

**Name**

Irish Nightclub Industry Association

**Of the six categories into which the Paper classified the first round of submissions, which one (if any) best describes you?**

Trade Association representing a group of users

**Is our broad focus upon the economic and technological aspects of entrepreneurship and innovation the right one for this Review?**

Whilst the focus is broad there does seem to be a particular emphasis on the online environment and we would argue that entrepreneurship and innovation is not limited to online business in fact the majority of entrepreneurship and innovation exists in the 'off-line' environment. Online revenue for copyright collection societies whilst growing still represents a small fraction of the total royalty charges collected by copyright collection societies in Ireland. Therefore we believe that this review should consider the impact of innovation and job creation in both environments.

**Is there sufficient clarity about the basic principles of Irish copyright law in CRRA and EUCD? [Note: CRRA is the Copyright and Related Rights Act, 2000; and EUCD is the European Union Copyright Directive (Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society)].**

This is a very complicated area, but under the circumstances there is sufficient clarity with regard to the basic principles

**Should any amendments to CRRA arising out of this Review be included in a single piece of legislation consolidating all of the post-2000 amendments to CRRA?**

Yes however it should be noted from a copyright users perspective the CRRA already has a significant number of remedies to resolve disputes that currently could be considered as not being as efficiently implemented as possible

**Is the classification of the submissions into six categories – (i) rights-holders; (ii) collection societies; (iii) intermediaries; (iv) users; (v) entrepreneurs; and (vi) heritage institutions – appropriate?**

YES

**In particular, is this classification unnecessarily over-inclusive, or is there another category or interest where copyright and innovation intersect?**

NO

**What is the proper balance to be struck between the categories from the perspective of encouraging innovation?**

In the absence of competition between rights holders in the market place it will always be difficult to strike a balance between copyright holders and copyright users. Copyright users who have to deal with territorial monopolies will always be at a disadvantage and this could restrict innovation and job creation. Music users should be able to shop around Europe for their music rights license and not be restricted to deal with the territorial monopolies. This is also clearly in line with EU stated policy of the free movement of goods and services in Europe which was underlined in the

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recent Sky v Karen Murphy decision of the ECJ

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-10/cp110102en.pdf>

**Should a Copyright Council of Ireland (Council) be established?**

We agree there would be benefit to a copyright council of Ireland

**If so, should it be an entirely private entity, or should it be recognised in some way by the State, or should it be a public body?**

It should be recognised by the state and work closely with the controller who would under the current act has the necessary powers to make decisions

**Should its subscribing membership be rights-holders and collecting societies; or should it be more broadly-based, extending to the full Irish copyright community?**

We firmly believe that the membership of same should not be limited to copyright holders but also to copyright users in order to ensure a balance is struck between both groups. Copyright Holders and copyright users operating together in such an environment could we believe allow a greater understanding between the parties and therefore better develop what is at times a strained relationship.

**What should the composition of its Board be?**

It should have a balance between copyright holders and collection societies and copyright users over the spectrum of the various rights and have an independent chair. It should also include on its board the copyright controller

**What should its principal objects and its primary functions be?**

To ensure that there is a fair balance set between the rights of copyright holders and the rights of copyright users that encourages an environment of innovation and job creation and that also takes into account the European market and not just the national market

**How should it be funded?**

It should be a public and private partnership with statutory recognition

**Should the Council include the establishment of an Irish Digital Copyright Exchange (Exchange)?**

**What other practical and legislative changes are necessary to Irish copyright licensing under CRRA?**

As previously submitted the CRRA should invite European collection societies to compete in the Irish market and seek to allow Irish collection societies compete in European markets

**Should the Council include the establishment of a Copyright Alternative Dispute Resolution Service (ADR Service)?**

We believe that the intention of the CRRA is to allow individual users and/or groups of users challenge tariffs being introduced by monopoly copyright holders. The controller under the current act has appropriate powers with regard to dispute resolution between the parties in relation to tariffs set by monopoly copyright

