

Dear Dr O'Dell,

We would like to respond to the minister's invitation for submissions regarding a review of copyright and related rights.

The Irish Free Software Organisation represents the interests of Free Software in Ireland. Here, 'Free' refers to freedom rather than price --- Free Software confers on its users the right to run, study, change and distribute it. A great deal of innovation and technological progress has been made possible by Free Software, and it also generates considerable economic value. Free Software will be essential in internet-based growth opportunities in Ireland, for example in internet telephony or virtualised on-demand software services.

We welcome the minister's reference to a US-style 'fair use' doctrine, and we urge him to learn from the unintended consequences of their DMCA legislation. Purchasers of, for example, DVDs have fair use rights, but cannot enjoy them because of the encryption on DVDs. Creators of tools for unlocking DVDs, restoring consumers' ability to exercise their fair-use rights, have been sued, and products withdrawn, thereby harming innovation and competition.

IFSO acknowledges that creating the legislative conditions for a just society and dynamic economic growth requires that holders of legitimate copyrights are assured those rights receive requisite protection. At the same time, though, the public's rights must also be protected. The 'anti-circumvention' measures in the current law strike the wrong balance, and we urge the minister to reinstate the principle of s.374 of the Copyright and Related Rights Act, 2000, whereby 'rights protection measures' could not interfere with 'permitted acts'.

The public must also have the right to use their own electronic devices as they wish. Often this means using different software to that which the manufacturer supplied, but doing so in the USA has proved legally risky, because of abuse of the DMCA. For example, Texas Instruments threatened people who described how to write and use new software for its calculators.

Computer software is playing an increasingly important role in many products. In the US, this has opened the door to abuses of the DMCA, with the result that beneficial innovation and competition is hindered. The printer manufacturer Lexmark, aiming to maintain its monopoly position in the lucrative market for refills, sued under the DMCA to prevent a company distributing a component which would have enabled other manufacturers to create compatible refills. As another example, Microsoft is currently trying to use the DMCA to stifle the market for accessories for its Xbox, to give itself a monopoly. These cases, and other similar ones, illustrate how copyright law is being abused to prevent competition and innovation.

Although some such cases were ultimately resolved in favour of the innovator, the fear of being drawn into a very costly legal battle has a chilling effect. We urge the minister to ensure that legitimate competition in all markets is encouraged.

Finally, in the area of computer security, high-quality academic research in the USA has often been suppressed because it exposes flaws in a product. It is generally accepted that computer security, vital in this age where more and more business is conducted online, is best advanced by full and open discussions. We urge the minister to ensure that the carrying out, publication and discussion of security research is permitted.

In summary, we hope the minister will seize this opportunity to restore balance to copyright law, allowing the public to enjoy their rights, and fostering innovation and competition.

Thank you for your consideration of this submission.