



**An Bille um Chóipcheart agus Forálacha Eile maidir le
Maoin Intleachtúil, 2018
Copyright and Other Intellectual Property Law
Provisions Bill 2018**

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Explanatory Memorandum*



**AN BILLE UM CHÓIPCHEART AGUS FORÁLACHA EILE
MAIDIR LE MAOIN INTLEACHTÚIL, 2018
COPYRIGHT AND OTHER INTELLECTUAL PROPERTY LAW
PROVISIONS BILL 2018**

EXPLANATORY MEMORANDUM

Introduction

The purpose of this Bill is to implement certain recommendations of the ‘Modernising Copyright’ report published in 2013 by the Copyright Review Committee; make other amendments to modernise the copyright regime in Ireland and in addition to make amendments to the Patents Act 1992 to take account of two technical issues. The Bill also contains some amendments necessary for the transposition of the EU Directive (2017/1564) allowing the EU to ratify the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.

Provisions of the Bill

Part 1

Preliminary and general

Section 1 contains the short title, collective citations and commencement arrangements.

Section 2 repeals sections 31A and 78B of the Copyright and Related Rights Act 2000 (CRRA). *Sections 8 and 20* of the Bill provide new inclusions to the CRRA which relate to these repeals.

This section also provides for the repeal of section 96 of the Trade Marks Act 1996 to extend jurisdiction to Circuit Court and District Court to hear intellectual property (IP) infringement claims.

Part 2

Amendment of Copyright and Related Rights Act 2000

Chapter 1 – Definition

Section 3 provides that references to “Principal Act” means the Copyright and Related Rights Act 2000.

Chapter 2 – Court access for intellectual property claims, copyright exceptions and digital deposit of copyright works, etc.

Section 4, which amends Section 2(1) of the CRRA, provides for the amendment of certain existing definitions and the inclusion of new definitions in the CRRA that are needed for other changes made elsewhere in this Bill. It also allows for the necessary related amendments to existing definitions required in other relevant Acts.

Section 5 provides for the inclusion of two new subsections under section 16 of the CRRA which will allow for the extension of the jurisdiction of the Circuit Court and the District Court facilitating rightholders in bringing lower value IP infringement claims for relief in civil proceedings within the monetary jurisdiction of those Courts.

Section 6 provides for an amendment to Section 21(b) of the CRRA to clarify that the authorship of a sound track accompanying a film shall be treated as part of the film.

Section 7 provides for the amendment of Section 24(1) of the CRRA, clarifying that perpetual copyright does not exist in certain unpublished works by the substitution of wording to that section.

Section 8 relates to the repeal of the term of protection for copyright in designs, as provided for in *Section 2*, and thus the copyright standard term of protection now applies (life of the creator plus 70 years). This section outlines the transitional provisions put in place to allow for compliance with this amendment.

Section 9 provides clarification of the term of protection, subject to certain conditions, that applies to a work that was not previously made available.

Section 10 amends the CRRA to provide that rights identifying information is also protected by copyright and thus any act undertaken to copy, make available to the public or amend this information also constitutes an infringement of copyright.

Section 11 amends the CRRA to provide an exemption from copyright infringement for criticism or review of a work, provided that such use is not expressly reserved and that the copy and communication are accompanied by a sufficient acknowledgement, as allowed by the EU Information Society Directive.

Section 12 provides a new exception for use of copyright works to allow for caricature, satire and parody, as allowed by the EU Information Society Directive.

Section 13 provides for the insertion of a section to allow a copyright exception for Text and Data Mining (TDM) for non-commercial research and outlines the circumstances under which the exception applies.

Section 14 contains several provisions which introduces a range of new exceptions to copyright and related rights for education, teaching or scientific research. The section further explains that such exceptions will not apply in instances where licensing schemes for education establishments exist.

Sections 15 and 16 amend the existing provisions relating to copying by libraries and archives. The amendments expand existing provisions as allowed by the EU Information Society Directive and provide clarity to such bodies regarding the use of images for the purposes of publicising exhibitions etc.

Section 17 provides for the insertion of a new section into the CRRA permitting librarians or archivists to make a copy of a work in its permanent collection or archive in a different format for the purpose of preservation, where it is for non-commercial purposes subject to certain conditions.

Section 18 provides for libraries and archives to display works in their permanent collections, or dedicated terminals on the premises of the library or archive, for the sole purpose of education, teaching, research or private study once accompanied by a sufficient acknowledgement. This provision also extends to works displayed during public lectures.

Section 19 amends Section 70 of the CRRA and provides for technical amendments to reflect numerical listings arising as a result of the insertion of new sections as provided for in this Bill (*sections 17 & 18* refer).

Section 20 relates to the repeal of the existing term of protection for copyright in designs, provided for in *Section 2*, of this Bill which means that the copyright standard term of protection now applies (life of the creator plus 70 years). This section outlines the transitional provisions put in place to allow for compliance with this amendment.

Section 21 relates to the use of notes or recordings of spoken words in certain cases. This amendment will align Ireland more closely with the scope of exceptions allowable under Article 5(3)(f) of the EU Information Society Directive, resulting in newspapers and broadcasters receiving greater protection with regards to reporting on current events.

Section 22 expands the existing exception in the CRRA to allow for the copying of a work for the advertisement of a public exhibition, as well as for the sale of a work, but only to the extent necessary to promote the event and excludes any other commercial use.

Section 23 clarifies the position and rights of a person acting on behalf of a broadcaster with regards to the copying of a work. By the insertion of this section the Bill allows copying for the purpose of broadcast or cable programme to be extended to a person acting on behalf of and under the responsibility of the broadcaster.

