



Copyright Review Committee  
Copyright and Innovation: *A Consultation Paper*

COMMENTS OF RESEARCH IN MOTION LIMITED

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## 1.0 ABOUT RIM

Research In Motion Limited (“RIM”), a global leader in wireless innovation, introduced the BlackBerry® solution in 1999. The BlackBerry product line includes the BlackBerry® PlayBook™ tablet, the award-winning BlackBerry smartphone, software for businesses and accessories. Through the development of integrated hardware, software, and services that support multiple wireless network standards, RIM provides platforms and solutions for seamless access to time-sensitive information including email, phone, SMS messaging, Internet and intranet-based applications. BlackBerry products and services are used by millions of customers around the world to stay connected to the people and information that matter most throughout their day.

RIM technology also enables a broad array of third-party developers and manufacturers to enhance their products and services with wireless connectivity to data. RIM's portfolio of award-winning products, services, and embedded technologies are used by thousands of organizations around the world and include the BlackBerry® wireless platform, the RIM Wireless Handheld™ product line, software development tools, radio-modems, and software/hardware licensing agreements. Founded in 1984 and based in Waterloo, Ontario, Canada, RIM operates offices in North America, Europe, Latin America and Asia Pacific.

As a leading innovator in the ICT sector, RIM has a substantial portfolio of intellectual property rights in Europe and elsewhere. Since its market entry, RIM has been deeply involved in the evolution and development of standards through its membership in standard-setting organizations in Europe. In addition to our European headquarters in Slough, United Kingdom, we also have extensive R&D and manufacturing sites in Europe, which provides substantial direct and indirect employment. As a global company, RIM currently directly employs over 16,000 people throughout the world, including more than 2,000 in Europe. RIM has also created an additional 13,000 jobs through its European manufacturing and supply chain network. For more information, visit [www.rim.com](http://www.rim.com) or [www.blackberry.com](http://www.blackberry.com).

## 2.0 EXECUTIVE SUMMARY

Sound copyright legislation requires a balancing of interests. On the one hand, the Committee must ensure proper compensation and protection for creators, innovators and rights owners. At the same time, it must ensure that there is adequate access to content and information to promote economic development and technological innovation.

RIM considers that the proposals outlined in the consultation document are fundamentally sound and strike the right balance between these competing objectives. We welcome the Committee’s proposal a simple yet wide-ranging rights-clearance mechanism. We believe this would be most effective if developed as an interrelated and complementary solution to the Digital Copyright Exchange proposed in the United Kingdom’s Hargreaves Review of IP and Growth. While an extended collective licensing system could reduce barriers to entry for large entities seeking to offer a comprehensive music or audiovisual services (e.g. BBM Music, BlackBerry Video Store), the Digital Copyright Exchange could facilitate the licensing of copyrighted content for small and medium sized enterprises (e.g. application developers on App World).

RIM supports the notion of a private copying exception as it aligns the copyright regime with the reasonable expectations of consumers, and creates an environment that is conducive to technological innovation. We also support and appreciate the Committee's inclination to not introduce a system of private copying levies. We maintain that private copying levies on consumer electronic devices, such as mobile phones and tablets, are unreasonable and do not serve the interest of artists, consumers or the economy.

We would welcome the opportunity to continue this dialogue with the Copyright Review Committee and other stakeholders.

### **3.0 INTRODUCTION**

RIM is pleased to offer the following comments in response to the Copyright Review Committee's Copyright and Innovation consultation paper. This consultation document comes at a critical juncture for Ireland's digital communications industries. As digital engagement is increasing, so too are reports of copyright infringement. In this environment, the Committee must ensure that Ireland's copyright regime is well suited to the digital era.

RIM believes that the consultation document contains the right elements for the balanced copyright regime that Ireland needs at this time. We are aware that some of the discussions in this area are controversial. However, after reviewing it carefully and discussing it with other stakeholders, we have concluded that its recommendations are fundamentally sound. This submission focuses on three elements of the consultation document that are most likely to have an impact on RIM, namely the copyright licensing regime, exceptions to copyright and the role of intermediaries.

### **4.0 OVERVIEW OF RIM'S APPROACH TO COPYRIGHT REFORM**

RIM is both a copyright creator and copyright user. We develop software for the BlackBerry platform and services on a daily basis. We also license third party software, as well as musical and audiovisual content, for our platform and services. As a result, the protection of intellectual property rights is critical for RIM. It is a core foundation of our businesses.

We view copyright legislation as a piece of the larger puzzle of innovation. We believe that new technologies are fundamentally changing traditional business models and how consumers, companies, research institutions, and others interact. In the last decade, we have seen the creation of globally influential companies and entirely new economic and social opportunities. The protection and promotion of these digital age industries is critical. Intellectual property rights such as patents, copyrights, trademarks, and other public policy levers must reflect evolving realities.

