

Review of the Copyright and Related Rights Act 2000

Submission from the Library Association of Ireland

Introduction

The Library Association of Ireland (LAI) is the professional association for librarians in Ireland. The Association represents librarians in all sectors- academic, corporate, health, public, research, schools and voluntary. The Association is a founding (1992) member of the European Bureau for Library, Information and Documentation (EBLIDA) which represents librarians and libraries especially in the area of copyright and intellectual property.

The Association welcomes the opportunity to contribute to this review.

Purpose of the Review

The terms of reference note that the Review will:

1. Examine current Irish copyright legislation and identify areas that are perceived to create barriers to innovation
2. Identify solutions for removing these barriers
3. Examine the Fair Use doctrine
4. Consider Irish legislation in the light of European Communities Directive on Copyright and Related Rights

General Remarks

In preparing this submission, we have taken note of the recent review in the United Kingdom as outlined in *Digital Opportunity: Review of Intellectual Property and Growth* (Hargreaves Report, 2011). The rationale for the Hargreaves Report is the same as that of this review. We have also noted recent developments at EU and international level.

Historically, libraries have been the repositories of a nation's scientific and cultural heritage in their role as custodians of a nation's memory. Librarians provide access to their library collections and, in so doing, manage the rights of both copyright owners and users of copyright materials. As librarians we are very much in favour of a fair balance that protects both copyright owners and users of copyright materials, whether those users are librarians, people involved in private study, or researchers involved in commercial activities etc. There

is no financial gain to librarians, and our interest is purely professional, in terms of both protecting the authors and publishers, and of ensuring that scholarly and research activities which we support are not unreasonably hampered. This Association would concur with the view expressed by the National Library of Wales in its submission to the Hargreaves Review which stated that "...statutory exceptions to copyright law are as important as the sections which give protection to the work."(<http://www.ipo.gov.uk/ipreview-c4e-sub-nlw.pdf>)

Library collections contain material in various formats- manuscripts, books, periodicals, newspapers, paintings, prints and photographs, audiovisual formats- film, cassettes, CDs, DVDs and other sound recordings. For several decades, libraries have provided access to databases and computer software packages. For more than ten years, libraries have been providing public access to the internet.

We believe that any proposal emanating from the review should be based on evidence. We also believe that certain sections of the Act need to be clarified. Otherwise definitions contained in the Act will only become clear through undesirable court cases.

European and International Legislative Framework

While some of the points made below in relation to Irish legislation may be rectified by Statutory Instrument or Ministerial regulation, others will need to take account of various EC Directives.

Almost a year ago, LAI responded to the European Commission's Green Paper-*Unlocking the Potential of cultural and creative industries*. Many of the points we made then still obtain now and are worth repeating.

- Exceptions to copyright are a public good and in the public interest
- EC encourages a European Research Area
- Digital publishing is becoming more dominant

In addition, format shifting in the digital age may need to be dealt with at EU level.

Orphan works which cause problems for all libraries will be addressed in the proposed Directive on Orphan Works. The questions of licensing, cross border solutions and mass digitisation will be addressed in the directive. This Association intends to make a submission to this Consultation.

The International Federation of Library Associations and Institutions (IFLA) has prepared a draft Treaty on Copyright Exceptions and Limitations for Libraries and Archives (<http://www.ifla.org/files/clm/publications/tlib.pdf>). This will be considered at a World Intellectual Property Organization (WIPO) meeting in November 2011.

Current legislation

Management of copyright has become increasingly complex for librarians and others. Digital technologies which are helping many libraries exploit the richness of their collections are also creating uncertainties in copyright terms. The Library Association of Ireland would wish to see the continuation of the existing statutory exemptions and the addition of some new ones. We would also argue that Irish law needs to address the realities of the digital age. This would ensure that citizens will have access to digital information in an equitable manner.

The main barrier to innovation is lack of clarity. There are number of specific areas which cause concern:

- **Lack of clarity in relation to copying for archival purposes**
- **Lack of clarity and certainty in the context of digital publishing**
- **Lack of provision for digital legal deposit**

Copying for Archival Purposes/ Format Shifting

S. 65 is unclear in its scope. There is also a lack of clarity as to what constitutes an infringement.

It is appropriate to consider format shifting under this heading as the rationale for undertaking format shifting is for archival purposes. Some format shifting may be necessary for libraries serving users who have impaired vision and depend on spoken word formats.

