

Introduction

The Irish Film Institute (IFI) is the cultural institution for film in Ireland. Its mission is to Exhibit, Preserve and Educate and it does this on behalf of the Irish public as a Limited company with charitable status with partial funding from the Arts Council. Although it is based in Dublin, the IFI has a national and international remit. The IFI Irish Film Archive and IFI Education have responded to the Review individually and their responses are below.

IFI Irish Film Archive Response

One of the IFI's core activities is the preservation of film and film culture; it achieves this through the work of the Irish Film Archive. Since 1992 the Irish Film Archive has preserved and provided access to Ireland's national film heritage. It is responsible for the acquisition and preservation of film material produced in and about Ireland, since the introduction of the medium in Ireland in 1897.

The IFI Irish Film Archive has and acquires donations from private sources as well as from production companies and professional bodies. The Archive's collections are comprehensive comprising fiction, features, public information films, amateur material, documentary, newsreel, experimental film and animation, and provide a fascinating insight into Ireland's social history.

This collection now numbers over 27,000 cans of film and includes a substantial photographic and document collection. The IFI Irish film Archive is the only organisation of its kind in Ireland and as the only Irish member of the International Federation of Film Archives (FIAF) has established relationships with international archives, as well as nationally with Government departments, the Irish Film Board, the Broadcasting Authority of Ireland and filmmakers.

With regard to this submission responses are on behalf of the IFI Irish Film Archive, we have taken some of the main headings within the document and responded accordingly. Some areas of the discussion document we felt were outside our remit and we have not made comment on these.

Throughout the document we have been mindful of the:

Recommendation¹ of the European Parliament and the Council of 16 November 2005 on "Film heritage and the competitiveness of related industrial industries"

Which states:

Cinematography is an art form contained on a fragile medium, which therefore requires positive action from the public authorities to ensure its preservation. Cinematographic works are an essential component of our cultural heritage and therefore merit full protection.

In addition to their cultural value, cinematographic works are a source of historical information about European society. They are a comprehensive witness to the history of the richness of Europe's cultural identities and the diversity of its people. Cinematographic images are a crucial element for learning about the past and for civic reflection upon our civilization.

European film heritage should be made more accessible for educational, cultural, research or other non-commercial uses of a similar nature, in all cases in compliance with copyright and related rights. Film heritage is an important component of the film industry and encouraging its conservation, restoration and exploitation can contribute to improving the competitiveness of that industry.

We have also taken into consideration the work of Gower and Hargreaves in the UK in recent years.

General Comments

¹ OJ L 323, 09.12.2005

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_323/l_32320051209en00570061.pdf

The IFI Irish Film Archive welcomes the work of the Review Committee and its intention to examine the current copyright legislation in Ireland with a view to making it more appropriate for the digital age, more open to legitimate cultural and educational use, and as an opportunity to clarify the existing provisions.

The IFI Irish Film Archive interacts with copyright in a variety of ways; as a rights holder, as a user of content and as an organisation that works on behalf of rights holders, and so is in favour of legislation that protects the rights holder but also allows educational and cultural access to copyrighted materials. Any revisions to the current legislation must strike a fair balance between these interests.

We feel that clarifying and simplifying the current legislation would also be beneficial. The existing legislation is complex and open to interpretation in many cases, and for individuals or organisations that do not have expertise in the area of copyright and intellectual property it is often unclear where they sit within the current provisions. We also feel that whilst innovation is an important issue, education and cultural accessibility are areas that warrant equal attention.

IFI Irish Film Archive's copyright position

The IFI Irish Film Archive was established to preserve and share film for the benefit of the public. Like many similar organisations we hold rights in only a small proportion of the material we hold. When material is deposited with us for preservation purposes, the rights holders generally retain their rights and we work with (and on behalf of) rights holders to allow access to their material and collect monies on their behalf. We make material available to users, for private study, educational use and commercial use. The range of material that we hold is vast from periodicals, newspaper, books and other published works, photographs, to unpublished documents, digital files, films (both published and private) DVDs, CDs and various tape formats. Our use of these collections is limited by our ability to clear their use with the various rights holders, unlike commercial and broadcast archives who in most cases own the rights of most of the material they hold and are therefore much more easily able to make use of their collections. We perform an important service on behalf of the Irish public: preserving the moving image evidence of Irish endeavour and, as with other museums and cultural institutions, it is important we are able to share this material with the public, whilst respecting the rights holders.

