

DIGITAL ECONOMY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Topic 2: Online infringement of copyright

Section 3: Obligation to notify subscribers of reported infringements

40. This section inserts section 124A of the 2003 Act, which obliges ISPs to notify subscribers of copyright infringement reports (“CIRs”) received about them from copyright owners. It describes what CIRs and notifications to subscribers must contain, the procedures that copyright owners must comply with when making CIRs, and the procedures that ISPs must follow when sending subscriber notifications.
41. Copyright owners are currently able to go online, look for material to which they hold the copyright and identify unauthorised sources for that material. They can then seek to download a copy of that material and in doing so capture information about the source including the IP address along with a date and time stamp. However, they do not have the ability to match this information to the broadband subscriber to whom that IP address was allocated at that precise time. This information is only held by the subscriber’s ISP. Therefore, the copyright owner relies on the ISP’s ability to match the IP address to the name and address of the subscriber concerned.
42. However, the ISP is unable to pass this information on to the copyright owner without a court order. To do so would breach data protection and privacy law. To help ensure that the subscriber is made aware that their account appears to have been used to breach copyright, section 124A imposes an initial obligation on the ISP, in relevant cases, to notify the subscriber if the ISP receives a CIR from a copyright owner. There are maximum time limits of one month between when an infringement is detected and a CIR sent to an ISP, and between when a CIR is received and when a notification is sent to the subscriber.
43. The notification from the ISP must inform the subscriber that the account appears to have been used to infringe copyright, give the name of the copyright owner who has provided the report, provide evidence of the apparent infringement, direct the consumer towards legal sources of content, include information about subscriber appeals and the grounds on which they may be made, and provide other information. It also requires ISPs to make available advice on protecting internet access services from unauthorised use, taking into account that different protection will be suitable for different subscribers such as, for example, domestic subscribers, libraries, and small and medium business. The code may require the notification to include other material as well, such as a statement that information about the apparent infringement may be kept and disclosed to the copyright owner in certain circumstances. Further apparent infringements using the subscriber’s account may result in additional notifications.