HOUSE OF LORDS

Merits of Statutory Instruments Committee

21st Report of Session 2010-11

Drawing special attention to:

Draft Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2011

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The Select Committee on the Merits of Statutory Instruments

The Committee has the following terms of reference:

(1) The Committee shall, subject to the exceptions in paragraph (2), consider—

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (3).

(2) The exceptions are—

(a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;

(b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;

(c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.

(3) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

(c) that it may inappropriately implement European Union legislation;

(d) that it may imperfectly achieve its policy objectives.

(4) The Committee shall also consider such other general matters relating to the effective scrutiny of the merits of statutory instruments and arising from the performance of its functions under paragraphs (1) to (3) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

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The members of the Committee are:

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The Lord Eames OM
Rt Hon. the Lord Goodlad (*Chairman*)
The Baroness Hamwee
The Lord Hart of Chilton
The Lord Lucas
The Lord Methuen
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Publications

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Contacts

If you have a query about the Committee or its work, please contact the Clerk of the Merits of Statutory Instruments Committee, Delegated Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email merits@parliament.uk. The Committee's website, www.parliament.uk, has guidance for the public on how to contact the Committee if you have a concern or opinion about any new item of secondary legislation.

Statutory instruments

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Twenty-first Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the following instrument and has determined that the special attention of the House should be drawn to it on the ground specified.

Draft Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2011

Date laid: 18 January 2011

Parliamentary procedure: affirmative

Summary: The online infringement of copyright provisions in the Digital Economy Act 2010 ("the 2010 Act") were introduced to tackle the problem of widespread unlawful copying of material online, particularly via peer-to-peer file sharing (Explanatory Memorandum (EM) paragraph 7.1). The EM says that this is a significant problem with the resulting lost revenue across the creative industries being about £400 million per annum (EM paragraph 7.3). The Government estimates that the provisions in the 2010 Act to address online infringement of copyright will result in an annual increase in revenues of copyright owners of around £200 million (EM paragraph 10.1). The draft Order sets out how the costs of the provisions will be divided between the different industry participants; essentially it will require that 75% of the costs are met by copyright owners, with the remaining 25% being carried by the internet service providers (EM paragraph 2.1). The EM says that the online infringement of copyright provisions were the most controversial ones in the 2010 Act (EM paragraph 7.4) and summarises the views of key parties (EM paragraph 8.2). The Committee has also received a number of submissions from interested parties, and the Government has provided a response to some of the key points made (see Appendix 1), which will help to inform the House's consideration of this instrument.

This instrument is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.

1. The Digital Economy Act 2010 ("the 2010 Act") included provisions to tackle the problem of widespread unlawful copying of material online, particularly via peer-to-peer file sharing. The Explanatory Memorandum (EM) says that the problem is a significant one, with copyright owners estimating that around 7 million people regularly file-share material unlawfully in the UK and that around £400 million in revenue is lost per year across the creative industries (EM paragraph 7.3).

2. Under the 2010 Act, Internet Service Providers (ISPs) will be required to take direct action against users who are identified as infringing copyright through peer-to-peer file sharing. The 2010 Act aims to reduce online infringement of copyright by introducing measures including a system of mass notifications designed to educate consumers about copyright and bring about a change in consumer behaviour. This is explained in detail in the Impact Assessment (IA) (pages 5 and 6). The IA gives the rationale for this

draft Order as being the need for clarity and certainty on how the costs on ISPs associated with these obligations are shared between copyright owners and ISPs, and how Ofcom would recover its costs (IA page 6). This draft Order requires that the costs of the provisions in the 2010 Act – including the central costs of Ofcom as the regulator, the costs of the appeals process, and the costs of sending notifications - will be born entirely by industry, with 75% of those costs being met by copyright owners, and the remaining 25% being carried by the ISPs (EM paragraph 2.1). The Government estimates that the provisions in the 2010 Act to address online infringement of copyright will result in an annual increase in revenues of copyright owners of around £200 million (EM paragraph 10.1).

3. The EM says that the online infringement of copyright provisions were by far the most controversial ones as the 2010 Act went through Parliament (EM paragraph 7.4), and seeks to summarise the positions of the various industry players (EM paragraph 8.2). The Committee received a number of submissions which make a broad range of points challenging the draft SI. These include: that the underlying EC Directive does not provide for the payment of costs and fees as set out in the draft Order; that the draft Order fails to comply with the principle in EU law that the provision of public communications services should be subject to few regulatory burdens; that the notification of the draft Order is premature, given that the Government is currently not able to provide robust estimates on implementation costs; that the IA does not provide sufficient rationale for imposing costs on ISPs; that the costs imposed on ISPs will increase broadband retail prices for all consumers, leading to low income consumers being priced out of internet access service; and that organisations such as libraries might be considered ISPs for the purposes of the legislation and therefore incur obligations and costs (see Appendix 1).

4. The Committee invited the Government to respond to some of the key points made in the submissions. This further information from the Government is also printed at Appendix 1. The Government say that the draft SI is necessary in terms of determining what contribution to the costs are made by whom, and that it is also appropriate to give ISPs a clear incentive to keep the costs of the process to an effective minimum. The Government says that they have acknowledged that there may be an effect on broadband take-up should ISPs pass on the full cost of the process, but although this is regrettable it needs to be balanced against the wider benefit to the UK's digital economy.

5. The Committee also gave groups representing copyright owners the opportunity to submit any evidence. We have received a submission from 'Creative Coalition Campaign' (CCC), a coalition of rights holders representing around 30 leading organisations in film, music, publishing, football, as well as trade bodies and trade unions. The CCC say that they are concerned that the draft SI does not call for the appeals body to impose any requirement on a subscriber to pay for any part of the appeal body costs; even if there is a concerted campaign which leads to significant numbers of vexatious or unreasonable appeals. We also received a submission from UK Music supporting the legislation.

6. Given the complexity of this policy area, the House may wish to take into account the full content of the various submissions printed in Appendix 1 when considering the draft Order.