Sound copyright legislation requires a balancing of interests. Without proper compensation and protection for creators, innovators and rights owners, the development of creative and innovative work will be stunted. On the other hand, if customers are not able to derive full value from what they buy, we will not realize the revenue potential that will fund the creators, innovators and other participants in the supply chain. The importance placed by so many nations on developing strategies for a digital economy reflects the fact that more and more economic activity and commerce is being dematerialized; shifting from bricks, mortar and hardware to software and digital transactions and downloading.

Thus with every year that passes, the importance of modern copyright legislation increases. Commercial revenues from music downloading are booming, digital books are taking the market by storm and software and computing are being sold as digital services. Customers are not consuming these products in the ways that they used to: for example, instead of buying a vinyl record or a CD and moving it when required from the living room to the study, today's consumers download music onto their computer and redeploy it on devices they carry with them in and out of the house. Consumers have unprecedented flexibility in how they consume the content that is important to them. We need modern copyright legislation that appropriately reflects the position that rights owners and consumers find themselves in today.

## **5.0 COPYRIGHT LICENSING**

### **5.1 RIM's Experience with Copyright Licensing**

RIM's approach to copyright licensing is motivated by our recent experience in acquiring content, both in the context of our recent launch of content services and our ongoing distribution of mobile applications on the BlackBerry App World platform. These experiences have given us a unique perspective on the challenges faced by users seeking to license copyrighted content.

Our new mobile music service, BBM Music, was launched in the European market in November 2011. It is based on RIM's BlackBerry Messenger (BBM) platform and enables social and viral music discovery by allowing users to build an evolving, community-based music library that is shared amongst their BBM Music friends. In order to launch this service, RIM negotiated licensing agreements with several partners, including Universal Music Group, Sony Music Entertainment, Warner Music Group and EMI, to name a few. We also negotiated an agreement with Omnifone, a cloud music service provider, for the back-end solution, which includes content management, music hosting and reporting functions.

RIM has also introduced a new BlackBerry Video Store service for the PlayBook tablet. This service provides consumers with convenient access to an extensive catalog of film and TV entertainment, including new releases available for purchase or rent on the same day as they come out on DVD or Blu-ray Disc. It was launched in the United States in February 2012. RIM is currently negotiating licensing agreements with movie studios and other rights holders in order

to facilitate the launch of this service in other countries in the coming months, including in Europe. We are partnering with Rovi Corporation for the back-end component of this service.

Separately, RIM has several years of experience in the distribution of mobile applications for our application store front, BlackBerry App World. Since its launch, BlackBerry App World has had over 2 billion total downloads, with 6 million on a daily basis. Our App World service supports 26 currencies in 164 countries and currently has over 60,000 apps available for consumers. Contrary to mass market music and video services, such as BBM Music and BlackBerry Video Store, these applications are commonly created by small or independent businesses without access to legal support or financial backing. These app developers are typically responsible for ensuring that they have cleared the rights for any third party copyrighted content that is included in their mobile apps before it is made available on App World.

**RIM believes that, in order to be effective and relevant in the new digital environment, any new licensing scheme must take into consideration the needs of both small and large users of copyrighted content.**

The clearance of rights for mass market services such as BBM Music and BlackBerry Video Store bears little resemblance to the clearance of rights for a mobile gaming app. Unlike mass market music and video services, which typically include thousands and sometimes millions of musical and audiovisual works, mobile applications typically contain only a small amount of musical and video content (e.g. background music in a gaming app). Also, as noted above, mobile applications are typically developed by small and medium sized enterprises (SMEs), with limited ability to negotiate comprehensive agreements with rights holders. Hence, meeting the needs of these two constituencies using a single “one size fits all” licensing may be an impossible task. A more realistic approach might be to create two parallel systems, one for large institutional players seeking access to a comprehensive catalogue of content, and another for SMEs requiring access to small amount of content.

Irrespective of which licensing scheme is chosen, we believe that the discussions should be guided by the following key principles:

***Simplification:*** Users need simpler solutions for licensing works, corresponding to each market and exploitation form.

***Technological neutrality:*** Online rights should not be treated differently from other offline rights.

***User choice:*** Users should not be required to use a specific licensing scheme. The most logical and efficient way to obtain the necessary permissions should be available. Competition among various licensing schemes should be encouraged.

***Legal and financial certainty:*** Users need to be confident that the licensing scheme will provide the right to use the works as intended (legal certainty) and at specific and transparent costs (financial certainty).

**Comprehensive repertoire:** Licensing scheme providers should have the ability to issue licenses for the entire repertoire where required.

We welcome these debates and believe that they have the potential to offer a more efficient marketplace for owners and purchasers of rights, as well as opening up new markets to creators who may not have previously been able to access them.

