

Exchange of emails between CHIS and Lord Carter: January – February, 2009

Dear Lord Carter,

In your talk today at the Westminster Foundation meeting you touched briefly on the importance of the safety agenda. There is one issue which we see as being something of a hybrid, but among other things it certainly touches on the safety agenda. I refer to the misuse of file-sharing software.

On the one hand such software is usually in the public eye because of its role in undermining copyright protection, particularly in relation to music, films and software. Copyright protection I know is squarely within your purview. On the other, predominantly we see another side to file-sharing software.

Of course we have no interest in promoting or allowing copyright theft but we are just as concerned about the potential for a family to be plunged into a financial crisis when a rights-holder tries to collect their dues, the bill for which having arisen from the unknown/undiscovered activity of a child in the household. Some children will doubtless have fully understood the unlawful nature of their activity from the outset, and will simply have been skilful at disguising what they are doing from their parents. But that still does not help when possibly a large amount of money suddenly has to be found out of a perhaps already strained household budget. However, there will also be children or young people who get ensnared or caught up in this activity without ever fully understanding the potential consequences for them and their families.

Then there is the role of this type of software in providing access, as it frequently does, not only to copyright protected material, but also to a spread of other items found on participants' storage devices and hard drives. These other items may range from the plainly illegal e.g. child pornography, through to extreme violence or hard core pornography which falls short of being illegal but which is nonetheless highly age inappropriate, and much else between and besides.

In every other context, when we speak about online safety, it is commonly accepted that all participants and players in the digital space have a responsibility to do what they can to make the internet a safer place for everyone, but perhaps particularly for some of the most vulnerable elements in society such as children. That being so, we are at a loss to comprehend why the ISP community seem to think that they ought to be exempted from any

responsibility to act where they learn or know about, or could detect and prevent this kind of use of file-sharing software.

We say this with some feeling given it is well established that very many parents simply do not have the kind of technical knowledge needed to detect or block their child's use of such programmes, largely because they are unaware of its existence in the first place. Thus for ISPs, or anyone else, to speak only of "parental responsibility" seems to us to be largely an evasion.

Of course we must continue to try to reach out to parents to educate them in these matters but for the ISPs to be absolved of any responsibility to act seems entirely wrong. They should most certainly be expected to join with the rights holders to play a part in public education campaigns aimed at parents and children alike, but they should also be expected to intervene actively to block the use of the software where the evidence is clear that it is being used persistently for unlawful purposes.

I appreciate that, in general, you will not want to trespass on the role and responsibility of UKCCIS but given your current review, and the hybrid nature of this issue, do you not agree that this matter could properly be addressed by you in the context of that review? And more generally do you agree with the views I have expressed in this email?

Yours sincerely

John Carr
Secretary
Children's Charities' Coalition on Internet Safety
15th January, 2009.

Dear John

Thank you for your email following Westminster Media Forum. I apologise in the delay in replying but hope you have now seen the Digital Britain Interim Report

(http://www.culture.gov.uk/what_we_do/broadcasting/5631.aspx)

Thank you for that question, and it goes to the heart of what we have been trying to do around the use of peer-to-peer file-sharing.

A couple of important points first. Peer-to-peer technology is in itself entirely legitimate. It is utilised by a host of bodies for perfectly desirable and legal purposes - in entertainment by the BBC in its iPlayer offer, for example, but also in scientific and academic fields where its efficiency in transferring large amounts of information around is highly valued. Also, the protection enjoyed by ISPs from responsibility for monitoring what goes over their networks is prized not only by ISPs themselves, but also by a great many people who quite rightly do not see it as the function of the intermediary to be making judgement calls on what they are doing. Any technology can be abused - but it the abuse, not the technology, that should be addressed.

Of course, there is also general agreement across the board that some material cannot be tolerated in a civilised country. It is illegal to possess child-abuse images and those who do can be and are being pursued by law-enforcement agencies, who face the challenge of dealing with groups of users that can employ considerable skill in covering their tracks. At present, I would be sceptical about asking ISPs to take on a greater role in assisting the police beyond the network blocking, notice and take down and traffic data retention requirements that we already expect of them, but you are right that these issues are part of the debate.

Inevitably, it is the grey areas where much of the difficulty lies, and particularly in the area of copyright infringement, where I am well aware there are huge problems being caused to music, film, and other creative industries.

Here, we have made some real progress in terms of getting ISPs and rights holders to work together. Nevertheless, it must be acknowledged that serious differences remain between them on where responsibility should sit for addressing widespread unlawful file-sharing, and we have set out the Government's view on the way forward in the Digital Britain Interim Report.

If rights holders choose to pursue unlawful peer-to-peer file-sharers, they will of course necessarily focus their actions on the named subscriber of the ISP concerned. They are however very much aware that, in some cases, the children of a subscriber might have been unlawfully file-sharing without their parents' knowledge. Rights holders will naturally be aware of the dangers of undermining public support for their position by appearing to behave heavy-handedly. Under our proposals, that risk will be considerably reduced. What we are proposing is that once an ISP has received satisfactory proof from a rights holder of unlawful file-sharing, the ISP will be required to notify its customer that the activity has been discovered. The evidence suggests that about 70% of illicit file-sharers cease their activities on receipt of such a

warning letter.

The questions you raise about material which is not illegal, but might potentially be harmful to children is an issue which Tanya Byron's review examined and I am sure that this concern continues to be addressed by all parties in the forum provided by the UK Council on Child Internet Safety. I welcome your involvement with the Council and am pleased that Tanya has joined me on the Digital Britain Steering Board to ensure that our policies develop in a coherent way.

Kind regards

Stephen

Stephen A. Carter CBE

Minister for Communications, Technology & Broadcasting

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