

DIGITAL ECONOMY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Topic 2: Online infringement of copyright

Section 4: Obligation to provide infringement lists to copyright owners

44. ISPs have to keep a record of the number of CIRs linked to each subscriber along with a record of which copyright owner sent the report. Under section 124B of the 2003 Act, inserted by section 4, an ISP may be required to provide a copyright owner with relevant parts of those records on request (“copyright infringement lists”), but in an anonymised form so as to ensure compliance with data protection legislation. The code must set the threshold for determining who is a relevant subscriber who may be the subject of a copyright infringement list that the ISP provides to a copyright owner. The threshold may be set by reference to any matter, including the number of CIRs made (see section 7).
45. A CIR represents a single breach of copyright at a moment in time. Up until now, a copyright owner has had no way of knowing whether the subscriber behind that breach habitually infringes copyright online or whether the breach represents a curious individual trying file-sharing for the first and only time. Because of this, the high costs involved in legal action have deterred copyright owners from enforcing their rights. By allowing copyright owners to target only the most serious repeat infringers, copyright infringement lists provided by ISPs are intended to make legal action a more attractive and effective tool for copyright owners to use in respect of their copyright.
46. The lists will be made available to copyright owners on request in an anonymised form. For example, while a list might (for example) identify subscriber 936 as being linked to the most CIRs, it would not include any personal information about subscriber 936. In order to get this personal data, the copyright owner would need a court order. However, the list would allow the copyright owner to identify subscriber 936 as someone against whom legal action may be appropriate.