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July 12, 2011

***Via Electronic Mail***

Mr. Richard Bruton, TD  
Minister for Jobs, Enterprise and Innovation  
Copyright Review  
Department of Jobs, Enterprise and Innovation, Room 517  
Kildare Street  
Dublin 2

*Re: Consultation on the Review of the Copyright and Related Rights Act 2000*

Dear Minister, dear Mr. Bruton:

On behalf of the Computer & Communications Industry Association (CCIA), I write to you to contribute to the public consultation on the review of the Copyright and Related Rights Act 2000. CCIA is a not for profit trade association dedicated to open markets, open systems and open networks. CCIA represents large, medium and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications and Internet products and services – companies with more than \$200 billion in annual revenues. In responding to the consultation CCIA gathered the views of its Members and submits this contribution on behalf of the CCIA rather than any of its individual Members.

CCIA welcomes your initiative and aim to create a regulatory environment favorable to the development of the digital economy and new business models. A balanced copyright regime can be a key driver for innovation enabling companies to significantly contribute to economic growth. Given that major, global Internet companies have established subsidiaries in Ireland throughout the last couple of years, Ireland is in a unique position to greatly benefit from an appropriate copyright regime. The benefits of a balanced copyright regime are, however, not only limited to Ireland. As the Internet is cross-border in nature, copyright rules adapted to the digital age can boost the European economy as a whole taking advantage of an internal market free of any barriers to e-commerce.

The copyright review in Ireland comes at a very timely moment. In May 2011 the European Commission published a Communication<sup>1</sup> outlining an Intellectual Property Rights (IPRs) strategy. Copyright is rightly identified as an enabling tool for creation and investment,

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<sup>1</sup> COM(2011) 287, Communication from the Commission to the European Parliament, the Council, and the European Economic and Social Committee and the Committee of the Regions, 'A Single Market for Intellectual Property Rights. Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe'. Available online at: [http://ec.europa.eu/internal\\_market/copyright/docs/ipr\\_strategy/COM\\_2011\\_287\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf)

but what is needed is a balanced approach between the protection offered by copyright and corresponding exceptions and limitations to the exclusive rights. In the US Internet innovators greatly benefit from the Fair Use doctrine, which generally permits the use of portions of copyrighted work, so long as the normal economic exploitation of that work is not undermined. The resulting flexibility provides the level of legal confidence many of today's digital innovators require to invest and experiment with novel business ideas. CCIA just released a new study<sup>2</sup> based on the latest publicly available data showing how greatly industries relying on the US Fair Use doctrine contribute to the US economy. Thus, in 2008 and 2009 Fair Use industries generated revenue averaging \$4.6 trillion, a 35% increase over 2002 revenue. These industries' "value added" to the US economy averaged \$2.4 trillion, approximately 17% of total US current dollar GDP. Despite the economic downturn, Fair Use industries grew at a faster pace than the overall economy.

EU copyright law has no such equivalent doctrine and the current Copyright Directive<sup>3</sup> takes a prescriptive approach that provides for a finite list of specific and narrow exceptions and limitations to copyright protection. A study<sup>4</sup> commissioned by CCIA in 2010 revealed that EU industries relying on exceptions and limitations to copyright make significant contributions to Europe's economic growth. The value added generated by these industries amounts to EUR 1.1 trillion, or 9.3% of EU GDP. Nearly 9 million people are employed in these industries amounting to 4% of all EU employees. Employees earned EUR 307 billion in wages and salaries. Furthermore, between 2003 and 2007 these industries grew 3% faster than the EU economy. Given the conservative approach of the study, these numbers should not be underestimated.

Despite this positive economic impact of existing exceptions and limitations, Europe's copyright regime suffers from a serious deficiency. The Copyright Directive does not provide for consistent and harmonized exceptions and limitations throughout the EU, which results in divergent copyright regimes in the various Member States. This increases the cost of doing business in the European market and weakens Europe's competitiveness since new, innovative business models are hampered in supplying pan-European services. This approach seems particularly maladapted to the digital economy as innovation continues to move forward increasing the gap between existing regulations and technological advancement.