Sections 24, 25 and 26 jointly expand the existing exception to copyright for persons with a disability as allowed by the EU Information Society Directive. Together, they provide that persons with a disability can gain access to a wider range of copyright material in accessible formats. Several technical amendments are contained within these sections, such as, the expansion of the definition of disability; creation of a definition of 'relevant work', and identifying the acts permitted by a designated body. These sections also make some of the necessary legislative amendments to allow Ireland to transpose the Directive allowing the EU to ratify the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.

Section 27 widens the provisions for the existing legal deposit system to facilitate the development of our national printed archive. This section allows copyright deposit institutions the ability to collect non-print work systematically to produce a shared archive of digital works as well as creating an obligation on publishers to provide an electronic copy of a publication if requested by a deposit institution.

Section 28 amendments will expand provisions in the CRRA on fair dealing in performances to the full extent of the exceptions allowed by the EU Information Society Directive. Expanding the exception will ensure the fair dealing rights of those who utilise copyrighted works for education, research or private study and in the creation of caricatures, parody or pastiche and specifies that the rightsowner is appropriately credited for

the use of their works. This is a provision for performance right mirroring those in earlier sections relating to copyright in a work, due to the way the CRRA is structured.

Section 29 provides for the insertion of sections 225A to 225D into the CRRA. The pertinent section of the CRRA relates to the recording of broadcasts by an educational establishment. These sections outline the conditions under which an education establishment may carry out such actions. *i.e.* to carry out a computational analysis of anything in the work for the sole purpose of research for a non-commercial purpose (TDM); sole purpose of illustration or preparation for education, teaching or scientific research etc. Similar to *section 28*, this is a mirroring provision for performance rights.

Section 30 is another mirroring provision regarding performance rights which contains provisions clarifying and expanding the criteria under which librarians and archivists may make copies of recordings of performances for certain purposes, as specified in the CRRA and this Bill.

Section 31 is a mirroring provision regarding performance rights which outlines a number of exceptions permitting libraries or archives to make a copy of a recording or performance, where prescribed conditions are complied with.

Section 32 amends Section 370 of the CRRA by extending the same rights and remedies, available to a rightsowner, to a person who lawfully has the right (*i.e.* a licensee) to make available copies of copyright works to the public. This ensures that both a rightsowner and any licensee may pursue infringement proceedings against a person that contravenes these rights.

Section 33 relates to rights protection measures and permitted acts. This section seeks to clarify the position of a beneficiary that wishes to avail of an exception to access a work and that rightsowners should not prevent or unreasonably restrict the beneficiary from undertaking this permitted act. The section also outlines the complaint procedure which is applicable.

Sections 34, 35 and 36 relate to the rights and remedies applicable in respect of unlawful acts which interfere with rights management information and outlines the consequences should such acts take place. The amendments are to provide clarification to these sections allowing rightholders to be able to enforce their IP rights in relation to the removal of rights identifying/management information for the purpose of infringing the IP, but not where that removal is a normal part of business practise and where the rights of that rightholder are protected through other mechanisms in the business model and operations.

Section 37 amends the First Schedule of the CRRA by the inclusion of text for the purpose of providing clarification.

Chapter 3 – Consequential amendments

Sections 38 and 39 are consequential amendments to the Acts governing the Circuit Court and District Court to facilitate improving access to the courts system for IP infringement claims by permitting the admission of IP disputes to the Circuit Court and District Court for the amounts up to the monetary jurisdictions of those courts.

Section 40, 41 and 42 outline a number consequential amendments to the Patents Act 1992, Trade Marks Act 1996 and the Industrial Designs Act 2001 primarily related to the amendment of the definitions for “the Controller” and “the Office” across all intellectual property legislation.

Section 40 also makes provision for certain technical amendments to the Patents Act 1992.

Chapter 4 – Miscellaneous amendments of Principal Act in relation to education

Section 43 provides for the substitution of certain words as specified in the table contained in *Schedule 1* of this Bill, in relation to education and research provisions.

Section 44 provides for miscellaneous amendments to the CRRA in relation to fines as specified in the table contained in *Schedule 2* of this Bill.

Part 3

Amendment of the Patents Act 1992 in relation to Courts and Fines

Sections 45 to 80 outline a series of amendments to the Patents Act 1992.

Section 46 provides for miscellaneous amendments to, and inclusion of, certain definitions relevant to this part of the Bill.

Sections 47 to 79 provide for the amendments to specific references to the courts which is in order to allow the admission of IP disputes to the Circuit Court and District Court for the amounts up to the monetary jurisdictions of those courts. A number of specific claims must remain at the higher courts, these are specified under the exempted sections listed under *Section 4(e)*, ‘*intellectual property claim*’ means – *subsection (a)*, of this Bill.

Section 80 provides for miscellaneous amendments to the Patents Act 1992 in relation to fines as specified in the table contained in *Schedule 3* of this Bill.

Part 4

Amendment of the Trade Marks Act 1996 in relation to Courts and Fines

Sections 81 to 105 outline a series of amendments to the Trade Marks Act 1996.

Section 82 provides for miscellaneous amendments to, and inclusion of, certain definitions relevant to this part of the Bill.

Sections 83 to 104 provide for the amendments to specific references to the courts which is in order to allow the admission of IP disputes to the Circuit Court and District Court for the amounts up to the monetary jurisdictions of those courts. A number of specific claims must remain at the higher courts, these are specified under the exempted sections listed under *Section 4(e)*, ‘*intellectual property claim*’ means – *subsection (b)*, of this Bill.

Section 105 provides for miscellaneous amendments to the Trade Marks Act 1996 in relation to fines as contained in *Schedule 4* of this Bill.

An Roinn Gnó, Fiontar agus Nuálaíochta,
Márta, 2018.