



Digital Economy Act – Filesharing provisions

Guide to Ofcom's initial obligations code under the Digital Economy Act 2010

10

Digital Economy Act 2010 (c. 24)

- (10) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament."

7 Contents of initial obligations code

After section 124D of the Communications Act 2003 insert—

"124E Contents of initial obligations code

- (1) The criteria referred to in sections 124C(6) and 124D(6) are—
- (a) that the code makes the required provision about copyright infringement reports (see subsection (2));
 - (b) that it makes the required provision about the notification of subscribers (see subsections (3) and (4));
 - (c) that it sets the threshold applying for the purposes of determining who is a relevant subscriber within the meaning of section 124B(3) (see subsections (5) and (6)).
- ...new internet service pr

About Consumer Focus

Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland. We operate across the whole of the economy, persuading businesses, public services and policy makers to put consumers at the heart of what they do.

Consumer Focus want to see a digital economy characterised by competitive, dynamic and innovative markets to which consumers have meaningful access and in which they are empowered to make informed choices.

We want to see a copyright culture that supports this by striking a fair balance between creators, investors and consumers.

With the arrival of digital technologies consumers have become able to infringe copyright on a large scale. Copyright infringement is not to be condoned, but law enforcement always has to be proportionate and carried out in a way that respects data protection law and the human right to 'due process', which is the presumption of innocence and a fair trial.

This guide

This guide outlines the requirements for the 'initial obligations code' that Ofcom is to approve. It will underpin the notification of internet subscribers in cases where a copyright owner is alleging that their internet account has been used to infringe copyright. These provisions have been established by the Digital Economy Act 2010, which makes a number of requirements as to the content of the initial obligations code.

Digital Economy Act – Filesharing provisions

Guide to Ofcom's initial obligations code under the Digital Economy Act 2010

The Digital Economy Bill received Royal Assent 8 April 2010 and became the **Digital Economy Act 2010**.¹ Most of the provisions in the act came into force two months after Royal Assent, in June 2010.²

The Digital Economy Act (DE Act) established legislation on a range of digital communications issues, including internet domain registries, Channel 4's media content duties and the classification of video games. Section 3 to 18 of the DE Act cover 'online infringement of copyright' and contain the following two provisions:

The filesharing provisions – Section 3 to 16 of the DE Act. These sections are to be amended into the **Communications Act 2003** (COM Act), creating new sections 124A to 124N.³

The website-blocking provisions – Section 17 to 18 of the DE Act.

This guide only covers the initial obligations code which will underpin the notification stage of the filesharing provisions.

Two stage filesharing approach – The filesharing provisions establish a two stage approach which includes a notification stage and a technical measures stage. The notification stage will be supervised by Ofcom and underpinned by an initial obligations code, which is to be approved, administered and enforced by Ofcom. If the notification stage does not lead to a reduction in online copyright infringement, the Secretary of State has the power to impose a technical obligation on internet service providers to take technical measures against 'relevant subscribers'. This is when the technical measures stage starts.

¹ Digital Economy Act 2010, pg.1

² Some Sections relating to online infringement of copyright that came into force with Royal Assent, these are Sections 5, 6, 7, 15 and 16(1). Digital Economy Act 2010, section 218

³ Updating the Communications Act 2003 – The filesharing provisions of the DE Act, section 3 to 16, will be added to the Communications Act 2003, which already contains in excess of 400 Sections. The filesharing provisions will be inserted after section 124, hence the sections will be numbered 124 plus a letter of the alphabet, ie 124A, 124B.

