

Thomas Boué
Director
Government Affairs,
EMEA
thomasb@bsa.org
www.bsa.org

Avenue des Arts 44
1040 Brussels
T +32 2 274 1315
Fax + 32 2 274 1319

EU Register of
Interest
Representatives
Registration Nr.
75039383277-48

Copyright Review,
Room 517, Department of Jobs, Enterprise and Innovation,
Kildare Street, Dublin 2.

14 July 2011

CONSULTATION ON THE REVIEW OF THE COPYRIGHT AND RELATED RIGHTS ACT 2000:
BSA SUBMISSION

The Business Software Alliance (BSA)¹ welcomes the opportunity to submit views on Ireland's current copyright legislative framework in order to assist the Copyright Review Committee prepare its consultation paper. We believe – as detailed below – that rather than hindering innovation, Ireland's copyright law has been a significant factor in the growth of the ICT sector in Ireland. The Review's consultation should not focus on weakening this law, but rather should look at what can be done to strengthen its enforcement and better position the Irish Government as a leader in IP protection.

BSA brings together many of the world's most innovative companies, who together develop and bring to market technologies and services that help define the digital age. They all rely directly on copyright and other forms of intellectual property in order to fund and protect their innovations.

Many BSA members have a significant market presence in Ireland, and BSA has always worked closely with the Irish Government to ensure that Ireland's laws reflect the dynamism of the industry. The aim of the Committee's review – namely to identify any areas of the current copyright legislative framework that might create barriers to innovation and to make recommendations to resolve any problems identified – is therefore of significant, direct interest to BSA and its members.

BSA does not share the perception, which according to the review's terms of reference is apparently held in some quarters, that Ireland's copyright

¹ The Business Software Alliance (www.bsa.org) is the world's foremost advocate for the software industry, working in 80 countries to expand software markets and create conditions for innovation and growth. Governments and industry partners look to BSA for thoughtful approaches to key policy and legal issues, recognising that software plays a critical role in driving economic and social progress in all nations. BSA's member companies invest billions of dollars a year in local economies, good jobs, and next-generation solutions that will help people around the world be more productive, connected and secure. BSA members include Acronis, Adobe, Apple, Asseco Poland S.A., Autodata, Autodesk, AVEVA, AVG, Bentley Systems, CA Technologies, Cadence, CNC/Mastercam, Compuware, Corel, Dassault Systèmes SolidWorks Corporation, DBA Lab S.p.A., Dell, Intel, Intuit, Kaspersky Lab, McAfee, Microsoft, Minitab, NedGraphics, Progress Software, PTC, Quark, Quest, Rosetta Stone, SAP, Siemens, Sybase, Symantec, Tekla, and The MathWorks.

legislation does not cater well for the digital environment. On the contrary, BSA believes that the Copyright and Related Rights Act 2000 (the “Act”) has helped to drive innovation in Ireland by enabling rightholders to effectively protect their valuable intellectual property. When President McAleese signed the Act into law on 10 July 2000, she and her Government created a “state of the art” copyright law that enabled Ireland to reach its current position as a leading hub for software development and the single largest exporter of software solutions in Europe.² This law has proven flexible and enduring and we see no need for major reforms.

With that background, BSA asks the Committee to consider the following key points when crafting its consultation paper:

- **In order to drive innovation, it is essential to provide robust protection for rightholders.** There is a strong link between innovation, economic growth and IP protections. This conclusion is borne out by the direct experience of our companies. It is also buttressed by numerous studies that have shown that effective, balanced IP protections, such as those in Ireland, help create economic opportunities and drive competitiveness.³
- **Ireland’s existing copyright regime strikes an appropriate balance between facilitating innovative behaviour and protecting the resulting innovations.** Many of our member companies have conducted R&D and commercialised their innovations in Ireland for several years. They view Ireland’s IP regime as among the best in terms of promoting business growth and enabling innovators to bring their ideas to market. As a result of the regime’s effectiveness, the Irish IT industry is a dynamic sector that currently is responsible for approximately 25% of Ireland’s total turnover, representing one third of Ireland’s exports by value, and supporting 75,000 high-skill, high-wage jobs.⁴

² Figures from Enterprise Ireland show total export sales in the software sector of EUR 852m in 2009, up 6% from 2008, see <http://www.enterprise-ireland.com/en/Publications/Reports-Published-Strategies/2009-Annual-Report-and-Accouts-Eng-.pdf>.

³ See, for example, World Economic Forum Global Competitiveness Report 2010-2011 at http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf (confirming that the strength of a country’s IPR regime is linked to economic competitiveness); see, also, Cavazos Cepeda, Lippoldt, Senft, “Policy Complements to the Strengthening of IPRs in Developing Countries”, OECD Trade Policy Working Paper No. 104 (14 September 2010), available at http://www.oecd-ilibrary.org/trade/policy-complements-to-the-strengthening-of-iprs-in-developing-countries_5km7fmwz85d4-en (“A strengthened IPR framework can create spillovers, incentivise innovation, increase trade and trade-related investment, and boost intellectual property intensive economic activity . . .”).

