

SOCIETY OF FILM EXHIBITORS

The Academy, 42 Pearse St., Dublin 2

Music Users Council Member

Ph 01 671 8273

Mob. 086 026 5550

Dr Owen O'Dell Chairman
Copyright Review
Room 517
Department of Jobs,
Enterprise and Innovation
Kildare Street
Dublin 2
31st May 2012

Submission to the Copyright Review Committee

We refer to our previous submission of the 14th July. Regarding question (27) of Appendix 3 of the Consultation Paper we would like to make a further submission in relation to the copyright of a sound track of a film.

Copyright of a sound track of a film

Section 2 of the Copyright and Related Rights Act 2000 defines a sound recording as “a fixation of sounds, or of the representations thereof, from which the sounds are capable of being reproduced, regardless of the medium on which the recording is made, or the method by which the sounds are reproduced”. A film is defined under section 2 as “a fixation on any medium from which a moving image may, by any means, be produced, perceived or communicated through a device”. Thus, in the case of a sound film it is necessary to consider two separate copyrights under the present Act; the “film” copyright in the visual recording (the film strip less the sound track), and the sound recording copyright in the sound track.

The duration of copyright as provided under the Act is one aspect of the present legislation in which films and sound recordings are treated differently. Section 25 provides that the copyright in a film shall expire 70 years after the death of the last of the persons specified in subsection (1). Section 26 provides that the copyright in a sound recording shall expire 50 years after the sound recording is made or, where it is first lawfully made available to the public during such period, 50 years after the date of such making available. Therefore a sound track of a film may be out of copyright while the film is still in copyright.

We contend that a film sound track should not be treated separately from the visual part of a film as the ordinary meaning of what constitutes a film incorporates both the visual and audio experiences taken as a whole. We refer to a similar development in the UK and the Duration of Copyright and Rights in Performances Regulations 1995 which provided that the sound track accompanying a film shall be treated as part of the film. We submit that the copyright in the visual and sound components of a film should be united in the manner proposed in order to harmonise the relationship between the sound track of a film and the visual part of a film. Such an amendment to the legislation would provide clarity to the protection of intellectual property in this industry, thereby removing a barrier to innovation without denying protection to those entitled to same.

Section 151 of the Copyright and Related Rights Act 2000.

The purpose of Section 151 appears to provide licensees with the opportunity of objecting to an alteration of an existing licensing scheme prior to its introduction, and permits the licensee to continue operating the existing licence until such time as the Controller has made adjudication on the referral.

At present the Controller is refusing to accept a referral of a proposed scheme on the basis that a licensee can only oppose an existing scheme and therefore the licensee is denied his right to oppose an alteration to a proposed licensing scheme.

It is suggested that Section 151 should require a licensor to advise its licensees either by publication or letter of a proposed alteration to the licensing scheme, giving the licensee the opportunity to object to the alteration and refer the matter to the Controller under Section 151.

It is suggested that terms and conditions should apply to 151 similar to the Planning and Development act where a member of the public or a representative body can appeal or make comments regarding a proposed development which then can be referred to An Bord Pleanala. It is suggested that such a reference in the case of the Copyright and Related Rights Act 2000 should be to the Controller or the Copyright Council.

Copyright Council

We would also like to make a submission in relation to some of the questions raised in Chapter 3 and the proposed establishment of a Copyright Council of Ireland (Council) by the Irish copyright community. We would welcome the establishment of such a body provided it is truly representative of the entire copyright community, including music users. We fully support the Committee's suggestion that the subscribing membership of the Council should be broadly-based and collaborative such that every interested member of the Irish copyright community could also be subscribing members of the Council. Indeed in the absence of such a wide-subscribing membership we would be concerned that the Council would lack the requisite level of independence potentially resulting in the inadequate recognition and protection of the

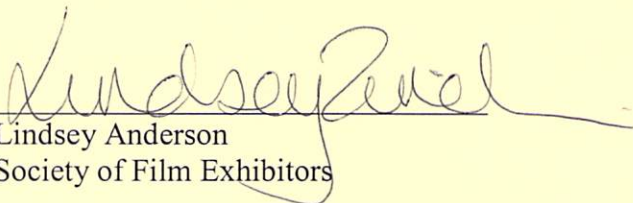
rights of copyright users, particularly in the carrying out of functions such as the negotiation of collective licences.

We agree with the Committee's suggestion that the members of the Board of the Council should be a broad mixture representing the public interest, the industry, and copyright users. We also agree with the proposition of an independent chair.

We are also in support of the establishment of an Irish Digital Copyright Exchange. We agree that, where possible, rights should be able to be licensed together and not separately. The proposed one-stop shop with a central and comprehensive database of licensable rights and a wide-ranging rights-clearance mechanism would provide our members with a straightforward and efficient method of obtaining the rights required to exhibit films.

Our members share the view that there is a pressing need for a quick and cost-effective method for resolving copyright disputes. The Society of Film Exhibitors is currently involved in a lengthy copyright dispute with a collective licensing organisation. We are highly concerned about the costs of this dispute and believe that such costs, in addition to the lengthy nature of the proceedings, are potentially major deterrents to the instigation of proceedings by other groups of copyright holders or users. A reluctance by rights holders and users to enforce their rights in this manner effectively results in a barrier to innovation. The establishment of a Copyright Alternative Dispute Resolution Service (ADR Service) to provide a quick, fair and free method of resolving copyright disputes would allow such parties to adequately protect and enforce their rights.

Kind regards


Lindsey Anderson
Society of Film Exhibitors