



- (a) the period beginning on a day determined by OFCOM in accordance with the Code and ending on 31st March 2013 or 31st March 2014 as determined by OFCOM; or
- (b) any subsequent period of twelve months beginning on 1st April;

“qualifying copyright owner” means, in relation to a notification period, a copyright owner(a) who has given an estimate to a qualifying internet service provider of the number of copyright infringement reports(b) to be made by the copyright owner to the internet service provider in that notification period in accordance with the Code;

“qualifying costs” means the costs incurred by OFCOM or the appeals body in carrying out functions under the copyright infringement provisions(c) including costs incurred by OFCOM under those provisions in appointing the appeals body or in establishing a body corporate to be the appeals body;

“qualifying internet service provider” means an internet service provider(d) to which the and obligations of the Code apply;

“relevant costs” means costs which would be reasonably and efficiently incurred by a notional qualifying internet service provider in carrying out its obligations under the copyright infringement provisions.

### **Provision to be made by the Code**

3. The Secretary of State specifies that the Code must include the provisions set out in the Schedule.

### **Enforcement**

4.—(1) OFCOM may recover as a civil debt any amount outstanding to it under any provision included in the Code by virtue of article 3.

(2) The appeals body may recover as a civil debt any amount outstanding to it under a provision included in the Code by virtue of article 3 and paragraphs 5 and 6 of the Schedule.

	<i>Name</i>
	Minister for Culture, Communications and Creative Industries
Date	Department for Culture, Media and Sport

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(a) See definition in section 124N of the Communications Act 2003.  
(b) See definition in section 124A(3) of the Communications Act 2003.  
(c) See definition in section 124N of the Communications Act 2003.  
(d) See definition in section 124N of the Communications Act 2003.

## SCHEDULE

Article 3

### PROVISIONS TO BE INCLUDED IN THE CODE

#### Notification fees

1.—(1) OFCOM must set the amount payable by a qualifying copyright owner for each copyright infringement report which the qualifying copyright owner estimates it will make under the Code during the notification period.

- (2) The amount set may be different for different descriptions of internet service providers.
- (3) The amount set by OFCOM must be based on OFCOM's estimate of relevant costs.
- (4) Relevant costs may include the costs of—
  - (a) receiving a copyright infringement report;
  - (b) matching the IP address(a) to a subscriber(b) on receipt of a copyright infringement report;
  - (c) generating and sending a notification of the copyright infringement report under section 124A(4) of the Act to that subscriber;
  - (d) retaining records of copyright infringement reports and notifications sent to subscribers, for the purposes of section 124B of the Act or if required to do so by the Code;
  - (e) managing information for the purposes set out in the Code;
  - (f) compiling and providing copyright infringement lists(c) to copyright owners, pursuant to section 124B of the Act;
  - (g) handling enquiries from and providing information requested by a subscriber about notifications received by that subscriber;
  - (h) maintaining appropriate security and access controls for data processed for the purposes set out in the Code to meet the requirements of the Data Protection Act 1998(d); and
  - (i) monitoring compliance with obligations under the copyright infringement provisions(e).
- (5) Relevant costs must exclude—
  - (a) costs (or in Scotland, expenses) payable under a Court order;
  - (b) costs caused by the failure of a qualifying internet service provider to maintain accurate subscriber records; and
  - (c) costs of economic opportunities lost as a result of compliance with obligations under the copyright infringement provisions.
- (6) In setting the amount OFCOM shall have regard to the desirability of—
  - (a) promoting efficiency in the exercise of rights and the performance of obligations under the copyright infringement provisions; and
  - (b) ensuring, as far as practicable, that the notification fees payable by all qualifying copyright owners in a notification period amount to 75% of the total costs incurred by all qualifying internet service providers calculated on the assumption that the total costs of each qualifying internet service provider are equal to OFCOM's estimate of relevant costs.
- (7) OFCOM must publish the amount it sets as soon as practicable.

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(a) See definition in section 124N of the Communications Act 2003.  
(b) See definition in section 124N of the Communications Act 2003.  
(c) See definition in section 124B(2) of the Communications Act 2003.  
(d) 1998 c.29.  
(e) See definition in section 124N of the Communications Act 2003.