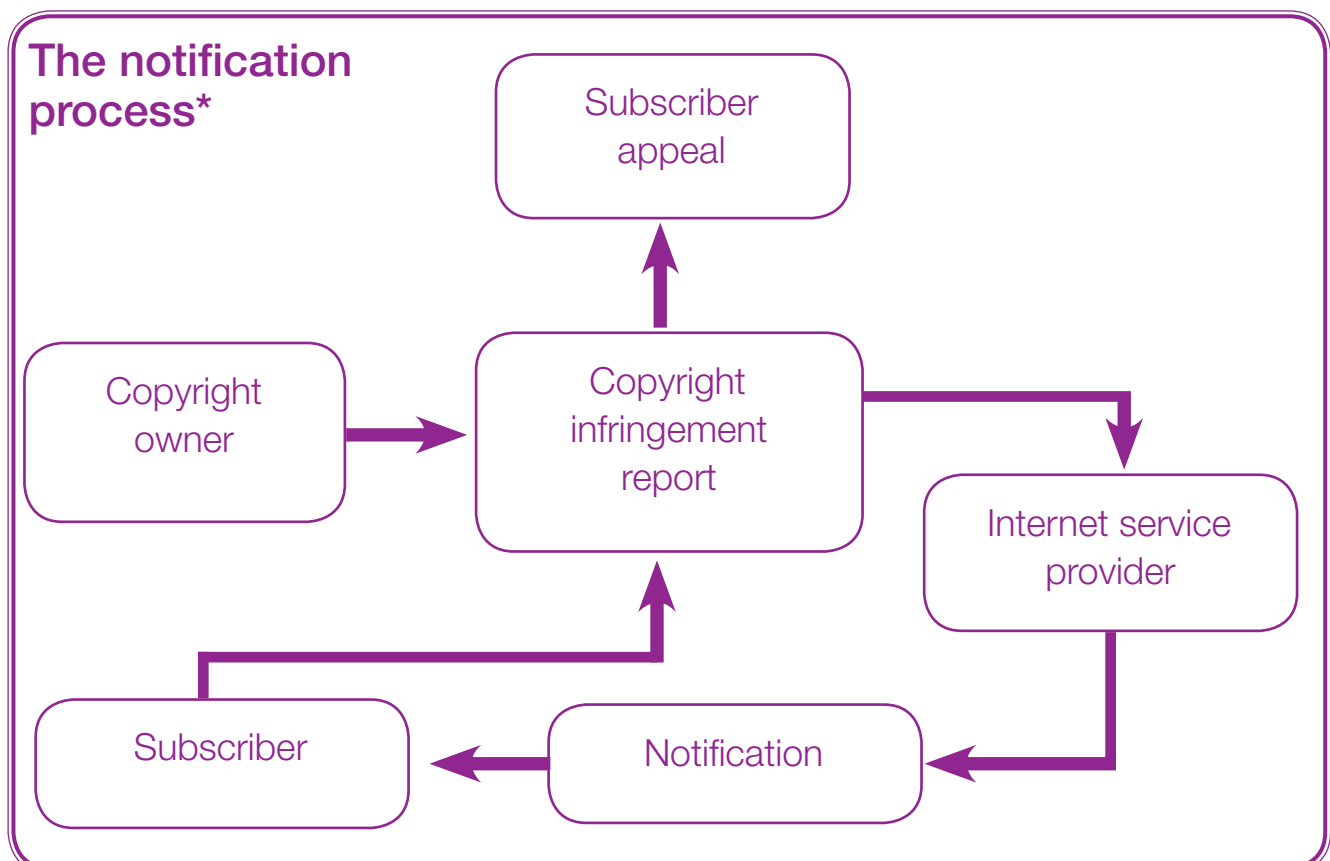
DE Act / COM Act section no and title	Stages
DE Act Section 3 / COM Act Section 124A – Obligation to notify subscribers of copyright infringement reports	Notification stage
DE Act Section 4 / COM Act Section 124B – Obligation to provide copyright infringement lists to copyright owners	
DE Act Section 5 / COM Act Section 124C – Approval of code about the initial obligations	
DE Act Section 6 / COM Act Section 124D – Initial obligations code by OFCOM in the absence of an approved code	
DE Act Section 7 / COM Act Section 124E – Contents of initial obligations code	
DE Act Section 8 / COM Act Section 124F – Progress reports	
DE Act Section 9 / COM Act Section 124G – Obligations to limit internet access: assessment and preparation	Technical measures stage preparation
DE Act Section 10 / COM Act Section 124H – Obligations to limit internet access	Technical measures stage
DE Act Section 11 / COM Act Section 124I – Code by OFCOM about obligations to limit internet access	
DE Act Section 12 / COM Act Section 124J – Contents of code about obligations to limit internet access	
DE Act Section 13 / COM Act Section 124K – Subscriber appeals	Subscriber appeals
DE Act Section 14 / COM Act Section 124L – Enforcement of obligations	Ofcom enforcement arrangement
DE Act Section 15 / COM Act Section 124M – Sharing of costs	Cost
DE Act Section 16 / COM Act Section 124N – Interpretation	Definitions