OTHER INSTRUMENTS OF INTEREST

Draft Financial Assistance Scheme (Revaluation and Indexation Amendments) Regulations 2011

7. These Regulations provide for the annual revaluation of the Financial Assistance Scheme which makes payments to members of certain occupational pension schemes who have lost part or all of their pensions as a consequence of their scheme ending with insufficient money to pay full benefits. In line with the Budget statement on 22 June 2010, the revaluation now uses the Consumer Prices Index rather than the Retail Prices Index as the measure of inflation. At paragraph 8.4 the Explanatory Memorandum (EM) states that the full analysis of consultation responses "will be published on the website shortly". This is not in line with the standard instructions which for over two years have required that such an analysis should be provided "at the time the instrument is laid before Parliament". Following intervention by the Committee's Secretariat the DWP has now produced the analysis and published it on their website.[1] The analysis and the Government's response to the comments made illustrate the policy rationale more clearly than the EM, and act as a reminder of some of the broader policy issues that might otherwise be overlooked. Timely publication is particularly important when, as in this case, the majority of responses were against the proposal. **We remind Government Departments in general, and DWP in particular, of the importance of publishing all supporting documents at the time they lay the instrument** as their purpose is to facilitate Parliamentary scrutiny and to enable Members of either House to prepare for the debates.

Draft Housing and Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) Order 2011 and two related instruments[2]

8. Section 318 of the Housing and Regeneration Act 2008 will come into force on 30 April 2011. It will remove the current exclusion of local authority Gypsy and Traveller sites from the Mobile Homes Act 1983, so that residents of authorised sites will have the same protection against eviction as those living on other residential mobile home sites; such as Park Home sites. It responds to a judgement[3] which found the lack of procedural safeguards against eviction on local authority Gypsy and Traveller sites to be in breach of Article 8 of the European Convention on Human Rights.

9. The 1983 Act automatically inserts a set of minimum rights and responsibilities, called the 'implied terms', into an agreement to occupy a pitch on a residential mobile home site. These Orders provide two new sets of implied terms for local authority and county council Gypsy and Traveller sites that will apply when section 318 is commenced. The Orders also:

    - disapply the right to assign the agreement when the caravan is sold or gifted on permanent residential pitches;

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[1] http://www.dwp.gov.uk/docs/fas-ppf-reg-gov-res.pdf

[2] Draft Mobile Homes Act 1983 (Amendment to Schedule 1 and Consequential Amendments) (England) Order 2011 and Draft Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011

[3] Connors v United Kingdom (2005) 40 EHRR 9

- disapply a number of implied terms where the pitch is a transit pitch. This will replicate as far as possible the arrangements currently in place on existing transit pitches, which are intended to be occupied for no more than three months at a time, providing accommodation for Gypsies and Travellers passing through an area. When transit sites are full existing agreements may be curtailed to accommodate those in more urgent need. Those asked to move will be given 4 weeks' notice, but local authorities need give no reason for exercising this power.

10. The amendments to the implied terms are made following consultation with Gypsies and Travellers and Local Authorities, both of whom wish to ensure that the existing policies of allocating pitches to those most in need should not be undermined.

11. More broadly the **Draft Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011** transfers the jurisdiction to determine proceedings and disputes under the 1983 Act, for residents of both Park Home sites and Gypsy and Traveller sites, from county courts to Residential Property Tribunals. It does this with the aim of resolving disputes in a low cost non-adversarial tribunal that balance the interests of the residents and site owners fairly.

Draft Renewables Obligation (Amendment) Order 2011

12. The Renewables Obligation ("the RO") is the Government's main policy measure to encourage the deployment of large scale renewable electricity technologies (EM paragraph 7.1). The RO was imposed on electricity suppliers by the Renewables Obligation Order 2009 ("the 2009 Order"), which was drawn to the special attention of the House by the Committee on the ground that it gave rise to issues of public policy likely to be of interest to the House [8th Report of Session 2008-09, 5 March 2009]. This draft Order makes a number of amendments to the 2009 Order, including: changing the way in which the 20 year maximum support period is calculated for certain offshore wind generating stations, and introducing new reporting requirements against greenhouse gas and land use sustainability criteria for generating stations using solid biomass and biogas. The draft Order also amends the Electricity Act 2009 and the 2009 Order to implement articles from the EC Renewables Directive introducing sustainability criteria for bioliquids and ensuring that all bioliquids fall within the definition of renewable sources.

The Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) Regulations 2011(SI 2011/113)

13. Previous regulations inspired a number of debates in both Houses to draw attention to the impact of a change in policy by the Valuation Office which had resulted in a number of firms, particularly those businesses operating in ports areas, being unexpectedly given large back-dated rates bills.[4] These new Regulations allow affected firms to seek a further payment moratorium until 31 March 2012. Last year when passing a similar moratorium until the end

[4] See report on SI 2009/204 in our 8th Report of Session 2008-9, http://www.publications.parliament.uk/pa/ld200809/ldselect/ldmerit/44/4403.htm, and on SI 2010/1507 in our 2nd report of Session 2010-11 http://www.publications.parliament.uk/pa/ld201011/ldselect/ldmerit/11/1103.htm

of March 2011, the Government announced that it would use the interval to try and find a more workable and cost-effective solution to the problem. The current Regulations preserve the position pending the passage of the permanent solution proposed in section 38 of the Localism Bill introduced in the House of Commons in December 2010 which, in certain specified circumstances (to be set out in further secondary legislation)[5], will allow backdated rates liabilities to be cancelled in their entirety. The current SI will ensure that rates liabilities that, subject to the enactment of the Localism Bill, will fall to be cancelled, do not have to be collected following the end of the current moratorium on 31 March 2011.

Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011 (SI 2011/134)

14. These Regulations contribute to the Funded Decommissioning Programme ("FDP") regime for new nuclear power stations set out in the Energy Act 2008 ("the 2008 Act"). The Explanatory Memorandum (EM) explains that the 2008 Act aims to facilitate new nuclear power in the UK whilst ensuring that the waste and decommissioning liabilities of operators do not fall onto the taxpayer; and that this is to be achieved by requiring companies seeking to construct nuclear power stations to submit a FDP to the Secretary of State setting out the costs of future waste and decommissioning liabilities, and how such costs are to be financed (EM paragraph 2.1 and 4.1). A linked SI (Nuclear Decommissioning and Waste Handling (Designated Technical Matters) Order 2010) was recently drawn to the special attention of the House by the Committee [10th Report of this Session, 4 November 2010]. These current Regulations include a number of requirements relating to the costing and reporting requirements for the FDP process, including for example a requirement for FDPs to be accompanied by an independent assessment of the predicted costs.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.

