[redacted] EY. CARLILE

From: MCU Team 1
Sent: 21 July 2009 14:00
To: MCU Team 2
Cc: [redacted]
Subject: FW: Update following the publishing of the Digital Britain Report and consultation on P2P file-sharing

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From: Mandelson MPST
Sent: 21 July 2009 13:50
To: MCU Team 1
Cc: BR Information Hub; Carter MPST; [redacted]
Subject: FW: Update following the publishing of the Digital Britain Report and consultation on P2P file-sharing

MCU

Please log and allocate to the BR info hub for advice / draft response.

Thanks

Paul

[redacted]
Private Secretary to Secretary of State for Business, Innovation and Skills
[redacted]

From: [redacted]
Sent: 20 July 2009 16:59
Subject: Update following the publishing of the Digital Britain Report and consultation on P2P file-sharing

Respect for Film:

Securing the Future of the Moving Image

I thought it might be useful to outline our thoughts on the Government's proposals, published on 16 June 2009, ahead of the summer recess, as there may not be an opportunity for us to meet face to face before then.

Respect for Film is behind a series of practical initiatives designed to reduce the level of copyright theft through increased education and enforcement. It was launched in October 2007 by Margaret Hodge, then Films Minister, and has been entirely financed by companies within the audio-visual sector. Its members include British Video Association (BVA); Federation Against Copyright Theft (FACT); Film Distributors Association (FDA); Film Education; Industry Trust for IP Awareness; Motion Picture Association (MPA); NBC Universal; Paramount Pictures; Sony Pictures; Twentieth Century Fox; Walt Disney Studios; Warner Bros.

As you may know, the Government's consultation made a series of recommendations regarding measures to tackle the enormous problem of digital copyright theft. The Government announced on 26 June that these measures would be taken forward in the Digital Economy Bill in the forthcoming Queen's Speech.

We have been closely involved in the Digital Britain process and have made clear our support for the overriding objective of seeing Internet Service Providers (ISPs) share the responsibility for tackling digital copyright theft, which as you will know, is a significant issue for our industry as well as other sectors. We are pleased that the Government's Digital Britain Report accepted this principle.

Translating that principle into practical proposals has taken significant effort and much debate and consultation. While we would prefer technical measures to be implemented earlier in the suggested process, thereby allowing reasonable and proportionate remedies to be applied in respect of persistent copyright infringers, before legal action is taken, we recognise that this must be balanced against the urgency for legislation to be implemented that will help reduce copyright theft.

It is crucial to the success of content providers in a digital economy that this legislation gets onto the statue book before the General Election. To that end, we are keen to work with you to ensure that politicians on all sides understand how urgently this regulation is required and to work through any issues that might arise. Delay in getting this legislation through could stall our progress by 2-3 years. We hope that both industry and political consensus can be reached in the months ahead that will facilitate that process.

We look forward to talking further about the detail of the legislation as it is developed by the Government and presented before Parliament in the next session. In the meantime, may I wish you an enjoyable summer, and if you have any questions please do not hesitate to contact me.

Yours sincerely

Lavinia Carey

Chair of the Respect for Film Steering Group

Director General of the British Video Association

British Video Association

www.bva.org.uk

020 7436 0041

[redacted]

Consultant

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Rt Hon Lord Peter Mandelson
Secretary of State for Business Innovation & Skills
Department for Business Innovation & Skills
1 Victoria Street
London
SW1H 0ET

13 August 2009

Dear Lord Mandelson,

Consultation on Legislation to Address Illicit P2P File-Sharing

Orange understands that the Government is considering changing the anti-piracy proposals as set out in the Digital Britain Report and the Consultation on legislation to address illicit Peer-to-Peer (P2P) file-sharing.

It is Orange's firm view that new business models, notification, new education campaigns, and targeted litigation action by rights-holders against serious infringers as proposed in the Digital Britain report is the best way forward and certainly how the piracy issue should be tackled before considering any other measure.

It is also our view that, while we value and support the creative work of artists and content publishers, it should not be the case that regulation forces internet service providers (ISPs) to act as virtual policemen. Digital-rights holders need to be encouraged to develop new business models to protect their creative, and valuable content.

