

TUC RESPONSE TO THE DEPARTMENT FOR BUSINESS INNOVATION AND SKILLS' CONSULTATION ON LEGISLATION TO ADDRESS ILLICIT PEER-TO-PEER FILE-SHARING

1. The TUC welcomes this opportunity to respond to the BIS consultation on legislation to address illicit peer-to-peer file-sharing and in doing so we have taken account of the subsequent statement issued by BIS on 25 August.
2. On this issue, as on many others, the TUC represents both creators and consumers. Our membership of more than six million workers in 60 unions includes workers in the creative industries who are concerned about the impact of digital piracy on their employment, both in the form of payment for past work and the prospects for future employment. But in addition, by representing millions of workers in all sectors of the economy – public and private, large firms and small businesses – we also represent a more substantial and representative proportion of the working population and therefore consumers than any other collective organisation.
3. It also has to be recognised that there is no simple divide between creator and consumer. Today there are many different workers, both employees and self employed, whose work is potentially subject to electronic distribution and therefore vulnerable to digital piracy. These workers include actors, musicians, directors, writers, photographers, illustrators and others whose talents are the essence of the products that are being pirated whether in the form of films, music or games. Workers who suffer as a result of digital piracy also include a range of technicians and craft workers, graphics, print and distribution workers engaged in making this work accessible to others. Increasingly, products previously distributed in the printed format of newspapers, books and magazines are also available on line or in digital version and so are vulnerable to illicit peer-to-peer file-sharing. Members of TUC unions also include those who involved in the legitimate retail sector and they too are naturally concerned about the impact of piracy on their jobs and their industry. All these workers' livelihoods depend on continuing investment in creative products and all of these workers are also consumers too.
4. The feedback that we get from these members is that they are concerned about the impact on the future of the entertainment industry and worry that overall, in a rapidly changing world, there are diminishing incentives to produce quality works and that the incentives will disappear altogether if those who do put their time, energy, talents and capital into creating quality works find that they are unable to gain any financial benefit because the works are pirated and distributed without any return for the creator.
5. We believe that the problem of digital piracy is serious, urgent and international. We welcome the additional proposals contained in the statement of 25 August as we feared that the original proposals would take too long to work through and neglected the significance of the role which Internet Service Providers could and should play in

countering a crime which had been made feasible through the development of the technology from which they benefit.

6. Our feedback from members and their unions supports the research which indicates that the majority of people who share files illegally do so for a number of reasons. In many cases this is because they are unaware that such activities are illegal. Even where they know that they are acting illegally they think this is either a victimless crime, or that the only people who will suffer are the big corporations or rich stars who can afford the comparatively small losses as a result of their individual crime. They also find that it is more convenient to act illegally than to make a legal purchase. Finally they assume will not suffer any consequences personally.
7. We believe that the proposed obligation to issue warnings of increasing severity would have a significant and important impact on the extent of digital piracy and the way it is viewed in society. We have seen similar social changes in other areas in which trade unions have been to the fore in mounting public information campaigns. For instance the rapid decline in smoking in public places, we believe, owes as much to increasing awareness of the damage this does to the health of others, including those having to work in such an environment, as to the legislation outlawing this practice. And in a similar way, if it were easier to access materials legally; if it was clear that illegal file sharing would be noticed and lead to increasingly severe repercussions; and if others in a household were both made aware of the illegal activity and its consequences then the scale of the problem would be reduced dramatically.
8. However it is also clear to us that there are those for who appeals to the common good and the benefit of all those working in the entertainment industries will not have the desired impact and that in these cases further sanctions are necessary.
9. It is for that reason that we have supported the idea of technical measures that ISPs would be obliged to take, leading to a reduction in bandwidth and eventual disconnection.
10. We believe that such systems do require safeguards, systems of appeal and protection from 'miscarriages of justice' particularly as we are asking private sector companies to implement sanctions against offenders. However we believe that the safeguards which are proposed and systems that need to be developed can provide protection.
11. We recognise that as more services are delivered through the Internet denial of access will be a more severe sanction than at present and it is for that reason that we have supported the idea of technical measures that ISPs would be obliged to take, leading to a reduction in bandwidth and the option of temporarily suspending access to all be essential services.
12. The statement of 25th August proposed exemption for smaller ISPs. We do not accept that such a move would be either fair or viable. The idea of exemption for

smaller companies from legal obligations is one that we have opposed in other areas and this would be no exception. The idea that those committing digital piracy could escape punishment by switching to a smaller ISP also appears to run counter to the purpose of the measures.

13. Nor do we accept the argument that producers and creators need to find alternative means to generate income from their work through sale of spin off products etc. This might work in some cases – such as high profile musicians who can give away their work but expect to generate far greater income through live performances – but the decision on whether to adopt such an approach must rest with the individual artist, rather than being imposed on them, by failing to protect their rights to their works.
14. The views expressed in this note reflect the position taken by our General Council when it considered the Digital Britain report soon after its publication. We note that following the additional statement of 25 August the deadline for the consultation has been extended to September 29.
15. The issue of Digital Piracy is due to be debated at our Congress which takes place 14-17 September and the extended deadline will allow us the opportunity to submit further comments if necessary arising from that debate.