

Consultation on the Review of the  
Copyright and Related Rights Act 2000:  
Barriers to innovation and the development of new business models

**Submission**  
by an  
**Ad Hoc Group of Concerned Librarians on  
Copyright Related Issues**

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The Ad Hoc Group comprises a group of librarians who have for many years taken an interest in aspects of copyright legislation, and is drawn from libraries representing various academic and special libraries supporting research activities. We sent previous submissions when the Copyright Bill was going through the Oireachtas, and most of our proposals were incorporated in the final Act. We welcome the invitation to offer our suggestions during the current review. While we support fair compensation for creators or copyright owners we are also concerned from a professional point of view that reasonable access to information, on which all research and development is based, is not impeded unnecessarily by over-restrictive practices, particularly in a situation where one side has a monopoly.

Since the focus of this review is on innovation, business and the economy we are concerned that current EU legislation uses the term “direct or indirect economic advantage” rather than “commercial advantage” in relation to limiting exemptions. Effectively this wording could eliminate all exemptions in copyright legislation, as all research or study is potentially of indirect economic advantage. While re-use for profit should be subject to fair remuneration there should, in our opinion, be a clear distinction between re-use for profit and more vague economic advantage.

There are a number of areas where we have concerns:

- Retain current library exemptions
- Obligation to charge for library copies
- Format shifting
- Contract and / or Terms and Conditions
- Issue of titles, contents pages, short snippets etc not being exempted
- Adaptation for the disabled
- Technological protection measures
- Regulation of copyright licensing agencies

### **Retain current library exemptions**

The current library exemptions were reached after a great deal of deliberation and consultations with librarians who are familiar with the practical implications of legislation on research activities. In reviewing the legislation we would suggest that care be taken not to remove or limit these exemptions, inadvertently or otherwise.

We would also ask you to consider looking at Section 50(3)(a), (Fair Dealing Section)

“(a) in the case of a librarian or archivist, he or she does anything which is not permitted under section 63”

which has caused great confusion, even among legal experts, as to its interpretation. On the face of it, it appears only to refer to quantitative limits in Section 63. However it has also been argued back and forth whether Section 63 can be read in isolation from the other Library conditions. We would ask that this be more clearly worded.

### **Obligation to charge for library copies**

SI 427 of 2007 introduced a requirement on libraries to charge for every copy made under the Library exemptions. This is extremely impractical for many libraries and introduces unnecessary bureaucracy which can hamper prompt provision of information. The then Minister, Mr. Tom Kitt, accepted this argument and undertook to remove the obligation to charge, by letter of 28<sup>th</sup> September 2001 to Jennefer Aston. We do appreciate that this charge was included in the SI (though not referred to in the Act) for the benefit of Libraries and for that reason would suggest that it should be amended simply by saying that Libraries *may* charge rather than *must* charge.

### **Format shifting**

We would like to see format shifting formally included in the legislation. In an era of rapidly changing technology, equipment to read legally acquired material can quickly become obsolescent. It should not, in our view, be necessary for either private persons or organizations to re-purchase legally acquired copyright content because the equipment to access it is out of date. The content that is protected by copyright has already been purchased.

### **Contract and / or Terms and Conditions**

We are very concerned that contracts and / or terms and conditions can be used to override copyright exemptions. Irish legislation includes the very useful Section 2(10) which provides that a contract cannot override an exemption in the legislation. There is a similar provision in the Database Directive. However, many contracts are subject to the law of a jurisdiction outside of Ireland. We would like a similar provision included in EU copyright legislation. Furthermore we would like a provision in EU law and that of EU member states to the effect that no contract relating to copyright works made available in EU member states can limit any exemptions available in EU law or that of EU member states, and that any such a clause would be null and void.

### **Issue of titles, contents pages, short snippets etc not being exempted**

We are very concerned at the implications of recent court judgments, i.e. *Newspaper Licensing Agency v Meltwater Holding B.V.* [2010] EWHC 3099 (Ch) and the European Court of Justice case *Case C-5/08 Infopaq International v. Danske Dagblades Forening* [2010] FSR 495. Access to information for research and other purposes is dependent on being able to identify existing information. If librarians and other information providers cannot index and catalogue existing information resources because titles, contents pages, and short extracts are not exempted from copyright protection, all research will be grind to a halt.

### **Adaptation for the disabled**

Currently copyright content can be adapted for the disabled by prescribed organizations. This is, in our opinion, unnecessarily burdensome, as there would seem to be no good reason why the disabled person could not carry out the adaptation if he or she had the means. In our view the exemption should apply to the disabled person (as well as to prescribed organizations).

### **Technological Prevention Measures (TPMs)**

Similarly we would like to see provisions that would force suppliers to make available the *means* of circumventing TPMs that limit a consumer's right to avail of the lawful exemptions in the legislation; without the *means*, a legal *right* to circumvent TPMs is of little use. Some form of resolution of disputes other than the inhibiting expense of recourse to the High Court should be provided for.

### **Regulation of copyright licensing agencies**

On a general note we are very concerned with the lack of regulation of licensing agencies. Most businesses and individuals are not sufficiently familiar with copyright law to query their dubious representations of the current law. Furthermore the current system of registering an inflexible "scheme" with the Controller is no longer appropriate to current information use in the digital age. There are several other issues relevant to business and research that we would like to expand on at a later date.

If you have any queries on the above we will be available to discuss them with you.