



An Roinn Gnó,
Fiontar agus Nuálaíochta
Department of Business,
Enterprise and Innovation

Regulatory Impact Analysis

Copyright and Other
Intellectual Property Law
Provisions Bill 2018

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Intellectual Property Unit
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Summary of Regulatory Impact Analysis (RIA)

Department/Office: Department of Business, Enterprise and Innovation	Title of Legislation: Copyright and Other Intellectual Property Law Provisions Bill 2018, to implement recommendations of the Copyright Review Committee's "Modernising Copyright" Report 2013
Stage: Seeking Government approval for publication of a Bill to implement a number of the Copyright Review Committee's recommendations	Date: February 2018
Related Publications: Copyright Review Committee's "Modernising Copyright" Report, December 2013	
Available to view or download at: https://www.djei.ie/en/Publications/Publication-files/CRC-Report.pdf	
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<i>What are the policy objectives being pursued?</i> Given the pace of technological development and the rapid move to digital since the Copyright and Related Rights Act 2000 was enacted, it was necessary to consider modernising certain aspects of Ireland's copyright legislation to take account of new ways of accessing copyright works that were not envisaged by the current copyright framework.	
<i>What policy options have been considered?</i> Option 1: Do Nothing/No Policy Change. Option 2: Introduce all the recommendations made by the Copyright Review Committee. Option 3: Introduce certain of the recommendations made by the Copyright Review Committee.	
<i>Preferred Option:</i> Option 3.	

OPTIONS			
Option No.	COSTS	BENEFITS	IMPACTS
1	- No direct costs	- None	- Risk of perceived reduction in competitiveness from a failure to modernise copyright legislation to keep pace with developments in the digital world
2	<p>- Cost of establishing the Copyright Council (D/Business, Enterprise & Innovation) not quantified</p> <p>- Cost of establishing an Intellectual Property Court (Department of Justice & Equality) not quantified, but would be significant</p> <p>- Likely significant cost of establishing IT systems to support mandatory digital deposit (Department Culture, Heritage and the Gaeltacht) not quantified</p>	<p>- Potential for increased engagement between stakeholders and Government through the workings of Copyright Council</p> <p>- Increased usage of exceptions to copyright as allowed by EU Information Society Directive¹</p> <p>- Consumers: potentially greater access to a wider variety of creative content in more competitive, innovative and dynamic market</p>	<p>- Negative impact on the administration of the Courts system if a separate stream was put in place for Intellectual Property (IP) cases</p> <p>- Potential for improved access to copyright works to benefit industry, consumers and society at large</p> <p>- Potential legal challenges to implementation of certain recommendations</p> <p>- Improvement in perceived competitiveness and levels of IP protection, supporting companies which already develop and manage IP in Ireland, and make Ireland a more attractive place for future investment by other companies in the future, particularly in relation to investment in research</p> <p>- Increased use of copyright material by students, including utilisation of new digital technologies in education and training</p>

¹ 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

3	- No direct costs	<ul style="list-style-type: none"> - Allow for increased usage of targeted exceptions to copyright allowed by EU Information Society Directive, benefitting strategic areas of interest such as research and education - Greater consumer access to a wider variety of creative content in more competitive, innovative and dynamic market. - All persons with a disability will benefit from the amendments contained in the Bill which will provide access to a wider range of copyright material in accessible format. The Bill also lay the groundwork for Ireland to ratify the Directive on certain permitted uses of work and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (Marrakesh Treaty).² 	<ul style="list-style-type: none"> - Improved perception of Ireland as a location for the creation of intellectual property by allowing rightholders to more fully protect and enforce their IP rights - Improved enforcement of IP rights through easier access to courts - Potentially allow for improved access to copyright works to benefit consumers and society at large and in targeted sectors - Increased use of copyright material by students, including utilisation of new digital technologies in education and training - Improvement in perceived competitiveness, supporting companies which already develop and manage IP in Ireland, and make Ireland a more attractive place for future investment by other companies in the future
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² Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of work and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society

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Description of Policy Context and Objectives

Introduction

The purpose of this document is to analyse the impact of the recommendations proposed by the Copyright Review Committee, and facilitate decisions on which recommendations should be pursued through amending the existing copyright and related rights legislation.

In addition, while drafting the Copyright and Other Intellectual Property Law Provisions Bill, several additional Intellectual Property (IP) matters were found to require legislative amendments. These include the crossover between copyright protection in industrial designs and consideration of improving access to the courts system for all relevant IP infringement claims. Certain other technical anomalies are also addressed in the Bill.

Context

What is copyright and related rights?

The author of a work such as a song, book, play or film holds the copyright in that work. This means that they have the exclusive rights to display, perform or create reproductions or copies of their works. The performers, producers and broadcasters of the work have what are known as related rights. These are the rights attributed to the person or persons that make a work available to the public, such as performers, producers or broadcasters. The holders of copyright and related rights are entitled to remuneration for the use of their work as well as to determine how it can be used.

Existing legislation

The existing legislation is the Copyright and Related Rights Act 2000 (CRRA) (as amended)³, which consolidated and modernised a number of previous Acts on copyright and related rights. There have been several amendments to the CRRA in the years since its enactment, many of which have been necessary to provide for changes to the copyright and related rights regime mandated at EU level or to ensure consistency with Ireland's obligations under international copyright treaties.

³ The Department of Business, Enterprise and Innovation has compiled an unofficial consolidated copy of the principal Copyright and Related Rights Act, 2000 which identifies each amendment by separate colour. This is for reference purposes only and can be found, together with links to all current relevant Acts and Statutory Instruments, at <https://www.djei.ie/en/What-We-Do/Innovation-Research-Development/Intellectual-Property/Copyright/Copyright-Legislation/>

The Digital Economy and its impact

The development of the digital economy in recent years has considerably changed the way in which users can access and use creative content. There is now a broader range of distribution channels and a larger range of formats over which to access copyrighted content. The EU Directive on the harmonisation of certain aspects of copyright and related rights in the information society (Directive 2001/29/EC)⁴ is the main EU Directive on copyright, which was adopted in 2001, and no update has yet been implemented. While Ireland ensured that it transposed all the mandatory aspects of the Directive, at the time it was not considered necessary to implement all the optional exceptions to copyright protection which were allowed under the Directive at the time of transposition.

Modernisation of copyright

The EU Commission has consulted with the Member States and other stakeholders on copyright modernisation as part of its Digital Single Market strategy. The EU Commission has proposed two directives and two regulations to adapt the EU copyright rules to the realities of the Digital Single Market, on 14 September 2016⁵. The detail in each of these proposals must be negotiated with EU Member States in the EU Council and the EU Parliament before they can be adopted.