<u>Draft Instruments subject to affirmative approval</u>

Draft Financial Assistance Scheme (Revaluation and Indexation Amendments) Regulations 2011

Draft Housing and Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) Order 2011

Draft Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (England) Order 2011

Draft Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011

[5] More detail is given in *Localism Bill: Cancellation of certain backdated non domestic rates liabilities - Impact Assessment* http://www.communities.gov.uk/publications/localgovernment/localismnondomrates

Draft Renewables Obligation (Amendment) Order 2011

Instruments subject to annulment

SI 2011/113 Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) Regulations 2011

SI 2011/134 Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011

SI 2011/136 Official Feed and Food Controls (England) (Amendment) Regulations 2011

APPENDIX 1: DRAFT ONLINE INFRINGEMENT OF COPYRIGHT (INITIAL OBLIGATIONS) (SHARING OF COSTS) ORDER 2011: FURTHER INFORMATION AND SUBMISSIONS

Further information from the Department for Culture, Media and Sports

We have received six submissions to date. The key points from the submissions are as follows:

It is not known whether the European Commission is satisfied that the draft SI complies with Article 12(1) of the Authorisation Directive (2002/20/EC);

Response (1): the draft Statutory Instrument was notified to the European Commission under the terms of the Technical Standards Directive. The communication from the Commission is considered to be confidential, and since the UK Government's response would essentially reveal the contents of the Commission communication we have not published it. However, we have asked the Commission if they would be content for the exchange to be made public, and if they agree we will publish accordingly. We are aware that a leaked copy of the Commission communication is available, but we do not comment in such circumstances.

The Directive does not provide for the payment of costs and fees as set out in the draft Order, it only allows for payment of "administrative charges";

Response (2): The Government considers that the obligations imposed on internet service providers by virtue of the Order do not fall within the scope of the Authorisation Directive.

The Authorisation Directive is one of the 'Specific Directives' referred to in Article 1(3) of the Framework Directive. That Article provides that the Specific Directives are without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue 'general interest objectives, in particular relating to content regulation and audio-visual policy'. Reduction of online copyright infringement and facilitation of targeted enforcement action by copyright owners would, in our view, be covered by this. We note that the Commission has recognised in its Communication 'Principles and guidelines for the Community's audio-visual policy in the digital age' referred to in Recital (6) of the Framework Directive that copyright protection and the taking of measures against piracy is a central element of audiovisual policy. We agree with this statement.

The costs with which the Order deals with are not in our view administrative charges within the meaning of Article 12(1). Recital (30) provides that administrative charges may be imposed on ISPs in order to finance the activities of the national regulatory authority in managing the authorisation system and for the granting of rights of use. Such charges should be limited to cover the actual administrative costs for those activities. The costs which ISPs will bear by virtue of the Order relate to a scheme which is distinct from those activities.

The draft Order fails to comply with the strong principle established in European law that the provision of public communications services should be subject to few regulatory burdens, and those burdens should be harmonised across the Union;

Response (3): the UK Government agrees with that general principle, and the strong line that we have taken to keep regulation to the effective minimum reinforces that. However, the cost-sharing Statutory Instrument does not come within the scope of such considerations. It is a necessary measure to enable the Digital Economy Act 2010 provisions relating to the online infringement of copyright to come into effect. It makes provision about what must be included in the initial obligations code about the sharing of costs. The Order will by itself not have any effect on the provision of public communications services.

The notification of the Cost Order is premature, given that the Government is currently not able to provide robust estimates on the cost of implementing the initial obligations;

Response (4): we disagree. The Statutory Instrument is necessary in terms of determining what contribution to the costs are made by whom, and is an essential stage in Ofcom being able to consult on the individual cost of notifications etc as well as being able to prepare for the tendering process for an independent appeals body. As such it is a crucial part of the overall timeline for the provisions. The accompanying Impact Assessment, whilst inevitably caveated in places, sets out the overall costs using the best information available to the Government.

The Impact Assessment accompanying the draft SI does not provide a sufficient rationale for imposing costs on ISPs;

Response (5): we disagree, and the Government is clear that, whilst it is appropriate for copyright owners to bear the bulk of the costs, it is also reasonable to give ISPs a clear incentive to keep the costs of the process to an effective minimum. Reducing widespread unlawful copying will benefit the digital economy as a whole, opening up new opportunities for legitimate content to be sourced via ISPs and elsewhere, and removing a significant amount of economically sterile traffic from networks, benefitting both ISPs and consumers in terms of the service they are offered.

The Impact Assessment accompanying the draft SI fails to establish how the cost split, or the initial obligations, are to 'facilitate progress towards the desired outcome of socially appropriate investment in content';

Response (6): in the Government's view this is clear – a reduction in the background availability of free – but unlawful content – will change the terms of engagement for those considering investing in the creative industries and in new ways of making content available. Note that Ofcom will also have a duty to report to the Secretary of State on the steps taken by copyright owners to enable subscribers to obtain lawful access to copyright works.

The impact on the justice system from the implementation of the initial obligations code has not been acknowledged or quantified;

Response (7): we do not anticipate that the impact on the justice system from the initial obligations code will be significant since the Act does not create any new rights for copyright owners to use the system. The initial obligations will enable copyright owners, should they choose to do so, to take better targeted legal action against subscribers identified multiple times as apparently infringing copyright. This will be done via existing legal routes, however. Whilst we would expect copyright owners to use the ability to target the most persistent infringers, we do not expect this to happen at a rate that will impact significantly on court time. Under the code subscribers may appeal to an independent appeals body.

The cost imposed on ISPs will increase broadband retail prices for all consumers, leading to low income consumers being priced out of internet access service;

Response (8): the Government has acknowledged that there may be an effect on broadband take-up should ISPs pass on the full cost of the process. This is regrettable, but needs to be balanced against the wider benefit to the UK's digital economy.

