

1. Name

Mark Keogh

2. Postal address

3. Email address

4. Are your responses confidential?

No

5. Website (if any; will not be disclosed)

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

rights-holder

User

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

Yes

8. 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)].

No

9. 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, single legislation reduces economic burdens on rights holders and cost of litigation

10. 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?

there are no reference to lawyers, non-heritage government bodies. Users is too narrowly described - educational, profit based secondary rights users, non-profit making secondary rights users.

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

Yes, see 10

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

Different educational levels (Australian model for schools rights). This should be extended to a GNU like licence of material for non-profit artist purposes, especially those that benefit the rights holders. Like advertisements benefiting new artists. Entrepreneurs should have prices publicly stated for rights use. This cannot be restricted, like price display was with dentists. Access should not be restricted unless on pre-stated reasons e.g. not in alcohol ads.

13. Should a Copyright Council of Ireland (Council) be established?

No, Ireland does not need another quango. An efficient online process within the dept of trade is all that is needed.

14. 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 would undermine rights holders to have a lobby organisation that distances itself from direct regulation. It would place extra unnecessary costs on rights holders and fracture one rights holder with another. Future lobby control will restrict the usefulness of this organisation and legally complicate its existence and involvement in rights litigation,

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

It should be run like the PRTB.

16. What should the composition of its Board be?

None

17. What should its principal objects and its primary functions be?

None

18. How should it be funded?

None.

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

No.

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

As above

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

No as this will be superseded by the courts. This will not have the legal basis of a state organisation like the injuries board.

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

This cannot be a privately financed and run legally back quango like the control of the legal and medical organisations.

23. 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?

No

24. Should the statutory licence in section 38 CRRA be amended to cover categories of work other than “sound recordings”?

No

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

None

26. 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 sounds useful, but the courts could not handle the flood of pithy claims.

27. 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?

No. The judiciary should have specialists that will take rights claims.

28. 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?

Massive, complex, costly and litigious open areas. It is unlikely the solicitors of Ireland would allow their income source to dry up in a recession.

29. 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?

30. 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?

Yes, the restriction of access to students and creative non-profit artists. The evidence is in the evolution of every artistic field.

31. 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?

Every case that has gained public support through online social networks.

33. Should the sound track accompanying a film be treated as part of that film?

No

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

Yes

35. Should the definition of “broadcast” in section 2 CRRA (as amended by section 183(a) of the Broadcasting Act, 2009) be amended to become platform-neutral?

No

38. Is there any evidence that it is necessary to modify remedies (such as by extending criminal sanctions or graduating civil sanctions) to support innovation?

Yes,

62. Should all of the exceptions permitted by EUCD be incorporated into Irish law, including:

(a) reproduction on paper for private use? - yes

(b) reproduction for format-shifting or backing-up for private use? - yes

(c) reproduction or communication for the sole purpose of illustration for education, teaching or scientific research? - yes

(e) reporting administrative, parliamentary or judicial proceedings? - no

(f) religious or official celebrations? - no

(g) advertising the exhibition or sale of artistic works? - no

(h) demonstration or repair of equipment? – yes

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

yes - as per the Australia system and should be extended to individuals if they apply for a study or non-profit artist creative generic licence

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

Yes

65. Should broadcasters be able to permit archival recordings to be done by other persons acting on the broadcasters’ behalf?

Yes, in perpetuity

66. Should the exceptions for social institutions be repealed, retained or extended?

Extended

67. Should there be a specific exception for non-commercial user-generated content?

yes - a licence should be purchase and published works should be registered.

68. Should section 2(10) be strengthened by rendering void any term or condition in an agreement which purports to prohibit or restrict than an act permitted by CRRA?

No

69. When, if ever, is innovation a sufficient public policy to require that works that might otherwise be protected by copyright nevertheless not achieve copyright protection at all so as to be readily available to the public?

For the advancement of the health and safety of the general public (epidemic health protect) and socio-cultural protection of any legitimate group

70. When, if ever, is innovation a sufficient public policy to require that there should nevertheless be exceptions for certain uses, even where works are protected by copyright?

As 69. and extended for artist studies and celebratory events

71. When, if ever, is innovation a sufficient public policy to require that copyright-protected works should be made available by means of compulsory licences?

Education

72. Should there be a specialist copyright exception for innovation? In particular, are there examples of business models which could take advantage of any such exception?

Yes

82. What is the experience of other countries in relation to the fair use doctrine and how is it relevant to Ireland?

Australia allows an institution to use licences for \$50AUS without restriction.

90. Should the post-2000 amendments to CRRA which are still in force be consolidated into our proposed Bill?

Yes

91. Should sections 15 to 18 of the European Communities (Directive 2000/31/EC) Regulations, 2003 be consolidated into our proposed Bill (at least insofar as they cover copyright matters)?

No