**AGCOM Presentation.**

**Introduction**

Good morning. My name is Campbell Cowie and I am the Director of Internet Policy at the UK’s Office of Communications. Ofcom, as it is more commonly known, is the UK’s independent regulator for the television, radio, telecommunications and postal sectors.

I would like to express my thanks to our kind hosts for inviting me to discuss how online copyright infringement is addressed in the UK.

I will begin by explaining the institutional structure of responsibilities in the UK and then focus the remainder of my talk on Ofcom’s activities in this area.

**Institutions & Enforcement**

Responsibility overall for intellectual property policy lies with the Intellectual Property Office, an agency within the Department for Business. The IPO is responsible for the development of policy and legislation, but has no enforcement powers. A second Government department, the Department for Culture, Media and Sport is Ofcom’s sponsoring department and, for reasons I won’t go into here, has the Ministerial responsibility for the Digital Economy Act 2010, also known as the DEA. More on that later.

Enforcement of copyright in the UK is a matter left to the Courts, primarily using the Copyright, Designs and Patents Act or CDPA. Under this Act, copyright owners can seek injunctions requiring intermediaries, such as Internet Service Providers, to block access to specified sites that the Court has found to be infringing and they can pursue those individuals who unlawfully share content and seek civil or criminal penalties. Copyright owners were initially wary of seeking blocking injunctions, fearful of unhelpful precedents being established, the cost involved in taking such actions, the length of time such court hearings take as well as the negative public reaction to such moves. However, there have now been a number of blocking orders issued over the last 2 years and the time taken by the courts has dropped from around 12 months to less than 2. We understand that the costs to copyright owner are also falling dramatically. Copyright owners report that ISPs are now more cooperative over implementing the orders and the broader public reaction has not been as negative as had been feared. They are a useful and valuable measure for tackling major hosting providers and indexing sites, but less useful for more temporary sites, such as those showing live football matches using streaming services. Overall, it is not yet clear what the impact on infringement levels has been, with some arguing that committed infringers simply circumvent the blocks or switch to alternative sites. Further, independent research on the actual impact of different measures is required.

Rather than using the CDPA to pursue individuals who share content, copyright owners have made use of the Criminal Justice Act and, in particular, its fraud provisions to secure criminal convictions and custodial sentences. This approached is viewed by the copyright owners as a much stronger deterrent than the civil penalties available under the CDPA.

**The Digital Economy Act 2010 (The DEA)**

Now for the Digital Economy Act 2010. The purpose of the DEA is to deliver a scheme whereby the major ISPs and copyright owners co-operate to notify subscribers of alleged infringement taking place on their accounts. Those subscribers who receive multiple notices may be taken to court under the CDPA. It is Ofcom’s responsibility to draft a Code to oversee this framework, establish an independent appeals body and to provide regular update reports on progress to the Government.

The Act also contains provisions for a second stage, involving technical measures such as bandwidth throttling and temporary account suspension. This stage requires yet more legislation and can only be implemented following two separate reports from Ofcom – including one on the potential efficacy of such measures. It would also require a new Code to be drafted by Ofcom and the establishment of a judicial process for hearing appeals. Based on our experience, about which you will hear more, that could take a number of years.

The Act also includes provisions for a new approach to the issuing of blocking injunctions against infringing sites. Ofcom was asked by the Government to review those provisions in the Act and, following our advice that those sections of the Act were unlikely to deliver against their objective, the Government has said that it will repeal those provisions.

You may think that an Act passed in 2010 would have been implemented by now and that I would be able to talk you through our success. Unfortunately, a number of delays mean that this is not the case.

First, there was an unsuccessful legal challenge made against the Government by two Internet Service Providers. This delayed the implementation by around 18 months. That, however, did not mark the end of the delays. The Act is incredibly complex, as it requires two further pieces of legislation to be passed by Parliament before notices can be sent. The second element is the Ofcom-drafted code. The first element, the legislation that establishes how the notifications scheme envisaged in the DEA is to be funded between copyright owners, ISPs and subscribers, was laid by Government in Parliament in June last year.

Parliament queried whether this legislation complied with Treasury rules for public bodies, such as Ofcom. DCMS postponed the Parliamentary debates on the legislation to allow time for an internal government examination of the scheme.

The nature of the issues under consideration is fairly technical and we are still awaiting resolution.

And all of that in turn means that nobody, least of all me, is yet able to answer one of the key questions of the operation of the Code: when will the first letters to subscribers hit the doormats. What we do know is that this will not be before the end of 2015.

I can, however, set out for you briefly what we will need to do to get from here to there.

When Parliamentary approval is granted, Ofcom will finalise and publish its draft Code. Brussels then needs to give its approval, a process that typically takes three months.

Assuming that goes smoothly, we will then appoint an independent body to hear subscriber appeals against allegations made under the Code. Only then can we publish our final Code - which in turn also needs Parliamentary approval.

I know these rules are rather complex, but you know how we British loves rules!

The next stage is then for us to say how much we think copyright owners should be charged for each report of an alleged copyright infringement they wish to have processed by an ISP, and then to secure legally binding number of infringement reports with rights holders.

Only then can we require ISPs to build the systems to automate infringement report processing and the sending of subscriber notifications.

Following that - and provided ISPs have been paid and we are satisfied that evidence-gathering procedures are sound - copyright owners can begin sending infringement reports.