The UK had also undertaken a similar review, which resulted in the publication of the Hargreaves Report⁶ in 2011 and led to a number of changes aimed at modernising its copyright legislation over the past five years. Many other EU Member States are taking steps to progressively modernise their copyright and related rights regimes to ensure that they maintain support for rightholders while facilitating access to creative content for consumers and allowing the development of the digital economy and new distribution channels.

Digital Single Market (DSM)

As mentioned above the EU Commission published four copyright proposals. Some of these proposals have been successfully concluded, for example the Marrakesh Treaty Directive and Regulation, while others are ongoing. The conclusion of these negotiations may result in the necessity to amend national legislation.

⁴ 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, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0029>

⁵ Links to the proposed Directives and Regulations, and relevant background documentation, can be found at <https://ec.europa.eu/digital-single-market/node/84547>

⁶ “Digital opportunity: review of intellectual property and growth” by Professor Ian Hargreaves is an independent report which makes recommendations about how the national and international intellectual property system <https://www.gov.uk/government/publications/digital-opportunity-review-of-intellectual-property-and-growth>

Copyright Review Committee

The Copyright Review Committee was established in May 2011 by the then Minister for Jobs, Enterprise and Innovation, Richard Bruton TD. It was tasked with examining the copyright framework in Ireland and with making recommendations that would support the development of a modern digital economy.

Objectives and work of the Copyright Review Committee

The Copyright Review Committee had the following terms of reference:

1. Examine national copyright legislation and identify any areas that are perceived to create barriers to innovation
2. Identify solutions to removing these barriers and make recommendations as to how these solutions might be implemented through changes to national legislation
3. Examine the US style 'fair use' doctrine to see if it would be appropriate in an Irish/EU context
4. If it transpires that national copyright legislation cannot be suitably amended (bearing in mind that Irish copyright legislation is bound by the European Communities Directives on Copyright and Related Rights and other international obligations) make recommendations for changes to the EU Directives that will eliminate the barriers to innovation and optimise the balance between protecting creativity and promoting and facilitating innovation.

As part of its work, the Committee undertook two separate public consultations⁷. An initial consultation during the summer of 2011 resulted in the CRC receiving in the region of 100 submissions from a broad spectrum of interested parties. The consultation papers were posted to the copyright pages of the Department's website. This was accompanied by an awareness-raising campaign of the consultation process through newspaper advertising.

⁷ The consultation papers and submissions received can be accessed on the website of the Department of Business, Enterprise and Innovation: <https://dbei.gov.ie/en/What-We-Do/Innovation-Research-Development/Intellectual-Property/Copyright/Copyright-Review/>

The Committee published a comprehensive consultation paper in February 2012 which set out the issues advanced in the submissions, and requested responses to specific questions. Further information was sought from interested parties by the Committee under the broad headings of Rightholders, Collecting Societies, Intermediaries, Users, Entrepreneurs, Heritage Institutions and Fair Use. A public meeting was held on 24th March 2012 to facilitate discussion in relation to the Consultation Paper. In the region of 180 submissions were received by the closing date for the consultation in which many complex and substantial matters were raised.

Respondents had a broad range of views on the Committee's questions and proposals. Most were supportive of the aims of the Committee to modernise the copyright and related rights regime and facilitate innovation. The responses to the detailed questions in the consultation were considered by the Committee in the drafting of its final Report and draft bill illustrating how their recommendations might be implemented.

The Committee's report, entitled "Modernising Copyright"⁸, was published in October 2013 and contained more than 60 specific recommendations. Following the publication of the Report, a public forum was held in the Royal Irish Academy on 9 December 2013. The Committee presented its recommendations to a capacity audience from the wider copyright community, followed by an open and wide-ranging debate on the proposed recommendations.

The Department of Business, Enterprise and Innovation then conducted an in-depth assessment of the complex legal issues involved in certain of the proposals with the Office of the Attorney General, as well as examination of the proposals from a policy perspective. Where recommendations involved issues under the remit of other Government Departments, those Departments were also consulted.

⁸ The "Modernising Copyright" Report can be found on the website of the Department of Business, Enterprise and Innovation: <https://dbei.gov.ie/en/Publications/Publication-files/CRC-Report.pdf>

Main Elements of the Committee's Report

The recommendations in the report are grouped in this paper under the following themes:

1. Copyright Council

The Copyright Council would be a statutory body run and funded by the copyright sector, independently of the Minister, the Department and the Controller of Patents, Trademarks and Designs. It would have responsibility for matters such as developing codes of practice, operating as a Digital Copyright Exchange and acting as an agency for the licensing of Orphan Works.

2. Access to Justice

The recommendations of the Committee in relation to improving access to justice include extending the remit of the Small Claims procedure in the District Court to include IP claims and introducing a special IP court in the Circuit Court.

3. Fair Use and Innovation

The Committee recommended the introduction of a fair use exception and an innovation exception to facilitate a lawful user of an initial work to derive from it an innovative work which either substantially differs from or substantially transforms the initial work.

4. Private Copying

The private copying exception would be framed for private and domestic uses and would cover reproductions on paper for private use, format shifting and reproductions for back-up copies.

5. Education and Research

Education and research are key building blocks in promoting greater innovation. Expanding the existing exceptions in these areas would allow educational and research institutions to make greater use of copyright-protected material, benefit from the use of new technologies in delivering education and training, and support the development of the wider innovation economy.

6. Digital Deposit

The Committee recommended the extension of copyright deposit to digital publications and have noted the UK Legal Deposit Libraries (Non-print works) Regulations, 2013, that provide for digital deposit in the UK. The digital deposit

would apply to existing Copyright Deposit Institutions and to any other institutions that the Minister might specify.

7. Disability

The Committee recommended the adoption of further exceptions for people with disabilities, including the making of a personal copy by a person who is disabled and the making of multiple copies by designated bodies.

8. Other Recommendations

The Committee made a series of further recommendations which have been considered from both a legal and policy perspective. These included:

- renaming the Controller of Patents, Trademarks and Designs and the Patents Office to include all forms of intellectual property;
- incorporating copyright exceptions from the Information Society Directive;
- a series of consumer protection recommendations; and
- a number of other very technical recommendations.

Identification and Description of Options

Option 1: Do nothing/No policy change

This option would mean that the status quo is maintained. There would be no specific measures implemented to advance copyright in Ireland into the digital age and promote greater innovation.

Option 2: Implement all of the Committee's recommendations.

This option would involve the implementation of each of the over 60 recommendations within the Committee's Report, as already outlined in the previous section. Following extensive analysis of the recommendations contained in the Report, including an in-depth assessment of the complex legal issues involved in certain of the proposals in consultation with the Office of the Attorney General, as well as examination of the proposals from a policy perspective, it was determined that implementing the recommendations in their entirety would not be feasible.

