

Will the Digital Economy Act protect consumers from 'speculative invoicing'?

by Alison Powell

The Judicial Review of the Digital Economy Act (DEA) starts today. Brought by BT and TalkTalk, it turns on the question of whether the Act is enforceable, and whether it harms the rights and freedoms of their individual subscribers.

But according to some, the proposals in the Act are intended to protect consumers from 'speculative invoicing' – a modern-day version of ambulance chasing where a collection society claiming to act on behalf of copyright holders sends thousands of letters alleging that someone has engaged in illegal downloading and claiming damages. Over the past three years thousands of Britons have received these letters, most recently from ACS Law.

Yesterday the DEA All Party Parliamentary Group discussed the links between the ACS Law case and the Digital Economy Act. The recent judgement on ACS Law turned on the limits of using IP addresses as evidence. As Birss **noted**,

“All the IP address identifies is an internet connection, which is likely today to be a wireless home broadband router. All [this] monitoring can identify is the person who has the contract with their ISP to have internet access. ...[the claimant does] not know who did it and know that they do not know who did it.”

At yesterday's event, barrister Francis Davies noted that under current law, there is no such thing as being liable just because you let someone else do something. Think of the photocopier in the library – the librarian is not liable if someone photocopies something illegal. So just letting someone use your internet connection does not mean that you have authorized them to do anything – much less anything illegal. Furthermore, it's easy to spoof IP addresses – and also easy to conceal potentially illegal filesharing by using virtual private networks.

The speculative invoices sent out by ACS Law played on the complexities of law and technology. The DEA was supposed to put an end to the harassment of individuals who couldn't defend themselves. It made ISPs responsible for providing information, and ceded Ofcom the right to determine what the ISPs initial obligations could be. But according to advocate Saskia Walzel of Consumer Focus, one of the weaknesses of the Act is its continuing reliance on IP addresses as evidence.

Most in the room acknowledged that some of the serious flaws of the Act would be raised in the judicial review. But others, such as the reliance on IP addresses as evidence and the fact that the initial obligations depend on copyright holders 'self-certifying' and not on Ofcom's regulatory powers.

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