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Copyright Review

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**Submission on the Consultation Paper “Copyright and Innovation”
Consultation on the Review of the Copyright and Related Rights Act 2000**

Introduction

The Federation of European Publishers (FEP) is the voice of publishers in Europe representing 27 national publishers’ association across the European Union and the European Economic Area. Publishing Ireland is an active member of FEP. European publishers employ directly 150,000 persons and hundreds of thousands indirectly. In recent years it has generated an annual turnover of some 23-24 billion €, corresponding to an estimated market value of over 40 billion €.

FEP is pleased to respond to the Consultation Paper, with the ultimate aim of improving the current Copyright legislative framework.

General and Cross-cutting Remarks

Our submission will provide a response only to 2 questions listed in Appendix 3 of the Consultation Paper. More generally, for FEP and its members the following points appear to be crucial, for a positive outcome of the Copyright Review:

1. We cannot agree with the perception (the premise of this Copyright Review) that certain areas of copyright, or even, copyright itself, is a barrier to innovation. To the contrary, copyright is an enabler for FEP members to continue their investments.
2. Licensing (individually and collectively) and in particular online and automated licensing of copyright works permits legal access to copyright-protected works. The Copyright Review Committee will be encouraged in its effort to create a framework that will allow the development of a Digital

Copyright Exchange for Ireland, with the aim of facilitating licensing solutions.

- 3. The real challenge to create greater growth and innovation and also a greater consumer surplus from the Internet, is to make it safer including for rights holders. This means tackling the issue of enforceability of intellectual property rights. Considering to give greater immunity to some intermediaries, when the other side is experiencing massive abuses of their rights, conflicts with the smooth circulation of copyright-protected content on the Internet,**

FEP ANSWERS TO QUESTIONS 37 AND 56 CONTAINED IN APPENDIX 3 OF THE CONSULTATION PAPER “COPYRIGHT AND INNVATION”

(37) Is it to Ireland’s economic advantage that it does not have a system of private copying levies; and, if not, should such a system be introduced?

Recital (38) of the EUCD reads *‘Member States should be allowed to provide for an exception or limitation to the reproduction right for certain types of reproduction of audio, visual and audio-visual material for private use, **accompanied by fair compensation. This may include the introduction or continuation of remuneration schemes to compensate for the prejudice to rightholders.*** (emphasis added) *Although differences between those remuneration schemes affect the functioning of the internal market, those differences, with respect to analogue private reproduction, should not have a significant impact on the development of the information society. Digital private copying is likely to be more widespread and have a greater economic impact. Due account should therefore be taken of the differences between digital and analogue private copying and a distinction should be made in certain respects between them.*

It is FEP view that if a Member State chooses to implement any of the exceptions of the 2001/29 Directive, it should compensate the rights holders for the loss of revenues deriving from the application of the exception. Therefore, if Ireland wants to allow private copying of protected material, it will need to install a system of compensation as it exists in other Member States.

(56) Should all of the exceptions permitted by EUCD be incorporated into Irish law, including:

It is FEP view that exceptions must remain exceptions to the rule (exclusive rights). Exceptions must be limited to circumstances when neither individual nor collective licences can fix a market failure. Therefore calling for all EUCD exceptions to be incorporated is not acceptable. The Irish legislator must also use



the three step test to qualify any exception and it needs to include Article 5.5. in Irish law. Some of the exceptions in EUCD were added to fix national requirements and might not be required for Irish businesses.

FEP pleads for the Irish legislators to be extremely vigilant when examining the scope of any potential exception, that it does not prejudice the normal exploitation of works. It is crucial that copyright retains its role of enabler of the creative and financial investments of authors and publishers, especially in countries like Ireland where authors and publishers have to ‘compete’ with their counterparts from much larger countries.

FEP is ready to come with more evidence of the impact of some exceptions on the Irish publishing sector if they were put in place in view of what is happening in other European countries.

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