Recommendations that could not be progressed include the following:

- Introduction of an **Irish fair use exception** similar to that which is in place in the US;
- A series of **private copying exceptions** in line with the InfoSoc Directive that would provide for users to shift the format of content which they have purchased;
- The establishment of a **Copyright Council of Ireland** which would be responsible for analysing copyright issues and making recommendations to the Minister; and
- The creation of a specialised **Intellectual Property Court** that would operate within the District and Circuit courts and would have jurisdiction over IP claims.

Option 3: Implement certain of the CRC's recommendations.

This option would involve pursuing the implementation of a number of the Committee's policy related recommendations, such as:

- Improving **access to the courts system for IP infringement claims**, particularly for lower value cases of IP infringements;
- Introduction of a **Text and Data Mining copyright exception**;
- Extension of existing **copyright exceptions for education and research** as proposed by the Committee should be implemented;
- A **disability exception** as proposed by the Committee should be implemented; and
- The extension of the existing copyright deposit provisions relating to books to allow for the **Digital Deposit** of electronic copies of books.

Preferred Option

The preferred option is **Option 3**; to implement a number of the Committee's recommendations but not all of them, and to address some of the matters raised by the Committee by implementing different solutions.

Separately, while responding to the Government decision in July 2016 to proceed with **Option 3**, the Minister took the opportunity during drafting of the *Copyright and Other Intellectual Property Law Provision Bill*, to include a number of related IP matters which also required legislative amendments, namely:

- Following a stakeholder consultation and in line with a Court of Justice of the European Union ("CJEU") ruling clarifying the correct duration; the term of protection for the copyright in an industrial design is being extended, following a transition period, to life of the creator plus 70 years;
- Two technical amendments found to be necessary for the Patents Act 1992; and
- The conversion of fines currently expressed in Irish pounds (IR£) to euro amounts or relevant classes of the Fines Act 2010 where appropriate, across all IP legislation.

Analysis of Costs, Benefits and Impacts for all Options

Note: The analysis of costs, benefits and impacts of those recommendations which the Committee made and which are proposed for implementation are only discussed under option 3 to prevent repetition, but these would also be relevant or partially relevant to option 2.

Costs

Option 1: Do nothing/No policy change

There are no direct costs associated with Option 1. However, Ireland could face a perceived drop in competitiveness if our legislation may not keep pace with changes at EU level and in other countries as the modern digital economy continues to transform business models and the way in which consumers and businesses access creative content.

Option 2: Implement all of the CRC's recommendations.

Exchequer:

There are a number of direct costs to the Exchequer arising from some of the Committee's recommendations. As these have been examined from a policy and legal perspective and are not recommended on those bases, the likely significant costs involved have not been specifically quantified.

Copyright Council

It is likely that there would be a significant initial cost involved in the establishment of a new Government body, including cost of provision of secretariat. The Committee expected that this would be self-financing, but upfront costs would be involved as well as some ongoing costs, depending on structure and levels of funding forthcoming from rightholders and users. The costs (including potential Exchequer funding) would be incurred in establishing the Council and would also entail ongoing running costs such as staffing, premises, IT, design, Board fees etc., as well as other resources needed for the administration of a Council. These have not been fully quantified given the general policy orientation to reduce the number of new public bodies.

The establishment of any new body needs to have a very clear mandate, remit and strong rationale, including a defined function that addresses a compelling need. A new body would also require resources, and it is likely that these would need be found within the existing resources of the Department, which are already stretched to cover the broad remit of its functions.

Creation of a specialised Intellectual Property Court within the Circuit Court

There would be a significant cost involved in the training of specialised judges and registrars and establishment of additional structures for a specialised court within the Circuit Court system, on an already heavily burdened courts system.

The Courts Service has identified pressures which would arise, including:

- the extension of the Circuit Court's jurisdictional threshold and its current caseload burden;
- the requirement to divide the time and resources of the Circuit Court between criminal, civil and family sittings; and
- the negligible number of IP disputes before the Irish courts to date.

These are fundamental reasons which, while not directly cost related, have implications for resources in the Courts system. Thus, any further compartmentalising of the Circuit Court's business as envisaged could not be justified from an efficiency or resourcing aspect. For this reason, no specific costings of the proposals have been undertaken by this Department, the Department of Justice and Equality or the Courts Service.

Expansion of the small claims procedure to include IP claims up to the monetary limit of the District Court

The Small Claims Procedure before the District Court has a current monetary limit of €2,000. The Committee recommended that IP claims be admitted to this procedure but also that the value of such claims be admitted to the full extent of the District Court limit of €15,000. Claims under the Small Claims procedure are managed and processed by the District Court Clerk (the Small Claims Registrar). The Small Claims Procedure was designed to inexpensively resolve small claims by consumers, without involving a solicitor. While it was subsequently extended to accommodate business to business claims, that extension was quite restrictive, and has limited the number of claims in this area which have had to be dealt with by the Small Claims Registrar.

The Department of Justice and Equality indicated that Small Claims Registrars would not have the requisite level of skills and legal knowledge to manage the resolution of complex claims such as those that would typically arise under copyright and other IP law. It would also be inappropriate to set a separate monetary threshold for just one type of claim for admission to the Small Claims Procedure as was proposed by the Committee. The significant extension of the threshold from €2,000 to €15,000 would further increase the likely caseload to be borne by the Small Claims Procedure. This would impact on its efficacy to the detriment of other users of the procedure. For these reasons, no costings of the proposals have been undertaken by this Department, the Department of Justice and Equality or the Courts Service.

Fair Use and a Private Copying exception

Implementation of both Fair Use and a Private Copying exception would not, in themselves, have cost implications. However, the certainty of legal action against the State if they were introduced would have significant cost and reputational implications for the Exchequer in relation to both measures.

Digital Deposit

Very significant costs would arise for Copyright Deposit Institutions from the introduction of mandatory digital deposit. This would require the development of electronic archiving systems, which would likely require significant additional Exchequer funding.

Option 3: Implement certain of the CRC's recommendations.

There are no direct costs to the Exchequer.

Benefits

Option 1: Do nothing/No policy change

There are no specific benefits associated with Option 1.

Option 2: Implement all of the CRC's recommendations.

While some benefits may accrue if all of the Committee's recommendations were implemented, it was determined that, on balance, the optimal course was not to implement the recommendations *en masse*.

Copyright Council

If the proposed Copyright Council were to work in the manner envisaged by the Committee, its output may be of benefit to some of the stakeholders involved, to a greater or lesser extent. The bringing together of stakeholders in a single entity might allow for greater coherence within the sector, and allow the stakeholders to reach agreement on standards and codes of conduct to be adopted by the sector. It could also allow for a single point of contact in relation to expertise on copyright issues. However, those potential benefits are all dependent on the stakeholders involved in the Council working together effectively despite their diverse origins and the opposing interests that they represent.

