

Name

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Of the six categories into which the Paper classified the first round of submissions, which one (if any) best describes you?

user

Is our broad focus upon the economic and technological aspects of entrepreneurship and innovation the right one for this Review?

No. The intersection (as you put it) of copyright and innovation is relatively minor, and to base a discussion of copyright on this is liable to lead to erroneous conclusions

Is there sufficient clarity about the basic principles of Irish copyright law in CRRA and EUCD? [Note: CRRA is the Copyright and Related Rights Act, 2000; and EUCD is the European Union Copyright Directive (Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society)].

Yes, these are reasonably clear.

Should any amendments to CRRA arising out of this Review be included in a single piece of legislation consolidating all of the post-2000 amendments to CRRA?

No. Consolidation and new legislation should be considered separately.

Is the classification of the submissions into six categories – (i) rights-holders; (ii) collection societies; (iii) intermediaries; (iv) users; (v) entrepreneurs; and (vi) heritage institutions – appropriate?

No. The basic issue of copyright is the inevitable conflict between intellectual property owners and consumers. Also: the term "users" is misleading, and should be replaced by the normal term "consumers"

In particular, is this classification unnecessarily over-inclusive, or is there another category or interest where copyright and innovation intersect?

There is. You should have considered more fully the increasing and damaging influence of copyright and patents on university research.

What is the proper balance to be struck between the categories from the perspective of encouraging innovation?

Innovation is impeded because research workers are prevented from pursuing certain lines of research.

Should a Copyright Council of Ireland (Council) be established?

No. This will be a complete waste of time and money. As far as digital rights are concerned, it is absurd to think this can be dealt with on a national basis.

If so, should it be an entirely private entity, or should it be recognised in some way by the State, or should it be a public body?

As I have said, there is no such thing as "Irish" digital entities.

Should its subscribing membership be rights-holders and collecting societies; or should it be more broadly-based, extending to the full Irish copyright community?

It should not exist at all.

What should the composition of its Board be?

Ditto

What should its principal objects and its primary functions be?

Its first act should be to recognise that it cannot deal with internet or online issues.

How should it be funded?

Certainly not by the state

Should the Council include the establishment of an Irish Digital Copyright Exchange (Exchange)?

No. There is no such thing as "Irish Digital Copyright",

Should the Council include the establishment of a Copyright Alternative Dispute Resolution Service (ADR Service)?

No. If something like this were to be established, it would have to be at EU level.

Given the wide range of intellectual property functions exercised by the Controller, should that office be renamed, and what should the powers of that office be?

Any functions related to the internet should be passed to an appropriate EU organisation.

Should there be a small claims copyright (or even intellectual property) jurisdiction in the District Court, and what legislative changes would be necessary to bring this about?

This would be a sensible minimal change

Should there be a specialist copyright (or even intellectual property) jurisdiction in the Circuit Court, and what legislative changes would be necessary to bring this about?

Not as far as internet material is concerned.

Whatever the answer to the previous questions, what reforms are necessary to encourage routine copyright claims to be brought in the Circuit Court, and what legislative changes would be necessary to bring this about?

It is really likely that many claims in the internet domain will be between two Irish entities?

Is there any economic evidence that the basic structures of current Irish copyright law fail to get the balance right as between the monopoly afforded to rights-holders and the public interest in diversity?

Yes, I have heard several research workers say that they fear to work in particular areas (eg in pharmaceutical research) because they may be sued and would not have funds to fight this even if they are in the right.

Is there, more specifically, any evidence that copyright law either over- or under- compensates rights holders, especially in the digital environment, thereby stifling innovation either way?

Yes, a great deal of evidence. There should be some sort of balance established when an entity with virtually unlimited resources threatens a research worker.

From the perspective of innovation, should the definition of “originality” be amended to protect only works which are the author’s own intellectual creation?

Yes. You should have drawn a sharp distinction between genuine intellectual property creators such as musicians or research scientist, and secondary organisations who purchase digital rights.

Should the sound track accompanying a film be treated as part of that film?

No. Why should it?

Should section 24(1) CRRA be amended to remove an unintended perpetual copyright in certain unpublished works?

Yes, if there is such an unintended copyright.

Should the definition of “broadcast” in section 2 CRRA (as amended by section 183(a) of the Broadcasting Act, 2009) be amended to become platform-neutral?

Probably not.

Should sections 103 and 251 CRRA be retained in their current form, confined only to cable operators in the strict sense, extended to web-based streaming services, or amended in some other way?

They should not be extended beyond their present ambit.

Is there any evidence that it is necessary to modify remedies (such as by extending criminal sanctions or graduating civil sanctions) to support innovation?

No. Keep the criminal law out of it.

Is there any evidence that strengthening the provisions relating to technological protection measures and rights management information would have a net beneficial effect on innovation?

No. It would do the opposite.

How can infringements of copyright in photographs be prevented in the first place and properly remedied if they occur?

More or less impossible nowadays with digital editing.

Is it to Ireland's economic advantage that it does not have a system of private copying levies; and, if not, should such a system be introduced?

Such a system should not be introduced.

Has the case for the caching, hosting and conduit immunities been strengthened or weakened by technological advances, including in particular the emerging architecture of the mobile internet?

I don't know what "case" you are referring to, but it is a folly to think you can pursue packets around the globe.

If there is a case for such immunities, has technology developed to such an extent that other technological processes should qualify for similar immunities?

Yes. You should look at mathematics, where it is still unknown for theorems to be copyright.

Is there any good reason why a link to copyright material, of itself and without more, ought to constitute either a primary or a secondary infringement of that copyright?

