



Digital Economy Act 2010

2010 CHAPTER 24

An Act to make provision about the functions of the Office of Communications; to make provision about the online infringement of copyright and about penalties for infringement of copyright and performers' rights; to make provision about internet domain registries; to make provision about the functions of the Channel Four Television Corporation; to make provision about the regulation of television and radio services; to make provision about the regulation of the use of the electromagnetic spectrum; to amend the Video Recordings Act 1984; to make provision about public lending right in relation to electronic publications; and for connected purposes. [8th April 2010]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

OFCOM reports

1 OFCOM reports on infrastructure, internet domain names etc

- (1) In Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and services), after section 134 insert—

“Reports on infrastructure etc

134A OFCOM reports on infrastructure etc

- (1) OFCOM must prepare reports in accordance with subsections (2) and (3) and each report must deal with—
- (a) the electronic communications networks matters listed in section 134B(1), and
 - (b) the electronic communications services matters listed in section 134B(2).

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- (2) The first report must—
 - (a) relate to the position on a day specified in the report which falls within the period of 12 months beginning with the day on which this section comes into force, and
 - (b) be sent to the Secretary of State by OFCOM not more than 2 months after the specified day.
- (3) A further report must—
 - (a) be prepared for each relevant period, and
 - (b) be sent to the Secretary of State by OFCOM as soon as practicable after the end of the relevant period.
- (4) “Relevant period” means—
 - (a) the period of 3 years beginning with the day specified in the first report, and
 - (b) each subsequent period of 3 years beginning with the end of the previous period.
- (5) Where there is a significant change in connection with a matter listed in section 134B(1) or (2) and OFCOM consider that the change should be brought to the attention of the Secretary of State, OFCOM must—
 - (a) prepare a report on the change, and
 - (b) send it to the Secretary of State as soon as practicable.
- (6) For the purposes of subsection (5), a change is significant if OFCOM consider that it has, or is likely to have, a significant adverse impact on—
 - (a) persons carrying on business in the United Kingdom or a part of the United Kingdom, or
 - (b) the general public in the United Kingdom or a part of the United Kingdom.
- (7) OFCOM must publish every report under this section—
 - (a) as soon as practicable after they send it to the Secretary of State, and
 - (b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.
- (8) OFCOM may exclude information from a report when it is published under subsection (7) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.

134B Networks and services matters

- (1) For the purposes of section 134A, the electronic communications networks matters are—
 - (a) the different types of electronic communications network provided in the United Kingdom (“UK networks”),
 - (b) the geographic coverage of the different UK networks,
 - (c) the proportion of the population covered by the different UK networks,
 - (d) the extent to which UK networks share infrastructure,

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- (e) the capacity of the different UK networks,
 - (f) the extent to which the providers of the different UK networks allow other communications providers to use their networks to provide services,
 - (g) the amount of time for which the different UK networks are and are not available, including the steps that have been or are to be taken to maintain or improve the level of availability,
 - (h) the preparations made by providers of UK networks for responding to an emergency, including preparations for restoring normal operation of UK networks disrupted by the emergency, and
 - (i) the standard of the different UK networks in comparison with electronic communications networks provided in a range of other countries, having regard, in particular, to their coverage and capacity.
- (2) For the purposes of section 134A, the electronic communications services matters are—
 - (a) the use of the electromagnetic spectrum for wireless telegraphy in the United Kingdom,
 - (b) the different types of electronic communications service provided in the United Kingdom (“UK services”),
 - (c) the geographic coverage of the different UK services,
 - (d) the proportion of the population covered by the different UK services,
 - (e) the amount of time for which the different UK services are and are not available, including the steps that have been or are to be taken to maintain or improve the level of availability,
 - (f) the preparations made by providers of UK services for responding to an emergency, including preparations for restoring normal operation of UK services disrupted by the emergency, and
 - (g) the standard of the different UK services in comparison with electronic communications services provided in a range of other countries.
- (3) The preparations referred to in subsections (1)(h) and (2)(f) include—
 - (a) the steps taken to assess the risks of different types of emergency occurring,
 - (b) the steps taken to reduce or remove those risks, and
 - (c) the testing of proposed responses to different types of emergency.
- (4) In a report under section 134A, OFCOM are required to include only information about, and analysis of, such networks, services and providers as they consider appropriate.
- (5) In this section “emergency” means an event or situation that seriously disrupts a UK network or UK service.