Evolution of Commercial Models

Orange believes that there should absolutely be a continued emphasis on digital content business models as proposed in the Digital Britain report so that the majority of consumers currently engaging in copyright infringement via file-sharing can be persuaded to migrate to lawful services. To demonstrate this point, a Music Ally survey recently found less than a third of UK teenagers said they now download music in breach of copyright, with 65% saying they use legal streaming sites...

Orange considers that the responsibility for the evolution of commercial models and the development and popularisation of legitimate and compelling content distribution business models lays primarily with rights-holders. Indeed, it is imperative that the creative industries embrace new technologies and concentrate their efforts on creating compelling offerings which customers want and which are

reasonably priced. The digital market is not the same as the offline market and rights-holders have to adapt accordingly. Other businesses, which have faced similar or bigger threats from the Internet, have re-invented themselves and adapted, creating new lower-cost business models, adding value in other ways or shifting to new advertising or licensing models.

Orange is committed to developing new business models. By way of an example, Orange has recently announced the new 'Monkey' Pay As You Go package that offers free access to music when customers top up their credit by £10 or more each month. The service is being launched in co-operation with Universal Music and Channel 4's 4Music channel.

Orange considers that the more the focus is on anti-file sharing and anti-piracy prevention, the less incentives rights-holders have in developing new business models (particularly ones which offer ISPs a share of revenue). This creates perverse incentives and legislation or regulation should not facilitate it. It is not the role of regulation to address a business model failure: regulation is very unlikely to bring long term benefits, and costs to the industry and all consumers and the economy at large are likely to be much higher than any benefits. Furthermore, the introduction of a tough regulatory regime is likely to act to the detriment of UK companies and have an adverse impact on the UK in that these new business models will establish themselves outside of the UK; customers' expectations will not be met and the development of internet services in the UK will be adversely impacted.

Technical Measures

Access to broadband is integral to the development and competitiveness of the UK's digital economy and society. As the Digital Britain report recognises, broadband access is of fundamental importance to citizens' ability to participate in society, particularly through access to online public and financial services and social interaction. Given this, it is inappropriate to put the continued access of a citizen to broadband connectivity at the mercy of a process dependent on an allegation of infringement which is not subject to judicial scrutiny.

Any solution must recognise that the ISP's role is protected by European law as an innocent intermediary and thereby avoid putting the ISP in a position where it would be forced to usurp the role of the courts in determining, in practice if not in theory, private civil, commercially - exploited rights and obligations between third parties (namely the rights-holder and the customer). It would be most inappropriate for Orange to be given that role within a proper legal and regulatory regime. It would certainly not be transparent or accountable from a customer perspective.

Having undertaken significant analysis under the MoU process it is Orange's firm view that technical measures are unlikely to be successful. Orange strongly believes that the application of technical remedies would have significant unintended consequences and could exacerbate the problem of online copyright infringement by encouraging users to encrypt their data and would, ultimately, prevent the ISPs achieving the quality and speed of broadband service which is one of the principal objectives of Digital Britain. Indeed, technical remedies are likely to affect subscribers' access to legitimate services, be expensive to implement and operate, may be exposed to evolving technical threats and are likely to give rise to legal issues around fair or proportionate treatment.

Orange also believes that most remedies against repeat infringers, would in practice amount to *de facto* account suspension or termination of the internet access account and would be disproportionate, counter-productive and inhibit the development of innovative business models. Consumers have the right to a presumption of innocence and the Government has the duty to ensure citizens' right to a due process.

Attempts to introduce a 'graduated response' where consumers find themselves subject to technical measures based on suspicion of copyright infringement has led to considerable public resistance notably in France where an attempt to implement the graduated response failed in the Constitutional Court. Orange will strongly resist any attempts to introduce laws that would impose obligations on ISPs to implement technical measures against its consumers.

Education, Notification and Targeted Litigation

In addition to compelling lawful services, Orange is convinced that the most effective, fair and proportionate approach is a process of formal written notifications together with an obligation on ISPs to disclose anonymous data on repeat infringers (on receipt of a court order authorising the disclosure of such personal details) so that the rights-holders can take more targeted litigation action. This was the Government's position within the final Digital Britain report.

1. Orange believes that sending formal written notifications to its customers will play an important part in the education campaign to combat copyright infringement online. Orange is also willing to assist the rights-holders in educational programmes to respect copyrights provided that commercial agreements are in place with individual rights-holders.