Is it right for the draft SI to go forward at this stage given that the BT/Talk Talk JR and OFCOM review of the Digital Economy Act are both outstanding, and therefore likely to cause some uncertainty over the legality of the Digital Economy Act?

Response (9): the Government considered the question of whether to proceed with implementation of the Act, including this Statutory Instrument, in the light of the judicial review very carefully. The Government considers it will win the case, and that therefore it would be wrong to hold up implementation, and the benefits that it will afford. The Ofcom review of section 17 of the Act is not relevant since it is entirely separate to the Statutory Instrument under consideration.

It doesn't seem justifiable for ISPs to bear part of the cost of the implementation of the DEA without receiving any benefit from incurring this cost;

Response (10): this point is dealt with under response (5)

Libraries could be considered as ISPs and therefore can be made responsible for the monitoring of their networks for copyright infringement and incur significant financial obligations as a result;

Response (11): the position of libraries, and other public wifi providers, was considered carefully during the passage of the legislation and during consideration of the initial obligations code. The decision was taken by the then Government that there should not be a specific exemption for libraries since they did not want to incentivise a migration of unlawful file-sharers to such public services. The current Government has supported this line but has continued to be clear that a pragmatic approach to this needs to be found through the practical implementation of the provisions in the code (rather than within the Statutory Instrument under consideration), and we are confident that Ofcom will do so. In our view it would not be proportionate to impose obligations on libraries etc without evidence that it is necessary. It should also be noted that there is no intention of requiring any ISP to monitor their networks for the purposes of the Act.

It is understood that OFCOM would be agreeable to private agreements between ISPs and copyrights holders. Does the EC Directive allow for this? Is it tenable that ISPs will have to agree and administer such credit agreements?

Response (12): private commercial arrangements between ISPs and copyright owners, so long as they are not in any way anti-competitive or against the law , are a matter for them. It is not for Ofcom to endorse or otherwise such arrangements

It is irrational in that it does not relate the costs payable as fees to OFCOM and internet service providers to the number of copyright infringement reports submitted, but only to the estimated number. There is a provision to correct over-estimates, but not a similar one to correct under-estimates;

Response (13): we do not agree that this is at all irrational – it is simply a practical way for the system to start, and to work. An ISP will not be under any duty to process under the scheme any copyright infringement reports which exceed the estimate of the number of copyright infringement reports that a copyright owner has provided to the ISP in respect of a notification period. This is made clear in the code. The calculation of the amount of notification fees that a copyright owner has to pay to an ISP is dealt with in paragraph 2 of the Schedule to the Order. The copyright owner has to pay an amount equal to the notification fee set by Ofcom times the number of reports it has estimated it will send to the ISP in the next notification period. That number of reports is reduced by any shortfall in the number of reports that the copyright owner sent in the last notification period against the number it actually sent.

BT do not believe that the draft SI meets requirements to be non-discriminatory, technology-neutral and not distort competition. BT explained their position to BIS in a detailed submission in May 2010;

Response (14): the Government understands the position of BT on this issue, but does not agree with it. The SI makes provision about what must be included in the initial obligations code about the sharing of costs. Section 124E of the Communications Act 2003 sets out the criteria which must be satisfied in relation to the code. These include that the provisions of the code are objectively justified in relation to the matters to which it relates. The provisions also have to be non discriminatory, proportionate and transparent.

BT also do not believe that the draft SI is compatible with the EU Directive in specific respects (NB. We presume DCMS are familiar with the arguments).

Response (15): the Government is aware via the process for application for judicial review about BT's views. As the matter is before the courts the Government does not wish to comment on the detail. We will therefore restrict ourselves to asserting that the general approach to cost sharing and the scope of the initial obligations has been considered carefully by both Government and Ofcom, and we are confident that they are fair, effective and proportionate, and consistent with European legislation.

On a linked matter, I note the announcement of a review of net blocking yesterday. Is there any chance that this review could extend to include the provisions of this SI?

Response (16): whilst this is not something raised by submissions this is an important point. We are very keen to differentiate clearly between the initial obligations on the one hand (which the cost-sharing Statutory Instrument wholly relates to) and site blocking injunctions through introduction of reserve powers in sections 17-18 on the other. It is important that we do not confuse the two issues which relate to different types of copyright infringement problems and entirely separate approaches to tackling them. It is appropriate to ask Ofcom to look at the workability of section 17, partly because they have no regulatory locus in that part of the Act, but also because no decision has yet been taken on whether those reserve powers should be used.

It would be quite inappropriate to ask Ofcom to review this Statutory Instrument for a number of reasons. Primarily this is because the Statutory Instrument has been through a full consultation process and has been notified to the European Commission under the Technical Standards Directive. We believe, therefore, that it has had sufficient scrutiny from stakeholders during that process and it is now subject to Parliamentary scrutiny. The matters covered in the SI are primarily matters of policy and are properly for the Secretary of State, not for the regulator to take a view on. Finally, the SI has a direct bearing on Ofcom's own operations in that, amongst other things, it determines how Ofcom's costs under the Digital Economy Act 2010 are to be met.

February 2011

Submission from British Telecom

As discussed a short while ago, we note that the Committee is today considering this draft SI and would like to bring to the Committee's attention some serious concerns relating to its compatibility with EU law, as well as wider concerns about the approach the Government has taken.

Our concerns can be summarised as relating to:-

- the obligation on eligible ISPs to meet 25% of the cost of informing subscribers of alleged copyright infringement and for keeping records of those subscribers;
- the further obligation to contribute to Ofcom's costs of establishing the code of practice, setting up the appeal body and processing appeals.

We do not believe that the draft SI is compatible with EU Directives in specific respects, as set out in the attached submission to the EU. More generally, we do not believe the draft SI meets requirements to be non-discriminatory, technology-neutral and not distort competition.

I also attach for information our more detailed submission to BIS on the draft SI in May 2010 *[not printed]*.

February 2011

Submission from Consumer Focus

I write to you in relation to the draft 'Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2011', which has been laid before parliament on the 17th of January and is soon to be considered by the Merits of Statutory Instruments Committee. The draft statutory instrument on cost (the draft SI thereafter) is subject to prescrutiny for affirmative SIs.

