



# Protection of Intellectual Property Rights Online: Culture, Media and Sport Select Committee inquiry

A submission from the Association of Colleges  
March 2011

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The Association of Colleges (AoC) represents and promotes the interests of Further Education Colleges and their students. Colleges provide a rich mix of academic and vocational education. As autonomous institutions, established under the Further and Higher Education Act 1992, they have the freedom to innovate and respond flexibly to the needs of individuals, business and communities.

The following key facts illustrate Colleges' contribution to education and training in England:

- Every year Colleges educate and train three million people.
- 831,000 of these students are aged 16 to 18 which compares to 423,000 in schools.
- 74,000 14 to 15 year olds are enrolled at a College
- One-third of A-level students study at a College
- 44% of those achieving a level 3 qualification by age 19 do so at a College

Colleges are centres of excellence and quality. The average A-level or equivalent point score for Sixth Form Colleges is 800.1 compared with 761.6 for school sixth forms. 96% of colleges inspected in 2008/09 were judged satisfactory or better by Ofsted for the quality of their provision.

For more information on Colleges please see [www.aoc.co.uk](http://www.aoc.co.uk)

## **Introduction**

1.0 The Digital Economy Act (DEA) has a number of serious consequences for Colleges which we do not believe were the original intention of the legislation and may hinder efforts to maximise digital inclusion and foster creativity and innovation in education and learning. In summary these are;

- Cost
- Notification Process
- Technical steps required

1.1 In particular Colleges are concerned about the cost of enforcing the Act's provisions. We believe that it would place an excessive administrative and financial burden on Colleges to ensure that they are not in breach of the Act and that this may lead Colleges to adopt a 'risk averse' position. If Colleges make the decision to withdraw services rather than risk breaching the DEA then students and staff could be disenfranchised with regard to access to digital resources. The educational and, broader socio-economic, effects of such 'digital exclusion' would be profound, not least with reference to information access, the costs of obtaining permissions from existing rights-holders, and fair use.

1.2 The Act contains certain ambiguities as it currently stands and it is possible that Colleges could be defined as an Internet Service Provider (ISP), a subscriber and/or a user. We would argue that the guidance provided by Ofcom on the enactment of the DEA has to make clear these distinctions and, moreover, that Ofcom include Colleges under its definition of a 'non qualifying ISP'. In so defining Colleges they would be afforded a degree of dispensation essential to the ways in which the DEA will be interpreted and

enforced. The difficulty in interpreting the provisions of the DEA, not least the technical problems involved in its enforcement, pose real challenges for Colleges.

- 1.3 At a time when Colleges are seeking to make cost savings while remaining innovative in the use of technology, not only in relation to learning and teaching but as part of the economic life of the communities within which they exist, any legislative measure that restricts the use of digital resources is of real concern to the sector.
- 1.4 As has been pointed out by the Joint Information Systems Committee (JISC) the organisation funded by post 16 funding bodies, particular concern for Colleges relates to the notification process and its '3 strikes' provision and whether it is, 'proportionate and whether it complies with EU Directives'<sup>1</sup> Under the current provisions of the Act Colleges will face time-consuming and expensive legal proceedings in order to comply with the notification process, regardless of the findings of the process in individual cases.
- 1.5 The issue of data protection and the right to privacy is an important concern for Colleges, a point again echoed by JISC when it noted that, 'European Union laws control how organisations gather, process and use information online and what can be gathered and stored from the use of telecoms networks'<sup>2</sup>. The lack of clarity in the current Ofcom guidelines means that Colleges are in an anomalous position with regard to interpreting legislation and, potentially, infringing the privacy of their staff and students.
- 1.6 Colleges have also expressed concern over the implied technical measures required to implement the Act, both in terms of cost and efficacy. As one College IT Manager has noted, 'I do not think there is a technical solution to this at the moment. As soon as there is a technical solution someone will find a way round it. I think we as Colleges should ensure our staff (and students) are "educated" to understand the issues around downloading or using copyrighted material. If necessary, our disciplinary processes need to be amended to reflect the seriousness of abusing the Act,'<sup>3</sup>. It has also been suggested that the existing monitoring and filtering systems used by Colleges, notably those supplied by JANET UK the government funded provider of connectivity and web services to UK Colleges, are geared towards the specific needs of Colleges when it comes to safeguarding. Any change to those systems, to make them more amenable to detecting infringements of the Act, risk losing the valuable protection afforded by those systems now used by Colleges.
- 1.7 The level and scope of monitoring implied by the Act has also raised concerns from those tasked with implementing it within Colleges. As one IT Director has argued: 'We don't at the moment keep an audit track of every logon because frankly it would generate so much data that we would be hard pushed to make any meaningful sense of it. In this respect ISPs have a slightly easier task in that they know which IP they have allocated to which subscriber at any moment in time. We may be able to track which PC has which IP (although even that isn't simple due to [Dynamic Host Configuration Protocol (DHCP)]lease times) but we would also then need to track which user was logged on to that PC at the time any infringement took place which is another layer of recording.'<sup>4</sup>

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<sup>1</sup> JISC IPR Newsletter 48, December 2010, p.2

<sup>2</sup> [Ibid].

<sup>3</sup> Director IT Services, Warwickshire College

<sup>4</sup> IT Director, Derby College

1.8 Despite the use of extensive monitoring systems within Colleges, including software and firewalls to block outgoing ports, most Colleges would face additional burdens in enforcing the Act, in that, ‘...what we don’t have is anyone to actually “monitor” these things let alone anything more proactive. What we in fact do is report after the fact if we are given cause to suspect that something has taken place. Even this places a burden on resources from a staffing point of view as this takes a person away from their actual job’<sup>5</sup>. He went on to conclude that whether Colleges were defined as ISPs or as Subscribers under the terms of the Act that, ‘Looking at what this entails in terms of monitoring I have no doubt that we cannot currently fulfill those requirements either technically or...more importantly manpower wise’.

#### Conclusion

2.0 Colleges already operate simple, effective and proportionate steps to prevent infringement on their networks.

AoC argues that the additional cost and administrative burden that the Digital Economy Act requires, and the potential detriment to learning, far outweighs the risks of infringement, for which there is little credible evidence regarding College students.

AoC argues strongly that Ofcom guidance should define Colleges as ‘non qualifying ISPs’ or that the Act be amended to allow this definition.

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<sup>5</sup> IT Director, Derby College