If a Copyright Council were established as a statutory body, it could establish an alternative dispute resolution (ADR) mechanism, which could be an additional avenue for copyright disputes to be resolved. This may, in turn, have the potential in the long term to reduce the cost of disputes in relation to copyright for all parties – in terms of the time required to address issues and the cost of taking a case. However existing ADR systems are currently very poorly utilised for disputes related to copyright in Ireland.

Improved access to the Courts system

A specialist Intellectual Property Court within the Circuit Court would provide a dedicated stream for the processing of IP claims that would benefit rightholders in being able to seek enforcement in relation to lower value claims within the monetary jurisdiction of the Circuit Court, rather than needing to progress directly to the High Court, acting as the Commercial Court. This would also result in lower legal costs and the greater potential for rightholders to seek to protect their IP rights for lower value claims.

The Committee's proposal that IP claims could be considered by the Small Claims Procedure under the District Court could potentially bring about benefits for all rightholders, particularly those at the lower end of the scale and meet one of the requirements for reasonably and cheap access to Court. This would benefit SMEs in particular, although the Law Society noted that the existing rules would need to be amended to allow for the admission of business to consumer claims.

Private Copying Exception

The recommendation frames the core private copying exceptions (reproductions on paper, format shifting and back-up copies) as being for the user's 'private and domestic use'. The cohort identified as most likely to benefit from the proposed private copying exception is consumers/users and the most likely to be disadvantaged are rightholders. There is currently no private copying exception in Irish law therefore a legislative change would be required to introduce any exception.

In October 2014, the UK amended its copyright law introducing such an exception to copyright infringement which permitted people to make private copies of media they have bought (such as CDs and eBooks), for purposes such as format shifting or back up. This amendment was successfully subjected to judicial review by the music industry. Irish copyright law is very similar to UK copyright law in this area, and considering that any proposed exception would be extremely similar to the failed UK exception, the likelihood is that such an Irish private copying exception would also be legally challenged.

Fair Use and Innovation

There is currently no 'fair use' doctrine in Irish Law. The closest related doctrine that describes permitted exceptions to the exclusive rights of copyright owners is fair dealing. Fair dealing, generally, provides exceptions for the use of copyrighted material in research, scholarship, and criticism "for a purpose and to an extent which will not unreasonably prejudice the interests of the owner of the copyright". The proposed Fair Use doctrine would almost certainly create a much broader list of exceptions.

The reasoning in favour for a fair use exception relates to its flexibility and promotion of innovation and technology. In contrast, this exact same flexibility would create too many uncertainties and unpredictability in law as well as reducing protection for copyright owners.

Digital Deposit

The recommendations on digital deposit could present a potential overall saving to publishers through the delivery of electronic books rather than hard copy books. The main benefits to copyright deposit institutions would be the ability to collect non-print

works systematically to produce a shared archive of digital works, as well as the many published works that are no longer published in hard copy but solely in electronic format (pdf/web documents etc.). However, the imposition of a mandatory digital deposit regime must be offset against the costs which would be involved for deposit institutions in establishing digital archival and retrieval systems.

There is also potential, in the longer term to develop a separate project to allow for multi-institutional collaboration in capturing and preserving Ireland's digital record with the potential to eventually reduce the cost of the preservation of online works. This would be a matter for the Department with policy responsibility, Department of Culture, Heritage and the Gaeltacht, to consider, evaluate, make proposals to Government for policy change and seek Exchequer funding for the project in due course.

Option 3: Implement certain of the CRC's recommendations

On a general level, a decision to implement only certain recommendations provides the opportunity to avoid implementing recommendations that are likely to have some negative impacts.

Improving access to the courts

There is a strong imperative to improve access to the courts system and facilitate the ability of individuals and companies to enforce their IP rights in a timely, efficient and inexpensive manner. The ability for lower value IP claims to be heard and adjudicated at an appropriate level within the court system is a critical part of providing justice to best serve the needs of individuals and companies.

In the longer term, it would lead to the development of a greater wealth of case law and precedent to benefit all parties. It is also likely that, due to the reduced cost burden of taking enforcement actions, there would be greater numbers of cases taken and an increase in the numbers of legal practitioners specialising in IP matters, potentially leading to an overall reduction in legal costs for such expertise.

This also helps to maintain Ireland's reputation as a high performing country with regards to IP enforcement at all levels. This is important to attract R&D and other innovation sectors to develop and retain their IP in Ireland, and is in keeping with other Government policies such as the Innovation 2020 strategy and the Knowledge Development Box. This is a factor that has been discussed in many academic papers, with a WIPO Journal article expressing it clearly:

*“Countries that are perceived as having a clear, simple, effective and expeditious judicial system could display higher levels of investment. Firms may also conduct more R&D in these countries, for example, as this factor may facilitate their ability to appropriate benefits of their innovative activity”.*⁹

Copyright Exceptions

The emergence of digital technologies has facilitated new ways to exploit existing material. Activities such as digital preservation, digital and online educational activities, Text and Data Mining and others, are not always clearly permitted by existing copyright law. Introducing the proposed legislative amendments will bring a range of benefits to the different areas. The current legal uncertainty negatively affects the way in which users can benefit from the potential of these technologies in the digital environment. The benefits will emerge in relation to the ability of users to undertake such activities, as well as allowing Ireland to continue to pursue the development of those technologies in our vibrant ICT sector.

Education and research

Education and research are fundamental and linked aspects in achieving the Government’s priority of promoting greater innovation. The amendments set out in the Bill are intended to expand the existing copyright exceptions in the Copyright and Related Rights Act, 2000, to the full extent allowed by the EU Information Society Directive (Directive 2001/29/EC). This will facilitate greater clarity around the use of copyright material in scientific and other research. This would support the Government’s science strategy, *Innovation 2020*¹⁰, which aims to continue to see Ireland improve its performance globally in the area of research and development.

⁹ Barro, “Determinants of Economic Growth”, 1996; S. Djankov, R. La Porta, F. Lopez-de-Silanes and A. Shleifer, “Courts: The Lex Mundi Project”, CEPR Discussion Papers 3344 (2002); E.E. Glaeser, R. La Porta, F. Lopez-de-Silanes and A. Shleifer, “Do Institutions Cause Growth?”, NBER Working Papers 10659 (National Bureau of Economic Research, 2004); La Porta et al., “The Economic Consequences of Legal Origins”(2008) 46(2) *Journal of Economic Literature* 285 – as quoted in: Cavazos Cepeda, Ricardo H. and Lippoldt, Douglas C., “The Strengthening of IPR Protection: Policy Complements”, in W.I.P.O Journal, Issue 1, 2010, p.104

¹⁰ *Innovation 2020* is Ireland’s current five year strategy on research and development, science and technology. The strategy and its implementation reports can be found on the website of the Department of Business, Enterprise and Innovation at: <https://dbe.gov.ie/en/Publications/Innovation-2020.html>

The students undertaking education and training, as well as the education sector as a whole, would be the beneficiaries of the implementation of the education and research exceptions below.