2. Orange believes that the formal notifications coupled with new education campaigns and business models will lead to a dramatic reduction of online copyright infringement and lead to collaborative partnerships between rights-holders and ISPs.

3. Orange is also committed to give reasonable support to rights-holders to take direct civil legal action against their chosen litigation targets, because pursuing litigation action must be an essential part of the strategy to combat copyright infringement online.

Costs

Orange considers that the principle of costs recovery is crucial to the process and that any reasonable solution must place the costs on the party that benefits from the systems in place. Costs of enforcing private legal rights should not be imposed on innocent third parties (namely ISPs and consumers) and any reasonable solution must place the burden of enforcement on the party that benefits from the rights.

If the costs of implementing any process are imposed on ISPs, rather than on rights-holders seeking to enforce their private legal rights, this would impact ISPs' ability to invest in the infrastructure to support the Digital Britain agenda and would destroy all

incentives for rights-holders to innovate. This would also prevent the development of ISPs' own content offerings.

Better Regulation

Orange considers that it would disproportionate and discriminatory to impose obligations on one party only, namely the ISPs. It is essential that rights-holders pursue targeted litigation action and work towards the creation of compelling legal alternative models.

Orange would urge the Government to follow the principles of better regulation: regulation should be transparent, accountable, proportionate, consistent and targeted. The Government should also ensure that a human rights impact assessment is made to avoid implementing a process which violates citizens' right to a due process which includes the presumption of innocence.

Conclusion

Orange would urge the Government to give the opportunity to all stakeholders to respond to the current consultation and only consider the implementation of technical measures as a last resort if education campaigns, formal notifications and new business models have failed in the objective reduction of online copyright infringement.

Yours sincerely

Tom Alexander
CEO, Orange UK

CC: Rt Hon Ben Bradshaw MP, Secretary of State for Culture, Media & Sport
Rt Hon Stephen Timms MP, Minister for Digital Britain
Sion Simon MP, Minister for Creative Industries

149096

HOUSE OF COMMONS

LONDON SW1A 0AA

DATE RECEIVED

04 SEP 2009

BERR MCU

Lord Peter Mandelson
Secretary of State
Dept. of Business, Enterprise & Regulatory Reform
1 Victoria Street
LONDON
SW1H 0ET

Our Ref: MR/[redacted]01001/01092728
Your Ref:

26 August 2009

Dear Peter

Re: [redacted]

I am attaching a copy of a communication I have received from my constituent, the contents of which are self-explanatory.

I would be grateful if you could let me have a reply dealing with the points my constituent raises.

With best wishes

Rt Hon Andrew Smith MP

Print

Subject **Letter from your constituent** [redacted]
From: [redacted]
Sent: **Aug 25, 2009 09:14:44 PM**
To: **andrewsmith.mp@virgin.net**

[redacted]

Email: [redacted]

Tuesday 25 August 2009

Dear Mr. Smith,

I am writing to you to express my concern over the Government's announcement of new hard-line tactics to curb the sharing of copyrighted content over the internet.

Academic studies have found file-sharing to have no statistically significant impact on paid sales of music. Furthermore, there have been well-documented cases in the USA of people being taken to court for file-sharing when they could not possibly be guilty - for example, people without computers. There is no reliable way to identify people who are infringing copyright laws, making the Government's proposals practically unenforceable.

This will be a very expensive waste of time and money, which serves only to pander to the paranoid hysteria of corporations who are dissatisfied with the failure of their business model. Rather than finding new ways to make their product attractive, they choose to manipulate and bully our elected representatives into being their personal security force. This is an unacceptable situation and the Government must think very carefully before allowing its connections to business interests to override its duty to the general public of this country.

Yours sincerely,

[redacted]

[redacted]

(Signed with an electronic signature in accordance with subsection 7(3) of the Electronic Communications Act 2000.)

BIS | Department for Business Innovation & Skills
The Rt Hon Stephen Timms MP
Minister for Digital Britain

Our ref: SW/149096
Your ref: [redacted]1001/01092728

The Rt Hon Andrew Smith MP
House of Commons
London
SW1A 0AA

21 September 2009

Dear Andrew

Thank you for your letter of 26 August to Peter Mandelson, enclosing correspondence from your constituent, [redacted], about possible Government action to prevent unlawful downloading from the internet. I am replying as this matter falls within my portfolio.