Giving an URL should never be considered as a breach of copyright. You might as well say that giving the name of a book or an author is a breach of copyright

If not, should Irish law provide that linking, of itself and without more, does not constitute an infringement of copyright?

Definitely

If so, should it be a stand-alone provision, or should it be an immunity alongside the existing conduit, caching and hosting exceptions?

It should be separate, to put it beyond argument.

Does copyright law inhibit the work of innovation intermediaries?

Not yet, but it will if the ideas you seem to hold are put into practice.

Is there a case that there would be a net gain in innovation if the marshalling of news and other content were not to be an infringement of copyright?

Yes.

If so, what is the best blend of responses to the questions raised about the compatibility of marshalling of content with copyright law?

The "marshalling of content" is irrelevant. If the information conveyed can be described as news it should be free of copying.

In particular, should Irish law provide for a specific marshalling immunity alongside the existing conduit, caching and hosting exceptions?

Probably

Should the definition of "fair dealing" in section 50(4) and section 221(2) CRRA be amended by replacing "means" with "includes"?

Yes

Should all of the exceptions permitted by EUCD be incorporated into Irish law, including:
(a) reproduction on paper for private use?

Yes

(b) reproduction for format-shifting or backing-up for private use?

Yes

c) reproduction or communication for the sole purpose of illustration for education, teaching or scientific research?

Yes

d) reproduction for persons with disabilities?

e) reporting administrative, parliamentary or judicial proceedings?

Yes

f) religious or official celebrations?

g) advertising the exhibition or sale of artistic works?

Yes

h) demonstration or repair of equipment?

Not sure how this comes in

i) fair dealing for the purposes of caricature, parody, pastiche, or satire, or for similar purposes?

Yes

Should CRRA references to "research and private study" be extended to include "education"?

Yes

Should the education exceptions extend to the (a) provision of distance learning, and the (b) utilisation of work available through the internet?

Yes

Should broadcasters be able to permit archival recordings to be done by other persons acting on the broadcasters' behalf?

Yes

Should the exceptions for social institutions be repealed, retained or extended?

Extended

Should there be a specific exception for non-commercial user-generated content?

Probably

Should section 2(10) be strengthened by rendering void any term or condition in an agreement which purports to prohibit or restrict than an act permitted by CRRA?

Yes

When, if ever, is innovation a sufficient public policy to require that works that might otherwise be protected by copyright nevertheless not achieve copyright protection at all so as to be readily available to the public?

The public interest should be the criterion

When, if ever, is innovation a sufficient public policy to require that there should nevertheless be exceptions for certain uses, even where works are protected by copyright?

If the public interest can be shown to benefit

When, if ever, is innovation a sufficient public policy to require that copyright-protected works should be made available by means of compulsory licences?

Yes, the current requirement to provide copies of books to TCD and others should be extended to online material

Should there be a specialist copyright exception for innovation? In particular, are there examples of business models which could take advantage of any such exception?

I'm sure there are

Should there be an exception permitting format-shifting for archival purposes for heritage institutions?

Obviously, otherwise material will become unreachable

Should the occasions in section 66(1) CRRA on which a librarian or archivist may make a copy of a work in the permanent collection without infringing any copyright in the work be extended to permit publication of such a copy in a catalogue relating to an exhibition?

Yes (though it is not really clear what you mean by an "exhibition").

Should the fair dealing provisions of CRRA be extended to permit the display on dedicated terminals of reproductions of works in the permanent collection of a heritage institution?

Yes

Should the fair dealing provisions of CRRA be extended to permit the brief and limited display of a reproduction of an artistic work during a public lecture in a heritage institution?

Yes

How, if at all, should legal deposit obligations extend to digital publications?

The obligation should be so extended if requested by the relevant library.

Would the good offices of a Copyright Council be sufficient to move towards a resolution of the difficult orphan works issue, or is there something more that can and should be done from a legislative perspective?

Just frame an appropriate law. A Council is not required for this.

Should there be a presumption that where a physical work is donated or bequeathed, the copyright in that work passes with the physical work itself, unless the contrary is expressly stated?

Seems reasonable, but the 70-year period is far too long.

Should there be exceptions to enable scientific and other researchers to use modern text and data mining techniques?

Yes, If people don't want their data examined they should not put it on the internet.

Should there be related exceptions to permit computer security assessments?

Not sure what this means.

(a) What EU law considerations apply? (b) In particular, should the Irish government join with either the UK government or the Dutch government in lobbying at EU level, either for a new EU CD exception for non-consumptive uses or more broadly for a fair use doctrine?

If there is such a motion the Irish government should support it.

How, if at all, can fair use, either in the abstract or in the draft section 48A CRRA [in the Paper], encourage innovation?

Seems fairly obvious.

How, in fact, does fair use, either in the abstract or in the draft section 48A CRRA [in the Paper], either subvert the interests of rights holders or accommodate the interests of other parties?

It does impinge on rights holders, clearly, but fair use should still be allowed.

How, in fact, does fair use, either in the abstract or in the draft section 48A CRRA [in the Paper], amount either to an unclear (and thus unwelcome) doctrine or to a flexible (and thus welcome) one?

It is unclear and flexible.

Should the post-2000 amendments to CRRA which are still in force be consolidated into our proposed Bill?

Yes

Should sections 15 to 18 of the European Communities (Directive 2000/31/EC) Regulations, 2003 be consolidated into our proposed Bill (at least insofar as they cover copyright matters)?

No

Do you have any further comments on the Consultation Paper?

You do not seem to accept that digital material cannot be restricted to one jurisdiction. By definition it circulates the globe.

Do you have any comments on the work of the Copyright Review Committee or on the consultation process generally?

Digital issues cannot be considered on a national basis.