

Name

Mark Dennehy

Of the six categories into which the Paper classified the first round of submissions, which one (if any) best describes you?

rights-holder

User

Is our broad focus upon the economic and technological aspects of entrepreneurship and innovation the right one for this Review?

No. The review should be looking at the fundamental principles of copyright law in light of the changes in recent years to the media markets. Only a few times in human history have we seen fundamental changes to the means for information distribution in society: the development of language; the development of written languages; the development of paper and inks; the development of printing blocks; the development of modern movable type and modern printing presses; the development of widespread literacy movements; and the recent (as in, over the past three decades) development of widespread access to electronic media, both in the form of media used to publish and in the form of media used to support communal discussion. That we are living in a time when such a change is happening is remarkable, but it requires that we examine our laws at a basic level to ensure that they are fit for purpose in a world which has fundamentally changed. Focussing on the economic and technological aspects of entrepreneurship and innovation does not even come close to scratching the surface of what is required here.

Is there sufficient clarity about the basic principles of Irish copyright law in CRRA and EUCD? [Note: CRRA is the Copyright and Related Rights Act, 2000; and EUCD is the European Union Copyright Directive (Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society)].

No. Copyright law is unnecessarily complex. The average person on the street needs to be able to understand it, because thanks to the widespread adoption of social media in all its forms and the widespread adoption of smartphones with cameras and other sensors and the integration of these two phenomena, the average person on the street is now a content creator and therefore a copyright holder; in fact, they now comprise the majority of copyright holders.

Should any amendments to CRRA arising out of this Review be included in a single piece of legislation consolidating all of the post-2000 amendments to CRRA?

Yes, a restatement under the Statute Law (Restatement) Act.

Is the classification of the submissions into six categories – (i) rights-holders; (ii) collection societies; (iii) intermediaries; (iv) users; (v) entrepreneurs; and (vi) heritage institutions – appropriate?

No. The vast majority of average people on the street fall into at least two of these categories - (i) and (iv).

In particular, is this classification unnecessarily over-inclusive, or is there another category or interest where copyright and innovation intersect?

Neither is the core problem with the classification; the core problem is that the classification does not map to reality well.

What is the proper balance to be struck between the categories from the perspective of encouraging innovation?

Copyright holders should remain those who originally produce the content, and their copyright should be upheld in cases where to do otherwise would cause financial loss to the holders; however, this must be balanced with a right to fair use of content which must be clearly defined in statute law and not left to the courts to decide through case law, as the process of clearly defining something like this via precedent takes time and during that time, all innovation is stifled through fear of expensive legal action and possible financial ruin. It is the role of government to set standards here, not the courts. It must also be evaluated as to whether copyright law should be enforceable in cases where no financial loss has been or can be suffered by the copyright holder. In such cases, copyright law loses its purpose and becomes instead merely an impediment to content creation. It should be considered to make a form of copyright licence such as the creative commons licence into a default under Irish law for cases where no copyright is explicitly asserted by the content creator. This would maintain copyright for the original author, but not stifle innovation.

Should a Copyright Council of Ireland (Council) be established?

Only if its recommendations would be entered into statute law, and only if its role is correctly defined. A council should exist to advise and draft statute law in response to changes in the overall landscape; not to adjudicate disputes in individual cases.

If so, should it be an entirely private entity, or should it be recognised in some way by the State, or should it be a public body?

It must be a state body with qualified professionals appointed to it. These professionals should represent all areas of copyright law stakeholders, and should not be dominated by any one group, such as the RIAA.

Should its subscribing membership be rights-holders and collecting societies; or should it be more broadly-based, extending to the full Irish copyright community?

It *must* be more broadly based. To promote the rights of only one section of the community over the others would be to render such a council worse than useless from the start.

Should the Council include the establishment of an Irish Digital Copyright Exchange (Exchange)?

That is entirely dependent on what this exchange is foreseen as being responsible for, and as such this question cannot be answered.

What other practical and legislative changes are necessary to Irish copyright licensing under CRRA?

It is vital that the safety of conduits such as ISPs from legal prosecution for copyright infringement by third parties on their sites be made a priority. It is also vital to ensure

that the rights of all copyright holders are equally asserted, and not mere of those who can afford to bring legal suit in the courts to seek redress.