(8) OFCOM may review the amount from time to time and, if it considers appropriate, re-set it in accordance with sub-paragraphs (1) to (6).

(9) OFCOM must publish any revised amount as soon as practicable.

(10) A revised amount shall take effect from the beginning of the first notification period after the date of publication.

### **Payment of notification fees**

2.—(1) Prior to the start of each notification period a qualifying copyright owner must pay to a qualifying internet service provider the notification fees.

(2) The notification fees payable are equal to the amount set by OFCOM under paragraph 1 multiplied by the number of copyright infringement reports calculated in accordance with sub-paragraph (3).

(3) The number of copyright infringement reports is—

- (a) the number of copyright infringement reports which the qualifying copyright owner estimates it will make to the qualifying internet service provider under the Code during the notification period; less
- (b) the difference between the number of copyright infringement reports which that qualifying copyright owner estimated it would make to that qualifying internet service provider under the Code in the previous notification period and the number it actually made to that qualifying internet service provider in that period, if lower.

### **Qualifying costs**

3.—(1) A qualifying copyright owner at the start of a notification period must pay a fee in respect of the qualifying costs estimated by OFCOM to be incurred in respect of that period.

(2) At the start of each notification period OFCOM must notify each qualifying copyright owner of the amount of the fee to be paid and the date for payment.

(3) OFCOM must set the fees with a view to securing that, on the basis of such estimates of the likely qualifying costs as it is practicable for OFCOM to make and taking account of any case fees that may be charged by the appeals body under paragraph 5 and any fees that may be paid by subscribers under paragraph 6—

- (a) for each notification period, the aggregate amount of fees payable by qualifying copyright owners to OFCOM in respect of qualifying costs are sufficient to meet, but do not exceed, the total amount of the qualifying costs in the notification period;
- (b) (i) the amount of the fee payable by each qualifying copyright owner represents a share of the aggregate amount of fees payable by qualifying copyright owners in respect of qualifying costs in the notification period;
- (ii) such share is based on the total number of copyright infringement reports that the qualifying copyright owner estimates it will make under the Code during that period as a proportion of the total number of copyright infringement reports estimated to be made by all qualifying copyright owners under the Code during that period.

(4) As soon as practicable after the end of each notification period, OFCOM must publish a statement in respect of that period showing—

- (a) the total amount of fees that have been received from qualifying copyright owners by OFCOM;
- (b) the total amount of fees that remain outstanding and are likely to be paid or recovered; and
- (c) the qualifying costs incurred in that period.

(5) Any deficit or surplus shown by the statement (after applying this sub-paragraph for all previous notification periods) shall be carried forward and taken into account in fixing the fees to

be paid in respect of the qualifying costs OFCOM estimates will be incurred in relation to the following notification period.

### **Initial costs**

**4.**—(1) Qualifying copyright owners liable to pay fees in respect of qualifying costs in either or both of the first two notification periods must pay a share of the initial costs.

(2) OFCOM must apportion the initial costs with a view to securing, so far as practicable—

(a) that, in the first notification period, the aggregate amounts payable to OFCOM by all qualifying copyright owners in that period in respect of the initial costs are sufficient to meet, but do not exceed, the initial costs;

(b) that, in the second notification period, the aggregate amounts payable to OFCOM by all qualifying copyright owners in the first and second notification periods in respect of the initial costs are sufficient to meet, but do not exceed, the initial costs.

(3) OFCOM must review at the start of the second notification period the amounts it has charged to qualifying copyright owners in the first notification period in respect of the initial costs and may make refunds in respect of any overpayments, if it considers it appropriate, after taking account of the amounts it charges to qualifying copyright owners in the second notification period.

(4) In carrying out its functions under this paragraph, OFCOM must, so far as practicable, have regard to the following objectives—

(a) (i) the amount payable by each qualifying copyright owner in the first notification period represents a share of the aggregate amounts payable by all qualifying copyright owners in that period in respect of the initial costs;

(ii) such share is based on the number of copyright infringement reports which the qualifying copyright owner estimates it will make under the Code during that period as a proportion of the total number of copyright infringement reports estimated to be made under the Code by all qualifying copyright owners during that period;

(b) (i) the amount payable by each qualifying copyright owner in the second notification period represents a share of the aggregate amounts payable by all qualifying copyright owners in the first and second notification periods in respect of the initial costs;

(ii) such share is based on the number of copyright infringement reports which the qualifying copyright owner estimates it will make under the Code during the first and second notification periods as a proportion of the total number of copyright infringement reports estimated to be made under the Code by all qualifying copyright owners during those periods.