In relation to the draft SI we would like to draw the committee's attention to the comment the European Commission issued in response to the draft SI being notified to the Commission under the Technical Standards Directive prior to the draft SI being laid before parliament. In the comment the draft SI is referred to as 'draft technical regulation 2010/633/UK'. The comment is attached for your reference and has been obtained by Consumer Focus through an access request *[not printed]*.

In the comment the Commission draws attention to Article 12(1) of the Authorisation Directive (2002/20/EC) regarding the circumstances under which administrative charges may be imposed on an ISP. The Commission notes that it has not received information that "would allow it to conclude that the costs of OFCOM and the appeals body in carrying out their functions under the UK online copyright infringement provisions fall under the categories of administrative costs specified in subparagraph (a) of Article 12(1) of Directive 2002/20/EC." Therefore the Commission has asked for such information to be submitted.

The Commission has also requested clarifications regarding how the cost imposed on ISPs would be "objective" in the sense of Article 12(1) subparagraph (b) of Directive 2002/20/EC. The Commission states that this information is of particular relevance because "the qualifying Internet Service Providers do not appear to benefit in any way from the planned online copyright measures."

The Commission has issued the comment on the 21st of December 2010, the draft SI has been laid before parliament on the 17th of January 2011. To our knowledge the Commission was provided with additional information one day before the draft SI was laid before parliament, and the Commission is currently in the process of responding. It is therefore not known at this stage whether the Commission will be satisfied that the draft SI complies with Article 12(1) of the Authorisation Directive (2002/20/EC).

Consumer Focus has raised a number of concerns in relation to the draft SI when it was notified to the Commission in September 2010. We were particularly concerned that:

- the notification of the Cost Order is premature, given that the Government is currently not able to provide robust estimates on the cost of implementing the initial obligations
- the Impact Assessment accompanying the draft SI does not provide a sufficient rationale for imposing any cost on ISPs
- the Impact Assessment accompanying the draft SI fails to establish how the cost split, or the initial obligations, are to 'facilitate progress towards the desired outcome of socially appropriate investment in content'
- the impact on the justice system from the implementation of the initial obligations code has not been acknowledged or quantified
- the cost imposed on ISPs will increase broadband retail prices for all consumers, leading to low income consumers being priced out of internet access service

Our full comments on the draft SI and the Impact Assessment submitted to the Commission can be found here - Consumer Focus response to notification of online infringement of copyright initial obligations sharing of cost order[6]

[6] http://www.consumerfocus.org.uk/files/2010/10/Notification-of-online-infringement-of-copyright-initial-obligations-sharing-of-cost-order.pdf

I would be grateful if you could bring the comment of the Commission in relation to the draft SI to the attention of the Merits of Statutory Instruments Committee. Please do not hesitate to contact me if you have further questions.

February 2011

Submission from Copyright for Knowledge

I am writing as I understand the Merits of Statutory Instruments Committee are reviewing the "costs code" relating to the 2010 Digital Economy Act. Copyright for Knowledge represents a wide range of education and research interest groups in the UK ranging from the Joint Information Systems Committee, Universities UK as well as Research Libraries UK and the Society of College, National and University Libraries who submitted the attached letter (RLUK-SCONUL) to the courts as part of BT and Talk Talk's succesful request for a judicial review regarding the online copyright infringement aspect of the Digital Economy Act 2010. Please also find attached a copy of a submission made to the Commission on the Costs Code by Copyright for Knowledge, as well as a simplified diagram of public internet access *[not printed)*.

Public intermediaires such as schools, public libraries, college and universities have been extremely concerned at the passage of the Act. As you know, the Digital Economy Act requires Internet Service Providers (ISPs) to be involved in the process of identifying and potentially sanctioning subscribers for the illegal downloading of in-copyright material. However the core definitions of "ISP", "subscriber" and "communications provider" given in the Act are unclear and confusingly simplistic, and do not reflect the "networked" provision that exists within public intermediary networks. Essentially the Act creates a situation whereby public intermediaries are simultaneously subscribers as well as ISPs. (The legislation, and indeed the regulatory impact assessments produced for parliament, only envisaged a binary commercial ISP / householder relationship which contrasts with the complex nature of web access in our sector - see attachment "PIinterenetprovision." *[not printed])*

Despite this we are concerned that universities, colleges, libraries and schools (and in turn local authorities upon which many schools and libraries depend), are currently being "shoe-horned" into the scope of the Act with little regard for the ramifications of doing this. In terms of the costs code, we are concerned that unless a satisfactory situation to the drafting issues outlined above are found, public intermediaries as ISPs could either immediately, or at some point in the future, potentially be forced to cover 25% of the costs of the process. This is in spite of the fact that public intermediaries provide internet access for public policy purposes, do not commercialise internet provision and of course are subject to large cuts in their public funding.

We would hope that the above submissions are useful in your deliberation of the costs code.

February 2011

Submission from Francis Davey

Outline

I wanted to raise with the Committee two concerns I have about the order:

- It is irrational, in that it does not relate the costs payable as fees to OFCOM and internet service providers to the number of copyright infringement reports (CIR's) submitted, but only to the estimated number. There is a provision to correct overestimates, but not a similar one to correct under-estimates.
- It may fail to comply with the "Authorisation Directive" (2002/20/EC).

Computation of costs

The Order deals with the amounts that copyright owners and service providers will be required to pay under the Initial Obligations Code. There are 4 classes of payment:

- payments by copyright owners to service providers for processing copyright infringement reports (CIR's)
- ongoing fees payable to OFCOM
- initial fees payable in approximately the first 2 years to OFCOM (which will include start-up costs of the scheme)
- fees payable to the appeals body which hears subscriber's appeals.

I am concerned only with the first three.

The payment model includes a requirement that in advance of each "notification period" (12 month periods - though the first notification period may be longer or shorter than that), a copyright owner will supply a service provider with an estimate of the number of CIR's it anticipates sending in the coming notification period.

