

The Irish Educational Publishers Association (IEPA) represents 10 leading member firms that produce over 90% of the educational content, authored in the main by experienced Irish teachers and specifically tailored for the Irish primary and secondary schools curriculum, as well as third level institutions.

Founded in the 1960s, the IEPA members include Celtic Press, CJ Fallon, Educate.ie, Folens, Forum Publications, Gill & Macmillan, An Gúm, Mentor Books, The Educational Company of Ireland and Veritas. They represent vast combined experience in Irish education, having been closely involved in the provision of educational content for over 45 years. Most recently members are producing, free of charge, an increasingly sophisticated range of digital materials, both for shared classroom use and for download to various devices by individual students and teachers.

In this time of tremendous change in Information and Communication Technology, the IEPA welcomes the review of copyright legislation. However we wish to make a number of points.

1. Employment

A recent Publishing Ireland survey (2009) reported that 560 people were employed directly in the publishing sector in Ireland. The survey also reported an additional 477 freelance people were employed in related activities including designers, illustrators, artists etc. Of these 1000 people employed either directly or indirectly in the publishing industry, approximate 40% or 400 people are dependent on the education sector for their livelihood.

2. Proliferation of Communication Technologies

Recent developments in communication technologies (Multi-functional photocopiers and scanners, visualisers, Interactive Whiteboards, tablets, digital phones and cameras, not to mention email) now make the copying and dissemination of copyright materials easier than ever before. The proposal for a broad exception of copying restrictions “for educational use” could be widely abused and could have a profound impact on publishers’ abilities to supply top quality, Irish curriculum specific material in the future.

3. Innovation and Educational Publishing

There is widespread recognition that Ireland needs to enhance its education system to meet the employment needs of the 21st Century industries. Significant investment in educational technologies is evidence of this strategy. However, the investment in hardware and infrastructure has not yet been matched by professional development for teachers. Nor have funds been made available to schools specifically for the procurement of Irish – curriculum specific digital content. Irish publishers have invested heavily in the development of digital content and platforms and the IEPA would strongly argued that undermining the copyright of educational materials will disincentivise ongoing investment in digital content, technologies and platforms. This will inevitably lead to a reduction in the supply and quality of teaching and learning in Ireland in the future.

4. Curriculum-specific materials

There is plentiful free educational online content available for use in schools but this content is most often generic. Such materials are useful to a point but cannot replace materials specifically developed for use in Ireland. Ireland has specific educational requirements determined by curriculum, language, history, currency, measures and cultural context, as well as particular demographic challenges (approximately 1/3 of Irish primary classrooms are multi-level). Generic materials or materials developed specifically for other jurisdictions, fall well short of meeting the needs of Irish teachers and pupils.

5. Incentivising Authors

Ireland is a small country with a total school population of less than 1 million persons. Revenues earned by authors through royalties are therefore modest and any move which could further reduce their earnings will diminish future output in terms of quality and quantity.

IEPA's responses to specific questions in the Consultation Paper

Question 56

Should all of the exceptions permitted by EUCD be incorporated into Irish law?

We are concerned by the approach taken in the Consultation Paper which appears to be to broaden exceptions to the absolute maximum permitted under European law, and indeed beyond. This demonstrates a disregard for the established creative and copyright-dependent industries, of which educational publishing is an important example.

(a) Reproduction on paper for private use

The exception for reproduction on paper for private use exists in continental European systems and is **subject to fair compensation**, usually through an equipment levy which does not currently exist in Ireland.

It is most likely that the proposed exception would be interpreted as a general exception legitimising all private uses and would further weaken the copyright structure at a time when rights holders are suffering severely from problems with enforcement.

It is our view that “illustration for teaching” should not include multiple copying for distribution in the classroom or multiple directed copying by students.

(d) Reproduction for persons with disabilities

It is our view that the current legislation does not work from the point of view of nominating and funding designated bodies and that creating a broader exception would not necessarily resolve the issues in relation to access to content in a cost effective and timely manner.

