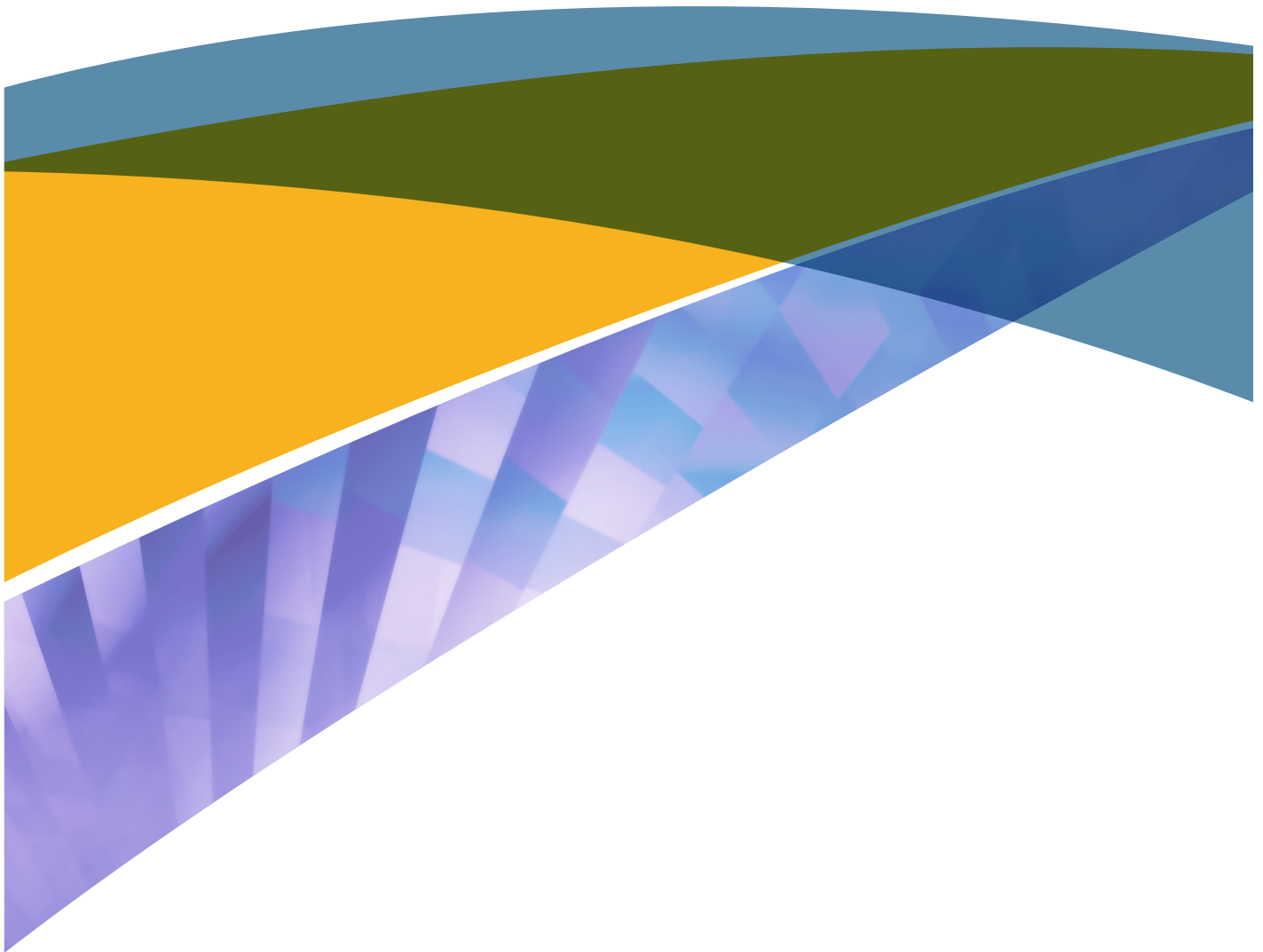




Intellectual
Property
Office

Summary of responses

Consultation on changes to the penalties for offences under sections 107(2A) and 198(1A) of the Copyright, Designs and Patents Act 1988 (Penalties for Online Copyright Infringement)



In July 2015 the Government consulted on proposed changes to the maximum term for online copyright infringement, increasing it from two to ten years. This document summarises the responses received.