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collection societies. The current practice in the event of a dispute to either an existing tariff or a proposed tariff results is an arbitration process. This process is similar to a legal challenge and the potential cost of such a reference is cost prohibitive to many individual users and their representative organisations. This gives an unfair advantage to copyright holders who normally have significantly greater financial resources. The result is that music users who don't agree with a tariff and wish to challenge same will in fact not do so only because of the cost implications. A Copyright Alternative Dispute resolution service would be an advantage however as suggested above the current act has appropriate dispute resolution mechanisms contained therein and the controller should be better equipped to deal directly with these issues rather than defer the matter to third parties outside of the controller's office which are costly for both copyright owners and copyright users. However we believe the introduction of competition would reduce significantly the number of disputes

**How much of this Council/Exchange/ADR Service architecture should be legislatively prescribed?**

As referred to above the architecture for dispute resolution exists in the current act however it needs to be implemented in a more effective manner under the remit of the controller's office

**Given the wide range of intellectual property functions exercised by the Controller, should that office be renamed, and what should the powers of that office be?**

We are not sure if a renaming of the office would be necessary but we do think that the powers already invested in the controller by the current act should be better implemented by that office

**Should the statutory licence in section 38 CRRA be amended to cover categories of work other than "sound recordings"?**

YES

**Furthermore, what should the inter-relationship between the Controller and the ADR Service be?**

As the controller under the current act has the relevant powers the ADR service should be part of the controller's functions

**Should there be a small claims copyright (or even intellectual property) jurisdiction in the District Court, and what legislative changes would be necessary to bring this about?**

This may not be necessary if the controller's office using the powers already invested in him under the act operated the ADR service

**Should there be a specialist copyright (or even intellectual property) jurisdiction in the Circuit Court, and what legislative changes would be necessary to bring this about?**

An environment such as a dedicated copyright intellectual property small claims court would be an advantage however as suggested above the current act has appropriate dispute resolution mechanisms contained therein and the controller should be better equipped to deal directly with these issues rather than defer the matter to third parties outside of the controller's office. Again the introduction of competition in this market place would limit the amount of disputes

**Whatever the answer to the previous questions, what reforms are necessary to encourage routine copyright claims to be brought in the Circuit Court, and what legislative changes would be necessary to bring this about?**

. Intellectual property disputes brought before the controller, Circuit, District or High courts does require specialist knowledge but we are not sure you can legislate for the courts to have specialist knowledge in this regard. The necessary reforms would require users and copyright holder to agree to have particular claims dealt with in particular courts which maybe also difficult to achieve however this may not be necessary should competition be introduced and when the controller himself already has sufficient powers under the act to resolve such disputes.

**Is there any economic evidence that the basic structures of current Irish copyright law fail to get the balance right as between the monopoly afforded to rights-holders and the public interest in diversity?**

In the absence of competition monopolies will always have an unfair advantage in any sector. This is economically demonstrated in the vast difference in charges between collecting societies to copyright users in the European market for the exact same product/service

**Is there, in particular, any evidence on how current Irish copyright law in fact encourages or discourages innovation and on how changes could encourage innovation?**

We believe competition between copyright collection societies in Europe would encourage innovation as the barriers to innovation would be reduced in a competitive copyright collection society market

**Is there, more specifically, any evidence that copyright law either over- or under-compensates rights holders, especially in the digital environment, thereby stifling innovation either way?**

The absence of competition between copyright collection societies over compensates rights holders

**From the perspective of innovation, should the definition of “originality” be amended to protect only works which are the author’s own intellectual creation?**

YES

**Should section 24(1) CRRA be amended to remove an unintended perpetual copyright in certain unpublished works?**

Yes copyright should have a limited timeframe

**If the copyright community does not establish a Council, or if it is not to be in a position to resolve issues relating to copyright licensing and collecting societies, what other practical mechanisms might resolve those issues?**

The introduction of competition between European collection societies in Europe is a practical mechanism to resolve issues relating to copyright licensing and collecting societies and is also in line with stated EU policy with regard to the free movement of goods and services within Europe.

**Are there any issues relating to copyright licensing and collecting societies which were not addressed in chapter 2 but which can be resolved by amendments to CRRA?**

The CRRA should allow the controller invite copyright collection societies outside of the state to compete here in Ireland.