Copyright Council

We welcome the suggestion by the review that an Irish copyright council is established.

We feel that such an organisation should be an independent body and that it should work to clarify legislation and advise members with regard to copyright and that it should provide its members with a forum for discussing copyright matters.

We feel that it should be broadly based representing both the users and owners of copyright, thus ensuring that it had a balanced approach to its duties.

It should be State recognised and work as an advisory and consultative body to ensure copyright legislation is better understood and it should have the role of being a liaison and pressure group for change in copyright law where such change is identified as necessary. We also welcome the suggestion that a Digital copyright Exchange and ADR service are established once an effective, fair and transparent mechanism can be devised for both.

Rights Holders

As mentioned above, the IFI holds the rights to very little of the material it holds. In most cases we work on behalf of the rights holders to ensure their material is not released without their permission and also to ensure that any monies owed to them are paid. We feel that whilst it is important to

update legislation in order to recognise legitimate developments in technology, digital and less formal types of learning, the rights of copyright holders should still be protected.

Orphan works

Many of the held films in the IFI are orphan works, items for which we cannot identify who owns the rights. In line with recent EU directive, in the area of Orphan works and recommendations for mechanisms by which they could be made available, we would welcome a change in the legislation to allow heritage institutions to make use of these collections themselves or to make them available to third parties, once due diligence has been employed in attempting to clear rights. A standardised mechanism across Europe for this would be useful including agreed mandatory elements for a diligent search.

Collecting Societies

The IFI would in theory welcome collective rights licensing should it be transparent and strictly regulated. The current lack of collective licensing in particular with regard to the moving image makes use of such material difficult, as the resources required to clear material for use are extensive. Any move towards collective licensing should recognise the difference between purely commercial use and cultural or educational use through its scale of charges. Such licensing shouldn't have the effect of making material too expensive to be used, but should have the result of simplifying access and should work in the interest of both rights holders and users. As pointed out by the Film Archives UK submission to the Hargreaves report, such licensing should not work to prevent publically funded film archives generating the income through charging access fees to their collections. These archives do not often own the rights in the material they hold and obtain much needed income by charging for provision of access to their collections (as opposed to the rights holders charging licensing fees). This income goes directly towards offsetting the cost of preserving and providing access to their collections. Any changes in licensing should take this into account. In Ireland there is no system of educational licensing for moving image. The ERA model in the UK has been very helpful in allowing the 11 members of Film Archive UK to share their collections with schools, universities and other educational organisations without infringing copyright.

We feel that in many cases libraries, archives and other heritage institutions should benefit from educational exemptions even though they aren't educational establishments as defined in the current legislation. It has been suggested in the UK that heritage organisations should be enabled to deliver collections through digital means to researchers and users to prevent damage to fragile materials and to improve efficiency for researchers. We feel that a password protected system of licensing for educational and cultural use should be developed in Ireland to allow organisations working in the public interest to more easily make use of works that are protected by copyright. Such a system would also ensure that rights holders were still able to derive an income.

Heritage Institutions

It is important that copyright legislation recognises the position of heritage institutions and enabling them to undertake preservation, digitisation, cataloguing and other core curatorial work without them being at risk of infringing copyright. Archives and Libraries need to be able to copy material for preservation purposes and also for educational use and for exhibition. We welcome the suggestion that format shifting and copying for preservation purposes is recognised within the copyright legislation as it is a fundamental activity undertaken by heritage institutions. We also would like to make the point that legislation should be careful with regard to making a distinction between commercial and non-commercial archives or organisations. Many not for profit and educational organisations need to make charges for their services in order to cover their costs in an era where public subsidy is being eroded. It is important they are able to do so while still benefiting from any special exemptions that being an educational or cultural organisation affords them.

We disagree that there should be a presumption that if a work is gifted or bequeathed that copyright passes to the organisation. In many cases the copyright will not be held by the person who physically owns the object or item and therefore it is impossible for them to pass on these rights.

