Consultation on the Review of the Copyright and Related Rights Act 2000

Submission by Nuala Connolly, PhD

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Ireland is uniquely positioned as the international and European headquarters for global Internet companies including Google, Facebook, LinkedIn, Twitter and eBay. Despite its reputation as a European hub for Internet innovation, proposed legislative changes to the Copyright and Related Acts 2000 bear the potential to inhibit innovation, infringe on the basic right to freedom of expression online (as established in the European Convention on Human Rights) while also failing to account for the broader social and cultural landscape of the Internet.

In 1994, policy analyst Anne Wells Branscomb predicted that “the law will lumber along like an unwieldy dinosaur winding its way to extinction if it cannot keep up with the pace of change in this new interactive information intense environment”. Branscomb's remarks continue to resound, particularly in the context of Internet regulation as policy-makers struggle to cope with the accelerative pace of change. Copyright legislation has been extended and amended globally, becoming increasingly difficult to enforce, at odds with the everyday practices of millions of citizens, lacking the democratic discourse so needed in this arena and ignoring the reactions and criticisms of civil society.

Fundamentally, regulation in this area should be designed to promote a fair balance of rights and interests (as acknowledged in the Recitals of the Directive), yet increasingly we are expected to navigate and adhere to legislation that is simultaneously abstruse and ambiguous. While there is a place for the protection of intellectual property, this should never be at the expense of free speech. There is undoubtedly a need to reconfigure current proposed legislative changes, for a variety of reasons;

1. *Current legislation represents an outdated generation of understanding of the issues*. Infrastructural advances will change how information is protected and regulated online. Advances in cloud service provision have resulted in a global network of remote services and information storage options. This will have new meaning for how data is protected and secured, altering traditional notions of legal jurisdictions and impacting on both information stored in remote databases (including that of ISPs) and cloud-based user-generated content online.
   Media streaming via cloud-based services, supported by advances in networking, Internet access and use (e.g. Broadband, smartphone data plans) are changing how consumers engage with media. The availability of these services and new forms of media libraries represents an increasingly successful economic model of access to copyrighted material including music and video. Where civil society moves in a particular direction, regulators should seek to investigate alternative models that may promote a balance of interests. Regulation must meet the challenge of being sufficiently flexible to acknowledge and account for changes while avoiding opacity or ambiguity. For instance, some terms (e.g. 'book') no longer hold the clear meaning they once did. Policy-makers must account for the language and culture of the Internet, with a view to future-proofing regulation.

   There is also need to examine how regulation and sanction is applied. *The identification of users by IP address is flawed*. This process may result in the actions of one user at an IP address infringing upon the rights of every user at the IP address. Added to this, an IP address is easily substituted or circumvented, not uncommon to those accessing geographically limited content online. In addition, the collection and retention of this data and potential link to data collected under the Data Retention Act raises further questions in terms of mass surveillance, social control and the right to privacy.

2. The proposed legislative changes are incompatible with the basic operation of the Internet because they fail to reflect the social and cultural shifts associated with its use. *The reaction of civil society is absolutely crucial in the application of law.* Regulation should not be imposed post-hoc. It is not the function of copyright law nor should it be the intention of regulators to censor, to infringe upon rights, to limit the ability of society to exercise those rights or to reduce civil society to mere

consumers of media. Freedom of expression, interactivity and innovation are the lifeblood of the Internet. In the context of this legislation, there has been clear advocacy from civil society for a fair balance between producer and consumer. All information society regulation should aim to strike this balance, while continually enabling rights of access (infrastructure and content) and education.

3. It is clear that millions of citizens, including minors and young people, are breaching copyright law daily. This fact cannot be ignored. Aside from the desire to legislate for copyright, *there is a need to educate on issues of information disclosure, user-generated content creation and intellectual property online*. Despite the expectation that citizens (young people in particular) are expected to understand and adhere to legislation that is at odds with their social and cultural experiences online, there is no adequate new media/ technology curriculum at first or second-level in Ireland. There is no mandatory information or technology literacy education for young people in Ireland, despite the prevalence of new media in their day to day lives. They will undoubtedly and inadvertently at times find themselves in breach of copyright and subject to sanction. It is not acceptable to assume levels of understanding that do not exist and are not supported by education and learning. These are issues that must be taking into account when legislating in an area so ubiquitous to everyday life.

4. The *current proposed legislative changes require significant amendment* if seeking to address the realities of intellectual property protection on and off-line. Notably, there is a lack of clarity around exemptions.There is a need for a clear set of exemptions or scope for reasonable exemptions that are not so limited as to inhibit innovative and creative activity. A type of 'fair use' exemption system, or 'doctrine' as employed in the US would afford some much-needed flexibility to the legislation and facilitate innovation and potentially economic growth (remixes, adaptations, parody). There is a need for the formal recognition of format-shifting, particularly for personal and individual use. There would be great difficulty prosecuting in this area and it is unrealistic to legislate against this activity.
   There is also a need for clear recourse and mechanisms. For instance, where a take-down notice is issued, the entire process should be transparent, with a reasonable right to reply given.

Due consideration must always be given to the potential consequences (some of them unintended) of information policy. Where the policy imposes broad reaching regulation that affects day-to-day life, these consequences must be investigated and explored, with policy-makers meeting ends beyond those in the interests of commerce. Dialogue should account for the lack of consensus on some issues and the broader social, political and cultural landscape. It should take the views of civil society into account as well as inter-disciplinary perspectives. Drawing on the broadest range of stakeholders provides the most comprehensive view, with discussion framing the issues in a way conducive to balanced and sustainable regulation. The law must not be allowed to 'lumber along', especially where the voice of civil society is loud and clear.

Author:
I hold an MA and PhD in Information Studies (Information Policy) from the UCD School of Information and Library Studies. My research interests include the sociology of the Internet, the theory and practice of surveillance in information societies and information policy.

Contact me at: nualaconnolly@gmail.com