

## INTERNATIONAL DIGITAL SERVICES CENTRE<sup>1</sup>

### Draft Submissions to the Copyright Review

| Issue  | Description  |
|--|--|
| EMI Records (and others) v UPC [2010] IEHC 377   | Proposal to amend CRRA to allow injunctions to be granted under the CRRA to copyright owners in accordance with the Ecommerce Directive.                 |
| <p>Position of the IDSC:</p> <p>The IDSC recommends that injunctions against ISPs be permitted under the CRRA in accordance with the Ecommerce Directive and as identified by Charleton J. in the above judgment. This must also involve a consideration with stakeholders of the conditions and modalities under which injunctions should be permitted, before implementation of the injunction right, to ensure a more permanent solution and to avoid protracted litigation with the further uncertainty that that would bring.</p>   |  |
| Fair Use and other Exceptions  | Proposal to consider full implementation of the exceptions permitted under the InfoSoc Directive in the alternative to a US styled 'fair use' exception. |
| <p>Position of The IDSC:</p> <p>The IDSC acknowledges there is a difference of opinion on whether it is permissible for Ireland to implement a US styled 'fair use' exception under the InfoSoc Directive. In any event, The IDSC does not consider the current US approach to be the optimal mechanism to modernise Irish copyright law.</p> <p>The IDSC does propose that the Copyright Review give full consideration to implementing in full the scope of exceptions permitted under the InfoSoc Directive.</p> <p>With exception of Article 5(1) of the InfoSoc Directive, there are no exact equivalents under the CRRA to the exceptions under the InfoSoc Directive although close equivalents exist in respect of Articles 5(2)(d), 5(3)(b), 5(3)(h), 5(3)(i) and 5(3)(m).</p> <p>Otherwise, there is scope to further consider and implement the exceptions contained in the InfoSoc Directive. In particular, Article 5(2)(b) can be used as the basis for a format shifting exception particularly in the context of copyright in Ireland reflecting the reality of what occurs for private purposes and aligning it to the perceptions of the public. In this regard, cloud computing should be considered for any format shifting exception.</p> |  |

<sup>1</sup> Andrew to provide a cover letter on DSI Headed Notepaper with description of DSI.

|  |  |
|--|--|
| <p>Special consideration should be given in this regard to the exceptions in the InfoSoc Directive which has not been implemented in the CRRA at all. In this regard, there are no equivalents to Article 5(3)(g), 5(3)(K) or 5(3)(n). In this regard, Article 5(3)(g) is an important exception as it deals with parody and for which there are reasons to have an exception.</p>   |  |
| <p>Non-Commercial Experimental Use</p>   | <p>The issue of non-commercial experimental use of copyright works has been raised before in reports, e.g. in the context of the Arts and, in particular in setting up a theatre performance which requires experimentation on the music in order to achieve the right ambiance.</p> |
| <p>The IDSC Position:</p> <p>Within the confines of the InfoSoc Directive or as part of submissions to the European Commission, an exception of this nature should be considered.</p> <p>This exception could be considered as non-commercial and it is important to bear in mind that the adaptation right is not harmonised by the InfoSoc Directive in this regard and similarly transformative works could be excepted on this basis.</p>                      |  |
| <p>Orphan Works</p>  | <p>Ireland should take a lead on the issue of orphan works.</p>  |
| <p>The IDSC Position:</p> <p>The Proposed Directive on Orphan Works only goes so far and would apply to specified organisations only. In Ireland, it is contended that it could develop an approach to orphan works. This could involve a three tier system of diligence, registration and a retained fee for the copyright owner (perhaps with the Patents Office). In this regard, due regard should be had to the concept of extended collective licensing.</p> |  |
| <p>Licensing/Rights Clearance</p>  | <p>To provide for a streamlined and accessible system of national and par-EU licensing taking into account considerations such as those in the FAPL AG decision.</p>   |

|   |  |
|---|--|
| <p>The IDSC Position:</p> <p>This is an issue that should be addressed to the European Commission. Both national and pan-EU licensing should be permitted, streamlined and be easy to access.</p>   |  |
| <p>Enforcement</p>  | <p>There are perceived weaknesses in the Commercial Court with delays in appeals to the Supreme Court (ref. Working Group on a Court of Appeal), an increased awareness and implementation of alternative dispute resolution (ref. the Law Reform Commission on <i>Alternative Dispute Resolution: Mediation and Conciliation</i> (November, 2010)).</p> |
| <p>The IDSC Position:</p> <p>THE IDSC supports the introduction of a Court of Appeal for appeals from the High Court but in particular appeals from the Commercial Court.</p> <p>However, access to justice in Ireland is not just about the High Court. There should be a streamlined court system to deal with smaller copyright (and indeed, IP claims generally). For example, the Review Committee should consider fully the County Patents Court in the UK. Currently, there is a perception that it is prohibitively costly to seek to enforce smaller IP claims in Ireland. Any such system should focus on the awards available and the costs that may be ordered.</p> <p>In terms of ADR, certain provisions are included in the Superior Court Rules but this should be extended further and should be fully considered by the Review Committee.</p> |  |
| <p>Licensing Body Registration and Renewal</p>  | <p>Unnecessary system and may be a barrier to deals on licensing.</p>  |
| <p>The IDSC Position:</p> <p>The IDSC is of the view that registration of licensing bodies and renewal of such licensing is unnecessary red tape and the requirement for renewal of registration should be re-examined.</p> <p>In particular, the recordal of tariffs by licensing bodies could be a practical obstacle in Ireland to setting up an online exchange for content.</p> <p>The IDSC is not aware of any other Member State with such requirements.</p>   |  |

|   |  |
|---|--|
| Co-Regulation   | Concept of co-regulation by industry with Government oversight, DEA as an example. |
| <p>The IDSC Position:</p> <p>THE IDSC recommends that the Review Committee consider all aspects of co-regulation that may be applied to copyright and to IP more generally.</p> |  |