

Name

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

User

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

Yes.

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)].

Yes.

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?

A specific reference in Irish law should be made to the Creative Commons Copyright mechanism.

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?

Yes.

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

Generally speaking, educators and academicians prefer to see copyright categories articulated for their express purpose.

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

Innovators need to be able to remix the work of those who have gone before, with attribution.

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

Yes.

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?

The council needs statutory backing.

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

As broad as possible.

What should the composition of its Board be?

An academic, creative or entrepreneur who licenses his or her work via Creative Commons should be on the board.

What should its principal objects and its primary functions be?

To articulate the many purposes of copyright for rights holders, consumers and the public.

How should it be funded?

As a line item from the public purse.

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

Yes.

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

Licensing should consider pipelines of data coming through Application Programming Interfaces (APIs).

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

Yes.

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

As much as possible, to give it standing in the eyes of the international community and the courts.

Given the wide range of intellectual property functions exercised by the Controller, should that office be renamed, and what should the powers of that office be?

I defer this to those familiar with the issue.

Should the statutory licence in section 38 CRRA be amended to cover categories of work other than “sound recordings”?

Yes.

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

I defer this to those familiar with the issue.

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?

I defer this to those familiar with the issue.

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?

I defer this to those familiar with the issue.

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?

I defer this to those familiar with the issue. I am not a legal specialist.

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. The James Joyce Foundation trod on the sensitivities of culture while extending the rights of the author.

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. If you cannot access and repurpose a font to create a new interface, you cannot compete in many new media spaces.

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?

No. Billables are easy to articulate when invoicing users for payment.

From the perspective of innovation, should the definition of “originality” be amended to protect only works which are the author’s own intellectual creation?

Yes.

Should the sound track accompanying a film be treated as part of that film?

Yes.

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

Yes.

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?

Yes.

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

CRRA should address streaming, caching and physical playback.

Should sections 103 and 251 CRRA be retained in their current form, confined only to cable operators in the strict sense, extended to web-based streaming services, or amended in some other way?

Extend to streaming services.

Is there any evidence that it is necessary to modify remedies (such as by extending criminal sanctions or graduating civil sanctions) to support innovation?

Graduated civil sanctions.

Is there any evidence that strengthening the provisions relating to technological protection measures and rights management information would have a net beneficial effect on innovation?

Perhaps, but flexibility concerning use has a more direct relationship to the fostering of innovation.

How can infringements of copyright in photographs be prevented in the first place and properly remedied if they occur?

Using services such as Tineye or Digimarc can detect infringements of copyright concerning photographs.

Should the special position for photographs in section 51(2) CRRA be retained?

I defer this to those familiar with the issue.

If so, should a similar exemption for photographs be provided for in any new copyright exceptions which might be introduced into Irish law on foot of the present Review?

I defer this to those familiar with the issue.

Is it to Ireland's economic advantage that it does not have a system of private copying levies; and, if not, should such a system be introduced?

I defer this to those familiar with the issue.

If the copyright community does not establish a Council, or if it is not to be in a position to resolve issues relating to copyright licensing and collecting societies, what other practical mechanisms might resolve those issues?

The Council is paramount.

Are there any issues relating to copyright licensing and collecting societies which were not addressed in chapter 2 but which can be resolved by amendments to CRRA?

I defer this to those familiar with the issue.

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 is difficult to impose a tracking mechanism that ensures ease of use with the mobile internet.

If there is a case for such immunities, has technology developed to such an extent that other technological processes should qualify for similar immunities?

Caching, hosting and conduit immunities should be granted to ISPs.

If there is a case for such immunities, to which remedies should the immunities provide defences?

An ISP should not be held responsible for the downloading and service connectivity of its clients.

Does the definition of intermediary (a provider of a "relevant service", as defined in section 2 of the E-Commerce Regulations, and referring to a definition in an earlier - 1998 - Directive) capture the full range of modern intermediaries, and is it sufficiently technology-neutral to be reasonably future-proof?

Intermediaries should not be content police.

If the answers to these questions should lead to possible amendments to the CRRA, are they required or precluded by the E- Commerce Directive, EUCD, or some other applicable principle of EU law?

I defer this to those familiar with the issue.

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.

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

Irish law should allow linkages without penalties.

If so, should it be a stand-alone provision, or should it be an immunity alongside the existing conduit, caching and hosting exceptions?

Linkages should stand alone as being immune from copyright infringement allegations.

Does copyright law inhibit the work of innovation intermediaries?

Yes.

Should there be an exception for photographs in any revised and expanded section 51(2) CRRA?

Yes, photographs should be permitted reuse or modification by Creative Commons license.

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.

If so, what is the best blend of responses to the questions raised about the compatibility of marshalling of content with copyright law?

If one can read the news that is researched and published by a journo, that news gets a bigger reach with greater amplification.

In particular, should Irish law provide for a specific marshalling immunity alongside the existing conduit, caching and hosting exceptions?

Yes.

If so, what exactly should it provide?

Aggregated news should be exempt from prosecution under copyright law.

Does copyright law pose other problems for intermediaries' emerging business models?

Those involved in producing e-publications sourced from newsfeeds would not be able to grow their business models if straitjacket copyright rules become the status quo.

