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In submitting this short statement of my concerns about current copyright law I would like to state firstly that I have had the opportunity to read the detailed and impressive submission sent by Ms Helen Sheehy from Sheehy Donnelly Solicitors, and endorse its contents absolutely. There is no need for me to rehearse my similar views here and so I add a more personal statement of my concerns for your consideration.

My name is Gavin Bonnar. I am a barrister in private practice in the North and in the South. I am also the author of a document called The Artists' Charter (www.theartistscharter.org) which aims to refocus the debate around copyright back to first principles that should not have been derogated from both globally and in Ireland. It is clear to me that when the US introduced the so-called safe harbour provisions in the late nineties under the Clinton administration, which then set the template for Europe and the world - the Internet was a very different place for business than it is today. The administration perhaps rightly felt it was important back then to create an 'absent' regulatory environment around, inter alia, the proper and effective enforcement of rights holders legitimate and genuine concerns, which lead to claims for mass infringement of their works but this was acceptable in the name of the greater good by allowing the Internet to flourish - they said - for the overall good of mankind, rather than the narrow global commercial interests of a number of disparate groupings. Little did we know the devastation that would be wrought on the creative industries worldwide and the current loss of revenues would leave these industries on the brink of collapse and so risk adverse that we have already lost an unquantifiable amount of artistic works that simply were not made, but would have been made had the theft of intellectual property not been allowed to proceed at such a pace.

As to why the US administration made that decision, I can say, I get it. It made sense - *at the time*.

However, one only has to look at the quite bewildering financial power of Google and Facebook, entities that did not exist when these provisions were first brought in, to understand just how the landscape has changed so remarkably and so, the single purpose of my submission here, is to remind the Minister and the Review Committee that those who now need similar protection to survive - never mind thrive or flourish - are the creative industries writ large.

It is beyond time for a readjustment back in favour of rights holders.

The words of Facebook's Mr Zuckerberg at Deauville should be ringing in the ears of every right thinking person when he said, by way of a blatant warning to the heads of various governments, that the web should remain *unregulated*. This is a good example of what is bred by way of totally distorted thinking when the regulatory frameworks, to which we all submit ourselves, are tampered with, or diminished, or ignored, no matter how good the intentions might have been at the time. With the recent banking debacle in Ireland, we more than most should understand that light or absent regulation is no regulation at all and no regulation over the enforcement of people's rights leads to questionable corporate behaviour and causes massive damage to us all.

Let us also not forget that the current 'Wild West' attitude to copyright infringement, and by which I mean the Irish government's shameful laxity regarding enforcement issues, tends to lead to arbitrary and capricious lawmaking around a 'second class law' like copyright and this is no way for a government to behave. It is important we cease treating the intellectual property rights of others as some kind of growth inhibitor to a small group of billionaire companies and their hoodie wearing, private jet flying executives. Governments, including this one, have facilitated mass industrial-scale theft of the artistic works of others and that culture must stop.

Paue a moment and think how boring YouTube would have been if it relied solely upon user generated content. Licensing is often the only option for rights holders to make some money from their work, but at rates that highlight the inequality of bargaining powers of the respective parties - again, a situation which should not have been allowed to arise.

There are only so many videos of cats falling off kitchen tables that one can watch before boredom sets in. However- if the content is the latest Jennifer Aniston movie or the latest Coldplay video these 'cool' online platforms, where 'sharing' is encouraged and facilitated as the new and only way forward in the digital arena, a new and distorted normalcy quickly takes root and we instantly create a worrying precedent from which we may struggle to enforce a host of other once solid laws. I say we behave this way at our peril. We have been lax and it is time to recognise that fact.

And I wonder what do you mean by growth inhibitor? Ireland has been shamed around the world by recent events but no one has ever had cause, ever, and over many many years to be other than extremely proud of the achievements of Ireland's artistic community; and so, it is all the more ironic that as the creative industries are applauded at Farmleigh as the pride of our nation while we are systemically allowing rampant abuse of those self-same rights holders and of those self-same artistic works simply because the government in 2000 could not enforce one EU directive properly and; when the record companies finally challenged the activities of the ISP's (and more on that later) in the courts, having exhausted a number of less public remedies, it was evident that the government were unable even to marry the domestic legislation with the demands of the Directive - a truly shameful episode which I note is yet to be remedied.

