

1. Name

Kevin Scally

2. Postal address

3. Email address

4. Are your responses confidential?

No

5. Website (if any; will not be disclosed)

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

User

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

No

8. 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)].

No

9. 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?

Yes

10. 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

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

Curious question. Why include entrepreneurs and intermediaries as separate categories? Why not educators?

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

Rights holders v public domain

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

Depends on the interests it represents

14. 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?

Public

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

Rights holders and defenders of public domain

16. What should the composition of its Board be?

Rights holders and defenders of public domain; authors, artists, publishers, media firms, Internet users, small firms, journalists, legal, Internet service providers

17. What should its principal objects and its primary functions be?

Maintain balance between economic exploitation of original works and educational, creative and innovative use of them.

18. How should it be funded?

Public

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

Not enough detail. Possibly.

20. What other practical and legislative changes are necessary to Irish copyright licensing under CRRA?

Proper definition of copyright as economic rather than property right, and reduction of copyright term to 20 years 'post mortem auctoris' would be a good start. Practical solutions might include some form of micropayment system.

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

Possibly

22. How much of this Council/Exchange/ADR Service architecture should be legislatively prescribed?

Impossible question to answer in this form

23. 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?

Not concerned

24. Should the statutory licence in section 38 CRRA be amended to cover categories of work other than "sound recordings"?

Not concerned

25. Furthermore, what should the inter-relationship between the Controller and the ADR Service be?

Not concerned

26. 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?

No

27. 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?

No

28. 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?

Why does this need 'encouragement'?

29. 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?

Ridiculous question.

30. Is there, in particular, any evidence on how current Irish copyright law in fact encourages or discourages innovation and on how changes could encourage innovation?

Educators are currently unable to afford to present many materials in the classroom environment, and increasingly too terrified to encourage students to experiment

31. 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?

Same question as 30, and same answer

32. 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, but it should also be recognised that no author's work is original in its entirety. This is one of the reasons why a property paradigm is inappropriate for copyright.

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

Yes

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

Of course

35. 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?

Possibly

36. Are any other changes necessary to make CRRA platform-neutral, medium-neutral or technology-neutral?

Not concerned

37. 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?

Not concerned

38. 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

39. 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

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

Not concerned

41. Should the special position for photographs in section 51(2) CRRA be retained?

No

42. If so, should a similar exemption for photographs be provided for in any new copyright exceptions which might be introduced into Irish law on foot of the present Review?

43. 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?

No

44. If the copyright community does not establish a Council, or if it is not to be in a position to resolve issues relating to copyright licensing and collecting societies, what other practical mechanisms might resolve those issues?

Micropayment system

45. Are there any issues relating to copyright licensing and collecting societies which were not addressed in chapter 2 but which can be resolved by amendments to CRRA?

Not concerned

46. 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?

Yes

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

Probably

48. If there is a case for such immunities, to which remedies should the immunities provide defences?

Question too complex

49. Does the definition of intermediary (a provider of a "relevant service", as defined in section 2 of the E-Commerce Regulations, and referring to a definition in an earlier - 1998 - Directive) capture

the full range of modern intermediaries, and is it sufficiently technology-neutral to be reasonably future-proof?

Ridiculous question. This would take a 15000 word essay to discuss. Are you serious?

50. If the answers to these questions should lead to possible amendments to the CRRA, are they required or precluded by the E- Commerce Directive, EUCD, or some other applicable principle of EU law?

See answer 49

51. 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?

Yes. One reason is that no legal system will ever manage the consequences of such a decision. Consider a technological solution.

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

No

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

No

54. Does copyright law inhibit the work of innovation intermediaries?

Yes

55. Should there be an exception for photographs in any revised and expanded section 51(2) CRRA?

No

56. 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

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

Bad question. Reword this.

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

Possibly

59. If so, what exactly should it provide?

Not concerned

60. Does copyright law pose other problems for intermediaries' emerging business models?

Almost certainly. "The Internet is a local machine for springing surprises" John Naughton

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

Probably

62. 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? - Yes

(e) reporting administrative, parliamentary or judicial proceedings? - Yes

(f) religious or official celebrations? - Yes

(g) advertising the exhibition or sale of artistic works? - Yes

(h) demonstration or repair of equipment? - Yes

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

63. Should CRRA references to “research and private study” be extended to include “education”?

Yes

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

Yes

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

Yes

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

Yes

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

Yes

68. 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

69. 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?

At all times

70. 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?

At all times

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

At all times

72. 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?

No

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

Yes

74. 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

75. 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

76. 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

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

Not necessary

78. 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?

Sufficient

79. 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?

Yes

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

Yes

81. Should there be related exceptions to permit computer security assessments?

Yes

82. What is the experience of other countries in relation to the fair use doctrine and how is it relevant to Ireland?

Inadequate

83. (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 EUCD exception for non-consumptive uses or more broadly for a fair use doctrine?

Ludicrous copyright term agreed at Berne 1884-86, Berlin 1908 and Brussels 1948 followed by the 20 year extension in 1990s . Join with interested governments to cut this to 20 years.

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

Surely this is obvious? Where is the evidence to the contrary?

85. 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?

Reduce the copyright term to something more reasonable and this could be up for discussion.

86. 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?

Fair use is essential.

87. Is the ground covered by the fair use doctrine, either in the abstract or in the draft section 48A CRRA [in the Paper], sufficiently covered by the CRRA and EUCD exceptions?

Probably not. But cut the copyright term and let us discuss.

88. What empirical evidence and general policy considerations are there in favour of or against the introduction of a fair use doctrine?

There is no evidence against fair use in general, as far as society's innovative activities are concerned.

89. (a) If a fair use doctrine is to be introduced into Irish law, what drafting considerations should underpin it? (b) In particular, how appropriate is the draft section 48A tentatively outlined [in the Paper]?

Not concerned

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

No

91. 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

92. What have we missed?

You entirely accept a copyright term which was agreed in 1883, over 100 years before the world wide web was invented, by a convention of interests including authors, publishers, literary societies and lawyers. No user or business interests were in the room in Berne when

this piece of appropriation took place.

93. Do you have any further comments on the Consultation Paper?

Limited and already out of pace with the technologies for human communication.

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

Similar problem to Berne 1883. The wrong interests are in the room.