

The Irish Playwrights' and Screenwriters' Guild

The Irish Playwrights' and Screenwriters' Guild is the representative body in Ireland of writers for the stage and screen, a member of the Federation of Screenwriters in Europe and of the International Affiliation of Writers Guilds.

The Guild has a contract with the Authors Licensing and Collecting Agency (ALCS) in London to provide them with information about the first transmission or cinema release of writers work in Ireland and to assist with the distribution of monies collected by the ALCS for Irish writers, from sources such as cable retransmission and blank tape levies in other countries.

The value and importance of creativity

Especially in the context of Ireland's current economic difficulties it makes sense to seek to find every possible source of value within our society and to try to maximise its potential for the creation of wealth and the creation of value in the economy and in society. It is widely accepted that the arts in Ireland are one of our strengths and that creative innovation and success in the arts contributes significantly to tourism revenues, to employment and to Ireland's fragile reputational capital.

However in examining the benefits to Ireland of our undoubtedly exceptional innovative capacity in the arts too little attention has been paid to how best to maximise intrinsic value in the arts with the focus being primarily on trying to ensure that state funding of the arts is maintained at as high a level as possible.

As stated in the submission to the Review of the Collecting Societies Forum "Copyright is the foundation upon which the creative industries are built". Artists are the creators and first owners of copyright. Maximising the extent to which intrinsic value – financial and otherwise – in copyright is produced and distributed will have the most effective impact on encouraging and facilitating innovation in the creative arts. It is, in our view, not a coincidence that the two sectors of the arts where Irish artists are most successful with audiences nationally and internationally are music and literature, where artists share in the economic life of what they create, both by contractual practices (particularly for those writers who succeed with audiences outside Ireland) and by collective management of rights.

The Current situation of creators in Ireland

Writers in Ireland for the stage and screen are unique in Europe in having very little share in the exploitation of the copyright they create. To a significant degree this impacts on their capacity to earn a sufficient income to maintain themselves as full time artists. Extensive research has now been done on the topic of the income of artists in Ireland both by artists' organisations and, most recently, by the Arts Council (<http://www.artscouncil.ie/Publications/LWCA%20Study%20-%20Final%202010.pdf>).

From the Councils report we know that:

- The average annual income from artistic work of an artist (the Arts Council does not include popular music within its remit) in Ireland is €14,676 (2008 income after deductible expenses but before tax).
- The vast majority of artists need to undertake a second job outside the arts to survive
- Even with a second job the total average annual income of artists has actually fallen in the thirty years since the Arts Council last reported on artists' earnings.
- Only 5% of artists' gross personal income from work as an artist comes from "royalties, advances or other copyright earnings".

Our own research, in respect of writers for the stage and screen only, shows an average income of €14,795.

Facilitating artists to share in the economic life of what they create would re-articulate the relationship between artist and audiences; improve the pitifully inadequate incomes of most artists; stabilise that income by spreading it over time; and thereby create the basic economic infrastructure for innovation in the creative arts, without having to call on increased state funding.

Publication by the European Commission of a Green Paper on the Online Distribution of Audiovisual Works

On the 13th July the European Commission published a "GREEN PAPER on the online distribution of audiovisual works in the European Union: opportunities and challenges towards a digital single market (COM(2011) 427/4)."

The Green paper

(http://ec.europa.eu/internal_market/consultations/docs/2011/audiovisual/green_paper_COM_2011_427_en.pdf) raises many questions including the definition of authorship, and on the remuneration for audiovisual authors for online exploitation of their work.

In respect of authors remuneration the Green Paper says

“one option would be the introduction of an unwaivable right to remuneration for their "making available" right managed, compulsorily, on a collective basis. Another option would be to promote authors' ability to undertake negotiations individually or collectively. This could be seen as the best way to maximize the value of authors' exclusive rights, especially as the making available right could prove to be one of their most valuable negotiating assets in the future.”

It would seem self evident that it would be very much to the benefit of creative innovation in the arts if writers could improve their income through sharing in the income potentially to be generated by the distribution online of their creative work at no cost to the state, but as currently arranged such a prospect seems difficult to achieve for Irish writers.

Firstly, unlike the vast majority of European Union member states, screenwriters in Ireland are not identified in Irish law as authors of the audiovisual work. While they are clearly the creators and therefore first owners of the copyright in the script of the film or television programme their lack of formal status as authors may prove problematic.

Secondly authors in Ireland are prevented by Section 4 of the Competition Act from negotiating collectively.

This Guild believes that writers are authors of the audiovisual work and should be so acknowledged by the Copyright and Related Rights Act.

The Guild would also strongly support the proposition that creators should be compensated on a per use basis for exploitation of what they create online and believes that this should be an objective for Irish copyright law, perhaps in the context of an eventual European Commission Directive.

General issues- Exceptions to Copyright - Fair Dealing and Fair use

The Writers' Guild shares the commonly held view in Europe, as reflected in European and national legislation, on the comparison between US style Fair Use and European style Fair Dealing. The system of specific exceptions to copyright, designed to facilitate legitimate uses such as Educational access, operates more effectively in the European context than the fundamentally litigious US system of Fair Use. Creative innovation in Ireland is essentially the preserve of individual creators and a multitude of SMEs who assist with the production and distribution of creative content. Long drawn out court cases dealing the possible exceptions to copyright application that powerful organisations and companies may like to have in order to reduce their cost base by not having to pay creators seem highly unlikely to have the effect of facilitating innovation, except perhaps in the legal profession.

Ireland's potential strength in the digital environment seems likely to rest in significant part on the creative capacity of our artists to produce innovative content. Undermining the capacity of this content to earn an income through its distribution online in order to facilitate companies whose business models are based on the assumption of free content seems illogical.

Conclusion

While the review of the legislation announced by the Minister is welcome and the need to update aspects of the legislation in order to respond to technological change is also welcome the tenor of the review appears to be based on a perception in certain industries that copyright legislation in Ireland “actually creates barriers to innovation and the development of new business models”.

The experience of the members of this Guild is the precise reverse. It is, in our view, the failure to maximise the potential of copyright legislation that creates barriers to innovation. Those who create copyright – artists – are very poorly compensated for what they do and many of them are excluded from any prospect of sharing in the economic life of what they create.

It has been our experience that those creating new business models for the distribution of creative content online often start from the assumption that they need to develop a system that provides them with free content. This approach cannot but further impoverish creators and undermine their capacity to create.

A significant and acknowledged strength of Ireland is the considerable national and international success of our artists. Their success is dependent on their capacity to protect and exploit their copyright.