

Gerard Cunningham

My apologies if my thought are a little disorganised, I'm afraid pressure of time means that I am sending you a first draft, rather than a polished submission, but I hope it is of use.

My background: I am a freelance journalist since 2001, primarily a writer, but on occasion a photographer, and I have also worked in broadcaster.

* Examine the present national Copyright legislation and identify any areas that are perceived to create barriers to innovation.

When I hear about copyright and innovation, usually I think of software, whether the difficulty in creating a sufficiently robust licence to ensure open source software remains open source, or the issues surrounding the copyright (or patenting) of closed software.

These days, barriers to innovation seems to have been remodelled to mean "I want to use your work without paying you."

As a freelance journalist, this is not a new problem, although the internet has made it easier. "Lifting" is a time-honoured tradition among newspapers, even if officially frowned upon. My experience has been that articles have been lifted wholesale and reproduced without my permission many times over the years. sometimes, an invoice and a letter lead to payment, and the end of the practice. On other occasions, particularly if the "lifter" is outside the jurisdiction, I'm ut of luck.

To be clear, I do not have a problem with a Google search engine taking the first par and headline of a story I've written, and adding a link to read more wherever the story is published. Clearly, I do have a problem with an article being cut and pasted in its entirety by another website. But it's not always that clear cut. Different sites rewrite stories to a greater or lesser extend, sometimes summarising my report in their own words, sometimes merely subediting the lead par.

A few years ago, many were predicting the end of professional photography. With a phone on every camera, newspapers would no longer need professionals, it was argued. Today, I think the situation has eased a little for photographers. It turns out that amateurs aren't that good at taking photographs. That doesn't mean they aren't sometimes used, and photographers, like writers, still face problems with unauthorised use of their work. But at least a cropped photograph lifted from a news website can be identified. The law is much less clear

on whether a subedited or rewritten story is still mine. "Fair use" will make it impossible.

Is a story still mine if the lead is rewritten? Is a court report still mine if it contains original quotes given in evidence, and I was the only journalist there? I've been told by prominent publishers that its not.

If my insistence that I should be paid for my work is a "barrier to innovation", then the innovators need to stop complaining. Because if it is no longer feasible for me to report because I'm not paid for my work, their innovative product will die too. Without my reports to take and remodel, where are they going to get the raw copy their "innovation" model requires.

* Identify solutions for removing these barriers and make recommendations as to how these solutions might be implemented through changes to national legislation.

I know its an old fashioned idea, but I submit that paying for your raw materials is a solution to the barrier referred to above.

To this end, I suggest that ways to make it easy for innovators to identify the creators of works they wish to use should be explored. Metadata can be added to photographs identifying their creators for example. I understand Adobe Systems have done some work on this concept in the past. Google is exploring what it calls an "author tag" which would serve a similar function for written content. In short, if innovators face barriers because they cannot use the works of other creators, then put in place mechanisms to allow them to identify and contact those authors. Through Irish law, the EU and international bodies (whether internet standards bodies, the WTO or otherwise) practices can be developed to identify authors.

There have also been suggestions for a register or central licensing system which would hold material, allowing innovators to identify authors. I have no opinion on such a move, but I would ask the committee to ensure that such a registry or licensing body was not used as a way to create orphan works. It should not be the case that unless a work is registers, it is unprotected, for example. In addition, registration should be free to creators, at least for freelancers. A sole trader cannot be expected to shoulder the addition burden of registration fees to protect his work. The onus should be on those who seek to use the work to ensure that hey have the necessary permissions and licences.

* Examine the US style 'fair use' doctrine to see if it would be appropriate in an Irish/EU context.

Fair use seems to me to mean unlimited use unless I can afford lawyers to stop it. This places the onus on me to prove that the work I created

is mine, and that it is not unfairly exploited. this seems backward to me. The onus should be on anyone who wishes to use my work to demonstrate that they have a right to it. Fair use is so vague and undefined as to be meaningless. The current system in Irish law allows for specific defined uses. If those exceptions are overly restrictive and a barrier to innovation, then re-examine them and propose a wider range of exceptions. But "fair use" too often means unrestricted use.

* If it transpires that national copyright legislation requires to be amended but cannot be amended, (bearing in mind that Irish copyright legislation is bound by the European Communities Directives on Copyright and Related Rights and other international obligations) make recommendations for changes to the EU Directives that will eliminate the barriers to innovation and optimise the balance between protecting creativity and promoting and facilitating innovation.

See above.

One final thing I would add. All the rights in the world are worthless, without an easy, accessible, and affordable dispute resolution mechanism. As part of any reform of copyright law, the question of legal access to remedy should be addressed. Access to the Small Claims Courts for freelance journalists (writers and photographers) would be a worthwhile innovation. A clear set of exceptions to copyright law, so that the question of a breach can be easily and quickly decided, would be an advantage in this regard.