We feel that the educational activities of Heritage organisations should be recognised. Consideration should be given to the idea that the Minister may specify that establishments other than third level and schools are educational establishments. In the UK it was suggested that the education activities of Museums, Galleries and Archives should be designated as such. This would seem to be within the intention of the law as the activities of these organisations is for the public benefit and would not constitute a prejudice to the ability of the rights holder to derive income.

In addition to this greater clarity as to what constitutes a prescribed library or archive and what the definition of not for profit is under the current legislation would be most welcome. There is already provision within existing legislation to broaden the scope of organisations that are acting in the public interest and that are not for profit and which will not undermine the rights of the copyright holder. Museums, galleries and archives should generally be considered to be acting in the public interest (once they are not a mainly commercial enterprise) and designation of recognised organisations undertaking a cultural objective on a not for profit basis should be recognised and afforded the legal mechanisms to enable them to undertake their role efficiently.

Fair Dealing/Use

The suggestion that the definition of fair dealing is altered to include educational use is welcomed. We fully support the recognition of the changing nature of education, and the updating of the legislation in line with this, however the definition of education would need to be very clearly defined. We feel it should be clarified or extended to recognise organisations such as the Irish Film Institute that have an educational mission at their core but are often working outside the formal education system. It should also be recognised the organisations working with an educational remit, but not directly funded by State, will often need to charge users a fee to cover costs of an educational screening, workshop, digitisation etc. Once they are not for profit, this should not have an impact on their educational status. In an era where life- long, digital and unstructured learning is becoming more and more common, the strict definition of education needs to be looked at to allow for the work of archives, museums and libraries who wish to share their collections with the public in a variety of ways that can be described as educational in a broader sense.

Currently the Digital Agenda for Europe is recommending that much of Europe's moving image heritage is digitised and uploaded for the public to access via projects such as Europeana. For an archive such as ours, this is problematic. As we do not own the rights in 99% of the material we hold, each clip would need to be cleared with the copyright holder before we could share it, and licensing fees may be incurred. This type of restriction has meant we have very little content online as it is such a time consuming process. In the digital age where people are used to (or expect to be able to) access their moving image heritage at the click of a mouse, this is a challenge. Whilst we are not suggesting that rights holders should be ignored by Heritage Institutions, greater alignment between the EU ambition to make cultural heritage available through new technologies and the restrictions imposed upon heritage and educational institutions that do not hold the rights in the collections they hold, would be welcome. The report suggests allowing heritage organisations to make material available on their premises without infringing copyright, this would be welcome. We welcome the suggestion that heritage institutions should be able to make material within their permanent collections available on dedicated terminals on site without infringing copyright and also that they should be able to make works available briefly during a public lecture.

We have concerns about the recommendation that copyright legislation should allow fair dealing for the purposes of parody, pastiche or satire. We feel that this is only appropriate in cases where work is in the public domain. For example we hold a large amount of private films and their use in this context would not necessarily deprive the rights holders financially but could cause untold upset and distress if legislation allowed their collections to be used legally in such a fashion.

IFI Irish Film Archive
27th June 2012

Submission to Copyright Review: IFI Education

Context

IFI Education has the national remit for film education in Ireland. Through our schools' programme, we engage with young people around the country in screenings, resources and workshops. We support continuing professional development of teachers in film education and provide a host of opportunities for critical and active engagement with film. Most recently, through our two year action research project into film education, we have facilitated teachers, educators and young people to develop, deliver and evaluate pilot projects which have operated within the context of media literacy, film education and the breadth of school curricula. Our lifelong learning and adult education programmes offer the public critical interaction with film and promotion of their film literacy.

All of our programmes require the use of copyrighted film content in a range of screening formats (generally 35mm or DCP – theatrical formats). These include:

Film screenings in IFI cinemas – film hired through commercial distribution

Film screenings as part of IFI Education touring programme in cinemas hired for the event or local arts centres

Film screenings in IFI workshops/courses either at IFI or other venue;

(i) Rights-holders

In most of these cases, commercial distributors – rights-holders offer 'fixed rate' hires to IFI in order to run the education event.

Strictly speaking, in 'fair-use', copyright would not be an issue as the screening is within an education context. However, as these are commercially produced films, we are obliged to clear copyright and cover related fees. This is particularly of concern when it comes to films which are prescribed 'texts' for formal school curricula (see fair use below).