This analysis has been recently confirmed by the Hargreaves report<sup>5</sup> commissioned by the United Kingdom government. In a nutshell, the report concluded that the United Kingdom's copyright regime, based on the EU Copyright Directive, is simply not fit for the digital age. The limited list of permissible exceptions and limitations cannot keep up with technological change

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<sup>2</sup> Rogers, T. & Szamosszegi, A. (2011). Fair Use in the U.S. Economy: Economic Contribution of Industries Relying on Fair Use. Available online at:

<http://www.ccia.net/org/CCIA/files/ccLibraryFiles/Filename/000000000535/CCIA-FairUseintheUSEconomy-2011.PDF>

<sup>3</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society.

<sup>4</sup> Akker, I., *et al.* (2010). Economic contribution of EU industries relying on exceptions and limitations to copyright. SEO Economic Research. Available online at:

<http://www.ccia.net/org/CCIA/files/ccLibraryFiles/Filename/000000000398/FairUseEUstudy.pdf>

<sup>5</sup> Hargreaves, I. (2011). Digital Opportunity. A Review of Intellectual Property and Growth. Available online at: <http://www.ipso.gov.uk/ipreview-finalreport.pdf>

and there is a need for a ‘new mechanism in copyright law to create a built-in adaptability to future technologies which, by definition, cannot be foreseen in precise detail by today’s policy makers’.<sup>6</sup> Since such an approach requires long-lasting negotiations at EU level, the report recommends that in the meantime it is advisable to pursue a more flexible copyright regime within the confines of the current law.

Against this background, CCIA welcomes the European Commission’s endeavor to examine a far-reaching overhaul of copyright at European level, possibly including the creation of a European Copyright Code. The Commission’s Communication specifically states that an update or even harmonization of current exceptions and limitations granted under the Copyright Directive will be taken into consideration. Furthermore, proposals will be put forward to create a pan-European licensing system enabling the creation of a truly functioning digital internal market. Citizens and businesses in the EU should enjoy the benefits of an integrated digital market stimulating innovative business models that legally offer copyright protected works, which can be accessed by every European regardless of his country of residence. CCIA is strongly convinced that a regulatory policy enabling legal, pan-European offers of protected works on the Internet is the best way to deal with copyright infringements online. Furthermore, it creates new business opportunities that currently remain unexploited.

With regard to copyright enforcement in the digital ecosystem, CCIA reiterates concerns that we have already addressed to the Taoiseach in a letter in December 2010. Following the Ireland High Court of Justice decision in *EMI Records v. UPC*<sup>7</sup>, CCIA outlined how certain approaches to copyright enforcement that are promoted by some rights holder constituencies curtail Internet users’ freedom. Examples include the “Three Strikes” rule or policies obliging Internet service providers (ISPs) to monitor subscribers’ usage for infringing activity and filter electronic communications. It is noteworthy that in the opinion<sup>8</sup> of the Advocate General in the *Scarlet v. SABAM*<sup>9</sup> case that is currently pending in front of the Court of Justice of the European Union, filtering and blocking systems that have to be implemented by ISPs constitute a restriction on a couple of fundamental rights.

It is our understanding that Ireland is uniquely poised to call for a balanced copyright regime at the EU level, which will support innovative Internet and technology industries. Sensible and balanced copyright regulations will not only free the innovative capacities within Ireland but will also have a positive impact on foreign direct investment flows. The suitability of a country’s copyright regulatory environment to a company’s business model has become an increasingly important factor for foreign innovators when making foreign direct investment decisions. For this reason and the reasons explained above, it is in Ireland’s best interests to be a driving force behind efforts to adapt current copyright laws to the digital age.

We thank you for your time and consideration of this important issue.

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<sup>6</sup> Ibid., p. 47.

<sup>7</sup> *EMI Records (Ireland) Ltd and others v UPC Communications Ireland Ltd* [2010] IEHC 377.

<sup>8</sup> Opinion of the Advocate General Cruz Villalón, delivered on 14 April 2011, in Case C-70/10.

<sup>9</sup> Case C-70/10 *Scarlet Extended v Société Belge des auteurs, compositeurs et éditeurs (SABAM)*.

Sincerely,

A handwritten signature in black ink, appearing to read "Erika Mann". The signature is fluid and cursive, with a large initial "E" and "M".

Erika Mann  
Executive Vice-President  
Computer & Communications  
Industry Association (CCIA)