The notification process:

The DE Act makes detailed provisions for the notification process. Essentially copyright owners will send 'copyright infringement reports' to internet service providers outlining an alleged infringement of copyright, and providing an IP address associated with the alleged infringement. The internet service providers will then match the IP address to 'internet access service' subscriber details and send notifications of the copyright infringement report made by the copyright owners. If the number of copyright infringement reports received from copyright owners reach a certain threshold, specified in the initial obligations code, internet service providers have to establish 'copyright infringement lists' in relation to the IP addresses. The subscribers who are associated with these IP addresses then become 'relevant subscribers' for the purpose of the notification stage and the technical measures stage.

During the notification stage copyright owners will have access to 'copyright infringement lists', though they will only see how many copyright infringement reports have been sent in relation to a subscriber identified by the relevant IP address, not the subscriber details. It is then expected that copyright owners obtain the subscriber details through a so called 'Norwich Pharmacal Order'; a court order that forces internet service providers to release the subscriber details associated with an IP address to the copyright owner who applied for that order. The copyright owners are then expected to take these subscribers to court for civil copyright infringement, using the evidence they have previously submitted through the copyright infringement reports.

During the notification process the initial obligations code will give subscribers the right to appeal the copyright infringement reports through an appeals body to be set up by Ofcom.



* The copyright owner sends a 'copyright infringement report' to the internet service provider, who sends a notification to the subscriber. The subscriber then has the right to appeal against the 'copyright infringement report'.

Initial obligations code: what it must include

The DE Act makes a number of specific provisions about what needs to be included in the initial obligations code that underpins the notification stage. The initial obligations code can only be approved by Ofcom if it fulfils all the criteria and makes all the provisions established in the DE Act. Ofcom needs the consent of the Secretary of State to approve the initial obligations code, and must lay the initial obligations code before Parliament.

Most of the criteria for approval and required provisions are specified in Section 7 'Contents of initial obligations code' of the DE Act (Section 124E of the COM Act). Other sections of the DE Act which outline relevant provisions for the initial obligations code include Section 4, 13 and 15.

A quick reference list on what the initial obligations code must include can be found at the back of this Guide.

Contents of initial obligations code

Criteria for approval:

Section 7 of the DE Act establishes a set of criteria and Ofcom must not approve the initial obligations code unless it is satisfied that it meets the criteria set out in this section.⁴ The criteria for approval of the initial obligations code are:

- 'the provisions of the code are objectively justifiable in relation to the matters to which it relates'
- 'that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons'
- 'that those provisions are proportionate to what they are intended to achieve'
- 'that, in relation to what those provisions are intended to achieve, they are transparent'⁵

Specific provisions:

Adding to these general criteria, the initial obligations code needs to include a long list of specific provisions that will underpin the notification process. The required provisions include the copyright infringement reports, the notification of subscribers, subscriber appeals against copyright infringement reports and a threshold for defining 'relevant subscriber'.

Copyright infringement reports and standard of evidence:

The initial obligations code must set out provisions concerning 'copyright infringement reports',⁶ therefore the initial obligations code must establish:

- 'requirements as to the means of obtaining evidence of infringement of copyright for inclusion in a report'
- 'the standard of evidence that must be included'
- 'the required form' of the copyright infringement reports sent by the copyright owner.⁷

⁴ Digital Economy Act 2010, Section 5 (Communications Act 2003, Section 124C), subsection 6 & Digital Economy Act 2010, Section 6 (Communications Act 2003, 124D), subsection 6

⁵ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 1(i), (j), (k) and (l)

⁶ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 1(a)