The first problem with the Order, as drafted, is that the proportion that each copyright owner pays to OFCOM is based not on the actual number of CIR's sent, but on the estimated number of CIR's to be sent. Paragraphs 3 and 4 of the Schedule to the Order, which deal with fees payable to OFCOM, refer only to the estimated number of CIR's not to the actual number.

This gives every incentive for copyright owners to underestimate the number of CIR's they will issue. There is no sanction for systematic underestimating and no possibility of a balancing charge.

While it has been suggested to me that all will be well because OFCOM's charges are based on proportions of a pre-determined total. If all copyright owners systematically under-estimate there will be a resulting (and proportionate) increase in the fees charged to them and the service providers they target. This is not a stable or satisfactory situation. Taken to a limit each copyright owner should logically provide an estimate of "1" and the fees would then be distributed equally between all copyright owners, rather than in proportion to use.

The second, and more serious, problem with the Order is that fees payable to service providers are based on the product of a number specified by OFCOM (a rate per CIR) and:

- the estimated number of CIR's for the current period, less
- any over-estimate of the number of CIR's from the previous period

Note: there is no correction of a previous under-estimate and no way for the fee to be higher than the cost of the estimated number provided by the copyright owner. In other words: copyright owners are compensated if they overpaid, but are not penalised if they underpaid.

That cannot be right. It would lead to further pressure on copyright owners to provide unrealistic and low estimates. Unless OFCOM takes action in advance to increase its rate per CIR to a meaningless and unreasonably high number, service providers will be left seriously out of pocket. The system will be a mockery.

It is clear from the Government's notification to the European Commission under the Technical Standards Directive that its intention is that there should be a price per CIR. The Order completely fails to achieve that goal.

The confusion may have arisen from section 124M(4)(b) of the Communications Act 2003 (inserted by section 15 of the Digital Economy Act 2010) which specifically provides that a code of practice may allow compensation for a previous period's overpayment. There is nothing in that

section that restricts the order to only allowing compensation in the case of an over-estimate, but it may be that the drafter's of the order confused themselves.

In my view the department needs to be asked, as a matter of urgency, to withdraw the draft order and replace it by one that conforms with the common sense understanding conveyed by its technical standards notification.

The Authorisation Directive

The policy aim of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services ("Authorisation Directive") is that regulation of those wishing to offer public communication networks should be extremely lightweight. Member States may regulate, but only within fairly tightly defined limits.

Article 6 prevents general conditions being imposed on all public communications network providers unless they fall within a list in the Annex to the Directive. Specific conditions – i.e. those relating to particular service providers or groups of service providers – may only be imposed to promote access or universal service obligations.

The Order imposes an obligation on ISP's to incur costs (in carrying out the initial obligations code) and to pay costs (to OFCOM in fees and to the appeals body for appeals). In my view, there are no paragraphs in the Annex which could cover either cost.

In particular, the only paragraph that permits the payment of a fee is paragraph A2 concerning "administrative charges" in order to be authorised to operate a public communications network. Article 12 of the Directive makes it quite clear that "administrative charges" must be just that — charges for the administration of the general authorisation scheme for public communication networks. Costs and fees under the order are not that.

It seems to me that the Order fails to comply with the very strong principle established in European law that the provision of public communications services should be subject to few regulatory burdens, and those burdens should be harmonised across the Union.

February 2011

Submission from Monica Horten

I have been given to understand that you are seeking experts views on the "Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2011".

I have included below the text of an article published today on my website: http://www.iptegrity.com[7] which discusses the Order in respect of the comments from the European Commission *[not printed]*.

I have recently been awarded a PhD in European Communications Policy, and the topic of my thesis was copyright enforcement measures and the EU Telecoms Package. For your reference, I have also included at the end a short biography of me *[not printed]*.

I trust this is of interest and will contribute constructively to the policy process.

February 2011

[7] http://www.iptegrity.com/index.php?option=com_content&task=view&id=615&Itemid=9

Submission from International Federation of Library Associations and Institutions

I have been given to understand that the Merits of Statutory Instruments Committee are this afternoon discussing the UK Digital Economy Act. I would like to ask you to convey to the Committee the comments below from the International Federation of Library Associations and Institutions (IFLA), an international NGO that represents over 750,000 library and information professionals in more than 150 countries worldwide. These comments were sent to the European Commission in January.

IFLA's members include a large number of library and information associations and institutions in the UK, including the British Library and Chartered Institute of Library and Information Professionals (CILIP). IFLA is concerned by the issues raised recently by our UK members with regards to the draft Statutory Instrument, 2010 No.0000 Electronic Communications, "The Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2011", as notified by the UK government to the European Commission under the Technical Standards Directive. We would therefore like to make the following submission under Article 6 of Directive 98/34/EC, as amended by Directive 98/48/EC[1].

IFLA understands that our members have separately submitted detailed technical concerns relating to the "online infringement of copyright" provisions, Section 3 to 18, of the Digital Economy Act 2010 ('DEA'). While we recognise that this submission comes late in the discussion, IFLA would still like to make some more general comments about the problems that could result from the DEA.

IFLA understands that during discussions between Ofcom and IFLA members in 2010, it became apparent that the definitions used in the DEA will cause great confusion and have possible negative consequences for libraries in the UK. For example, Ofcom confirmed that a library could be considered both an 'Internet Service Provider' (ISP) and a 'subscriber'. As an ISP, a library can be made responsible for the monitoring of their networks for copyright infringement and incur significant financial obligations as a result. As a subscriber, libraries are likely to receive notifications from their ISP to the effect that a copyright owner has made a report against them for alleged copyright infringement. The financial and time costs of complying with or appealing against this type of situation cannot be underestimated, nor can the types of penalty that could be imposed on libraries as result of an infringement by an individual user, such as the imposition of technical measures (such as reductions in quality of internet service, which ultimately affect library users).

Both situations will therefore bring not only confusion regarding the role the library must now play as a public intermediary, but also as yet-unknown costs in scaling up library operations to ensure adherence to the new role. At a time when library budgets are being cut across the United Kingdom and Europe, it is worrying that the UK Government is proceeding in implementing provisions which will impose an unknown, yet likely to be significant, cost on all types of ISP as defined by the Act. Adequate impact assessment have not been undertaken to assess the true financial implications of the act.

