

Introduction

Magnet Networks welcomes the detailed consultation that has been undertaken and published by the Copyright Review Committee (CRC). To aid innovation in Ireland any confusion about copyright in technology must be eliminated or collated into one piece of legislation overseen by one central agency to avoid conflict, and the ultimate stifling of growth. Magnet Networks AerTV service is at the forefront of innovation in over the top streaming and though recognised in legislation, updating legislation and ensuring technology neutrality would ensure further innovation in this space.

Questions

The main questions which Magnet Networks feels that it is appropriate to reply to are questions 1-6, 29-31, 43, 48, 54 and 86.

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

Magnet Networks agree with the definition of ‘innovation’ as outlined in the 2008 Report - Innovation in Ireland. This definition pinpoints what innovation is and more particularly why companies innovate i.e. to obtain a competitive advantage and break new ground in business models. As acknowledged in this consultation, as new business models emerge established models are not adopting speedily and thus are trying to rely on slanted interpretations of legislation to stymie these innovative models or have been reticent to work with these early adopters in order to legitimise their business i.e. it took Apple to make a deal with several music studios on a trial basis to make on line music legitimate and now a massive revenue source to the music owners. Music rights holders were afraid of their rights and the value of their rights being reduced but music downloading is now massive and a very profitable business. The music downloading model has led the way for books, videos and other download models.

(2) Is there sufficient clarity about the basic principles of Irish copyright law in CRRA and EUCD?

As outlined in the consultation, the Copyright Review Committee have boiled down the basic principles to the four main categories as outlined in Section 17(2) of the CRRA. These four categories are in essence the categories in which copyright subsists and each of these categories must be remembered when answering the remaining questions irrespective of whether you are a rights holder, intermediary, collecting society etc. Thus, there is sufficient clarity in the Irish copyright law on what the basic principles are.

(3) 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, legislation should be consolidated to include any post 2000 amendments for ease of reference and also to update definitions in line with newer tangential legislation e.g. Broadcasting Act, 2009 and also, in light of the Interpretation Act, 2005. As outlined in Section 4.12 of the Consultation, the Copyright Act (as amended by Section 183 of the Broadcasting Act, 2009) and Section 2 of the Broadcasting Act, 2009 have separate and

conflicting definitions of ‘broadcast’. Thus, to provide legislative clarity a comprehensive document outlining all copyright legislation should be consolidated into one act.

(4) 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?

These classifications are helpful in assisting people and companies to assess which category they fall into. However, these categories are not definitive and categories i, iii, iv and v are in some instances merging into one due to how technology is used.

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

These classifications are helpful in placing people/companies into particular groupings but they should not be held as definitive as companies may at one instance be a user but in another be an entrepreneur or an intermediary. Lines are being further and further blurred as technology moves in such fast bursts of innovation e.g. social media, music downloads, e-books etc.

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

Magnet Networks believe that the core principles outlined in Question 2 (above) and Section 17(2) of CRRRA, should be those protected and any general interest groups should not be allowed place their interests above anyone else’s. By allowing core principles to be maintained and protected each grouping or category interests would be preserved and core principles prevents any confusion in the mind of the innovator when reviewing their copyright obligations or clearance requirements.

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

The definition of broadcast in Section 2 of the 2009 Act is “broadcast” *means the transmission, relaying or distribution by electronic communications network of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not;*

But the definition of broadcast as amended in Section 183(a) is ‘broadcast’ *means a transmission by wireless means, including by terrestrial or satellite means, whether digital or analogue, for direct public reception or for presentation to members of the public of sounds, images or data or any combination of sounds, images or data, or the representations thereof, but does not include transmission by means of MMDS or digital terrestrial retransmission;”*,

As recommended in Section 4.12 of the Consultation, if the definition of broadcast is amended to reflect that which is defined in Section 2 of the 2009 Broadcasting Act, it would be platform neutral or at least by platform inclusive, as the 2009 Act goes on to define

