ratio is wrong. We do not believe that the rightsholders should bear the majority of the costs. The ISPs will reap significant benefits from a reduction in illegal traffic across their networks – e.g. through reduced costs associated with the decline in the volume of illegal video traffic – and some of them will benefit from greater take-up of legal services which they have launched or plan to launch.

The split of costs proposed by the previous Government seems particularly inequitable with regard to the UK independent production sector which is made up of undercapitalised small-and-medium sized enterprises (SMEs) which are unlikely to have the internal financial capability to meet substantial costs envisaged under a the proposed 75:25 split.

We urge the Coalition Government to revisit the proposed division of costs at the earliest opportunity. In the first instance, given the level of uncertainty about the number of Copyright Infringement Reports (CIRs) that will be generated, it would seem sensible to work on the basis that costs should lie where they fall. Once the Code has been in operation for sufficient time to allow a robust body of evidence about costs to be constructed, then the issue of how costs be apportioned could be revisited.

Question 4

Do you think this is reasonable? Do you have an alternative formulation that addresses the issue in a more effective way? Please give reasons.

We think it would be more sensible to identify a range of possible costs rather than trying to focus on a single figure. In addition, HADOPI is an entirely new organisation and as the consultation recognises there are “fundamental differences” between the approach in France and the proposed approach in the UK. Ofcom is an existing organisation. We believe therefore that HADOPI is the wrong benchmark. It would be better for the Government to work with Ofcom to identify an estimated range of costs which are appropriate to the legislative framework, while ensuring that Ofcom’s costs are as low as possible and reflect the stringent financial environment in which all public bodies now operate.

Question 5

Do you think the broad 75:25 cost split should be used to apportion the cost of the regulator functions and appeals? If not, why not and how should they be funded?

As the statutory duties to be undertaken by Ofcom will benefit both ISPs and rightsholders (for reasons set out in the answer to Question 3), we believe that a 50:50 split is also appropriate in apportioning costs in relation to these duties.

Question 6

Should subscribers have to pay a fee to access the appeals system? If so, at what level, and how should economically vulnerable people be protected? Please give reasons and any supporting evidence.

Clearly, as with many appeal processes, there is a danger of frivolous appeals and attempts to undertake an abuse of process. We believe that mechanisms need to be found which prevent attempts to manipulate the system while protecting economically vulnerable people. We therefore believe that public sector best practice should be followed in relation to any appeals mechanism that is put in place.

Question 7

Does the Order achieve all of these objectives? If not, please specify which aim(s) you feel the Order fails to achieve and why.

It would not be appropriate for the UK Film Council to comment in detail on all aspects of the Order. However, we do wish to comment on the issue raised in Question 10, see below.

Question 8

If you answered “no” to Question 6, please set out how you think the Order should be changed.

See answers to Question 6 and 7.

Question 9

Do you agree with the process that the Order establishes in terms of when copyright owners may participate?

See answer to question 7.

Question 10

Does this process ensure that small copyright owners are able to access the system? If not, what alternative provisions could be made?

See answer to Question 3.

Question 11

The impact assessment sets out the costs as we understand them at this stage. Does this represent a reasonable assessment of the position? Please provide any supporting evidence for your comments.

The UK Film Council is not in a position to comment on the impact assessment.