

The Association of Independent Radio Producers of Ireland (AIRPI)

The Association of Independent Radio Producers of Ireland (AIRPI) welcomes this opportunity to have an input into the future of copyright in Ireland. The Department has posed the question about national copyright legislation not catering well for the digital environment and actually creating barriers to innovation and the development of new business models.

The biggest problem for AIRPI members is that the replaying of their material in the digital environment may need an *ad hoc* re-editing of all copyright material that is not their own to ensure compliance with existing copyright law. A radio producer would much rather present that material in its finished definitive form and not have to spend extra time having to recraft the piece to ensure that it is cleared for copyright in an environment that, more often than not, won't actually bring further remuneration to the producer.

A blanket licence agreement with any concerned collection agency along the lines of the existing independent TV producers agreement with the MCPS or indeed like the blanket licence agreement that community radio stations have in place would allow AIRPI members to focus more on the creative element than on the logistics. Not only should there be greater ease with the clearance of copyright of material in pre-production, but also for post-production - repeat plays of that material online or elsewhere.

The most prominent area of the digital environment, namely social media, allows memes that all have copyrighted material to be viewed and enjoyed by all. This is to be encouraged and the idea of somehow 'policing' it would be akin to trying to count the grains of sand on Dollymount strand. It seems ironic that non professionals can do anything they want with copyrighted material, yet the professionals such as the AIRPI members need to dot their 'i's and cross their 't's with great diligence on all copyrighted material, especially their own.

AIRPI is responding to the needs of social media with the recent setting up of an online 'one stop shop' environment, namely the AIRPI Sound Garden in Audioboo.fm & AIRPI.ie which serves as an audio compendium of the best material members have produced as well as allowing members to catch up on training sessions they may have missed – an AIRPI version of iPlayer as it were.

Memes displaying content of AIRPI members material is an important marketing tool and should be encouraged in terms of spreading the word of what is regarded as some of the best radio material in the world. It would be helpful if an assurance/indemnity could be in place to ensure that such ongoing activity would never penalise an AIRPI member by making them party to any copyright infringement proceedings where no active direct infringement was being made by an AIRPI member.

The U.S. fair use policy as espoused by the Copyright Act of 1976 considers four factors in determining whether the use made of a work in any particular case is a fair use:

1. *the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;*
2. *the nature of the copyrighted work;*
3. *the amount and substantiality of the portion used in relation to the*

copyrighted work as a whole; and

4. *the effect of the use upon the potential market for or value of the copyrighted work.*

Fair use policy already exists to some degree with the existing Copyright and Related Rights Act 2000: -

Section 51 'Fair dealing with a work for the purposes of criticism or review of that or another work or of a performance of a work shall not infringe any copyright in the work where the criticism or review is accompanied by a sufficient acknowledgement.

(2) Fair dealing with a work (other than a photograph) for the purpose of reporting current events shall not infringe copyright in that work, where the report is accompanied by a sufficient acknowledgement.

(3) In this Part, "sufficient acknowledgement" means an acknowledgement identifying the work concerned by its title or other description and identifying the author unless—

(a) in the case of a work which has been lawfully made available to the public, it was so made available anonymously, or

(b) in the case of a work which has not been made available to the public, it is not possible for a person without previous knowledge of the facts to ascertain the identity of the author of the work by reasonable enquiry.

52.—(1) The copyright in a work is not infringed by its inclusion in an incidental manner in another work.

(2) The copyright in a work is not infringed by the making available to the public of copies of anything the making of which was not, by virtue of subsection (1), an infringement of the copyright.

(3) A work shall not be regarded as included in an incidental manner in another work where it is included in a manner where the interests of the owner of the copyright are unreasonably prejudiced.

(4) The copyright in a work which has been lawfully made available to the public is not infringed by the use of quotations or extracts from the work, where such use does not prejudice the interests of the owner of the copyright in that work and such use is accompanied by a sufficient acknowledgement.'

AIRPI is of the belief that fair dealing should continue to be the way for material to be enjoyed, as long as unauthorized commercial exploitation of that material was not occurring and sufficient acknowledgement was in place (with preferably some sort of web link to the producer's website etc).

In addition, we'd like to see the RTE archive become a national library for all to use, a national sound archive, a bit like the National Library, whose remit it would be to archive sound. There is such a project in the UK under the British Museum, we believe. If something like that existed, then the sounds would be nationally owned.

We have no objection to paying a reasonable fee for a sound archive our members need, but the existing process should be streamlined, and made easier. One member paid €200 for the right to use some RTE material in a single programme - the use was really restricted to that particular broadcaster - she couldn't have re-broadcast it, given it to a community station, or podcasted it. Another paid RTE €950 for material that would be used in the broadcast – on RTE itself!

The material in the RTE archive is ultimately owned by the taxpayer and should have greater transparency for future use. If our members wish to use some material that is easily found (e.g. recent visit of Obama/Queen), there should be a lower price or it is simply regarded as public domain. If a piece is hard to find, then of course our

members would pay more for the time and effort to locate it. The price should come down substantially thereafter as the 'hard work' has been done.

AIRPI welcomes this work of the Copyright Review Committee and would be happy to discuss any points raised above if needs be.