
ANNEX E
to BPI (British Recorded Music Industry) Limited
Response to BERR Consultation:

"Legislative Options to Address Illicit Peer-To-Peer (P2P) File-sharing"

Note: amendments are underlined and some unamended sections are included by way of context

COPYRIGHT, DESIGNS AND PATENTS ACT 1988

97A Injunctions against service providers

- (1) The High Court (in Scotland, the Court of Session) shall have power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using their service to infringe copyright.
- (2) In determining whether a service provider has actual knowledge for the purpose of this section, a court shall take into account all matters which appear to it in the particular circumstances to be relevant and, amongst other things, shall have regard to—
 - (a) whether a service provider has received a notice through a means of contact made available in accordance with regulation 6(1)(c) of the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013); and
 - (b) the extent to which any notice includes—
 - (i) the full name and address of the sender of the notice;
 - (ii) details of the infringement in question.
- (3) In this section "service provider" has the meaning given to it by regulation 2 of the Electronic Commerce (EC Directive) Regulations 2002.

97B Duty of service providers to take reasonable measures to prevent copyright infringements

- (1) Service providers shall take reasonable measures (including but not limited to technical measures) to prevent their service being used to infringe copyright.

- (2) Without prejudice to the duty in sub-section (1) above, where a service provider receives notice that the service he provides to one of his customers is being used to infringe copyright, the service provider shall take effective measures to prevent that service being used to further infringe copyright. The duty shall arise upon service of a notice on the service provider through a means of contact made available in accordance with regulation 6(1)(c) of the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013).
- (3) Any breach of the duties in sub-sections (1) and (2) above shall be actionable at the suit of a person who suffers loss or who will suffer loss as a result of that breach, and in any such action the Court shall be entitled to grant any relief including final or interim injunctive relief to ensure compliance with the duty.
- (4) In any proceedings under sub-section (3) above:
- (a) the burden shall be on the service provider to demonstrate that he has fulfilled his duties;
- (b) if and insofar as the service provider can demonstrate that he has complied at all material times and in all material respects with the voluntary code of practice published by the Secretary of State under sub-section (5) below and that the infringements complained of took place despite such compliance, the service provider shall be deemed to have fulfilled his duty under subsections (1) and (2) above.
- (5) Following consultation with interested parties and OFCOM, the Secretary of State shall publish a voluntary code of practice for service providers specifying those measures to be taken by service providers for the protection of the copyright of persons whose works are at risk of being unlawfully exploited by customers of service providers.
- (6) The Secretary of State may from time to time and after consultation with interested parties and OFCOM, modify the voluntary code of practice and shall publish any such revisions.
- (7) In this section "service providers" has the meaning given to it by regulation 2 of the Electronic Commerce (EC Directive) Regulations 2002.