We propose to legislate to ensure that consumers whose broadband account has been identified in connection with alleged copyright infringement would be alerted by letter. This would set out the legal position but also provide pointers for help and information on, for example, how to protect wireless networks properly, where to find legal sources and routes of appeal. This letter would come from the Internet Service Providers (ISP) concerned, not a law firm. This should help address many concerns about individuals being wrongly identified, not having the correct information or indeed feeling pressured by the threat of legal action.

For those individuals who choose to ignore the letter, they will receive a number of further warnings before they are ultimately added to a list of those subscribers most frequently alleged to have breached copyright. Rights holders will be able to use a court order to obtain the details of these individuals and then take targeted legal action as appropriate. This should ensure that individuals have ample opportunity to change their behaviour, take appropriate action to, for example, secure their wireless connection or indeed appeal. It would also mean that only those who chose to ignore the warnings and who appeared to continue to infringe copyright on a large scale would face legal action.

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Your constituent is right to point out the potential difficulties arising from any technical solution to monitor or block file-sharing. The consultation suggests one possible solution may be via the use of filters (or a similar technology) to restrict or block unlawful file-sharing. In Belgium, the use of filters has been imposed on an ISP by a court in order to combat file sharing, and the French Oliveness Agreement also mandates the testing of filters. Some have cited both as examples of what the UK might do. However, the effectiveness of filters or any other technological solution is a matter of some debate, which is why we have sought views on this.

We do have a real concern over the level of "false positives" that any filter might generate – a "false positive" is where a filter wrongly identifies and blocks legitimate traffic. We are also all too aware that this is a fast changing environment and what might work today may well be ineffective tomorrow. Any technological solution would need to have some degree of future proofing.

On your constituent's point about the cost of enforcement, clearly any solution must be effective, proportionate and transparent. All regulatory proposals are subject to an impact assessment to establish what costs they might entail and to whom those costs might fall. In this case, an impact assessment was included in the consultation document, although the consultation itself recognised this is still work in progress and called for more information.

Please thank [redacted] for taking the trouble to raise this issue with us.

Yours ever,

Stephen

STEPHEN TIMMS

As a final safeguard, this activity would be underpinned by a Code overseen by the independent regulator the Office of Communications (Ofcom). A key issue the Code would have to cover is consumer protection – one of Ofcom's prime roles. However, we are breaking new ground in legislating to tackle this type of activity and while we are confident these measures will significantly reduce the level of unlawful file-sharing, we cannot be sure. That is why we are also including the option to allow the introduction of technical measures if the notifications and legal action do not prove as effective as we expect.

We committed in the interim Digital Britain report to consult on the detail of the legislative proposals and this consultation was issued on 16 June. Following this, concern was expressed at the length of time it would take to implement these measures – or indeed move to technical measures. We therefore decided to modify these proposals and issued a statement on 25 August explaining our thinking. Your constituent would be welcome to respond by the closing date of 29 September. The consultation and statement can be found at:

http://www.berr.gov.uk/consultations/page51696.html

We added account suspension to the list of possible technical measures which might be considered if our proposals to tackle unlawful file-sharing through notifications and legal action are not as successful as we hope. This would raise significant issues, including human rights, and would require a very rapid appeal mechanism to ensure it was not wrongly applied. However we stress this is very much a consultation and no decision on whether suspension should be included has been taken. [We would particularly welcome your constituent's views.]

Consumer protection is a key factor covered in the consultation. The legislation will require the Code to provide routes of appeal for consumers. This Code will require the approval of the regulator, Ofcom. In the consultation itself, we also make it quite clear that consumer protection must be at the heart of any solution - regulatory or otherwise.

We recognise that any solution must protect individuals' privacy. The Government will build in safeguards to ensure the rights of the consumer are protected, and will also ensure policy proposals comply with relevant data protection legislation, and with the e-Commerce Directive, under which ISPs cannot be placed under a general obligation to monitor internet traffic.