Should the Council include the establishment of a Copyright Alternative Dispute Resolution Service (ADR Service)?

No. The statute law should be clear enough that such a service is unnecessary, and the Council should not be involved in individual cases in any case.

How much of this Council/Exchange/ADR Service architecture should be legislatively prescribed?

This architecture is fundamentally flawed and should not be adopted.

Furthermore, what should the inter-relationship between the Controller and the ADR Service be?

No ADR service should exist in its proposed format.

Should there be a small claims copyright (or even intellectual property) jurisdiction in the District Court, and what legislative changes would be necessary to bring this about?

This would be a far more preferable alternative to the proposed ADR service.

Should there be a specialist copyright (or even intellectual property) jurisdiction in the Circuit Court, and what legislative changes would be necessary to bring this about?

This would be a far more preferable alternative to the proposed ADR service.

Whatever the answer to the previous questions, what reforms are necessary to encourage routine copyright claims to be brought in the Circuit Court, and what legislative changes would be necessary to bring this about?

This question, and its predecessors, require specialist legislative knowledge to respond to. They seem ill-suited to a general questionnaire.

Is there any economic evidence that the basic structures of current Irish copyright law fail to get the balance right as between the monopoly afforded to rights-holders and the public interest in diversity?

Yes; and it was presented before the Junior Minister signed his recent SI.

Is there, in particular, any evidence on how current Irish copyright law in fact encourages or discourages innovation and on how changes could encourage innovation?

Yes; and it was presented before the Junior Minister signed his recent SI.

Is there, more specifically, any evidence that copyright law either over- or under-compensates rights holders, especially in the digital environment, thereby stifling innovation either way?

Yes; and it was presented before the Junior Minister signed his recent SI.

Should section 24(1) CRRA be amended to remove an unintended perpetual copyright in certain unpublished works?

Which "certain unpublished works" do you refer to?

Should the definition of “broadcast” in section 2 CRRA (as amended by section 183(a) of the Broadcasting Act, 2009) be amended to become platform-neutral?

No.

Are any other changes necessary to make CRRA platform-neutral, medium-neutral or technology-neutral?

Before considering this, it should first be considered whether or not CRRA *should* be platform-neutral, or whether this would not be the correct way to do things.

Has the case for the caching, hosting and conduit immunities been strengthened or weakened by technological advances, including in particular the emerging architecture of the mobile internet?

It has been strengthened; but the law no longer protects these immunities fully and this must be redressed.

Is there any good reason why a link to copyright material, of itself and without more, ought to constitute either a primary or a secondary infringement of that copyright?

No. This would be ridiculous, and even damaging financially to the copyright holder.

If not, should Irish law provide that linking, of itself and without more, does not constitute an infringement of copyright?

Yes.

Is there a case that there would be a net gain in innovation if the marshalling of news and other content were not to be an infringement of copyright?

Yes. News media are undergoing fundamental changes in their marketplace at present; new models for business in that field must be found, and if Ireland were at the forefront of that effort, it would benefit us enormously, making us highly attractive to foreign investments.

Should the definition of “fair dealing” in section 50(4) and section 221(2) CRRA be amended by replacing “means” with “includes”?

Fair use needs to be completely revamped. Changing a single word probably doesn't come close to the level of reworking required.

Should CRRA references to “research and private study” be extended to include “education”?

Yes.

Should the education exceptions extend to the (a) provision of distance learning, and the (b) utilisation of work available through the internet?

Yes.

Should there be a specific exception for non-commercial user-generated content?

No. This would be treating copyright holders' rights inconsistently.

Should there be an exception permitting format-shifting for archival purposes for heritage institutions?

Yes, obviously.

What have we missed?

The point. Most of the questions in this questionnaire are asking for empirical evidence -- not available to the general public without extensive work, but supplied to the Junior Minister before the most recent SI was signed by specialist groups -- to support a specific policy direction. The point of the review should not be to justify an a priori decision, but to evaluate the landscape and give possible options.

Do you have any further comments on the Consultation Paper?

Our world has been changing for the past few decades; our laws are no longer fully fit for purpose and require review from the conceptual level upwards, not mere detail work in the fine print. And to carry out this work, in this manner, without involvement of the community past the point of filling in questionnaires, is doomed to failure in the long term.