I understand a new statutory instrument remains in draft form, many months after the court decision in EMI V UPC was handed down - so much for standing up for the rights of our artistic communities. No wonder our politicians are derided by voters as wafflers and knuckle-draggers.

Even the terms of reference for this submission shock me.

It seems tolerably clear that this government is in thrall to the digital heavyweights, and, maybe because Google are the only company out there that can afford to spend €90million on a new building these days, their word carries great weight, too much weight in my opinion. I strongly urge the government to take a deep breath and look at the actions of such companies over the last decade. They have shown a massive disregard for the legitimate rights of others. They have profited hugely from the provision of a platform for illegal file sharing to the extent that we now have a whole generation of young consumers who think 'free' is what music, movies, games, books are, or if not, should be, simply because they wish to consume more and more of them and have convinced each other that if enough people are doing it, it is not theft. Well, it is theft. And it ill behoves a government to play such games. Simply put, the creative industries are dying on their feet. The music business, the sector I know best, has lost around \$6billion in gross revenues since the inception of You Tube in 2005. Meanwhile, the telecommunication sector has more than doubled in revenues to \$250billion worldwide. Much of that explosion in demand has come from ISP's who facilitate file sharing yet hide behind 'mere conduit' defences which do not match their ability to track their own customers who overuse broadband width - as pointed out so brilliantly by Mr Justice Charleton in the EMI V UPC decision.

Let us be clear here, 'fair use' provisions should not apply in Ireland, even if these were permissible under the EU Directives. And I believe they are not permissible, nor should we want them to be. This debate should not be about *lessening* the rights of copyright holders to legitimate protection; it should be about doing something substantive to *begin* protecting them. The problem is that ISP's introduce this bogus inhibitor argument to business as a smokescreen and spend many millions of their billions of profits lobbying hard on this very canard and then sit back amazed that the leaders of nation states, who really should know better, are so easily bought to heel with a handshake on a couple of beanbags or the whiff of a few new jobs.

Well, let's look at the *actual* job situation in Europe - of which we are very much a member and dependent on these days. The Tera Report suggests we have already lost 800,000 jobs in the creative sector because of the collapse in revenues in the music business. By 2015, it is estimated that we may lose 1.2 million more jobs. And gross revenue losses in this sector and ancillary sectors are in the region of more than two hundred billion Euros. How many bean bag promises will it take to match those job losses?

The Tera Report, independently put together neither from the creative nor digital sectors found the following, as of March 2010.

‘ - In 2008 the European Union’s creative industries, based on the more accurate and comprehensive definition, contributed 6.9%, or approximately €860 billion, to total

European GDP, and represented 6.5% of the total workforce, or approximately 14 million workers.

– In 2008 the European Union's creative industries most impacted by piracy (film, TV series, recorded music and software) experienced retail revenue losses of €10 billion and losses of more than 185 000 jobs due to piracy, largely digital piracy.

– Based on current projections and assuming no significant policy changes, the European Union's creative industries could expect to see cumulative retail revenue losses of as much as €240 billion by 2015, resulting in 1.2 million jobs lost by 2015.'

I urge the Review Committee to read the report in full. It impartially and quite devastatingly sets out the short term future for the creative industries. If you further weaken copyright protection, in breach of every person and groups rights to 'favourable remuneration of their artistic works' as enshrined in Art 23 of the UNDHR, then you do so having been put on express notice in this submission what is at stake and I promise you I shall be back to name and shame you in or around 2015 if you fail to heed the reasonable demands of not only creatives, but the secondary economy that lives off these industries who have seen their rights abused for far too long.

The telecommunication sector claim they respect the rights of artists, they state we are looking for new model, they spoof about rights holders claims being inhibitors to growth in the face of massive growth and now, if the terms of reference are anything to go by, they have set in chain a review that seems to be heading in one direction only, and success for the creative sector might be judged on how little the Review Committee leans in that direction. Well, I say the Review Committee should move in favour of the artists. That would mean the telecommunication sector would rush to find a technological solution to a technological problem, but will only do so when the world stops bending over backwards for them, and starts looking at the very real plight of our poets, our singers, our writers and our software wizards.