Mark Lazarowicz MP

Member of Parliament for Edinburgh North & Leith

House of Commons
London SW1A OAA

Constituency Office
5 Croall Place, Leith Walk,
Edinburgh EH7 4LT

Telephone: 0131 557 0577
Fax: 0131 557 5759
Email: mark@marklazarowicz.org.uk
Website: www.marklazarowicz.org.uk

28 August 2009

149401

Rt Hon Lord Peter Mandelson MP
Secretary of State
Department for Business, Innovation and Skills
1 Victoria Street
LONDON
SW1H 0ET

Dear Peter

[redacted]

Please find enclosed a copy of a letter I have received from my above constituent.

I would be grateful if you would investigate the points raised and let me have your comments, in order that I can advise my constituent accordingly.

At first sight the points made by my constituent seem to be very well founded, and I would hope that the proposals could be reconsidered given the objections which have been raised by a number of my constituents.

I look forward to hearing from you.

With thanks

Mark

MARK LAZAROWICZ

DATE RECEIVED
7 SEP 2009
BERR MCU

[redacted]

Email: [redacted]

Tuesday 25 August 2009

Hi Mark,

I am writing regarding the Laws proposed under the P2P file sharing legislation.

Even though this decision was ruled out by the governments own digital Britain report in June this proposal is still being put forward.
Why should a whole household be punished for the actions of one member?
for example if my flatmate was "accused" of file sharing I would lose my connection to the internet. Which is a very important means of communication for me, which I rely on for work, and personal business I.e personal banking, paying bills/road tax, shopping, booking holidays, also research and education.
Why does the government feel that this this action can be justified, from being merely accused? Would the government put people in prison if accused of assault twice? Don't we have to be "proven" guilty before being sentenced?
Also the accusations that these companies make have been proven false time and time again, so how can we rely on this solely to put people back into age of no communication?

I feel very strongly also that out money as a tax payer is being used to prop up companies with an outdated business model, who rather that embrace the internet, seem hell bent on preserving in their archaic way of doing business (selling CD's).
How can the government justify spending British money to ensure the gross high profits, of mainly American companies?

The result of these proposals will be protests and public distaste with the government, in the run up to the general election. There have been popular movements in France, Sweden and elsewhere start up over similar measures.

I would like to know your stance on the issue and urge you to reject this proposal.

BIS | Department for Business Innovation & Skills

The Rt Hon Stephen Timms MP

Minister for Digital Britain

Our ref: SW/149401

Your ref:

Mark Lazarowicz MP
House of Commons
London
SW1A 0AA

September 2009

Dear Mark

Thank you for your letter of 28 August to Peter Mandelson, enclosing correspondence from your constituent, [redacted] about possible Government action to prevent unlawful downloading from the internet. I am replying as this matter falls within my portfolio.

We propose to legislate to ensure that consumers whose broadband account has been identified in connection with alleged copyright infringement would be alerted by letter. This would set out the legal position but also provide pointers for help and information on, for example, how to protect wireless networks properly, where to find legal sources and routes of appeal. This letter would come from the Internet Service Providers (ISP) concerned, not a law firm. This should help address many concerns about individuals being wrongly identified, not having the correct information or indeed feeling pressured by the threat of legal action.

For those individuals who choose to ignore the letter, they will receive a number of further warnings before they are ultimately added to a list of those subscribers most frequently alleged to have breached copyright. Rights holders will be able to use a court order to obtain the details of these individuals and then take targeted legal action as appropriate. This should ensure that individuals have ample opportunity to change their behaviour, take appropriate action to, for example, secure their wireless connection or indeed appeal. It would also mean that only those who chose to ignore the warnings and who appeared to continue to infringe copyright on a large scale would face legal action.

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As a final safeguard, this activity would be underpinned by a Code overseen by the independent regulator the Office of Communications (Ofcom). A key issue the Code would have to cover is consumer protection – one of Ofcom's prime roles. However, we are breaking new ground in legislating to tackle this type of activity and while we are confident these measures will significantly reduce the level of unlawful file-sharing, we cannot be sure. That is why we are also including the option to allow the introduction of technical measures if the notifications and legal action do not prove as effective as we expect.