⁷ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 2

According to Section 3 of the DE Act the copyright infringement report must be sent to the internet service provider within one month of the day on which the evidence was gathered.⁸ Copyright owners must provide the following information in the copyright infringement reports they send to internet service providers:

- a statement ‘that there appears to have been an infringement of the owner’s copyright’
- ‘a description of the apparent infringement’
- ‘evidence of the apparent infringement that shows the subscriber’s IP address and the time at which the evidence was gathered’
- ‘any other requirement of the initial obligations code’⁹

Identification of subscribers:

The DE Act requires that the initial obligations code sets out ‘requirements as to the means by which the internet service provider identifies the subscriber’.¹⁰ In doing so the initial obligations code needs to make provisions on the method used by an internet service provider to match the IP address supplied by the copyright owner in the copyright infringement report to one of their subscribers.

Notification of subscribers by internet service providers:

The initial obligations code must also make provisions concerning the notification of subscribers in relation to whom an internet service provider receives one or more copyright infringement reports.¹¹

The DE Act does not specify that a subscriber must be notified by the internet service provider about every copyright infringement report made in relation to their account. Instead the DE Act states that the initial obligations code must include provisions on ‘which of the copyright infringement reports the provider must notify the subscriber of’.¹²

The DE Act also provides that the initial obligations code must make ‘requirements as to the form, content and means of the notification in each case’¹³ and Section 3 provides a long list of information that notifications sent to subscribers must include:

- ‘a statement that the notification is sent under this section in response to a copyright infringement report’
- ‘the name of the copyright owner who made the report’
- ‘a description of the apparent infringement’
- ‘evidence of the apparent infringement that shows the subscriber’s IP address and the time at which the evidence was gathered’
- ‘information about subscriber appeals and the grounds on which they may be made’
- ‘information about copyright and its purpose’
- ‘advice, or information enabling the subscriber to obtain advice, about how to obtain lawful access to copyright works’
- ‘advice, or information enabling the subscriber to obtain advice, about steps that a subscriber can take to protect an internet access service from unauthorised use’
- ‘anything else that the initial obligations code requires the notification to include’¹⁴

⁸ Digital Economy Act 2010, Section 3 (Communications Act 2003, 124A, subsection 6)

⁹ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 3

¹⁰ Digital Economy Act 2010, Section 3 (Communications Act 2003, 124A), subsection 3(d)

¹¹ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 1(b)

¹² Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 3

¹³ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 3

¹⁴ Digital Economy Act 2010, Section 3 (Communications Act 2003, 124A), subsection 6

In relation to anything else the initial obligations code may require the notification to include, the section provides the following suggestions:

- ‘a statement that information about the apparent infringement may be kept by the internet service provider’
- ‘a statement that the copyright owner may require the provider to disclose which copyright infringement reports made by the owner to the provider relate to the subscriber’
- ‘a statement that, following such a disclosure, the copyright owner may apply to a court to learn the subscriber’s identity and may bring proceedings against the subscriber for copyright infringement’
- ‘where the requirement for the provider to send the notification arises partly because of a report that has already been the subject of a notification... a statement that the number of copyright infringement reports relating to the subscriber may be taken into account for the purposes of any technical measures’¹⁵

Data retention:

The initial obligations code must also set out ‘provisions about how internet service providers are to keep information about subscribers’¹⁶ and it needs to limit ‘the time for which they may keep that information’.¹⁷ Section 3 states that internet service providers must notify subscribers of copyright infringement reports within one month from the day they received the copyright infringement report from the copyright owner.¹⁸

In addition Section 7 establishes that the initial obligations code ‘must not permit any copyright infringement report received by an internet service provider more than 12 months before the date of a notification of a subscriber to be taken into account for the purpose of the notification’.¹⁹

‘Relevant subscriber’ and ‘copyright infringement list’ threshold:

Part of the information held by internet service providers on their subscribers will be the ‘copyright infringement list’ in relation to ‘relevant subscribers’ and the initial obligations code must also set the ‘threshold applying for the purpose of determining who is a relevant subscriber within the meaning of section 124B’²⁰ (that is DE Act section 4).