Further issues regarding rights occur in teachers desire to use DVDs for classroom work, using off-the-shelf home DVDs. A DVD designated for e.g. a group film screening in a learning context could be acquired through a collection agency but a fee covering rights is incurred.

The question therefore, arises, regarding rights-holders. Should commercial rights-holders i.e. film distributors be obliged within a revised copyright law to waive fees in all education contexts (i.e. those in which there is no potential for profit?

(ii) Collecting Societies

In the case of film, two collecting societies operate in Ireland and provide rights clearance facilities for educational establishments or youth clubs and/or viewing content. In both cases, (MPLC, GFD), organisations must pay a fee in order to show films within the learning environment. While the license provider (MPLC) offers umbrella license to screen titles from a number of distributors, it does not cover all and, at the same time, a school requiring to add a license to their already tightened budgets are as likely to avoid this, despite the undoubtedly regular screening of films during school time. The other agency (GFD) will charge a set fee for each DVD rental for showing in a public environment, e.g. youth/film club. Again, these qualify as learning situations but are not falling under 'fair dealing'.

(iii) Entrepreneurs

Of particular relevance to the contemporary and future learning environment is the role of innovation – and the entrepreneurial approach of many educators to create viable and relevant learning content for their students. This applies in the SMART classroom – the increasing use of innovative technology to deliver content and engage within the conventional learning environment – but also in other learning environments: out of school, at home, youth group and in the ‘affinity spaces’ created by users interacting online where other types of learning can take place, such as problem-solving, collaboration and innovation.

As outlined in the report, if innovation is one of the keys to our future, then it is essential that young people are offered opportunities to learn within innovative and entrepreneurial environments. Media literacy is one of the key 21st century skills, identified as a key skill for EU Lifelong Learning but also within the remit of the Broadcasting Authority of Ireland, under the Broadcasting Act, and an aspect of the DES National Literacy Strategy. To facilitate the development of media literate young people, they must be enabled to critically engage with content online – manipulating, mashing, parodying, or any of the examples cited in the report – and develop SMART skills without copyright infringement penalties and with due acknowledgement to the creator/author, according to agreed and stipulated terms.

(iv) Heritage Institutions

As a heritage institution, promoting and preserving Irish film and film culture, the collections of the IFI Irish Film Archive are accessible to IFI Education for screening within education contexts, with copyright and related fee implications as much of the relevant material is held with commercial distributors. Outside of the education aspect itself, the issue of paying fees to enable young people and other learners to view artefacts representative of their own culture seems contradictory to a concept of Creative Europe and the aims for strengthening cultural and creative diversity. In order to develop creatively, young people need access to creative content and to develop an understanding of the heritage with which they can critically engage and in which they can creatively operate. As above, it is the education context that needs clarification.

(v) Fair Dealing: Education, research, private study

As outlined above, a much more thorough and clearer interpretation of education needs to be provided in order to encompass the range of learning environments which exist today across the spectrum of learning but also within the private/public sphere within online communities. The proposal to create a Copyright Council of Ireland where such definitions could be investigated and regularly reviewed would seem a progressive and positive step forward.

In the formal education environment, copyright issues concern the prescribed use of film in subject specific areas e.g. English; but also the desire to create other learning situations in which film and moving image can provide useful and stimulating media content of immediate accessibility to young people. Such situations e.g. after-school film clubs making use of SMART technology and promoting group work, collaborative and critical thinking, need to be exempt from copyright laws, in an understanding of fair dealing as no profit will be made.

The growth in online and distance learning programmes has undoubtedly implications for the use of copyright media and film content. A programme of learning which lacks visually rich media content today will struggle to succeed or make an impact among media-conscious young learners. At IFI, a resource for teacher professional development would comprise for example, clips from a range of films with which to support student learning across a range of subjects. Such a resource would be

made available online, password accessibly but without copyright implications for the organization, creator or educator.

To conclude:

Our work at IFI Education by its very nature brings us in direct contact with copyright issues, in order to successfully deliver an education programme, within the current copyright laws and definitions. Among teachers and educators there is a huge lack of clarity as to what implicates infringement. This contrasts with young people for whom free access (mostly illegal) is an expectation, if not a right. With a clearer and more thorough investigation of the concept of education within the copyright context, awareness-raising around respect for artistic rights and endeavour could be achieved. We welcome the opportunity to make this submission.

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