We committed in the interim Digital Britain report to consult on the detail of the legislative proposals and this consultation was issued on 16 June. Following this, concern was expressed at the length of time it would take to implement these measures – or indeed move to technical measures. We therefore decided to modify these proposals and issued a statement on 25 August explaining our thinking. Your constituent would be welcome to respond by the closing date of 29 September. The consultation and statement can be found at:

http://www.berr.gov.uk/consultations/page51696.html

We added account suspension to the list of possible technical measures which might be considered if our proposals to tackle unlawful file-sharing through notifications and legal action are not as successful as we hope. This would raise significant issues, including human rights, and would require a very rapid appeal mechanism to ensure it was not wrongly applied. However we stress this is very much a consultation and no decision on whether suspension should be included has been taken. We would particularly welcome your constituent's views.

Consumer protection is a key factor covered in the consultation. The legislation will require the Code to provide routes of appeal for consumers. This Code will require the approval of the regulator, Ofcom. In the consultation itself, we also make it quite clear that consumer protection must be at the heart of any solution - regulatory or otherwise.

We recognise that any solution must protect individuals' privacy. The Government will build in safeguards to ensure the rights of the consumer are protected, and will also ensure policy proposals comply with relevant data protection legislation, and with the e-Commerce Directive, under which ISPs cannot be placed under a general obligation to monitor internet traffic.

Please thank your constituent for taking the trouble to raise this issue with us.

Best

[redacted]

STEPHEN TIMMS

BIS | Department for Business Innovation & Skills
The Rt Hon Stephen Timms MP
Minister for Digital Britain

Our ref: SW/153465
Your ref: PALI002/083500

Ben Bradshaw MP
House of Commons
London
SW1A 0AA

19 October 2009

Dear Ben

Thank you for your letter of 7 September to [redacted], enclosing correspondence from your constituent, [redacted]. Exeter [redacted] about possible Government action to prevent unlawful downloading from the internet. I am replying as this matter falls within my portfolio and apologise for the delay.

The Government wants as many people as possible to enjoy all the benefits that broadband internet can bring. New technology has changed the way people want to use and access media content, in some cases faster than products and services commercially on offer have developed. But we are also clear that the benefits of the internet must include economic benefits for our creative industries and artists. We therefore take extremely seriously the problem of illegal file sharing, and have been working closely with rights holders, media companies and internet firms to develop practical solutions to reduce and prevent this.

Whilst all parties would prefer a voluntary, rather than a regulatory solution, it is clear that such a commercial solution is very difficult to achieve. We recognise that one problem is the need for a level playing field and therefore acknowledge the need for a regulatory baseline. Last year we held a consultation on possible legislative options to tackle file-sharing; this, submissions received and the Government's response can be found at:

http://www.berr.gov.uk/consultations/page47141.html

We set out how we plan to move forward on this in the Digital Britain Report, published on 16 June, which identified the need to encourage new sources of content and increased levels of media literacy, as well as how to tackle those unlawfully sharing copyright material (Chapter 4). The report can be found at:

http://www.dcms.gov.uk/what_we_do/broadcasting/5631.aspx

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For those individuals who choose to ignore the letter, they will receive a number of further warnings before they are ultimately added to a list of those subscribers most frequently alleged to have breached copyright. Rights holders will be able to use a court order to obtain the details of these individuals and then take targeted legal action as appropriate. This should ensure that individuals have ample opportunity to change their behaviour, take appropriate action to, for example, secure their wireless connection or indeed appeal. It would also mean that only those who chose to ignore the warnings and who appeared to continue to infringe copyright on a large scale would face legal action.

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We committed in the interim Digital Britain report to consult on the detail of the legislative proposals and this consultation was issued on 16 June. Following this, concern was expressed at the length of time it would take to implement these measures – or indeed move to technical measures. We therefore decided to modify these proposals and issued a statement on 25 August explaining our thinking. The consultation on these proposals closed on 29 September. We are in the process of analysing all the responses received and intend to issue a summary along with the Government's top-level response in November. I hope your constituent was able to contribute to the debate.

We added account suspension to the list of possible technical measures which might be considered if our proposals to tackle unlawful file-sharing through notifications and legal action are not as successful as we hope. This would raise significant issues, including human rights, and would require a very rapid appeal mechanism to ensure it was not wrongly applied. However we stress this is very much a consultation and no decision on whether suspension should be included has been taken. We would particularly welcome your constituent's views.