(5) At the start of the first and second notification periods OFCOM must notify each qualifying copyright owner of the amount apportioned to it and the date by which such amount must be paid.

### **Case fees**

**5.**—(1) The appeals body may set a case fee to be charged for each determination of a subscriber appeal it may make.

(2) If the appeals body proposes to make a single determination in relation to two or more subscriber appeals within a notice of subscriber appeal sent to the appeals body under the Code, only one case fee may be charged in respect of that determination.

(3) The amount of the case fee must be approved by OFCOM.

(4) The case fee must be based on the costs that the appeals body may incur in making a determination (including the costs of handling and processing the subscriber appeal), to the extent that such costs are not recovered by the fees payable to OFCOM in respect of the qualifying costs and the fees payable by subscribers to the appeals body pursuant to paragraph 6.

(5) The appeals body must charge 75% of the case fee to the relevant copyright owner.

- (6) The appeals body must charge 25% of the case fee to the relevant internet service provider.
- (7) For the purposes of this paragraph—
- (a) the relevant copyright owner is the qualifying copyright owner that made the copyright infringement report which is the subject of the subscriber appeal or which led to the act or omission that is the subject of the subscriber appeal;
  - (b) the relevant internet service provider is the qualifying internet service provider that received that copyright infringement report from the relevant copyright owner.
- (8) The relevant copyright owner and the relevant internet service provider must pay their respective shares of the case fee within such period as the appeals body may determine from time to time.
- (9) If there is more than one relevant copyright owner the appeals body must apportion their share of the case fee equally between them.
- (10) The appeals body may review the amount of the case fee from time to time in consultation with OFCOM.

### **Subscriber appeal fees**

- 6.**—(1) A subscriber must pay a fee of £20 to the appeals body in respect of each notice of subscriber appeal which it sends to the appeals body under the Code.
- (2) The appeals body must refund the fee to the subscriber if it determines every subscriber appeal raised in the notice of subscriber appeal in favour of the subscriber.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order specifies provisions that must be included in the initial obligations code (the Code) about payment by copyright owners, internet service providers and subscribers of contributions towards costs incurred under the copyright infringement provisions in the Communications Act 2003, inserted by the Digital Economy Act 2010.

In Article 3 the Secretary of State specifies that the Code must include the provisions set out in the Schedule.

Article 4 provides that OFCOM and the person appointed to determine subscriber appeals (the appeals body) may recover as a civil debt any amount outstanding to them under provisions in the Code included by virtue of this Order.

Paragraph 1 of the Schedule deals with the notification fees. OFCOM must set the amount payable by a qualifying copyright owner for copyright infringement reports made by it to a qualifying internet service provider under the Code. The paragraph sets out how OFCOM should calculate the amount.

Paragraph 2 deals with the payment of the notification fees.

Paragraph 3 deals with the qualifying costs incurred by OFCOM and the appeals body under the Code. It sets out how fees to cover the qualifying costs are to be apportioned amongst qualifying copyright owners.

Paragraph 4 makes provision about the payment by qualifying copyright owners of amounts to cover the costs incurred prior to the first notification period.

Paragraph 5 makes provision for the appeals body to charge a fee to the relevant copyright owner and internet service provider for each determination of a subscriber appeal.

Paragraph 6 provides that a subscriber must pay a fee of £20 in respect of each notice of subscriber appeal it sends to the appeals body. The fee will be refunded by the appeals body if it determines every subscriber appeal raised in the notice in favour of the subscriber.

This Order was notified in draft to the European Commission in accordance with Directive 98/34/EC(a), as amended by Directive 98/48/EC(b).

An Impact Assessment has been produced. A copy may be viewed on DMCS website [www.culture.gov.uk](http://www.culture.gov.uk). Copies have also been placed in the Libraries of both Houses of Parliament.

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(a) OJ No. L 204, 21.7.1998, p.37.

(b) OJ No. L 217, 5.8.1998, p18.