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Introduction

Online copyright infringement is dealt with under s107(2A) (communicating work to the public in the course of a business, or to an extent prejudicially affecting the copyright owner) and s198(1A) (infringing a performer's making available right in a recording in the course of a business, or to an extent prejudicially affecting the owner of such right) of the Copyright Designs and Patent Act 1988. These offences are currently punishable by a maximum of two years imprisonment. By comparison, the maximum custodial sentence for infringement in respect of physical goods is ten years.

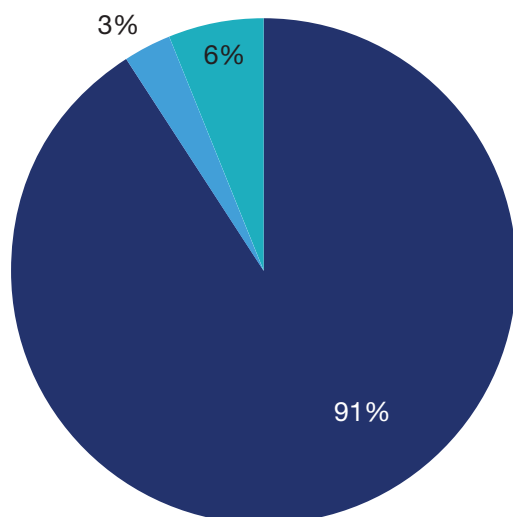
In July 2015, the Government consulted on proposed changes to the maximum term for online copyright infringement, increasing it from two to ten years to make consistent with the penalty for physical copyright infringements. This document summarises the responses received.

Overview of responses

The Government received 1,032 responses to the consultation. The majority (91%) were initiated by a campaign by the Open Rights Group (ORG); 'a campaigning organisation aiming to raise awareness of digital rights and civil liberties issues'¹. 6% were received from individuals and 3% from businesses or other organisations.

Consultation response

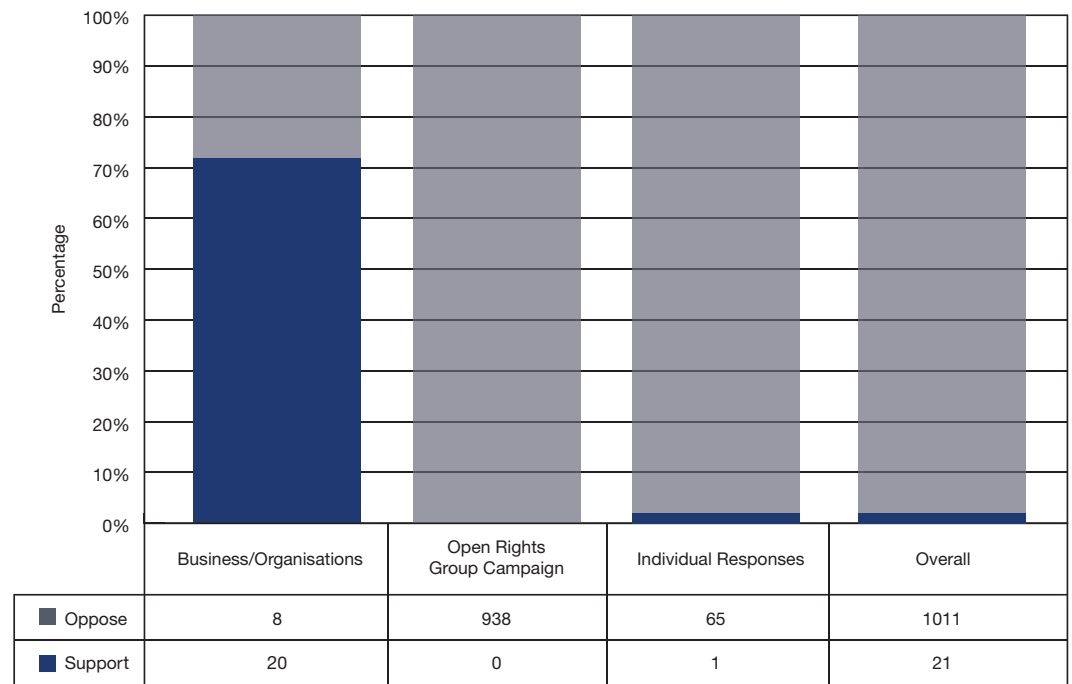
■ Open Rights Group Campaign ■ Businesses/Organisations ■ Individual Responses