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We recognise that any solution must protect individuals' privacy. The Government will build in safeguards to ensure the rights of the consumer are protected, and will also ensure policy proposals comply with relevant data protection legislation, and with the e-Commerce Directive, under which ISPs cannot be placed under a general obligation to monitor internet traffic.

Your constituent is right to point out the potential difficulties arising from any technical solution to monitor or block file-sharing. The consultation suggests one possible solution may be via the use of filters (or a similar technology) to restrict or block unlawful file-sharing. In Belgium, the use of filters has been imposed on an ISP by a court in order to combat file sharing, and the French Oliveness Agreement also mandates the testing of filters. Some have cited both as examples of what the UK might do. However, the effectiveness of filters or any other technological solution is a matter of some debate, which is why we have sought views on this.

We do have a real concern over the level of "false positives" that any filter might generate – a "false positive" is where a filter wrongly identifies and blocks legitimate traffic. We are also all too aware that this is a fast changing environment and what might work today may well be ineffective tomorrow. Any technological solution would need to have some degree of future proofing.

We recognise that one factor in the rise of unlawful peer-to-peer file sharing has been the lack of legitimate offerings allowing people to obtain the type of content they want in a format they want, when, where and how they want it – and at a price they are prepared to pay. This is something that clearly needs to be addressed as part of the solution.

There are already some examples of new business models emerging – such as Radiohead allowing fans to decide what to pay for an online copy, Paul McCartney's agreement with Starbucks; and Prince's decision to sell his more recent albums directly to consumers. There is also the rise of 360° models whereby artists and labels agree to share income from all sources including CD sales, concert and merchandising etc. However, not all models will suit all artists or formats and the industry is in a real state of change.

Action on file-sharing is not just about protecting the revenues of the labels or studios. There is the much wider issue of protecting people's individual creativity via copyright. Without effective copyright it is hard to see what long-term incentive there is for an artist to produce creative work if unable to see a return.

Our ambition is to see the UK as the leading major economy for innovation, investment and quality in the digital and communications industries. The Digital Britain Report aims to secure four key conditions, namely: open markets; empowered and informed consumers and citizens; universal access to public service content; and a responsive regulatory framework. One work-stream will explore business models for content development in the digital age and the impact of new media on the content market. In addition, the UK Intellectual Property Office will take forward work to deliver a digital copyright framework which supports creativity, investment and job creation.

Please thank your constituent for taking the trouble to raise this issue with us.

Yours ever

Stephen

STEPHEN TIMMS

DIANE ABBOTT

Member of Parliament for Hackney North and Stoke Newington
HOUSE OF COMMONS, LONDON SW1A 0AA

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13 OCT 2009

Rt Hon Lord Mandelson
Secretary of State for Business, Enterprise and Regulatory Reform
Department for Business, Enterprise and Regulatory Reform
1 Victoria Street
London
SW1H 0ET

Our Ref: [redacted]

18 September 2009

Dear Lord Mandelson

RE: 3-Strike Policy

I have received a letter from my constituent – [redacted] – regarding the 3-Strike Policy on Internet downloads and document sharing. Please find a copy of the letter attached. I would be grateful if you could provide me with a response which I could forward on to [redacted].

Yours sincerely,

Diane Abbott MP

DATE RECEIVED
12 OCT 2009
DEPARTMENT

BIS | Department for Business Innovation & Skills

The Rt Hon Stephen Timms MP
Minister for Digital Britain

Diane Abbott MP
House of Commons
London
SW1A 0AA

Our ref: DH/153673
Your ref: [redacted]065

October 2009

Dear Diane

Thank you for your letter of 18 September to Peter Mandelson, on the behalf of your constituent, [redacted], about possible Government action to prevent unlawful downloading from the internet. I am replying as this matter falls within my portfolio and I apologise for the delay.

The Government wants as many people as possible to enjoy all the benefits that broadband internet can bring. New technology has changed the way people want to use and access media content, in some cases faster than products and services commercially on offer have developed. But we are also clear that the benefits of the internet must include economic benefits for our creative industries and artists. We therefore take extremely seriously the problem of illegal file sharing, and have been working closely with rights holders, media companies and internet firms to develop practical solutions to reduce and prevent this.