This is the point - probably around 12 months from Parliamentary approval of the Code - when we expect the first subscriber notification letters to arrive on doormats.

At this point some of you might be wondering if the numerous hoops still yet to be jumped through are actually worth it. One way to answer that is to look at the current situation in the UK for sending letters alleging infringement to subscribers, and for pursuing court actions for alleged infringement using the CDPA.

First, **copyright owners find it difficult to target legal actions.** A content owner observing multiple infringements of their copyright cannot easily tell whether these are from a single dedicated infringer, or are multiple instances of, for example, children using a grandparental internet connection to download the odd track. To determine this, the copyright owner would typically need to secure court orders for each infringement requiring identity disclosure by ISPs.

Second**, consumers are not always clear on who is using their connection and for what purpose,** or **how to go about securing their connection.**

Third, **there is little transparency for consumers on how evidence of infringement is gathered** by content owners, and **no review mechanism** for allegations received (apart from through the courts).

And fourth, abuse of the current system has led to **alarming and threatening communications,** such as those sent by a small number of law firms, which have been heavily criticised both by consumer groups and by the UK courts.

The Initial Obligations Code has the potential to make a difference to all of these issues. It:

* Enables copyright owners to **target their legal action against those linked to multiple infringements, rather than occasional infringers**.
* Requires a **robust and transparent** standard of evidence to support allegations of infringement.
* Offers a clear means of **educating consumers** about copyright, with notifications that help them **find lawful sources of content**.
* Allows time for consumers to **change their behaviour** or **take steps to secure their account** before they can receive a further notification.
* And provides a mechanism for subscribers to **appeal against allegations** of infringement.

I think these are all clear improvements over the current situation. However, there remain a number of concerns, for instance in relation to the treatment of public wifi and of public bodies, such as universities and libraries. We have sought to clarify their status under the Code - that we propose they have no obligations – and will continue to work with those stakeholders so as to avoid unnecessary steps being taken by such bodies, such as closing down their wifi and internet services.

**Ofcom online copyright infringement tracker survey**

So, that covers the main elements of the DEA implementation timetable and the key issues we face in implementation.

I would now like to finish by giving some context for the broader discussion on measures to tackle online copyright infringement.

One of Ofcom’s often-overlooked new duties under the Digital Economy Act is the duty to report to the Secretary of State on online copyright infringement and progress in reducing it. This duty kicks in as soon as the first letters are sent under the scheme.

However, the Government has provided funding for Ofcom to conduct research ahead of the formal duty. We have published two waves of consumer research so far, as well as a deep dive analysis of the data generated. The purpose of the deep dive was to examine in more detail the complex relationship between general consumption, infringement, attitudes, and spend across six key content types.

I would like to draw out three key points from the research.

By way of background to the first point, we’ve seen online content services developing strongly in the UK over the last few years. The number of services has grown and they offer ever greater repertoire, with constant innovation in business models and user interfaces. And some content sectors are trying hard to educate the public and change their attitude towards copyright.

* So in this context it is interesting that two **related** issues that come out loud and clear from our research are that:
	+ **Consumers remain confused about whether the content they are accessing is licensed**. Nearly half of internet users say that they are not confident in determining what is legal and what is not, when downloading, streaming or sharing content online;
	+ **Furthermore, infringers still cite price, availability of content and greater clarity over what is legal and what is not, as the factors which would be most likely to make them stop infringing.**

By way of contrast, only 16% agreed that receiving a warning letter from their ISP would deter them.

Of course, claimed behaviours in relation to future actions should generally be treated with caution and we need to do more work to understand this finding. But, it does strongly suggest that a notification scheme should ideally be complemented by other measures, such as fair blocking, better lawful services, improved education and more credible enforcement against individual infringers. I am aware of the view that says the focus should only be on commercially infringing sights, but our consumer research suggests strongly that a mix of measures must include those targeted at reducing **demand** for infringing content.

* Another key point is that **unlawful consumption of copyright material remains a relatively niche activity**; it involves a fairly small number of people but accounts for quite a lot of all material consumed online. 1.6% of the 12+ internet user population, were responsible for 79% of infringed content. 3.2% of 12+ internet users, were responsible for 88% of infringements. This suggests again that any mass market notification scheme will need to be complemented by other measures targeted at the hardcore of serious infringers. This may mean targeted legal action of the type envisaged under the DEA.
* The final point I would like to draw out from the research relates to spend.
	+ Our survey indicates that for some content types **those who consumed both lawfully and unlawfully claimed to spend the most on content.** The *Top 20% Infringers* also spent significantly more across all content types on average than either the *Bottom 80% Infringers* or the non-infringing consumers (£168 vs. £105 vs. £54 over the six month period covered).
	+ There are a number of possible reasons for this, but a couple of related stats from the research may offer some insight: **A quarter of infringers gave as a reason for infringing that it allows them to try before they buy;** and **40% of infringers said that they had previously accessed for free content that they went on to pay for.**

The **research is available on our website and it contains a truly huge amount of data** - I urge anyone interestedin this area to take a look. Our intention has not been to draw policy conclusions from the data. Instead, we are seeking to paint a picture of users of digital content and of their behaviours.

However, we hope that the data on the behavioural drivers of those who infringe copyright will help those policy makers around the world who are developing new policies to address online copyright infringement.