

This is the response of the JNT Association, trading as Janet, to Ofcom's [consultation on the revised draft Initial Obligations Code](#) under the *Digital Economy Act 2010*. Janet is the UK's National Research and Education Network, a private network that connects all universities, colleges, research organisations and regional schools networks to each other and to the Internet.

We are grateful for the clarification that has been provided in Annex 5 of Ofcom's Notice on the status under the Act and Code of the universities, colleges, libraries and other "public intermediaries" that are our customers. This will help us to continue and further improve our efforts to reduce copyright infringement on our networks. However we are concerned that public intermediaries who obtain internet services from Qualifying ISPs rather than, or in addition to, Janet may each have to negotiate with them treatment as ISPs or Communications Providers, rather than Subscribers, and hope that Ofcom will be able to provide further assistance in resolving any problems that may arise.

### **Comments on the draft Code.**

We are concerned that section 4(3)(b) will mean that an ISP that does not receive an estimate before the first notification period (either because no estimate was submitted, or because it was not a Qualifying ISP during that period) may have as little as two months before a subsequent notification period in which to establish, test and have fully operational its system for handling CIRs. The responses to the previous consultation agreed that an ISP would need a longer period between its first estimate and first CIR than for subsequent estimates where the CIR handling system would already be in operation. We believe that this should apply to all Qualifying ISPs whenever they receive their first estimate, not just those that happen to qualify for the first notification period.

We remain concerned that section 18 – circumstances where notification requirements do not apply – will not give reporters sufficient information to improve their CIR processes. In particular the circumstances covered by 18(e) "the qualifying ISP has not been able to identify the subscriber which is the subject of a copyright infringement report and it is not reasonably practicable for the qualifying ISP to do so" could include:

- The CIR has been sent too late and the ISP no longer has relevant logs;
- The CIR does not contain enough information to uniquely identify a single subscriber (e.g. because of the use of Network Address Translation);
- The CIR does not match the ISP's traffic logs (e.g. because of an error in the reporter's clocks).

These each require a different change to be made to the reporting system (respectively to report sooner, to provide more information, and to fix a configuration error). We share the desire expressed by the MPA (para 4.50) that evidence-gathering systems should be robust with problems identified and corrected quickly. This will not be achieved if the only way to identify systemic problems such as these is through Ofcom's annual re-assessment of reporting processes.