- Text and data mining
- Exception for illustration for teaching or scientific research
- Distance learning exception
- e-learning exception

Having a strong regime in place to ensure the necessary copyright protection and facilitate modern licensing schemes, whilst supporting the development of modern education methods including distance and online learning, also supports the wider government policy agenda for the modernisation of education¹¹.

Text and Data Mining

The introduction of a copyright exception to allow Text and Data Mining will facilitate the increased use of this important research technique. It would allow investigation of datasets of increasing size, complexity and diversity. Thus, it would be particularly beneficial to the research community in gathering data and making greater uses of data, including that generated by publicly-funded research.

The new copyright exception will allow researchers to make copies of any copyright material for the purpose of computational analysis if they already have the right to read the work (that is, work that they have “lawful access” to). They will be able to do this without having to obtain additional permission to make these copies from the rights holder. This exception would only permit the making of copies for the purpose of text and data mining for non-commercial research. Researchers would still have to buy subscriptions to access material; this could be from many sources including academic publishers.

Thus, while publishers would still have the right to be paid for their material through subscriptions or other contract terms, researchers would be able to undertake non-commercial research using computational analysis on the material which could result in additional conclusions being made from research projects and allow for greater leverage of the results generated by publicly-funded research projects over time.

¹¹ There are a range of relevant Government strategies in relation to education, including the “*Digital Strategy for Schools 2015-2020: Enhancing Teaching, Learning and Assessment*”; the “*STEM Education Policy Statement: 2017-2026*” and its associated implementation plans; and “*Irish Educated, Globally Connected: An International Education Strategy for Ireland, 2016-2020*”, which are available on the website of the Department of Education and Skills, <https://www.education.ie/>

The wider enterprise sector would also benefit from the results of that research in developing new products and services, and thus leading to retention and increasing employment in the longer term. This also supports other Government initiatives such as the national Open Data initiative¹² and the development of the Smart Economy.

Digital Deposit

The main benefit to copyright deposit institutions of the recommendations to facilitate digital deposit on a voluntary basis is to allow them to collect non-print works systematically to produce a shared archive of digital works. There is also the potential for some savings for publishers through the delivery of electronic books rather than hard copy books.

Disability

For persons with a disability, they will benefit from gaining access to a wider range of copyright material in accessible formats. The expansion of the definition of disability, to include all types of disability, will allow for greater access for all persons with a disability to copyright works adapted to suit their particular needs.

The disability exception imposes limitations to the exclusive rights enjoyed by rightholders such as book publishers in terms of the production, distribution and making available of their works to the public. It is likely that, once implemented, the new opportunity it affords for wider distribution of publishers' works will have an overall net positive impact.

In particular, persons with a visual disability will benefit from the availability of a wider range of published material in an accessible format. Since the Bill has been undergoing drafting, the EU has adopted a Directive¹³ and separate Regulations¹⁴ to facilitate the EU

¹²The "Open Data Strategy 2017-2022" is operated by the Department of Public Expenditure and Reform <http://www.per.gov.ie/en/open-data/>

¹³"Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society" http://ec.europa.eu/information_society/newsroom/image/document/2017-39/directive_marrakech_3F0C5F3D-C1A8-F9E1-9B9AEA464FAE7982_47216.pdf

¹⁴"Regulation (EU) 2017/1563 of the European Parliament and of the Council of 13 September 2017 on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled" http://ec.europa.eu/information_society/newsroom/image/document/2017-39/regulation_marrakech_3F1846C9-C2C1-82CD-3C0EF8178EE8C012_47217.pdf

as a whole ratifying the WIPO Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled¹⁵.

This Bill makes some of the necessary legislative amendments to allow Ireland to transpose this Directive by the deadline of 11 October 2018. However, further amendments will be necessary and may be brought forward as Committee Stage amendments once the necessary stakeholder consultation¹⁶ and policy analysis is complete.

¹⁵ <http://www.wipo.int/treaties/en/ip/marrakesh/>

¹⁶ The Department of Business, Enterprise and Innovation held a public consultation on the transposition of the EU Directive into Irish law from 11th December 2017 to 24th January 2018. The consultation document is available on the Department's website: <https://dbei.gov.ie/en/Consultations/Public-Consultation-Directive-EU-2017-1564-implementing-Marrakesh-Treaty.html>

Impacts

Option 1: Do nothing/No policy change

There has been a substantial shift in consumer behaviour towards the digital world which has not yet been fully reflected in copyright legislation. To do nothing would have significant impacts for rightholders and other stakeholders. These include no improvement for rightholders seeking to pursue smaller value IP claims, certain anomalies within existing copyright legislation would remain and consumers as a whole would not benefit from widening the exceptions to copyright for education, research or disability. In addition, the opportunity to pursue the creation of innovative new solutions through, for example, the use of text and data mining techniques would be foregone.

Option 2: Implement all of the CRC's recommendations.

The range of recommendations by the Committee is extremely diverse and, on an individual basis, gives rise to potentially significant impacts if applied in full as recommended. The Department has carefully examined, from a legal, a policy and a cost perspective, the full range of recommendations made by the Committee. Taking the most significant recommendations, the Department's assessment concluded that the impact of implementing each one has potential downsides. Taking the main recommendations, in particular, the position is as follows:

Copyright Council

A number of potential impacts were identified in relation to the proposal for the establishment of a Copyright Council of Ireland. The proposal envisaged a new Statutory Body which would be responsible for analysing copyright issues and making policy recommendations to the Minister.

In addition to the potential level of costs involved, which could require Exchequer funding to establish the Council in the first instance, and ongoing running costs such as staffing, premises, IT, design, Board fees, etc., the establishment of the Council would also impose additional costs on the individual and corporate Members of the Council (effectively, copyright stakeholders in Ireland), as the membership fees are expected to cover ongoing running costs of the Council. In that regard, there is a potential impact that the leverage and influence wielded by the major stakeholders may (unintentionally) result in members with greater financial resources having an unfair influence on the agenda and output of the Council.

The proposed establishment of a new statutory body was made against a backdrop of Government policy actively supporting rationalisation of such bodies as part of the economic recovery efforts, and only retaining those where there is a very clear mandate, role and remit for the body. A very strong rationale would be required for the establishment of any new statutory bodies, which has not been identified by the Committee.

The Committee proposed that the Council would be established to include a broad range of relevant copyright stakeholder interests. However, the Department anticipated difficulties for the proposed Council being able to reach consensus across such a heterogeneous group, with immensely diverging objectives as these would expect to represent a wide range of rightholders, intermediaries, user groups and consumers, all of which range from individuals to large corporate or other entities. As a result, the proposed Copyright Council would be very unlikely to achieve the aims envisaged by the Committee and would not be fit for purpose.