Furthermore, the imposition of new restrictions on library networks runs counter to the library's vital mission of providing freedom of access to information to its users. Not only does the legislation potentially lead to or encourage the adoption of blocking technologies that are valuable for learning and information sharing in an educational context, it also raises fundamental freedom of expression and privacy issues as public bodies inevitably monitor the activities of their users.

The chilling effect of the monitoring of Internet use should not be underestimated, and the electronic recording of library users' information seeking activities is not consistent with a democratic approach to access to knowledge. Library users should be free to seek information without barriers, and without fear of surveillance.

Finally, IFLA would like to comment on the broad implications of the DEA in a European setting. Concerns about copyright infringement have led to the sections of the DEA that could adversely affect libraries. The DEA now joins other recent national legislation, such as HADOPI in France, which has the potential to shape the European legislative environment with regards to digital copyright in the future. This is particularly pertinent in the age of ACTA, where signatories are encouraged to provide enforcement procedures that permit effective action against infringements of intellectual property rights in the digital environment. IFLA is concerned that if legislation such as the DEA, with its potential to negatively impact upon access to information via public intermediaries, is seen as a template or model then library users across Europe will suffer as libraries pick up the financial and ethical burdens of complying with the new laws.

IFLA urges a close examination of the DEA to assess its social and societal aims and consequences in respect to the provision of the highest quality library services in the United Kingdom.

February 2011

Submission from Talk Talk Telecom Group Plc

I understand that the Merits Committee will be considering the statutory instrument relating to the above Order on Tuesday 8 February and that you will take account of comments from interested stakeholders and the public. TalkTalk, as one of the UK's largest ISPs, will be effected by this Order would like to make the following submission. We hope that the committee finds these comments useful.

The effect of the cost sharing order combined with the Digital Economy Act 2010 (which was enacted in April 2010) and the draft Initial Obligations Code (which has only been published in draft form) is to create the *de facto* requirement for certain Internet Service Providers (ISPs) to incur (and not fully recover[8]) costs on behalf of and in order to support the copyright enforcement activities of rightsholders. We consider that the cost sharing mechanism is inappropriate for a number of reasons, in particular:

- The obligations raise issues of legal importance since they are, in several respects, incompatible with the Authorisations Directive
- The obligations give rise to public policy concerns since they are unreasonable and not justifiable because they require ISPs to incur costs even though they receive no benefit. Further, the obligations will distort competition and result in inefficiency
- The Government's procedure that culminated in the making of this Order was (and remains) deficient

Incompatible with Authorisations Directive

We consider that the requirement is incompatible with the Authorisation Directive (2012/20/EC) in three respects.

First, the Directive states (Art 6.1) that general authorisations granted to ISPs to provide communications services '*may only be subject to the conditions listed in the Annex*'. The Annex itself contains an exhaustive list of conditions. Yet none of these conditions deals with the possibility of imposing charges and costs on ISPs as part of a general regime of copyright enforcement on behalf of – and for the sole benefit of – rightsholders. On the contrary, charges should only be levied to cover administrative costs (Art.12).

[8] According to the cost-sharing instrument ISPs can only recover 75% of some of the costs they incur. In addition, ISPs are required to pay 25% of Ofcom's costs and 25% of the costs of appeals

Furthermore, where charges associated with the cost of complying with specific obligations extend beyond the terms of the general authorisation (as is the case here) they are only permitted to the extent that they are sanctioned by Article 6(2) of the Directive. The costs associated with the enforcement of the provisions of the Digital Economy Act are not so sanctioned.

The European Commission in its comments on the draft Order (notification 2010/0633/UK) raised a similar concern regarding compatibility with Articles 6 and 12 of the Directive. For instance it said:

> *... the Commission would like to call the attention of the competent UK*
>
> *authorities to Article 12(1) of Directive 2002/20/EC on the authorisation of electronic communications networks and services (Authorisation Directive), according to which :*
>
> *"1. Any administrative charges imposed on undertakings providing a service or a network under the general authorisation or to whom a right of use has been granted shall:*
>
> *(a) in total, cover only the administrative costs which will be incurred in the management, control and enforcement of the general authorisation scheme and of rights of use and of specific obligations as referred to in Article 6(2), which may include costs for international cooperation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of secondary legislation and administrative decisions, such as decisions on access and interconnection; and*
>
> *(b) be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges.".*
>
> *The Commission is not in possession of all the elements that would allow it to conclude that the costs of OFCOM and the appeals body in carrying out their functions under the UK online copyright infringement provisions fall under the categories of administrative costs specified in subparagraph (a) of Article 12(1) of Directive 2002/20/EC. In consequence, the Commission would like to ask the competent UK authorities to submit such elements.*

I am not aware of the any 'such elements' being provided to the Commission to address its concerns that Order is incompatible with the Authorisations Directive.

Second, the obligation on ISPs is not objective in the sense of the requirement of Article 12(1) because the ISP does not benefit from such measure. Again this point was highlighted by the Commission:

> *... the Commission would also appreciate receiving clarifications permitting to verify that these administrative charges would be 'objective' in the sense of Article 12(1) subparagraph (b) of Directive 2002/20/EC in particular because the qualifying Internet Service Providers do not appear to benefit in anyway from the planned online copyright measures.*

I am not aware of the Commission having been provided any clarification to address its concern.

Third, the obligation is discriminatory, not technologically neutral and will distort competition since it does not (at least to begin with) apply to smaller ISPs or mobile ISPs and as such is incompatible with the Authorisation Directive. The Government itself accepts that the measure will competitively disadvantage certain ISPs.

Economically damaging

The requirement on ISPs to incur costs is both unreasonable / unfair and economically inefficient for a number of reasons.

The orthodox and widely used approach when considering which party should pay certain costs is the 'beneficiary pays' principle. The Government accepts this over-riding principle – for instance they said:

> *"As a general principle we believe that the cost should be borne by the party that will benefit, though there may be circumstances where it is appropriate to diverge from that." (June 2009 Illegal Filesharing Consultation §4.17)*

As the European Commission pointed out (see above) it considered that for it to be 'objective' for ISPs to bear 25% of the cost there would have to be some commensurate benefit to the ISP (yet it considered that there was no such benefit).

