

Where next for web blocking in the UK?

Now that the government has backed down from enforcing the web blocking provisions of the Digital Economy Act, questions are being raised as to how this issue will move forward. UK rights owners will not be falling on their swords any time soon, meaning that this issue is far from resolved.

Following advice from Ofcom, the DCMS **announced in August** that Sections 17 & 18 of the DEA will no longer be implemented, and that the government will instead addressing the problem of copyright infringing websites through 'other measures' outside of legislation.

The web blocking provisions of the Digital Economy Act were controversial from the outset due to the technical practicalities of ISPs blocking web content, and the ease of circumvention of technical measures for website operators and their visitors. This was confirmed by **Ofcom's report**, following which the government pulled the plug.

As the **Open Rights Group reported**, Communications Minister Ed Vaizey has been regularly meeting with ISPs and content holders for several months to discuss web blocking options. Documents secured by ORG in an FOI request have confirmed that rights holders are lobbying for a self-regulatory voluntary code. ORG themselves have recently met with Vaizey to express their concerns regarding web content blocking, and to argue that any process of developing a voluntary code between ISPs and content holders should be open to scrutiny from citizens and civil society.

Also of interest is that the Premier League are now sitting at the table with Vaizey in regards to web content blocking. Premium television services have recently been concerned with live content such as Premier League matches or Ashes Cricket (and next year F1 no doubt) being broadcasted illegally through streaming websites. The priority for these stakeholders will be to have the ability to block these websites as soon as they appear, in real time. The notice and takedown system is of little benefit when the content is valuable due to its 'live' status.

Regardless of the recent government u-turn on web blocking legislation, content holders have had landmark success in **securing the blocking of the Newzbin2** website. For the first time, rights holders sought an injunction under Section 97A of the Copyright, Designs and Patents Act 1988, and **were successful** in their application. This means that the recent government u-turn is slightly irrelevant as there is now some precedent for more injunctions under 97A in the UK. However, the process is neither quick nor cheap – the Newzbin2 case took over 18 months to get the desired result.

The Newzbin2 case is the first time that the UK's Cleanfeed web blocking system has been used to prohibit access to rights infringing content. Until now Cleanfeed has been used for enforcing illegal content such as child abuse images, criminally obscene content, and sites that incite racial hatred.

As the Ofcom report confirms, any measures employed by ISPs to block website content are easily circumvented by website operators and users alike. Of wider concern is the risk that website blocking will result in "over-blocking", where attempts to block IP addresses also block access to legitimate content. For this reason and many others, we should keep a close watch on this issue over the next few months.



