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## Open Wi-Fi 'outlawed' by Digital Economy Bill

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**The government will not exempt universities, libraries and small businesses providing open Wi-Fi services from its Digital Economy Bill copyright crackdown, according to official advice released earlier this week.**

This would leave many organisations open to the same penalties for copyright infringement as individual subscribers, potentially including disconnection from the internet, leading legal experts to say it will become impossible for small businesses and the like to offer Wi-Fi access.

Lilian Edwards, professor of internet law at Sheffield University, told ZDNet UK on Thursday that the scenario described by the Department for Business, Innovation and Skills (BIS) in [an explanatory document](#) would effectively "outlaw open Wi-Fi for small businesses", and would leave libraries and universities in an uncertain position.

"This is going to be a very unfortunate measure for small businesses, particularly in a recession, many of whom are using open free Wi-Fi very effectively as a way to get the punters in," Edwards said.

"Even if they password protect, they then have two options — to pay someone like The Cloud to manage it for them, or take responsibility themselves for becoming an ISP effectively, and keep records for everyone they assign connections to, which is an impossible burden for a small café."

In the [explanatory document](#), Lord Young, a minister at BIS, described common classes of public Wi-Fi access, and explained that none of them could be protected. Libraries, he said, could not be exempted because "this would send entirely the wrong signal and could lead to 'fake' organisations being set up, claiming an exemption and becoming a hub for copyright infringement".

Universities cannot be exempted, Young said, because some universities already have stringent anti-file-sharing rules for their networks, and "it does not seem sensible to force those universities who already have a system providing very effective action against copyright infringement to abandon it and replace it with an alternative".

### **Subscriber vs IP**

Young added that universities will need to figure out for themselves whether they qualify as an ISP or a subscriber. This is a distinction that carries very different implications under the [terms of the bill](#), which would establish possible account suspension as a sanction against subscribers who repeatedly break copyright law, and force ISPs to store user data and hand it over to rights holders when ordered to do so.

Businesses providing open Wi-Fi networks to customers and clients will also need to decide whether they are ISPs or subscribers, "depending on the type of service and the nature of their relationship with their consumers...although it appears unlikely that few other than possibly the large hotel chains or conference centres might be ISPs", Young said.

Young added that [free or 'coffee shop' access](#) tends to be too low-bandwidth to support file-sharing and, under the bill, "such a service is more likely to receive notification letters as a subscriber than as an ISP". He recommended that they secure their connections and install privacy controls, to "reduce the possibility of infringement with any cases on appeal being considered on their merits".

The BIS minister also noted that there was scope in the bill's text — currently being [amended in the House of Lords](#) — "to reflect the position of libraries, universities or Wi-Fi providers",

perhaps by letting such organisations have different sets of thresholds that would trigger notification letters from rights holders.

"This would be a matter for the code and we would urge the relevant representative bodies to consider now how best to engage in the [Digital Economy Bill] code development process," he added.

The bill defines an 'internet access service' as an electronic communications service that "is provided to a subscriber, consists entirely or mainly of the provision of access to the internet, and includes the allocation of an IP address or IP addresses to the subscriber to enable that access".

An ISP is defined as a person who provides an internet access service, and a subscriber is defined as a person who "receives the service under an agreement between the person and the provider of the service, and does not receive it as a communications provider".

Referring to BIS's comments about the low bandwidth of coffee-shop connections, Lilian Edwards suggested it was "not correct to draft laws hoping they are difficult to break".

Edwards also pointed out that BIS's guidance for universities shows the government admitting "they don't know themselves how universities fit into the Digital Economy Bill".

"[Universities] don't know if they're subscribers, ISPs or neither," Edwards said. "If the government is not clear, how on earth are the universities supposed to respond? This seems almost unprecedented to me, for a government document."









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