There is a strong argument in favour of an explicit permission to do format-shifting, e.g., transferring data or software from one computer storage medium to another (to permit content on 5 ¼ inch floppies to be copied to 3½ inch floppies or to CD-ROM or to USB

drive) or from one format to another (if you have a vinyl album you should be able to transfer it to tape, CD or MP3). The principle is recognized in s.80 on copying software

“80. - (1) It is not an infringement of the copyright in a computer program for a lawful user of a copy of the computer program to make a backup copy of it which it is necessary for him or her to have for the purposes of his or her lawful use.” This principle is as important in industry as it is in private activities, to counter obsolescence of hardware and software, and to avoid the unnecessary expense of re-purchasing material simply because the technology used to store or access it has changed, and to avoid cases where valuable information is lost because the hardware or software necessary to its use has become obsolete (as has happened with US census material).

Because of the speed of technological developments and the opportunities to benefit from these, we would recommend that format shifting be extended to all formats.

Research leading to innovation

It is extremely important, in the context of innovation, jobs, the economy etc that the current Fair Dealing exemption, or any future Fair Use exemption, continue to be available for this type of research as well as for "private research". One of the objectives of copyright is to protect creators of original works IN ORDER TO promote the development of ideas and the further use of those ideas in other areas of innovation, industry etc. Therefore, exemptions must cover reasonable usage in the course of commercial activities. As it is, the Library Exemptions are NOT available to any library within a commercial / profit-making body (e.g. industry, law firms etc) and so the only exemptions available to researchers within such bodies (lawyers, chemists, software developers etc) is the availability of Fair Dealing (or perhaps Fair Use in the future) for the actual end-users - the librarians cannot supply copies in the same way as in non-commercial libraries. It would be very short-sighted to take away this limited, reasonable exemption in order to make every commercial re-use of copyright material subject to payments / permission, as it would ossify innovation and paralyse industry. This is especially important as the lines between commercial and non-commercial can be quite blurred (e.g. funded research in third level institutions), teaching hospitals etc.

If the exemption for end-users is altered (e.g., by replacing Fair Dealing with Fair Use) it is important that the exemptions for Libraries should not be made any narrower than they are under the Act of 2000, nor should the exemptions for librarians acting on behalf of end-users be any narrower than the exemptions for the end-users themselves. So, if the exemptions for end-users are changed to allow a slightly more flexible "Fair Use" instead of "Fair Dealing", it would seem logical that the exemptions for librarians should likewise be slightly reworded,

so that librarians can copy for a person's research or private study as defined by "Fair Use" rather than merely "Fair Dealing". It would make no sense if a person using a library could make a copy of an article for a widely defined "Fair Use" and yet if the librarian was pushing the photocopier button, the end-use would have to be the more narrowly defined "Fair Dealing". As it is the library exemptions are not extended to libraries within commercial bodies (SI 427 of 2000).

But even IF the library exemptions must still be restricted in this way to libraries that are not-for-profit, the end-use for which copying is done by librarians should match the end-uses that are permitted for end-users. Likewise, the introduction of Fair Use might afford an opportunity to allow slightly less restrictive activities for librarians (in particular recognizing as Fair Use the making of a copy or download of material for archiving in the library for future, unspecified users rather than restricting library copying to the making of copies in response to specific requests from end-users).

The use of digital data needs to be addressed so that text and data mining is permissible. This would appear to be an area where there may be many commercial opportunities available. If data and text mining are permissible this could lead to very efficient use of research budgets.

Digital Publishing

Digital publishing is becoming more dominant and in some subject areas is or will soon be the norm. Academic and research libraries are involved with major digitisation projects of out-of- copyright works as are the public libraries in the AskaboutIreland initiative (www.askaboutireland.ie).

Many journals are now published as Open Access and individual academic institutions have developed digital repositories. Irish examples are <http://www.tara.tcd.ie/> and <http://rian.ie/>

Digital Legal Deposit

Legal deposit of digital materials needs to be clarified. This needs to be addressed urgently as the National library of Ireland, other legal deposit libraries and public libraries need clarity especially in relation to the collection of digital only publications. The deposit of such publications needs to be mandatory.

Recommendations

1. We believe certain aspects of the current legislation are good and should be continued. The existing provision in Irish law, s.2 (10) which voids any contract which seeks to eliminate statutory exemptions should be applied throughout the EU. This principle already exists in the Database Directive.
2. There should be clarity in relation to copying for archival purposes.
3. Mandatory digital legal deposit should be introduced.

Library Association of Ireland,

14th July 2011