As defined in Section 4 of the DE Act, a relevant subscriber is one for whom the ‘copyright infringement reports made by the owner to the provider’ ‘have reached the threshold set in the initial obligations code’.²¹

This means that the initial obligations code has to state how many copyright infringement reports an internet service provider must receive in relation to a subscriber before they are classified as ‘relevant subscriber’.

¹⁵ Digital Economy Act 2010, Section 3 (Communications Act 2003, 124A), subsection 8

¹⁶ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 1(d)

¹⁷ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 1(e)

¹⁸ Digital Economy Act 2010, Section 3 (Communications Act 2003, 124E), subsection 1(e)

¹⁹ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124A), subsection 5

²⁰ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 1(c)

²¹ Digital Economy Act 2010, Section 4 (Communications Act 2003, 124B), subsection 3

Once a subscriber has become relevant, the internet service provider must establish a copyright infringement list for that subscriber.²² The Section provides that the threshold may be set ‘by reference to any matter’ including one or more of the following criteria: ‘the number of copyright infringement reports’, the ‘time within which the reports are made’ and ‘the time of the apparent infringements to which they relate’.²³

The Section also provides that if the threshold is set in relation to ‘the time of the apparent infringements to which they relate’ it ‘must operate in such a way that a copyright infringement report received by an internet service provider more than 12 months before a particular date does not affect whether the threshold is met on that date; and a copyright infringement list provided under section 124B must not take into account any such report.’²⁴ This means that if the threshold is set in relation to the time the apparent infringement occurred, only copyright infringement reports received by the internet service provider less than 12 months ago can be taken into account for the purpose of defining a relevant subscriber.

Subscriber appeal against copyright infringement reports:

The initial obligations code can only be approved by Ofcom if it meets the requirements concerning subscriber appeals against copyright infringement reports.²⁵ Section 13 on subscriber appeals states that the initial obligations code must confer on subscribers the right to bring a subscriber appeal.²⁶

Section 13 also states that the initial obligations code must also provide ‘that there is a person who, under the code, has the function of determining subscriber appeals’²⁷ and ‘that that person is for practical purposes independent (so far as determining subscriber appeals is concerned) of internet service providers, copyright owners and Ofcom’.²⁸ Essentially the initial obligations code has to provide for the establishment of an appeals body for the purpose of subscriber appeal.

The person determining subscriber appeals must have the following powers:

- ‘to secure so far as practicable that a subscriber is not prejudiced for the purposes of the copyright infringement provisions by an act or omission in respect of which an appeal is determined in favour of the subscriber’
- ‘to make an award of compensation to be paid by a copyright owner or internet service provider to a subscriber affected by such an act or omission’
- ‘where the appeal is determined in favour of the subscriber, to direct the copyright owner or internet service provider to reimburse the reasonable costs of the subscriber’²⁹

In relation to subscriber appeals the initial obligations code must provide that a subscriber has the right to appeal on the grounds that the copyright owner or the internet service provider did not comply with the initial obligations code or any obligation regulated by the initial obligations code.³⁰

²² Digital Economy Act 2010, Section 4 (Communications Act 2003, 124B), subsection 2

²³ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 5

²⁴ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 6

²⁵ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 1(h)

²⁶ Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 2(a)

²⁷ Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 2(b)

²⁸ Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 2(c)

²⁹ Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 7

³⁰ Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 4

The initial obligations code must also ‘provide the ground for appeal’ in the case where an appeal relates to, or anything done by reference to, a copyright infringement report. The following two grounds for appeal are specified in relation to a copyright infringement report:

- that the apparent infringement to which the report relates was not an infringement of copyright’
- ‘that the report does not relate to the subscriber’s IP address at the time of the apparent infringement’³¹

In relation to subscriber appeal on these two grounds the initial obligations code must provide that the appeal must be determined in favour of the subscriber if he or she shows that:

- ‘the act constituting the apparent infringement to which the report relates was not done by the subscriber’
- ‘the subscriber took reasonable steps to prevent other persons infringing copyright by means of the internet access service’³²

The initial obligations code must also provide that an appeal on any grounds must be determined in favour of the subscriber unless the copyright owner or internet service provider can show that:

- ‘the apparent infringement was an infringement of copyright’
- ‘the report relates to the subscriber’s IP address at the time of that infringement’³³

In relation to the costs of subscriber appeals the initial obligations code must make adequate arrangements for the costs incurred by the person determining the subscriber appeal to be paid by the internet service providers, copyright owners and/or the subscriber concerned.³⁴ Whether or not a subscriber has to pay a fee for bringing an appeal, and how much the internet service providers and copyright owners have to pay towards the cost of the appeals body, is to be determined by the Secretary of State in an order.³⁵ The initial obligations code is then to implement the provisions in the order and make practical arrangements.