“electronic communications network” means transmission systems including, where applicable—

- (a) switching equipment,*
- (b) routing equipment, or*
- (c) other resources,*

which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, and such conveyance includes the use of—

- (i) satellite networks,*
 - (ii) electricity cable systems, to the extent that they are used for the purposes of transmitting signals,*
 - (iii) fixed terrestrial networks (both circuit-switched and packet-switched, including the Internet),*
 - (iv) mobile terrestrial networks,*
 - (v) networks used for either or both sound and television broadcasting, and*
 - (vi) cable television and internet protocol television networks,*
- irrespective of the type of information conveyed;*

This definition of electronic communications network is all encompassing and is platform neutral, as well as technology and medium neutral. Thus, to avoid confusion about which broadcast definition is appropriate in which circumstances Section 2 of the Broadcasting Act, 2009 should prevail and the CRRA should be amended to reflect this.

(30) Are any other changes necessary to make CRRA platform-neutral, medium-neutral or technology-neutral?

Section 20 of the CRRA it states: *Subject to subsection (2), copyright shall not subsist in the transmission of a broadcast or other material in a cable programme service unless the transmission alters the content of the broadcast or other materials.* This ties in with Question 31 below. Copyright exclusion should exist in any broadcast that is an unaltered, unabridged retransmission of the original within the Irish territory.

Cable programme service is defined as *“cable programme service” means a service, including MMDS, which consists wholly or mainly of sending sounds, images or data or any combination of sounds, images or data, or the representations thereof, by means of a telecommunications system—*

- (a) for reception at 2 or more places (whether for simultaneous reception or at different times in response to requests by different users), or*
 - (b) for presentation to members of the public,*
- but shall not include:*

- (i) a service or part of a service of which it is an essential feature that while sounds, images or data or any combination of sounds, images or data, or the representations thereof, are being conveyed by the person providing the service, there may be sent from each place of reception, by means of the same system or, as the case may be, the same part of it, data (other than signals sent for the operation or control of the service) for reception by the person providing the service or other persons receiving the service;*
- (ii) a service operated for the purposes of a business, trade or profession where—*

(I) no person except that person carrying on the business, trade or profession is concerned in the control of the apparatus comprised in the system,

(II) sounds, images or data or any combination of sounds, images or data, or the representations thereof, are conveyed by the system exclusively for the purposes of the internal management of that business, trade or profession and not for the purpose of rendering a service or providing amenities for others, and

(III) the system is not connected to any other telecommunications system;

(iii) a service operated by an individual where—

(I) all the apparatus comprised in the system is under his or her control,

(II) sounds, images or data or any combination of sounds, images or data, or the representations thereof, conveyed by the system are conveyed solely for his or her private and domestic use by that individual, and

(III) the system is not connected to any other telecommunications system;

(iv) services, other than services operated as part of the amenities provided for residents or occupants of premises operated as a business, trade or profession, where—

(I) all the apparatus comprised in the system is situated in, or connects, premises which are in single occupation, and

(II) the system is not connected to any other telecommunications system;

(v) services which are, or to the extent that they are, operated for persons providing broadcasting or cable programme services or providing programmes for such services;

Telecommunications system is defined as ‘*a system for conveying sounds, data or information or any combination of sounds, images or information, or the representations thereof, by means of a wire, beam or any other conducting device through which electronically generated programme-carrying signals are guided over a distance;*’

This is not platform/medium or technology neutral and is also very long, complicated and at points incomprehensible.

This definition should be amended to reflect the definition of electronic communication network outlined in the Broadcasting Act 2009 (see answer to Question 29 above). As you can see ‘cable’ is included within the definition of electronic communications network. The definition of electronic communications network is platform, technology and medium neutral. If the definition of broadcast is aligned then why should a copyright exclusion be valid for one medium i.e. cable and not others e.g. web-streaming, IPTV, etc.