Reports on internet domain names

134C OFCOM reports on internet domain names

- (1) OFCOM must, if requested to do so by the Secretary of State—

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- (a) prepare a report on matters specified by the Secretary of State relating to internet domain names, and
 - (b) send the report to the Secretary of State as soon as practicable.
- (2) The specified matters may, in particular, include matters relating to—
 - (a) the allocation and registration of internet domain names, and
 - (b) the misuse of internet domain names.
- (3) OFCOM must publish every report under this section—
 - (a) as soon as practicable after they send it to the Secretary of State, and
 - (b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.
- (4) OFCOM may exclude information from a report when it is published under subsection (3) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.”
- (2) In section 135(3) of that Act (information required for purposes of Chapter 1 functions), after paragraph (ib) insert—
 - “(ic) preparing a report under section 134A;
 - (id) preparing a report under section 134C;”.

2 OFCOM reports on media content

After section 264 of the Communications Act 2003 insert—

“264A OFCOM reports: wider review and reporting obligations

- (1) When carrying out a review under section 264 for a period, OFCOM must also carry out a review of the extent to which material included in media services during that period (taken together over the period as a whole) contributed towards the fulfilment of the public service objectives.
- (2) Every report under section 264 must—
 - (a) include a report on the matters found on the review under this section,
 - (b) specify, and comment on, whatever changes appear to OFCOM to have occurred, during the period to which the report relates, in the extent to which the public service objectives have been fulfilled,
 - (c) specify, and comment on, whatever changes appear to OFCOM to have occurred, during that period, in the manner in which those objectives are fulfilled, and
 - (d) set out OFCOM's conclusions on the current state of material included in media services.
- (3) “The public service objectives” are the objectives set out in paragraphs (b) to (j) of section 264(6) (as modified by subsection (4)).
- (4) Paragraphs (b) to (j) of section 264(6) have effect for the purposes of subsection (3) as if—
 - (a) references to the relevant television services were to media services, and

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(b) references to programmes were to material included in such services.

(5) In this section—

“material” does not include advertisements;

“media services” means any of the following services that are available to members of the public in all or part of the United Kingdom—

- (a) television and radio services,
- (b) on-demand programme services, and
- (c) other services provided by means of the internet where there is a person who exercises editorial control over the material included in the service.

(6) The services that are to be taken for the purposes of this section to be available to members of the public include any service which—

- (a) is available for reception by members of the public (within the meaning of section 361); or
- (b) is available for use by members of the public (within the meaning of section 368R(4)).”

Online infringement of copyright

3 Obligation to notify subscribers of reported infringements

After section 124 of the Communications Act 2003 insert—

“Online infringement of copyright: obligations of internet service providers

124A Obligation to notify subscribers of copyright infringement reports

(1) This section applies if it appears to a copyright owner that—

- (a) a subscriber to an internet access service has infringed the owner's copyright by means of the service; or
- (b) a subscriber to an internet access service has allowed another person to use the service, and that other person has infringed the owner's copyright by means of the service.

(2) The owner may make a copyright infringement report to the internet service provider who provided the internet access service if a code in force under section 124C or 124D (an “initial obligations code”) allows the owner to do so.

(3) A “copyright infringement report” is a report that—

- (a) states that there appears to have been an infringement of the owner's copyright;
- (b) includes a description of the apparent infringement;
- (c) includes evidence of the apparent infringement that shows the subscriber's IP address and the time at which the evidence was gathered;
- (d) is sent to the internet service provider within the period of 1 month beginning with the day on which the evidence was gathered; and