Administration and enforcement of the initial obligations code:

Section 7 of the DE Act also requires the initial obligations code to cover issues of administration and enforcement of the initial obligations code,³⁶ which is the role of Ofcom.³⁷ According to the DE Act Ofcom must resolve ‘owner-provider disputes’,³⁸ which are defined as a dispute that ‘is between persons who are copyright owners or internet service providers’ in relation to ‘an act or omission in relation to an initial obligation or an initial obligations code.’³⁹ So if there are any disputes between copyright owners and internet service providers on how to comply with the initial obligations code, it is for Ofcom to resolve, and the initial obligations code must make adequate provisions of the resolution of such disputes.

³¹ Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 3

³² Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 6

³³ Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 5

³⁴ Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 2(d)

³⁵ Digital Economy Act 2010, Section 15 (Communications Act 2003, 124M), subsection 2

³⁶ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 1(g)

³⁷ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 7

³⁸ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E) subsection 7

³⁹ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E) subsection 9

Furthermore the initial obligations code must make adequate arrangements 'for Ofcom to obtain any information or assistance from internet service providers or copyright owners that Ofcom reasonably require for the purposes of administering and enforcing the code'.⁴⁰ This means that the initial obligations code establishes a process whereby Ofcom can require internet service providers and copyright owners to provide information and assistance.

According to Section 7 of the DE Act the initial obligations code's provisions may also include provisions for the payment of a penalty if the internet service provider or copyright owner contravenes their initial obligations.

The provisions may also require copyright owners to indemnify an internet service provider for any loss or damage resulting from the owner's failure to comply with the initial obligations code or the filesharing provisions of the DE Act more generally.⁴¹

Costs:

According to Section 7 of the DE Act the initial obligations code must make any provision about contributions towards meeting costs that is required to be included by an order under Section 15 on the sharing of costs.⁴² The initial obligations code must make adequate arrangements 'for the costs incurred by Ofcom in administering and enforcing the code to be met by internet service providers and copyright owners'.⁴³

Under Section 15 of the DE Act the Secretary of State specifies by order the payment of contributions towards costs incurred under the filesharing provisions of the DE Act. These provisions must be included in the initial obligations code.⁴⁴ Copyright owners and internet service providers can be required to make payment contributions for the filesharing provisions, while subscribers can be required to make payment contributions towards the subscriber appeal.⁴⁵ Once the order has been made, the initial obligations code has to make arrangement for payment in accordance with the order.

⁴⁰ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E) subsection 7

⁴¹ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E) subsection 8

⁴² Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E) subsection 1(f)

⁴³ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E) subsection 7

⁴⁴ Digital Economy Act 2010, Section 15 (Communications Act 2003, 124M) subsection 1

⁴⁵ Digital Economy Act 2010, Section 15 (Communications Act 2003, 124M) subsection 2

Quick reference list on what the initial obligations code must include

Criteria for approval:

Criteria the initial obligations code must meet before Ofcom can approve it:

- ‘the provisions of the code are objectively justifiable in relation to the matters to which it relates’
- ‘that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons’,
- ‘that those provisions are proportionate to what they are intended to achieve’ and ‘that, in relation to what those provisions are intended to achieve, they are transparent.’⁴⁶
- ‘a description of the apparent infringement’
- ‘evidence of the apparent infringement that shows the subscriber’s IP address and the time at which the evidence was gathered’
- ‘any other requirement of the initial obligations code’⁴⁸
- ‘requirements as to the means of obtaining evidence of infringement of copyright for inclusion’ in a copyright infringement report
- ‘the standard of evidence that must be included’
- a copyright infringement report must be sent to the internet service provider within one month of the day on which the evidence was gathered⁴⁹