Whilst all parties would prefer a voluntary, rather than a regulatory solution, it is clear that such a commercial solution is very difficult to achieve. We recognise that one problem is the need for a level playing field and therefore acknowledge the need for a regulatory baseline. Last year we held a consultation on possible legislative options to tackle file-sharing; this, submissions received and the Government's response can be found at:

http://www.berr.gov.uk/consultations/page47141.html

We set out how we plan to move forward on this in the Digital Britain Report, published on 16 June, which identified the need to encourage new sources of content and increased levels of media literacy, as well as how to tackle those unlawfully sharing copyright material (Chapter 4). The report can be found at:

1 Victoria Street, London SW1H 0ET
www.bis.gov.uk

Enquiries +44 (0) 20 7215 5000 | **Minicom** +44 (0) 20 7215 6740 | **Contact us** www.bis.gov.uk/contact-us

http://www.dcms.gov.uk/what_we_do/broadcasting/5631.aspx

We propose to legislate to ensure that consumers whose broadband account has been identified in connection with alleged copyright infringement would be alerted by letter. This would set out the legal position but also provide pointers for help and information on, for example, how to protect wireless networks properly, where to find legal sources and routes of appeal. This letter would come from the Internet Service Providers (ISP) concerned, not a law firm. This should help address many concerns about individuals being wrongly identified, not having the correct information or indeed feeling pressured by the threat of legal action.

For those individuals who choose to ignore the letter, they will receive a number of further warnings before they are ultimately added to a list of those subscribers most frequently alleged to have breached copyright. Rights holders will be able to use a court order to obtain the details of these individuals and then take targeted legal action as appropriate. This should ensure that individuals have ample opportunity to change their behaviour, take appropriate action to, for example, secure their wireless connection or indeed appeal. It would also mean that only those who chose to ignore the warnings and who appeared to continue to infringe copyright on a large scale would face legal action.

As a final safeguard, this activity would be underpinned by a Code overseen by the independent regulator the Office of Communications (Ofcom). A key issue the Code would have to cover is consumer protection – one of Ofcom's prime roles. However, we are breaking new ground in legislating to tackle this type of activity and while we are confident these measures will significantly reduce the level of unlawful file-sharing, we cannot be sure. That is why we are also including the option to allow the introduction of technical measures if the notifications and legal action do not prove as effective as we expect.

We committed in the interim Digital Britain report to consult on the detail of the legislative proposals and this consultation was issued on 16 June. Following this, concern was expressed at the length of time it would take to implement these measures – or indeed move to technical measures. We therefore decided to modify these proposals and issued a statement on 25 August explaining our thinking. The consultation on these proposals closed on 29 September. We are in the process of analysing all the responses received and intend to issue a summary along with the Government's top-level response in November. I hope your constituent was able to contribute to the debate.

However, it is not possible to look at file-sharing in isolation. There is also the need to ensure proper education of consumers, for new attractive legal sources of content as well as a system of notifications; these will play a significant part in that education role. It is vital that there are attractive legal offers available so that unlawful behaviour is no longer the "default" for many seeking content online. That is why we welcomed the recent announcement by Virgin Media and Universal on the launch of a subscription download model, allied with Virgin taking anti-piracy measures on its network. This is the type of agreement which will play a critical role in moving the majority of people away from piracy.

Our ambition is to see the UK as the leading major economy for innovation, investment and quality in the digital and communications industries. The Digital Britain Report aims to secure four key conditions, namely: open markets; empowered and informed consumers and citizens; universal access to public service content; and a responsive regulatory framework. One work-stream will explore business models for content development in the digital age and the impact of new media on the content market. In addition, the UK Intellectual Property Office will take forward work to deliver a digital copyright framework which supports creativity, investment and job creation.

The "graduated response" or "3 strikes and you're out" system has been discussed between the different industry parties in the context of voluntary solutions, and is the basis of what was proposed in France. As your constituent may know, these proposals were found to be in breach of the French Constitution and at the time of writing it is not clear what action the French will now take. Also the European Parliament has made clear in the recent telecoms package its opposition to any regulation which could bar a consumer from internet access without court approval. Account termination is not and has not been part of any regulatory proposal to combat unlawful file-sharing.

Please thank [redacted] for taking the trouble to raise this issue with us.

Best

[redacted]

STEPHEN TIMMS