## 5.2 Collective Licensing

The growing availability of online content offers consumers easy and unprecedented access to millions of works such as music, video and books. At the same time, however, the online distribution of this content presents new challenges to the conventional approach of accessing copyrighted works. While digital access to these works is simple, obtaining the right to lawfully distribute these works online is complex and costly. The lack of simple, user-friendly licensing makes authorized access and use challenging and, in some cases, prohibitive. Both rights holders and users suffer: rights holders because they cannot offer authorized and controlled access to their works and therefore lose the ability to exploit and profit from them and users because there is no easy access to lawful digital content.

We agree with the Copyright Review Committee that inefficiencies in the licensing system can stifle innovation and that the fragmented nature of collective rights management is resulting in significant transaction costs. We believe that the transaction costs associated with clearing rights are increasing barriers to entry, ultimately hindering the development of new products and services which could stimulate growth and enhance choice for consumers.

As a service provider, and a new participant in the online content industry, we faced significant barriers to entry. As we prepared to offer BBM Music in Europe, we went through lengthy and complicated negotiations with a variety of rights holders across multiple catalogues and jurisdictions. We incurred significant transactional and legal costs to clear the rights for these catalogues.

One factor that makes the current copyright clearance regime so complex is fragmentation. Fragmentation occurs on many different levels:

- **Fragmentation of rights:** Content can be compiled of multiple protected works and involve several economic rights (reproduction right, making available right, distribution right, etc.) Furthermore, some copyrighted materials can be subject to overlapping rights (copyrights, neighbouring rights, rights of publicity, etc.)
- **Fragmentation of right owners:** Copyrights and related rights are rarely owned by a single entity. In practice, rights are divided along vertical and horizontal lines, for different modes of exploitation and different territories. Rights can be exercised by agents or collective licensing societies.
- **Fragmentation of licensing practices:** Individuals and businesses wishing to distribute copyrighted works online are confronted with a variety of licensing schemes. Each “family

of rights” has its own licensing tradition (which likely also differs between jurisdictions), with no commonly accepted method for licensing or pricing related rights in a consistent manner.

We agree with the Committee that a simplified regime of collective licensing would be good for business as reduced transaction costs will lower barriers to entry, and enable the development and rollout of new business models and services. The creation of a simpler licensing regime will address the fragmentation complexities outlined above. The ability to clear rights in a “one stop shop” would ultimately increase the availability of online content and decrease the administrative and financial burdens of acquiring and maintaining licenses. In our view, the creation of a collective licensing system, as described in the consultation, could help to reduce barriers to entry by simplifying the process and reducing the transaction costs associated with mass rights clearance.

Any system that makes it easier for new services to enter this market will make the whole industry more vibrant. A system such as this could serve as a catalyst for further competition amongst service providers as they will be able to offer more choice to their consumers who, in turn, will purchase more content, ultimately resulting in greater compensation for rights holders.

While we are supportive of a simplified clearance scheme, we caution that the system should not serve to limit the ways in which parties negotiate. It should be available as an optional tool, rather than a mandatory system.

RIM looks forward to participating in cross-sector discussions to further this initiative. The copyright licensing regime is multi-faceted and complex, spanning multiple sectors and business models. We recommend that the Committee continue to seek the input of industry groups throughout the process of developing this simplified clearance scheme.

### **5.3 Digital Copyright Exchange**

In addition to a collective licensing model, we envision a system of Digital Copyright Exchange (DCE) that would streamline access to specific and small amounts of content. This concept was proposed the Hargreaves Review of IP and Growth and is undergoing discussion in the UK. While this issue is currently the subject of a separate inquiry being conducted by Richard Hooper, we believe that a system of collective licensing and DCE should be viewed as interrelated and complementary solutions to the same problem, namely the fragmentation described above. As noted earlier, we believe that these two solutions are targeted at different constituencies and could be implemented in parallel.

As mentioned, a DCE would streamline access to specific and small amounts of content. For example, a small business developing a mobile gaming app would have the ability to access and purchase the rights to a single musical work to use as background music. As a mobile platform



provider, we work closely with a large number of such developers. Our global application developer community includes more than 500,000 developers registered to develop for BlackBerry. This is an important community for RIM. We are actively encouraging these small businesses to develop new apps for our platform. Mobile application developers can enhance the games and services they have created by adding background music or video. In many cases, access to copyrighted content is a barrier for developers.

In its consultation, the Committee proposes the development an overarching UK DCE as well as an Irish Digital Copyright Exchange, and envisions the development of an online system of automated digital permission and payment. We are supportive of the development of both of these systems and believe that online processing is essential and properly reflects the digital environment in which we work. However, we believe this would be most effective if developed as an interrelated and complementary solution to UK DCE. A coordinated, online exchange would simplify the clearance of rights across the United Kingdom and Ireland, reducing the complexity and transaction costs for small businesses.