Specific provisions that must be included in the initial obligations code:

Copyright infringement reports and standard of evidence:

- ‘the required form’ of the copyright infringement reports sent by copyright owners⁴⁷ which must include the following information:
 - a statement ‘that there appears to have been an infringement of the owner’s copyright’

Identification of subscribers:

- ‘requirements as to the means by which the internet service provider identifies the subscriber’⁵⁰

Notification of subscribers by internet service providers:

- provisions concerning the notification of subscribers⁵¹
- provisions on ‘which of the copyright infringement reports the provider must notify the subscriber of’⁵²
- make ‘requirements as to the form, content and means of the notification in each case’⁵³ which must include the following information:

⁴⁶ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 1(i), (j), (k) and (l)

⁴⁷ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 2

⁴⁸ Digital Economy Act 2010, Section 3 (Communications Act 2003, 124A), subsection 6

⁴⁹ Digital Economy Act 2010, Section 3 (Communications Act 2003, 124A), subsection 3(d)

⁵⁰ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 3

⁵¹ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 1(b)

⁵² Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 3

⁵³ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 3

- ‘a statement that the notification is sent under this section in response to a copyright infringement report’
- ‘the name of the copyright owner who made the report’
- ‘a description of the apparent infringement’
- ‘evidence of the apparent infringement that shows the subscriber’s IP address and the time at which the evidence was gathered’
- ‘information about subscriber appeals and the grounds on which they may be made’
- ‘information about copyright and its purpose’
- ‘advice, or information enabling the subscriber to obtain advice, about how to obtain lawful access to copyright works’
- ‘advice, or information enabling the subscriber to obtain advice, about steps that a subscriber can take to protect an internet access service from unauthorised use’
- ‘anything else that the initial obligations code requires the notification to include’⁵⁴
- ‘anything else the initial obligations code may require’ can include:
 - ‘a statement that information about the apparent infringement may be kept by the internet service provider’
 - ‘a statement that the copyright owner may require the provider to disclose which copyright infringement reports made by the owner to the provider relate to the subscriber’
- ‘a statement that, following such a disclosure, the copyright owner may apply to a court to learn the subscriber’s identity and may bring proceedings against the subscriber for copyright infringement’
- ‘where the requirement for the provider to send the notification arises partly because of a report that has already been the subject of a notification... a statement that the number of copyright infringement reports relating to the subscriber may be taken into account for the purposes of any technical measures’⁵⁵

Data retention:

- ‘provisions about how internet service providers are to keep information about subscribers’⁵⁶
- set a limit on ‘the time for which they may keep that information’⁵⁷
- internet service providers must notify subscribers of copyright infringement reports within one month from the day they received the copyright infringement report from the copyright owner⁵⁸
- copyright infringement report received by an internet service provider more than 12 months before the date of a notification of a subscriber can’t be taken into account for the purpose of the notification⁵⁹

⁵⁴ Digital Economy Act 2010, Section 3 (Communications Act 2003, 124A), subsection 6

⁵⁵ Digital Economy Act 2010, Section 3 (Communications Act 2003, 124A), subsection 8

⁵⁶ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 1(d)

⁵⁷ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 1(e)

⁵⁸ Digital Economy Act 2010, Section 3 (Communications Act 2003, 124E), subsection 1(e)

⁵⁹ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 4

‘Relevant subscriber’ and ‘copyright infringement list’ threshold:

- set the threshold applying for the purpose of determining who is a ‘relevant subscriber’,⁶⁰ that is:
 - a subscriber for whom the ‘copyright infringement reports made by the owner to the provider’ ‘have reached the threshold set in the initial obligations code’⁶¹
- the threshold may be set ‘by reference to any matter’ including:
 - ‘the number of copyright infringement reports’,
 - the ‘time within which the reports are made’
 - ‘the time of the apparent infringements to which they relate’⁶²
 - if the threshold is set in relation to ‘the time of the apparent infringements to which they relate’ it ‘must operate in such a way that a copyright infringement report received by an internet service provider more than 12 months before a particular date does not affect whether the threshold is met on that date; and a copyright infringement list provided under section 124B must not take into account any such report.’⁶³