Many of the functions envisaged by the Committee for the Council are only possible to pursue if the Council is established on a statutory basis, including *inter alia* an ADR mechanism or an Orphan Works Licensing Agency. This has implications for funding and governance of such a body, compared with a body established, funded and governed by the sector. Such functions would also have implications for resources, including staffing and ICT systems required, which would need to be funded. Given the low levels of uptake of existing ADR systems, and the low numbers of orphan works which have been registered from Ireland since the Orphan Works regulations were enacted in 2014, it is unlikely that demand would increase to the level which would justify the necessary resources to implement those functions.

If the Council were to be established as the Committee proposed, it is likely that expectations would be raised amongst stakeholders that policy advice to the Minister would be followed closely and should only come from this channel. This would potentially impact on the independence of Government to pursue its policy agenda in Ireland and internationally, and to respond to problems or opportunities which it identifies independently to the Council's deliberations/recommendations.

Several of the proposed functions of the Council are no longer relevant since the publication of the Report. The Orphan Works Directive has been transposed and there is no intention to introduce an Orphan Works Licensing Agency in Ireland. The development of an ADR function crosses over improvements in access to the Courts system. Some other functions, such as advocating for the copyright community, providing a point of single contact, producing best practice guidelines and engagement with a Digital

Copyright Exchange, would of course be possible without a statutory body. The Department would welcome copyright stakeholders who come together to form such a body which equitably reflects the copyright community and stakeholder views.

Access to the courts

The creation of a specialised Intellectual Property Court that would operate within the Circuit Court and would have jurisdiction over IP claims would have a number of negative impacts to offset the benefits outlined previously.

At present, the low number of cases, particularly those of lower value, currently being pursued through the Irish Courts in relation to IP matters indicates that there is not enough demand and there would be an insufficient caseload for such specialised courts to be feasible. This is particularly important considering other Government priorities in relation to access to the courts, such as the specialist judges appointed to deal with personal insolvency cases since 2013, and the increased demand on criminal, civil and family court proceedings in recent years. If this were to be pursued, it would negatively impact on Government actions to tackle organised crime.

If the small claims procedure was to be opened to IP cases to the current limit of the District Court (€15,000 rather than the current €2,000 limit for small claims cases), it would be unfair to allow such cases utilize a higher value threshold when compared to other cases. The small claims procedure was created to facilitate lower value and less complicated cases to be resolved in a less bureaucratic way, but that is not possible in relation to IP cases. Small claims cases are managed by the District Court Clerk, acting as the Small Claims Registrar, and only go before a judge where the registrar cannot negotiate a settlement between the parties involved. However, the registrar would require significant additional training to understand the complexity of IP law in order to consider such cases, even if the limit were maintained at the existing €2,000. Intellectual property covers a broad swathe of distinct legislation including copyright and related rights, trademarks, patents, industrial design and other intellectual property.

It would be expected that improving access to the courts system, as recommended by the Committee, and reducing the cost burden for IP cases could potentially result in a large increase in the numbers of cases being introduced to the courts. The Courts Service is already struggling with the overall caseload, including in relation to existing resources, availability of courtrooms and judges, and long waiting times for cases to come to court. This would only deteriorate if these specific measures were implemented.

Fair Use Exception

Our probing in terms of extending beyond targeted exceptions did not suggest that significant economic benefits would arise from the introduction of a fair use regime in Ireland, or that the appetite for the introduction of same was particularly strong even in some of those who submitted in favour. The case was not made that an innovation of fair use exception would provide tangible benefits, particularly economic benefits, in promoting new technologies.

The introduction of a new fair use exception would give rise to legal uncertainty in practice and an increased number of disputes that would inevitably involve legal proceedings. It was considered that this could potentially result in increased litigation costs, which runs contrary to the recommendations on access to the courts system and could result in further pressure on the courts system as a result of such cases.

Separately, it is considered certain that if a Fair Use measure was introduced in Ireland, this would be legally challenged. This would require the Government to defend and justify the measure, but potentially leave the Government open to paying out damages to those affected by its implementation, even if only for a short period.

There is also a danger that the introduction of a Fair Use provision could potentially inappropriately skew the copyright balance in favour of users of copyright or even be perceived to do so and, in effect, could potentially hamper innovation and disadvantage rightholders.

Many of the intended benefits of the envisaged fair use exception could be achieved by legislating in Irish law for targeted copyright exceptions. These include exceptions under the Information Society Directive for news reporting, comedy, pastiche and satire, and the expansion of existing education and research exceptions. While we cannot identify clear causal benefits from these proposals, they will assist in supporting the Government's priority to create the ecosystem that will make Ireland the best small country in which to do business.

They will also benefit other Government priorities, such as supporting the development of research in Ireland and making better use of primary research (including publicly funded research) through the research and TDM exceptions, and improving Ireland's competitiveness by supporting the education ecosystem, facilitating the increased upskilling and reskilling of people in the Irish economy and also assisting the international education strategy through distance learning and eLearning exceptions.

Private Copying Exception

A private copying exception is likely to result in a similar impact as happened in the UK. Copyright law in the UK was changed in 2014 to introduce a private copying exception without a levy. This permitted people to make private copies of legally acquired content and would have allowed consumers to, for example, transfer their own CDs onto their mp3 player, but not allow people to make copies and give them to other people. The UK provision was successfully judicially reviewed on the basis of insufficient evidence shown of the lack of “harm” caused to rightholders and thus quashed in 2015. Given that any proposed exception in Ireland would have been almost identical to the failed UK exception, and our expectation that it would almost certainly be legally challenged and struck down, it was decided not to progress the Committee’s recommendation in this area.

Digital Deposit

Provision for a mandatory digital deposit system as recommended by the Committee would have significant impacts. There are currently a broad range of works that are no longer published in hard copy, but are only published and disseminated in electronic formats. There is no legal imperative to collect and store those at present and this could be seen as an unintentional deficiency, particularly in relation to the deposit of Government reports and other publications, many of which are only published electronically at the present time.

The impact on business, charities or voluntary bodies is that, to the extent that such bodies publish work in a medium other than print, they will be obliged to deliver the work on request to a deposit institution. In terms of economic impact, the recommendations represent a potential overall saving to publishers through delivery of electronic copies rather than hard copies of publications.

The development of a digital deposit system in Ireland would also support the development of new technologies around archiving and retrieving such publications, adapting those used elsewhere to best suit Irish needs. If a full digital deposit system were introduced as per the Committee’s recommendations, it would also facilitate the recording, archiving and utilisation for research purpose of websites with Irish domain names, which are not currently archived.