Simplifying access to copyrighted content is an important component in developing a vibrant mobile application development ecosystem. We consider that a DCE has the potential to open new markets to app developers who may not have previously been able to access copyright content by providing a more efficient marketplace for the licensing of content. Hence, we encourage the Committee to continue the discussion on this topic.

## **6.0 EXCEPTIONS TO COPYRIGHT**

As noted earlier, it is important to ensure that copyright policy recognizes and protects the interests of both copyright owners and copyright users. Copyright law must strike a balance between the copyright owner's right to a return on their intellectual investment and the importance of promoting innovation and economic development. The exceptions discussed in the Copyright and Innovation Consultation Paper provide a means by which this is achieved.

The ways in which we acquire and consume music, video and literature have changed dramatically in the last decade. As technology continues to evolve at a rapid pace, consumers are offered greater flexibility in how they access and store the content that is important to them. These advances have opened up new business opportunities for developers and new platforms for artists to sell their work.

Most consumers purchase content with the expectation that they will be able to transfer this content between different devices. For example, consumers expect that a song purchased legitimately online can be listened to from their personal computer, their MP3 player or their mobile phone. Particularly in the context of music sales, producers benefit from enabling consumers to format shift content in this way, and the ability to do so is generally factored into the purchase price of the music.

In the consultation, the Committee advises that the fair dealing provisions in section 50 of the CRRA (Copyright and Related Rights Act, 2000) allow for some reproductions for private use, and considers whether to implement the full EU Copyright Directive Article 5(2)(b) which provides for an *exception to or limitation upon the reproduction right in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or nonapplication of technological measures.*

In our view, the implementation of this private copying exception will serve to align copyright with the reasonable expectations of consumers, and create space for new technological innovation. We acknowledge and support the caveat that the private copying exception must minimize any harm to copyright owners.

RIM also supports and appreciates the Committee's inclination to not introduce a system of private copying levies. We maintain that private copying levies on consumer electronic devices, such as mobile phones and tablets, are unreasonable and do not serve the interest of artists, consumers or the economy.

Where instituted, private copying levies should not compensate rights holders for copying that is illegal or otherwise licensed. When a consumer purchases music from an online music store, as is increasingly the case, they are obtaining a license to copy that music a specified number of times. Any levy would only apply to copies made beyond that agreed upon number: the unlicensed copies. This amounts to a very small portion of music copied. Since private copying levies are applied to the device itself, rather than to these unlicensed reproductions, they inevitably cover licensed copies for which the rights holders have already been remunerated.

Private copying levies are detrimental to economic development. The implementation of levies in certain countries may encourage consumers to purchase goods in countries without copyright levies, depriving local retailers of business and the Government of income taxes and other internal taxes on IT products.

The resulting increase in the price of consumer electronics will reduce demand for these devices. The greatest impact will fall on lower income consumers, further limiting their access to technology and ICT products.

Private copying levies are detrimental to technological innovation. Increased costs of production will hamper, and potentially prevent, innovation and development, negatively impacting countries' hi-tech industries and reducing opportunities to successfully work in this field.

The internet and certain digital devices have become key platforms for artists to raise awareness of and sell their work to consumers. The application of private copying levies on

consumer electronics would have a negative impact on artists by decreasing the demand for the equipment that consumers use in order to purchase content online.

As stated in this consultation, exceptions within copyright law serve to accommodate interests other than those of rights-holders, such as those of users. We believe that the implementation of a private copying exception that allows copying for personal use would meet the needs of consumers. Specifically, we envision an exception that permits copying for format-shifting, backup, and personal use on different devices, but not the sharing of content between users. We believe that a model such as this would appropriately reflect consumer expectations and would cause minimal harm to rights holders.

As mentioned above, technological advances have opened up new business opportunities for developers and new platforms for artists to sell their work. Online communities have become a key platform for artists to raise awareness of and sell their work to consumers. When consumers are able to legitimately purchase content online with the assurance that they will be able to access it from multiple devices, it follows that they will purchase and consume more, more often.

## **7.0 CONCLUSION**

RIM urges the Committee to continue its work to strike the right balance between the interests of copyright owners and copyright users. We support the approach articulated in the consultation document. We believe that Ireland's digital economy is reliant upon intellectual property rights and requires modern public policies and programs that keep our economy globally competitive. This will ensure the further development of existing Irish companies as well as laying the foundation for future companies yet to be launched.

We believe that our comments and specific suggestions outlined above will assist the Committee improve the opportunities for technical innovation and strengthen Ireland's global leadership in this important area. We welcome the opportunity to continue this dialogue with the Committee and other stakeholders. Please do not hesitate to contact RIM directly should you have any questions.

### **Contact information:**

Elizabeth Kanter  
Director, Government Relations  
Research In Motion Limited  
[ekanter@rim.com](mailto:ekanter@rim.com)