Subscriber appeal against copyright infringement reports:

- must make the requirements concerning subscriber appeals against copyright infringement reports⁶⁴
- confer on subscribers the right to bring a subscriber appeal⁶⁵

- provide the ground for subscriber appeals, which are:
 - the copyright owner or the internet service provider did not comply with the initial obligations code or any obligation regulated by the initial obligations code⁶⁶
 - ‘that the apparent infringement to which the report relates was not an infringement of copyright’
 - ‘that the report does not relate to the subscriber’s IP address at the time of the apparent infringement’⁶⁷
- if the appeal was brought on the previous two ground the initial obligations code must provide that the appeal must be determined in favour of the subscriber if he or she shows that:
 - the act constituting the apparent infringement to which the report relates was not done by the subscriber’ and
 - ‘the subscriber took reasonable steps to prevent other persons infringing copyright by means of the internet access service’⁶⁸
- an appeal on any grounds must be determined in favour of the subscriber unless the copyright owner or internet service provider can show that:
 - ‘the apparent infringement was an infringement of copyright’ and
 - ‘the report relates to the subscriber’s IP address at the time of that infringement’⁶⁹
- provide ‘that there is a person who, under the code, has the function of determining subscriber appeals’⁷⁰

⁶⁰ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 1(c)

⁶¹ Digital Economy Act 2010, Section 4 (Communications Act 2003, 124B), subsection 3

⁶² Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 5

⁶³ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 6

⁶⁴ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 1(h)

⁶⁵ Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 2(a)

⁶⁶ Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 4

⁶⁷ Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 3

⁶⁸ Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 6

⁶⁹ Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 5

⁷⁰ Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 2(b)

- 'that that person is for practical purposes independent (so far as determining subscriber appeals is concerned) of internet service providers, copyright owners and Ofcom'⁷¹
- the remit of the person determining subscriber appeals must include the following powers:
 - 'to secure so far as practicable that a subscriber is not prejudiced for the purposes of the copyright infringement provisions by an act or omission in respect of which an appeal is determined in favour of the subscriber'
 - 'to make an award of compensation to be paid by a copyright owner or internet service provider to a subscriber affected by such an act or omission'
 - 'where the appeal is determined in favour of the subscriber, to direct the copyright owner or internet service provider to reimburse the reasonable costs of the subscriber'⁷²
- make adequate arrangements for the costs incurred by the person determining the subscriber appeal to be paid by the internet service providers, copyright owners and/or the subscriber concerned⁷³

Administration and enforcement of the initial obligations code:

- make provisions for the administration and enforcement of the initial obligations code,⁷⁴ by Ofcom⁷⁵
- arrangement for Ofcom to resolve 'owner-provider disputes',⁷⁶ that is a dispute 'between persons who are copyright owners or internet service providers' in relation to 'an act or omission in relation to an initial obligation or an initial obligations code'⁷⁷
- adequate arrangements 'for Ofcom to obtain any information or assistance from internet service providers or copyright owners that Ofcom reasonably require for the purposes of administering and enforcing the code'⁷⁸
- provisions for the payment, to any person specified in the code, of a penalty if the internet service provider or copyright owner contravenes their initial obligations
- provisions requiring copyright owners to indemnify an internet service provider for any loss or damage resulting from the owner's failure to comply with the initial obligations code or the filesharing provisions of the DE Act more generally⁷⁹

Costs:

- any provision about contributions towards meeting costs that is required to be included by an order under Section 15⁸⁰
- arrangements 'for the costs incurred by Ofcom in administering and enforcing the code to be met by internet service providers and copyright owners'⁸¹

⁷¹ Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 2(c)

⁷² Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 7

⁷³ Digital Economy Act 2010, Section 13 (Communications Act 2003, 124K), subsection 2(d)

⁷⁴ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 1(g)

⁷⁵ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 7

⁷⁶ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 7

⁷⁷ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 9

⁷⁸ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 7

⁷⁹ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 8

⁸⁰ Digital Economy Act 2010, Section 7 (Communications Act 2003, 124E), subsection 1(f)

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