In the case of the steps taken pursuant to the Digital Economy Act, the clear beneficiary is rightsholders and so it follows they should pay 100% of all costs the ISPs incur on their behalf (unless there is good reason for them not to). ISPs are able to recover all their costs in the case of activities that are similar to those that they are required to take under the Digital Economy Act, for instance, as a result of a 'Norwich Pharmacal' Court order or a request by a law enforcement agency.

Aside of being unfair and unjustifiable, diverging from the beneficiary pays principle will result in other harm:

- increased broadband prices and consequently lower uptake as a result of broadband consumers paying a portion of IP enforcement costs that should be properly paid for by rightsholders
- competitive distortion and dynamic inefficiency since (if the draft code is confirmed as requiring only the largest fixed ISPs to meet the obligations) large fixed ISPs will incur unrecoverable costs and so be competitively disadvantaged versus smaller fixed ISPs and mobile ISPs
- allocative inefficiencies will result since rightsholders do not bear 100% of the cost they cause and benefit from. For instance, it will result in an inefficiently high number of requests for notification and an inefficiently low amount of investment being put into alternative efforts to address illegal filesharing (such as education and alternative business models)

Procedural deficiency

Last we consider that the approach taken by the Government has and continues to be procedurally deficient. In particular:

- the Government did not assess the obvious option of rightsholders bearing 100% of the costs and instead only looked at the option of rightsholders bearing 0% of ISPs costs (option 0) and rightsholders bearing 75% of ISPs costs (option 1)
- we consider that this notification is premature for several reasons: it is difficult to fully assess the impact of the cost sharing since it is not currently known which ISPs the obligations will apply to; the costs are not yet fully known; and the Digital Economy Act itself (which the cost sharing order is based on) has yet to be notified itself

February 2011

Submission from the Taxpayers' Alliance

This is a brief note regarding The Online Infringment of Copyright (Initial Obligations) (Sharing of Costs) Order 2011 to be reviewed today by the Merits Committee. There are a number of concerns that I can express with regards to the Statutory Instrument. In light of the lack of time, only a few concerns are highlighted below:

1. The BT and TalkTalk judicial review of the Digital Economy Act is set for March 22-24 and the OFCOM review of the Digital Economy Act is expected to be completed by the end of April. In light of both of these reviews should the SI go forward with the uncertainty over legality that the Digital Economy Act faces?
2. As the European Commission has stated, it doesn't seem justifiable for Internet Service Providers to bear part of the cost of the implementation of the DEA (set at 25% in this Statutory Instrument) without receiving any benefit from incurring this cost. It is akin on Royal Mail being sued by an author if an illegally copy of his/her book is sent through the mail to a third party.
3. The European Commission is still in the process of responding to the SI and the European Commission has not yet said if it will be satisfied that the draft SI complies with Article 12(1) of the Authorisation Directive (2002/20/EC).

February 2011

Submission from the Creative Coalition Campaign

I am writing on behalf of the CCC following your call for submissions on The Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2011 ("the Costs SI"), which your committee will review shortly.

The CCC represents around 30 leading organisations in film, music, publishing, football as well as trade bodies and trade unions. It was created in August 2009 to encourage the UK Government to combat the threat that online copyright infringement - including illegal file-sharing - presents to the future of content creation, investment and jobs in the UK.

As you will be aware, the Costs SI relates to the Digital Economy Act (DEA), which includes provisions aimed at tackling the serious problem of online copyright infringement. Online copyright infringement poses a very substantial threat to both jobs and investment in the creative industries in the UK. We strongly welcome the move to establish a notice-sending regime, as proposed in the DEA, as a mechanism to assist in educating the public and to help tackle this growing problem. We greatly appreciate the Government's efforts in proceeding with the implementation of the DEA.

We are however concerned that the Costs SI does not call for the appeal body (that is to be established pursuant to the DEA) to impose any requirement on a subscriber to pay for any part of the appeal body costs; even if there is a concerted campaign which leads to significant numbers of vexatious or unreasonable appeals.

We are concerned that a failure to allow for any costs sanction will lead to a concerted campaign of vexatious appeals by organisations who seek to undermine and frustrate the notice sending system.

This may also mean that subscribers making genuine appeals are likely to suffer detriment if the appeals system is overwhelmed by appeals made on grounds that are frivolous or vexatious. Their appeals are likely to be subject to significant delay and subscriber confidence in the system is likely to be undermined as a result.

As a coalition of rights holders we feel it is important that the Government makes it clear that mass campaigns designed to frustrate and undermine the system will not be tolerated. We firmly believe this would act as a strong deterrent to those seeking to undermine the system. We believe it is critical that our concern about vexatious campaigns is noted in your report to the House of Lords.

Given our concern about vexatious appeals, we urge you and the committee to consider the implications of this when considering the Costs SI and hope your report to the House on this

Order will reflect these concerns accordingly. We have already raised these issues with the Minister and continue to talk to DCMS and Ofcom about how the risks can be mitigated.

February 2011

Submission from UK Music

Would you please let the Committee know that we urgently need this SI to be adopted by Parliament so that the implementation of the Digital Economy Act can begin.

UK Music has long argued that the Digital Economy Act will lay some crucial foundations for a sustainable and incentivised digital marketplace where copyrighted goods carry a value that can be realised by creators and investors.

This process has now taken many months to reach this stage. It is imperative that we have a legal framework with which to regulate what has largely been a totally dysfunctional market place.

It is our hope that this legislation will help underpin this embryonic yet fast moving economy and allow industry to do what it does best, focus on growing our businesses to the benefit of the sector and the UK's economy.

February 2011

APPENDIX 2: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the House of Lords Record Office and is available for purchase from The Stationery Office.

For the meeting on 8 February 2011 Members declared no interests on any of the instruments of interest.

Attendance:

The meeting was attended by B. Butler-Sloss, L. Eames, L. Goodlad, B. Hamwee, L. Hart of Chilton, L. Methuen, L. Plant of Highfield and L. Scott of Foscote.