A summary of those supporting and opposing the proposals is listed below:

¹ <https://www.openrightsgroup.org/>

Consultation responses – opposing/supportive



Responses received to consultation question

The consultation asked one question: Should the maximum custodial sentence available for online and offline copyright infringement of equal seriousness be harmonised at 10 years?

Summarised below are primary arguments supporting and opposing the proposal.

Supportive comments

- It is important that creativity is respected and rewarded, and those who deliberately infringe or facilitate infringement should face criminal sanctions. Copyright infringement online is no less serious than that of physical, and therefore shouldn't be treated any differently.
- The low sentence means that alternative, less specific legislation must be used for prosecutions where a sentence of more than two years is sought. This leads to cases where the requirements for proof prevent a successful prosecution. For example, common law conspiracy to defraud.
- There are many services in the UK offering content for free or at low cost. Making available infringing content is in clear defiance of creators' rights to receive remuneration for their work.
- Change would act as a powerful deterrent to those engaging in IP crime.

- A low maximum sentence restricts the investigative options for enforcement agencies and makes it difficult to convince courts that it is a serious crime.
- Heavy sentences are not being handed to minor infringers or innocent people; a maximum of 10 years imprisonment is already available using other less specific legislation.

Opposing comments

- 10 years is too high; copyright infringement is not a serious crime.
- With a higher sentence there is more incentive for private prosecutions, which in turn will increase the numbers being imprisoned.
- There is a difference between infringement committed online and physically and they should not be treated the same. Physical requires a sophisticated set up, whereas online can be done quickly, without specialist equipment and sometimes unwittingly.
- There is no requirement to prove intent to cause harm, meaning that the existing offence has elements of strict liability.
- The term 'affect prejudicially' is too vague and could mean someone facing a criminal charge where only a minimal amount of content has been infringed. This requires some threshold to ensure only commercial scale infringers are punished.



Government response

The Government is grateful to those who took the time to respond to the consultation. Responses were received from a wide range of interested stakeholders including the creative industries, businesses including legal, private individuals and affiliates to the Open Rights Group.

Since the consultation closed there has been detailed in-depth analysis and investigation of all the points raised to ensure that any future change in the legislation has longevity and appropriately reflects the landscape. This proposal has clearly struck a chord with many stakeholders, which is reflected in the high number of responses. As a result, the Government is now carefully considering the best way forward. However, the Government remains committed to tackling those engaged in online criminality.

Annex A: List of respondents

Individual Responses – 1,032

Alliance for Intellectual Property

Association of Chief Police Officers

British Academy of Songwriters, Composers and Authors

British and Irish Law Education and Technology Association

British Film Institute

British Phonographic Industry

British Video Association

Central Neuropsychology Ltd

Chartered Trading Standards Institute

Creative Coalition Campaign

DACS

Education Recording Agency

Etched Pixels Digital Design

Federation Against Copyright Theft

Federation Against Software Theft

Incorporated Society of Musicians

Independent Film & Television Alliance

MAS Design Products Limited

Motion Picture Association

Nelsons Legal Limited

Open Rights Group

Pirate Party UK

Professional Publishers Association

PRS for Music

The European Cultural and Creative Industries Alliance

The Publishers Association

Walpole

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