Also, AerTV pay license fees to music rights licensing bodies such as PPI and IMRO for its internet/web streaming channels such as AerTV music and AerTV film. Thus, these licensing bodies already recognise it as a legitimate form of broadcast and as such legislation needs to be clarified to allow such innovation.

(31) Should sections 103 and 251 CRRA be retained in their current form, confined only to cable operators in the strict sense, extended to web-based streaming services, or amended in some other way?

Magnet Networks believe once the relevant definitions such as cable programme service are updated then it would be platform neutral. Excluding one platform over the other is discrimination, and contra to the whole idea of allowing innovation. The Broadcasting Act, 2009 mentions the Internet as a broadcast means. Web streaming is just television streamed

to an internet connected device. With the advent of smart TV's which eliminate the need for tradition set top boxes and with the rise in popularity of services such as AerTV, iPlayer and SkyGo, these are all web streaming products, not allowing copyright exclusion stifles innovation and could make SmartTV's redundant in Ireland. To explain further, if you are not allowed use your broadband connection to stream TV, as suggested by a submission referred to in Section 4.13, then Smart TV's unique selling point is eradicated. Currently, people use their PS3's, Xboxes', Wii's to stream and watch TV from either video on demand services such as NetFlix but also from over the top television such as AerTV and iPlayer or SkyGo. Also, in the Broadcasting Act 2009, a TV licence must be paid for any device greater than 16 square inches that is capable of receiving TV, thus, an iPad requires a TV licence, but not allowing web streaming would mean it is unable to receive TV more particularly free to air TV as rights would not be excluded as per the submission outlined in Section 4.13. This again would stifle innovation and would isolate Ireland as new innovative products cannot be sold or used as they would assist in contravening legislation.

(43) Does the definition of intermediary (a provider of a “relevant service”, as defined in section 2 of the E-Commerce Regulations, and referring to a definition in an earlier - 1998 - Directive) capture the full range of modern intermediaries, and is it sufficiently technology-neutral to be reasonably future-proof?

It is sufficiently technology neutral as the exclusions set out in Schedule 1 of the Regulations frame what is included within the regulation i.e. it is everything other than those excluded in Schedule 1. This means it does not put limits on what falls within its remit.

(48) Does copyright law inhibit the work of innovation intermediaries?

The strength and might of the copyright holders rather than copyright law itself inhibits innovation. From Magnet Networks experience though over the top television is recognised in both the Broadcasting Act and the CRRA, content holders keep insinuating that there are potential copyright infringements with over the top streaming but are unable to substantiate these remarks when asked.

(86) What have we missed?

Magnet Networks believe that the CRC have missed very little but CRC have to take into account technologies such as television manufacturers that currently do not utilise the internet to distribute content but leave that to aggregators such as UPC, Magnet and Sky who provide television to end users, in future TV manufacturers will be providing television content to users through their platform and it will be international rather than localised and thus, pan European copyright considerations will be required as the TV manufacturer will more than likely not negotiate on a local level with the licensing and collecting authority. Also, the TV manufacturers will not provide the broadband connection but will rely on telecommunication providers and then such TV channels such as Sky, RTE and TV3 will rely on the broadband provider to get their content to the end user. Thus, over the top streaming will become the norm in the next 3-5 years and our copyright legislation should be neutral in all aspects to allow this area to flourish and allow Ireland be the test bed for over the top streamin.

Conclusion

Overall, Magnet does not believe major changes need to take place in the area of copyright. Its main concern is that definitions are updated to be less platform or technology specific and more encompassing. It is also necessary to amend legislation to ensure that different pieces of legislation are aligned with the same definitions to avoid confusion, namely CRRA and the Broadcasting Act.

Innovation can really only occur where general principles of copyright are protected as outlined in Section 17(2) and beginning to mandate for possible innovations or stifling other innovation for short term gain should be avoided.