We would refer you to the UK solution¹ of an exception subject to a licence override to grant the additional benefits that only voluntary licensing can bring to the table.

ICLA, the collecting society mandated by Irish publishers and authors to represent their interests in the collective management of rights would offer a licence modelled on the UK Print Disabled Licence. This licence would permit institutions to make Accessible Copies for those suffering from some form of impairment.

ICLA would maintain a register of accessible versions made under a licence so that those supporting the reading impaired can avoid making unnecessary duplicate accessible copies and so that publishers could identify where the potential for accessible editions exists. This register would save significant time and costs for the institutions.

This licence would also facilitate the exchange of Repertoire Exchange Agreements by ICLA with counterparts overseas, thus potentially allowing Accessible Copies made under licence or permissions abroad to be imported into Ireland.

¹ Section 31 CPDA

Licensing would also result in Irish materials being included in a number of initiatives which are underway enabling the sharing of accessible copies across borders, ie: the European Trusted Intermediaries Network (ETIN) and the Trusted Intermediaries Global Accessible Resources (TIGAR) Project.

Question 57

Should CRRA references to “research and private study” be extended to education?

It is dangerous to threaten to introduce a measure that would deprive authors and publishers of funding to reinvest in the creation of new education materials. Such a move can only serve to stifle innovation and creativity. Revenue received from ICLA through the blanket licence for education is reinvested in developing new learning resources. The loss of this licensing revenue, which cannot be recouped from elsewhere in a mature market, will clearly have an impact on the amount publishers are able to reinvest. It is impossible to see how this will fuel growth and gives the impression that the consultation is undermining the business model of longstanding industries in favour of unproven “new digital models”.

We believe that there is no case for extending “fair dealing” to education and removing or restricting the comprehensive, stable and long established collective licensing schemes that apply to reprographic copying. To do so would remove the publishing sector’s ability to exploit its work, in contravention of the Berne 3-step test²; impact on primary sales by enabling unlicensed multiple copying; and deprive publishers of a significant and reliable source of funding to reinvest in new educational materials.

The interaction between the inclusion of education in the fair dealing provision and the additional exception for “illustration for education, teaching and research” is problematic. It is likely that educational institutions will seek to avail of the fair dealing exemption, maintaining that they are not conducting sufficient copying to prejudice the interests of the rights holders. We would contend that the level of copying which would take place under this exception would both conflict with a normal exploitation of the work and unreasonably prejudice the legitimate interests of the author.

² Ireland is a party to the Berne Convention and is obliged to comply with its terms. Article 9(1) provides that authors or literary and artistic works shall have the sole right in authorising the reproduction of these works “in any manner or form” and Article 9(2) provides for permissible exceptions under the “3-Step Test”. 9(2) “*It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.*”

We would remind the Committee that the three steps of the Test are cumulative, cannot be addressed in isolation and that the test is reinforced in Article 5.5 of the Information Society Directive.

Question 58

Should the education exceptions extend to the (a) provision of distance learning, and the (b) utilisation of work available through the internet?

We feel that should these exceptions be introduced they must be included the same provision as for reprography and only be an exception in the absence of a licence being available to cover the uses. To do otherwise, would render the reprography provision obsolete.

We also feel that with regard to the distance learning provision, in order to remain within the ambit of EUCD, the material would have to be communicated to registered student via a closed system, with access controls. This should be specified. The exception should be confined to “non-commercial purposes” and should not cover commercial activity.

Chapter 9 – Heritage Institutions

We do not support the introduction of a new definition of heritage institutions for the purposes of Sections 59-70 CRRA and note this this is not addressed in any question relating to the chapter.

The suggested wording would have the effect of broadening further the free educational uses and would, in conjunction with the other proposed provisions, undermine the current licensing models. Educational licensing has become a normal exploitation of a work and as such we feel this proposal goes beyond the scope of the Three Step Test.