While this would record material that may otherwise be removed from the Web over time, it is a significant project which would require specific Government policy to be developed and funding for the necessary IT systems and other resources required. In addition, further legislative amendments would be required, including additional responsibilities for the National Library of Ireland.

However, both of those elements would require considerable resources with skillsets, which are not readily available in Ireland and which would be likely to involve the deposit institutions seeking additional Exchequer funding to acquire the necessary resources. These projects would fall within the remit of the Department of Culture, Heritage and the Gaeltacht to develop.

Option 3: Implement certain of the CRC's recommendations.

Having examined the report of the Committee and following analysis of its recommendations, it is considered that the most beneficial course of action is to seek to implement certain recommendations as outlined below.

Access to the courts

Improving access to the courts system for IP infringement claims, particularly for lower value cases of IP infringements by allowing the admission of intellectual property disputes to the Circuit Court and District Court for amounts up to the monetary jurisdictions of those courts, will have an overall beneficial impact. It is envisaged that relatively small IP cases would be heard faster and would be less burdensome for those involved than those cases going directly to the High Court, acting as the Commercial Court. It would support smaller, particularly individual, rightholders in protecting their intellectual property and enforcing their rights in smaller cases, which are not economically feasible to prosecute before the High Court.

It is likely that such a measure would result in an increased caseload within the already over-burdened courts system through these measures, but this should be lower than would occur through the opening of the small claims procedure to IP claims and the establishment of a specialist Intellectual Property Court within the Circuit Court. In the longer term, the increased enforcement activity by rightholders may lead to a change in the behaviour of competitors, users and consumers, as the increased likelihood of court action against infringements results in reduced levels of infringement overall.

There should be an additional beneficial impact of the reduced requirement for legal representation in the lower courts. However, there should also be a longer term beneficial impact for the legal sector through the increased numbers of such cases making IP a more important sector overall and increasing the expertise in IP matters across the legal sector in Ireland.

These measures will also enhance Ireland’s reputation for the protection of intellectual property¹⁷, strengthen the overall efforts to develop an innovation economy, encourage companies to develop and deepen their R&D capacity and support the Government’s strategy to make Ireland the best small country in which to do business.

Extension of existing exceptions for Education and Research

Few areas are more pivotal than education to our ambitions as a nation. The quality of the service we provide through our education system will determine whether we can deliver our most important goals, including to break cycles of disadvantage and ensure that every person has an opportunity to fulfil their potential, to create sustainable well-paying jobs and strong economic growth and to solve the great problems through research and innovation, and excel in culture, art and every other field of human endeavor.

The expansion of the existing provisions of copyright law in Ireland to the full extent allowed by the EU InfoSoc Directive will facilitate greater clarity around the use of copyright material in both education and training and in scientific and other research.

In relation to the widening of the existing education exceptions, these will allow for greater use of copyright works in classrooms, which is beneficial for students in increasing their exposure to a variety of sources and materials. It will also allow educational institutions to benefit from the potential afforded by new technologies, whether the students are in the classroom itself or through distance and online learning technologies for students not physically present in the classroom. This is in line with the changing provision of education and training in Ireland in general and will also support the Government’s vision that Ireland will provide the best education and training system in Europe¹⁸ in tandem with the strategy to promote Ireland as a centre for international education¹⁹. In addition, the widening of the existing education exceptions will enhance the development of the wider innovation economy by introducing modern methods and ideas to students at all levels in a much faster timeframe than previously possible.

¹⁷ “Intellectual Property Protection” is one of the key indicators used by the World Economic Forum in its annual *Global Competitiveness Report* <http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf>

¹⁸ “Action Plan for Education 2016-2019”, Department of Education and Skills Strategy Statement, September 2016 <http://www.education.ie/en/Publications/Corporate-Reports/Strategy-Statement/Department-of-Education-and-Skills-Strategy-Statement-2016-2019.pdf>

¹⁹ “Investing in Global Relationships: Ireland’s international education strategy 2010-2015”, Department of Education and Skills, 2010, <https://www.education.ie/en/Publications/Policy-Reports/Ireland-s-International-Education-Strategy-2010-2015-Investing-in-Global-Relationships.pdf> A successor strategy is currently being developed by the Department of Education and Skills.

In line with the Committee’s recommendation, the Government intends to expand the existing education exceptions beyond non-commercial use to facilitate private education and training providers to take advantage of the exceptions in their provision of education and training services, where these providers are recognized by the Department of Education and Skills. However, there is also a licensing override included, which protects the commercial interests of rightholders by requiring that, where a suitable licence is available for copyright material, education institutions must purchase that licence in order to use that material. Licensing bodies in Ireland have been proactive in developing such licences for digital use of works in education and training.

Text and Data Mining

The introduction of a Text and Data Mining copyright exception into Irish law would support the increase in usage of this important research technique, and allow investigation of datasets of increasing size, complexity and diversity. Thus, it would be particularly beneficial to the research community and to the enterprise sector benefitting from the results of that research in developing new products and services.

The Irish Government’s Action Plan for Jobs 2013²⁰ had identified “Big Data” as one of the areas where Ireland has distinct advantages compared to other countries. The Government believes our skills base and research capability in ICT has the potential to reap substantial benefits in terms of jobs and growth from the global expansion of the “Big Data” sector. More recently, the Government published its National Open Data Strategy 2017-2022, in July 2017²¹. The objectives of the strategy relate to the publication of high value government data in open format, making it publicly available and freely reusable; and engaging with a broad community of stakeholders to promote use of the data for the benefit of all sectors of the economy.

The creation of the Text and Data Mining exception will further support the Government’s efforts to develop the “Big Data” sector in Ireland and consequently lead to an increase in employment.

Digital Deposit

The existing legal deposit system facilitates the development of our national printed archive. Legal Deposit benefits authors, publishers, researchers and the general public because it helps to ensure that the nation’s published output is collected systematically

²⁰ Action Plan for Jobs 2013, Department of Jobs, Enterprise and Innovation, <https://www.djei.ie/en/Publications/Publication-files/Action-Plan-for-Jobs-2013.pdf>

²¹ Strategy aims to make Ireland a leader in Open Data – O’Donovan, 14 July 2017 <http://www.per.gov.ie/en/strategy-aims-to-make-ireland-a-leader-in-open-data-odonovan/>

and becomes part of the national heritage. These publications are recorded in the online catalogues of legal deposit libraries, where they become an essential research resource and can be made available to users of the deposit libraries on their premises. The publications are also preserved for the use of future generations. However, the copies provided to the deposit libraries by publishers are separate to other copies of publications, as they are not available for lending as part of the library's normal catalogue but are intended for archival and preservation of the publication records purposes.