⁴ See ICT Ireland, Sector profile, available at: http://www.ictireland.ie/Sectors/ICT/ICT.nsf/vPages/Papers_and_Sector_Data~sector-profile?OpenDocument..

- **The review thus should not focus on whether the substantive copyright rules need weakening, but rather on whether the mechanisms to enforce those rules need strengthening.** The Act introduced several improvements to assist right holders enforce copyright in Ireland and to dissuade infringers, such as new civil penalties and substantially increased criminal penalties in the form of higher maximum fines and prison sentences. Some modifications may be warranted to strengthen this regime, however – for example, to create even stronger deterrents against IP theft, to provide measures that would help rights holders to address internet piracy,⁵ and to amend aspects of judicial and law enforcement procedure.
- **It would also be worthwhile for the Committee to explore how the Irish Government can better “lead by example”.** Government-endorsed policies ensuring that the public sector does not purchase or use infringing software can help protect intellectual property by setting an example for industry and individual citizens. Ireland’s piracy rate is currently at 35%;⁶ adopting a government “software asset management program” could help to reduce the rate further, driving a concomitant increase in innovation, jobs and tax revenues.⁷
- **More generally, we encourage Ireland to focus its efforts on implementing the Innovation Taskforce’s recent recommendations.** As the UK Hargreaves Review recently reported, the answer to the question whether the UK would quickly become a rival to Silicon Valley if only it could amend its copyright law and adopt a “fair use” exception, is “certainly not”. The reality – as shown by several studies⁸ – is that numerous factors play a role to support innovation and competitiveness, including attitudes to business risk and

⁵ For full details of BSA’s position on appropriate measures to deter online piracy of content, see <http://www.bsa.org/country/Public%20Policy/online-content-piracy.aspx>.

⁶ See BSA’s 2010 Global Software Piracy Study, May 2011, available at, http://portal.bsa.org/globalpiracy2010/downloads/study_pdf/2010_BSA_Piracy_Study-Standard.pdf.

⁷ See, for example, SAM (software asset management) Advantage, at, <http://samadvantage.bsa.org/>.

⁸ See, for example, study from the Economist Intelligence Unit (sponsored by BSA), that identifies several necessary factors to create a sound environment for IT sector growth, “Resilience amid turmoil: Benchmarking IT industry competitiveness 2009”, available at http://portal.bsa.org/2009eiu/study/2009_eiu_global.pdf. The Innovation Union Scoreboard 2010 and European-American Business Council’s Atlantic Century Report (2009) paint similarly complex pictures of the many elements needed to promote innovation in a given market and highlight potential areas of focus for Ireland. “Innovation Union Scoreboard 2010, The Innovation Union’s performance scoreboard for Research and Innovation”, February 1, 2010, available at: http://ec.europa.eu/research/innovation-union/pdf/iu-scoreboard-2010_en.pdf; and ITIF and EABC, “The Atlantic Century, Benchmarking EU & U.S. Innovation and Competitiveness”, February 2009, available at: <http://www.itif.org/files/2009-atlantic-century.pdf>.

investor culture, the tax and regulatory environment, R&D investment, and the local education system and workforce.

Irish policymakers have long understood the need for holistic measures to drive innovation in the country. When it committed itself to reform in the 1990's, Ireland embraced its future as a knowledge based economy not only by successfully reforming its copyright laws, but also by adopting new fiscal and strategic approaches that have attracted world-class innovators and allowed indigenous technology companies to flourish. Clearly this commitment has remained resolute, as most recently evidenced by the Government's plan to build a "Smart Economy" and to position Ireland as "The Innovation Island". The Government's "Innovation Taskforce" recognises that Ireland has many of the attributes needed in order to become an innovation hub for Europe, and has set out what further work needs to be done to make this happen. In BSA's view, Ireland has the appropriate copyright framework in place. The Government and its High Level Implementation Group should continue to work on the remaining top priorities, such as building on investment to date in research and development;⁹ attracting top tier venture financing to scale innovative companies; and strengthening linkages between education and industry, including by making it easier to identify and access intellectual property arising from public sector investment.

BSA hopes that these views will assist the Copyright Review Committee prepare its consultation paper, and looks forward to working further with the Committee and responding to the full consultation later this year. We would welcome the opportunity to speak with the Committee at any time; to do so, please contact: Thomas Boué, Director, Government Affairs, EMEA, BSA.

Business Software Alliance
Avenue des Arts, 44
BE – 1040 Brussels
Tel: +32 (0)2 274 13 15
Fax: +32 (0)2 274 13 19
Email: thomasb@bsa.org

⁹ Economy-wide R&D spend has trebled in the last decade, with two thirds coming from the enterprise sector, *see* http://www.taoiseach.gov.ie/eng/Building_Ireland's_Smart_Economy/Smart_Economy_Progress_Report.pdf.