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

Yes

Should all of the exceptions permitted by EUCD be incorporated into Irish law, including:

- (a) reproduction on paper for private use? - yes
- (b) reproduction for format-shifting or backing-up for private use? - yes
- (c) reproduction or communication for the sole purpose of illustration for education, teaching or scientific research? - yes
- (d) reproduction for persons with disabilities? - yes
- (e) reporting administrative, parliamentary or judicial proceedings? - yes
- (f) religious or official celebrations? - yes
- (g) advertising the exhibition or sale of artistic works? - yes
- (h) demonstration or repair of equipment? - yes
- (i) fair dealing for the purposes of caricature, parody, pastiche, or satire, or for similar purposes? - yes

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 broadcasters be able to permit archival recordings to be done by other persons acting on the broadcasters’ behalf?

Yes

Should the exceptions for social institutions be repealed, retained or extended?

Yes

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

Yes

Should section 2(10) be strengthened by rendering void any term or condition in an agreement which purports to prohibit or restrict than an act permitted by CRRA?

I defer this to those familiar with the issue.

When, if ever, is innovation a sufficient public policy to require that works that might otherwise be protected by copyright nevertheless not achieve copyright protection at all so as to be readily available to the public?

Innovation happens now because of the wide-reaching access to resources on the internet. Those resources would not be as easily visible without the open architecture of the web. We should maintain and build upon this openness.

When, if ever, is innovation a sufficient public policy to require that there should nevertheless be exceptions for certain uses, even where works are protected by copyright?

Openness is critical in a society that builds upon the creativity of those who have come before.

When, if ever, is innovation a sufficient public policy to require that copyright-protected works should be made available by means of compulsory licences?

For educational use. It would save me endless time and ensure new third level courses could be offered if rights holders were compelled to offer academic licenses.

Should there be a specialist copyright exception for innovation? In particular, are there examples of business models which could take advantage of any such exception?

Yes,

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

Yes.

Should the occasions in section 66(1) CRRA on which a librarian or archivist may make a copy of a work in the permanent collection without infringing any copyright in the work be extended to permit publication of such a copy in a catalogue relating to an exhibition?

Yes.

Should the fair dealing provisions of CRRA be extended to permit the display on dedicated terminals of reproductions of works in the permanent collection of a heritage institution?

Yes.

Should the fair dealing provisions of CRRA be extended to permit the brief and limited display of a reproduction of an artistic work during a public lecture in a heritage institution?

Yes,

How, if at all, should legal deposit obligations extend to digital publications?

I defer this to those familiar with the issue.

Would the good offices of a Copyright Council be sufficient to move towards a resolution of the difficult orphan works issue, or is there something more that can and should be done from a legislative perspective?

Yes.

Should there be a presumption that where a physical work is donated or bequeathed, the copyright in that work passes with the physical work itself, unless the contrary is expressly stated?

Yes.

Should there be exceptions to enable scientific and other researchers to use modern text and data mining techniques?

Yes.

Should there be related exceptions to permit computer security assessments?

Yes.

What is the experience of other countries in relation to the fair use doctrine and how is it relevant to Ireland?

The United States articulated copyright provisions under the Creative Commons, opening avenues for fair use that are defensible under law.

(a) What EU law considerations apply? (b) In particular, should the Irish government join with either the UK government or the Dutch government in lobbying at EU level, either for a new EUCD exception for non-consumptive uses or more broadly for a fair use doctrine?

Yes.

How, if at all, can fair use, either in the abstract or in the draft section 48A CRRA [in the Paper], encourage innovation?

Nearly every hour of the 15 hours of lecture materials I deliver at the Limerick Institute of Technology depends upon the gracious consideration of fair use.

How, in fact, does fair use, either in the abstract or in the draft section 48A CRRA [in the Paper], either subvert the interests of rights holders or accommodate the interests of other parties?

Fair use does not subvert.

How, in fact, does fair use, either in the abstract or in the draft section 48A CRRA [in the Paper], amount either to an unclear (and thus unwelcome) doctrine or to a flexible (and thus welcome) one?

Fair use is a welcome concept.

Is the ground covered by the fair use doctrine, either in the abstract or in the draft section 48A CRRA [in the Paper], sufficiently covered by the CRRA and EUCD exceptions?

I defer this to those familiar with the issue.

What empirical evidence and general policy considerations are there in favour of or against the introduction of a fair use doctrine?

You cannot innovate without ample fair use of past products, services and information.

(a) If a fair use doctrine is to be introduced into Irish law, what drafting considerations should underpin it? (b) In particular, how appropriate is the draft section 48A tentatively outlined [in the Paper]?

Identify alternative licensing schema such as CC.

Should the post-2000 amendments to CRRA which are still in force be consolidated into our proposed Bill?

I defer this to those familiar with the issue.

Should sections 15 to 18 of the European Communities (Directive 2000/31/EC) Regulations, 2003 be consolidated into our proposed Bill (at least insofar as they cover copyright matters)?

I defer this to those familiar with the issue.

What have we missed?

I defer this to those familiar with the issue.

Do you have any further comments on the Consultation Paper?

Please ensure I am able to share and share alike through the changes made in Irish copyright law.

Do you have any comments on the work of the Copyright Review Committee or on the consultation process generally?

No.