

**UPC Submission to the Department of Jobs, Enterprise and Innovation**  
**'Copyright and Innovation' consultation paper**

- 1.1 UPC Communications Ireland Limited ('UPC') welcomes the opportunity to make the following submission in response to the Department of Jobs, Enterprise and Innovation's (DEJI) consultation paper on 'Copyright and Innovation'.
- 1.2 UPC is a long-term strategic investor in the Irish market as well as a significant employer with a workforce of almost 900 and providing further employment to over XX third parties. The company offers a range of innovative TV, broadband and phone services to its residential and business customers. It is therefore relatively unique in the marketplace in that it is one of the few truly converged companies whose services straddle the traditionally separate broadcasting and telecommunications sectors.
- 1.3 It is of note that the origins of the UPC business model are in the delivery of pay TV services and these services continue to be core to the UPC product offering. As DEJI will be aware, the offer and access to such services is dependent upon the remuneration of copyrighted audiovisual content. UPC is therefore both cognisant and supportive of the need to protect copyright and by virtue of existing commercial dealings with rightsholders, ensures they receive appropriate remuneration. Thus while UPC is one of Ireland's most successful fixed line internet service providers, the company's roots are steeped in the protection of intellectual property.
- 1.4 The terms of reference of the consultation paper are primarily to "examine the present national copyright legislation; identify areas that are perceived to create barriers to innovation and identify solutions that might remove these and how these might be implemented through changes to national legislation". The main focus of the paper is therefore how legislative reform might foster greater innovation for various business, user and rightsholder communities. It is of note therefore the emphasis of the paper is limited to considering how best to facilitate the emergence of new online business models in such a way that it would not have a disproportionate impact on existing rightsholders. Much of what is discussed in the consultation paper is therefore of limited and/or no relevance to UPC or its main business activities. For this reason, UPC has limited its commentary to respond to Question 68 which asks "what have we missed?"
- 1.5 The current review, the first since the Copyright Act was introduced in 2000, represents a unique opportunity for Government to evaluate the existing framework and consider what amendments are required to bring it in line with technological innovation that has occurred since enactment. That the DEJI and the Copyright Review Committee has deliberately chosen not to consider that which is currently of most concern to ISPs and rightsholders alike is a grave omission and missed opportunity. The issue of intermediary liability in the context of illegal filesharing has singularly been the most important, and hotly contested legal and public policy aspect of copyright law in the recent past.



- 1.6 By way of justification as to its omission, the consultation paper has indicated this particular issue has been the subject of a separate consultation process on a since-adopted Statutory Instrument (SI). Further to previously submitted submissions by UPC, other ISPs and consumer groups, the DEJI will be already aware, the SI does not provide adequate legal certainty for those concerned.
- 1.7 UPC has repeatedly advocated for a holistic approach to copyright reform. It has also called on the legislature to take the lead in developing a legal framework which determines where the balance of rights, with particular regard to online infringement, should lie. As it stands, the current framework is frustrating for both rightsholders and ISPs and has only resulted in increasing uncertainty, and repeated and costly litigation. While UPC accepts the issue of illegal filesharing is complex and not easily resolved, it is the company's firm view that primary legislation is the most appropriate means by which clear guidance can be given to all on their legal rights and obligations. It is for this reason UPC believes the current review represents the ideal opportunity for Government to consider this important matter. In this regard, UPC has pointed to a number of EU jurisdictions (France, UK) where respective Governments have already adopted legislative frameworks and which could provide a useful starting point for the DEJI.
- 1.8 In conclusion, UPC would call on the both the DEJI and Copyright Review Committee to re-consider the decision to exclude the issue of intermediary liability in the context of online infringement and to bring the matter back in scope in this consultation.

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