

THE SPECULATIVE INVOICING HANDBOOK

BONUS CHAPTER:
(not) responding to a questionnaire

First Edition

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(Not) Responding to a Questionnaire

If you've 'replied and denied' and now received a letter from a law firm requesting further information: Congratulations! This kind of mailing demonstrates that at present they don't have enough information to build a case against you. Your straight denial has left them out in the cold. Now they're hoping you'll be kind enough to fabricate a case against yourself (or maybe someone else) on their behalf. Perhaps you'll be good enough to suggest your own grandmother who surfs eBay for wool supplies when she pops over on Sundays? Maybe your younger brother, or your flatmate? Thankfully you're not as stupid as they'd believe.

None-the-less you might be wondering what to do with this paperwork...

There are a few key points to consider. Let's look at them in order:

Are you short on toilet paper?

That one's a joke. You're probably feeling a little stressed; I figured I'd try to lighten the mood. Now that's out of the way, to business...

What about pre-action protocol?

Firstly, pre-action protocol allows you a bare minimum of 14 days (and usually longer) to reply to any query like this, so if the letter requests that you reply any sooner – it's in breach of pre-action protocol straight away.

Secondly, you will recall, from earlier chapters in the handbook, that the Copyright, Designs and Patents Act 1988 requires that you either did or authorised the infringement of copyright. See those words? Let me type them in big fat letters: **DID** or **AUTHORISED**. No 'allowed', no 'permitted', no 'responsible'. These words are all utterly irrelevant to any claim with a legal basis. You either **did** it yourself, or you **authorised** someone else to do it, or you **did not**.

As the firm in question will have categorically failed to accuse you directly of infringing the copyright in accordance with the terms of the CDPA they have not actually stated a valid case against you. They have, in fact, asked you to *settle* for something of which they've *not even accused you*.

At least one of the companies involved in this scheme stated to the court, when applying for orders against ISPs to release customers details, that their intention in contacting you was to be to ask for your help. They said that you "could perhaps assist [them]...identifying who it may have been". They even said that they were "not suggesting" that the account holders were "guilty". That may not have been the impression their letters have given but that is what they told the court.

As they've not actually formally accused you of anything you've not actually got any *real* reason to comply with pre-action protocol. You certainly won't be failing to comply if you don't complete this questionnaire. That's important point number one. Let's stick it in a box:

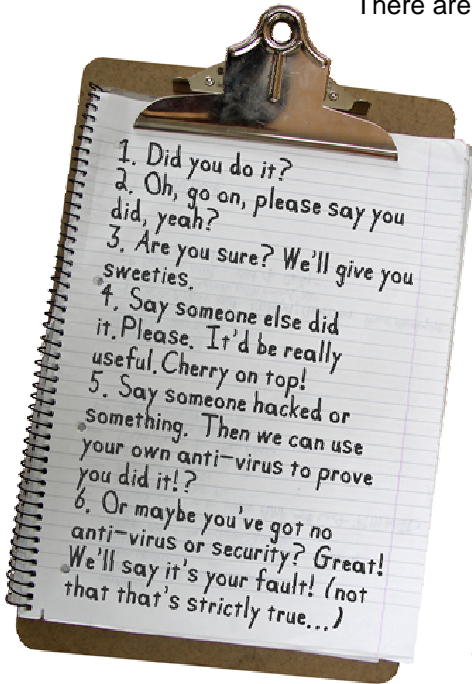
1) You do not need to answer their absurd questionnaire to comply with pre-action protocol.

If I fill this in will they understand I didn't do it, and leave me alone?

In all likelihood they've answered this one for you. Very probably at the bottom of the form will be a statement along the lines of "unless we receive a written admission of guilt from someone else, we are unable to drop the case against you".

Translation: "Our evidence is rubbish. We don't know who did it, if it happened at all. We might as well harass you as much as anyone else... unless you can find us someone else that'll pay up. Oh, and if you can get them to admit guilt, in writing, that'd be really handy!"

They won't leave you alone unless they're going to get the money from someone else. They don't care who (if anyone) did it. It's all about the money. Providing them with helpful information in support of your case will



just enable them to tick their boxes and build a more detailed profile of you which they will use to harass you further. Don't waste your time.

2) Nothing good will come of filling in their questionnaire. Don't do it. You *absolutely do not have to* and they have *no* legal basis for requiring you to do so (despite whatever they might claim). You should only provide this level of information if a *court* orders you to do so.

Should I reply?

It's probably a good idea to send a letter though you're not obliged to. It would look better in the massively unlikely event that it did ever go to court. However there is no good reason to fill in the questionnaire (and several very strong reasons why you shouldn't).

How should I reply?

Ah! Good question! A sample response is suggested below. You should amend it where necessary to fit your own needs but, as ever, be sure you know *what* you are changing and *why*. Do not copy and paste this without reading it. I have intentionally included a sentence where you admit to being a member of the Mr Blobby fan club to make you go through it with a fine-toothed comb.

	Your name <No.> Your street Your town Your county [postcode]
[Law Firm name] [insert mailing address here]	
	[insert date here]
Re: Claim concerning XXXXX	
Dear Sir/Madam	
[add any other very bland content which contains no information about yourself or your circumstances, and serves to introduce your letter here, if you wish]	
I note that you have previously written to me inviting a settlement in respect of the alleged infringement of your client's copyright. At this time, while referencing the Copyright Designs and Patents Act 1988, you failed to cite any evidence to support an assertion (or indeed even make an assertion) that I did commit or else authorised an infringement of your client's copyright.	
As you will be aware section 16(2) of the act requires a person to either directly infringe copyright, or authorise someone else to do so. As I have previously advised you in writing I have done neither. Until such a time as you are prepared to make an unambiguous assertion to the contrary, and to support this with evidence, I am not prepared to enter into any further discussions regarding this matter.	
I shall not be answering your 'questionnaire'. If there is such uncertainty in the matter of your client's claim and its evidentiary basis that you feel the need to send me a lengthy questionnaire, I would respectfully suggest that you might usefully review the basis for these claims and the way you go about selecting the individuals of whom you make demands for settlement.	
[conclude your letter here, probably with a firm repeat of your uncompromising denial of any infringement, if appropriate]	
Yours faithfully	
[name]	

What will they do if I don't fill in this questionnaire?

What will they say they'll do? Probably take you to court and you'll get a whoppingly huge fine and prison and they'll make you eat gruel and all sorts...

However... *saying* is not *doing*. Realistically, you can probably expect a few more letters. If you *do* answer the questionnaire the best thing that can happen is that from now you *and* another person will get harassed; the worst thing is that you'll end up inadvertently admitting to something you didn't do as a result of some wording which, intentionally or otherwise, is likely to elicit unwitting admissions of 'responsibility' from many innocent people.

Now, get writing. Sit on it for a day or two, re-read it and if you're happy, post it.

Once you've recharged your batteries send a copy to your MP, the Solicitor's Regulation Authority and anyone else you think might be interested to see quite what level this scheme operates on.