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Submission to Review of the Irish Copyright and Related Rights Act 2000

11 July 2011

The Review Committee's terms of reference include an examination of the US fair use defence, and its appropriateness for Ireland. This submission outlines the outcomes of a similar review in Australia in 2005, which may provide useful reference for the Committee.

About Copyright Agency Limited

Copyright Agency Limited (CAL) is an Australian non-profit rights management company. It collects, and distributes to rightsholders, copyright fees and royalties for the use of text and images, including uses of digital content. CAL is a company limited by guarantee whose members are rightsholders, including writers, artists and publishers.

CAL has agreements with similar organisations in other countries, such as Irish Copyright Licensing Agency, that enable it to collect and distribute copyright payments for Australian works used overseas, and for foreign works used in Australia.

CAL was appointed by the Australian Attorney-General in 1990 to manage the statutory licence in the Copyright Act for educational use of text and images (educational statutory licence), and by the Copyright Tribunal in 1998 to manage the statutory licence for government use of text and images (government statutory licence). These statutory licences allow uses of content without a copyright clearance provided fair payment is made to rightsholders.

CAL also licenses its members' works, and those of members of its overseas counterparts, for use by corporations, local governments and others. To date, this has mostly been through 'blanket' licences covering a range of repertoire, but CAL's transactional licensing services (clearances for individual works) will increase as a result of new services CAL is now able to offer.

Economic contribution of copyright-based industries in Australia

In 2008, the Australian Copyright Council commissioned PricewaterhouseCoopers (PwC) to report on the contribution to the Australian economy of copyright-based industries. The findings in PwC's report, *Making the intangible tangible: the economic contribution of Australia's copyright industries*, include that in 2006–07 Australia's copyright industries:

- employed more than 837,000 people (8 percent of the nation's workforce) – up 21 percent since 1996;
- generated \$97.7 billion in economic activity (10.3 percent of GDP) – up 66 percent since 1996; and

- accounted for \$6.8 billion in exports (4.1 percent of all exports) – up 6.3 percent since 1996.¹

Other studies on the economic implications of copyright in Australia include the following studies published by the Centre for Copyright Studies:

- *Economic perspectives on copyright law* (2003)
- *The Benefits and Costs of Copyright: An Economic Perspective* (2000)
- *The Law and Economics of Copyright, Contract and Mass Market Licences* (2002).²

Fair use

Australian copyright law includes fair dealing provisions similar to those in Irish copyright law. In 2005, the Australian government conducted an inquiry into whether Australia should introduce fair use provisions similar to those in US copyright law.³

The government decided not to introduce fair use provisions, but, as an outcome of the inquiry, the Copyright Act was amended in 2006 to introduce some new exceptions to infringement. These included exceptions allowing fair dealing for the purposes of parody or satire, and a ‘flexible dealing’ exception, based on the three-step test in international treaties, applicable to cultural institutions, educational institutions and people with a print disability, intended to supplement specific statutory licences and exceptions applying to those interest groups.

Issues emerging from the consideration of fair use in Australia include:

- many people, particularly those outside the US, over-estimate the scope of fair use, and underestimate the complexity;
- many who advocate the introduction of fair use often want more ‘certainty’ than it delivers: the introduction of the ‘flexible dealing’ provision in Australia has been followed by calls for more ‘certainty’ from those it is intended to benefit;
- many, if not most, of the activities allowed by fair use are already allowed under fair dealing provisions and other exceptions; and
- in Australia, the uses enabled by exceptions and statutory licences for education, libraries and the visually impaired are far more extensive than those enabled by fair use in the US.

There is information available from the Australian Copyright Council about the consideration of fair use in the Australian context, and about the 2006 amendments to the Copyright Act.⁴

¹ The report is available at

www.copyright.com.au/Quicklinks/Download_Centre/Research_Reports/Research_Reports.aspx

² These reports are available at

www.copyright.com.au/Quicklinks/Download_Centre/Research_Reports/Research_Reports.aspx.

³ The issues paper and submissions are available at

www.ag.gov.au/www/agd/agd.nsf/Page/Publications_Copyright-ReviewofFairUseExeption-May2005

⁴ This includes the Council’s information sheets ‘*Access to Copyright Material in Australia & the US*’, ‘*Fair use: some myths and misconceptions*’, and ‘*Copyright Amendment Act 2006*’ available at www.copyright.org.au and archive.copyright.org.au, and its publication ‘*Fair use: issues and perspectives*’.

Further information about copyright and collective management in Australia

CAL is happy to provide the Review with further information about copyright and collective management in Australia that may be useful for its inquiry.

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