The extension of the existing copyright deposit provisions relating to books to create a voluntary Digital Deposit will give copyright deposit institutions the ability to collect non-print works systematically to produce a shared archive of digital works. As this is a voluntary provision for the deposit institutions, each of the seven deposit institutions can decide on how they wish to proceed individually in relation to establishing digital deposit systems, and there is no specific requirement on those institutions to initiate the necessary development of additional ICT infrastructure on the entry into force of the proposed measures. However, it will allow those deposit institutions to accept published material in digital format if they wish, as well as, or instead of, physical copies of such material. It will also impose a duty on publishers to comply with a request for digital copies of published material if it is requested by a deposit institution, which could reduce their costs when compared with providing hard copies of that material.

There is also potential in the longer term to allow for multi-institutional collaboration in capturing and preserving Ireland's digital record with the potential to eventually reduce the cost of the preservation of online works.

Disability

The proposals widening of the existing exceptions for persons with a disability have been drafted to allow any person with a disability to have access to works which have been adapted to be accessible in relation to their particular disability, whether that is physical, sensory, mental health or intellectual impairment. The provision reflects the broader and clearer definition of persons with a disability which has been used in Ireland since the introduction of the Disability Act 2005. It will allow many more people to access copyright material in a way that they can understand and enjoy those works, which will improve their standard of education, facilitate their greater engagement with society and provide them with greater enjoyment of creative content.

The impact of a new provision that introduces a duty on publishers to make suitable copies of a work available to designated bodies on request will be to facilitate those designated bodies in making suitable modified copies for persons with a disability. This

strengthens the existing voluntary efforts made by publishers and designated bodies working together, particularly in the education sector.

Currently, designated bodies that represent the interests of persons with a disability are only allowed to make a single modified copy to meet the individual needs of a person with a disability in response to a specific request. The proposed amendments would allow designated bodies to create multiple copies and to facilitate transmission of those copies to other designated bodies as well as directly to individuals with a disability. The longer-term impact could be that designated bodies can benefit from economies of scale, where different bodies can specialise in different types of modifications to suit different types or levels of disability, but the modified copies of works can then be transferred between designated bodies as needed.

Designated bodies will be permitted to request a copy of a work which can then be copied and modified for the specific needs of a person with a disability. This will then allow that body to create additional copies of that modified work for the use by persons with a disability. Given advances in technologies, it may now be possible for persons with a disability to undertake necessary modifications themselves, using suitable software etc. The Department proposes to include a new provision that allows a person with a physical or mental disability to make a personal copy of a work themselves that is modified to meet their particular needs, rather than having to obtain such a modified copy from a designated body.

The impact of all those individual measures will, when combined, support many more persons with a disability in getting access to a broader range of copyright material which has been modified for that person to be able to access, understand, be informed by and enjoy the work. It should also, in due course, lead to a wider dissemination of such modified works, and a reduction in the cost of those works for those persons with a disability. It would be expected that, through a combination of the increased benefits of scale that designated bodies may experience by creating multiple copies of works, and the facilitation of intermediate electronic copies of works facilitating the modification process, there will be an overall reduction in the cost of creating suitable modified copies of works for persons with a disability. It is also likely that, again through a combination of the provision of electronic intermediate copies of the works, improvements in the technologies for making the modifications and the ability of designated bodies to create multiple modified copies for the use of persons with a disability (rather than the current situation where they must create a single copy on the basis of a specific request by a person with a disability), there will be a shortening of the time it takes to generate modified copies and for those to be available to persons with a disability.

Specifically, in relation to persons with a visual impairment, Ireland supported negotiations under the EU Digital Single Market which resulted in a Directive and Regulation being agreed in October 2017 to allow the EU to ratify the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled²². The proposal here partially supports the Irish legislative changes necessary to transpose that Directive. Further legislative changes required are being developed and may be included Committee Stage amendments to the Bill.

²² Regulation (EU) 2017/1563 and Directive 2017/1564 of the European Parliament and of the Council of 13 September 2017 can be accessed by clicking [here](#)

Consultation

The Copyright Review Committee conducted two separate public consultations as part of its work²³. An initial consultation during the summer of 2011 resulted in the Committee receiving in the region of 100 submissions from a broad spectrum of interested parties. The consultation papers were posted to the copyright pages of the Department's website. This was accompanied by an awareness-raising campaign of the consultation process through newspaper advertising.

The Committee published a comprehensive Consultation Paper in February 2012 which set out the issues advanced in the submissions, and requested responses to specific questions. Further information was sought from interested parties by the Committee under the broad headings of Rights-holders, Collecting Societies, Intermediaries, Users, Entrepreneurs, Heritage Institutions and Fair Use. A public meeting was held on 24th March 2012 to facilitate discussion in relation to the Consultation Paper. In the region of 180 submissions were received by the closing date for the consultation in which many complex and substantial matters were raised.

Respondents had a broad range of views on the Committee's questions and proposals. Most were supportive of the aims of the Committee to modernise the copyright and related rights regime and facilitate innovation. The responses to the detailed questions in the consultation were considered by the Committee in the drafting of its final Report and draft Bill illustrating how their recommendations might be implemented.

The Committee published its report, *"Modernising Copyright"*, in October 2013. Following the publication, the Department of Jobs, Enterprise and Innovation organised a Public Forum in the Royal Irish Academy on 9th December 2013 to afford the Copyright Review Committee the opportunity to publicly present the findings of their report. The forum also served as an occasion to allow for comments, questions and queries to be put to the Committee on the recommendations contained in the report, where the capacity audience from the wider copyright community engaged in an open and wide-ranging debate on the proposed recommendations.

The Department sought legal advice on the majority of the Committee's recommendations, to ascertain which would be possible to implement and whether any were going to be incompatible with existing EU legislation or other Irish legislation.

²³ Access to the consultation papers and responses received to the consultations are available on the website of the Department of Business, Enterprise and Innovation: <https://dbei.gov.ie/en/What-We-Do/Innovation-Research-Development/Intellectual-Property/Copyright/Copyright-Review/>

Separately, the Department undertook focussed consultations with key stakeholders on certain recommendations to gain greater insight into the potential results of those recommendations and their impacts. This included a number of relevant Government Departments and some private sector companies and representative organisations.

The Department of Business, Enterprise and Innovation continued its engagement with legal advisors and other Government Departments with relevant policy remits throughout the process drafting the Bill.

Enforcement and Compliance

None

Review

This Regulatory Impact Assessment will be reviewed as necessary during the course of the passage of the draft Bill through the Houses of the Oireachtas.

Publication

In tandem with the publication of the draft Bill, this Regulatory Impact Assessment will be made available on the Department's website. It will also be circulated to targeted stakeholders, as well as to the general copyright community through the copyright circulation list maintained by the Department of Business, Enterprise and Innovation.

As any review indicated above is found to be necessary during the course of the passage of the draft Bill through the Houses of the Oireachtas, the updated version of this RIA will be made available on the Department's website also.