

## **Copyright review submission**

By Declan Meenagh

I am a computer science student with an interest in the Internet. I don't have a background in law and hope the committee will forgive any mistakes I make in interpreting some of the legal terms.

## Chapter 2

(1)

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

There should be more of a focus on individual users. The focus should be on individual rights, rather than just focusing on rights holders. These include freedom of expression, religious views and cultural rights.

(2)

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

Exceptions in copyright law need to be defined clearer, and in any case where it is unclear then the judgement should automatically fall on the side of the user in a similar way to tax law.

(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?

It is important that copyright law is clear so it is accessible to the public and people starting up businesses. A simpler, easier to understand law will help innovation.

(6)

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

The user should be prioritised, as they benefit from greater access to content and innovative businesses.

## Chapter 3

(7)

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

I support establishing a copyright council once it has a mandate to protect small businesses and users.

(8)

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?

I would support it being established as a public body. This would help enforce the need for users to be included in all discussions.

(9)

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

Currently there are no organisations who represent the interests of individual users in Ireland. As such, users i.e. individual consumers, should be involved at all levels in any copyright council.

(10)

What should the composition of its Board be?

%50 individual consumers who are not associated with companies who are involved in copyright. A process should be set in place so the board can't be controlled by one interest group. The board should include a disability rep, as well as a librarian rep.

(11)

What should its principal objects and its primary functions be?

To provide a forum to discuss copyright in Ireland

To advise the government on how current policy affects rights holders, intermediaries and consumers

To protect free speech, political comment, whistleblowers and investigative journalism

To provide an alternative dispute mechanism

To help promote innovation and to encourage online start-ups

(12)

How should it be funded?

The council should be funded by a small tax on any profits derived from Irish copyright law, with a subsidisation from government. This will mean that any rights holder will have an equal voice in the council.

(13)

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

A Digital Copyright Exchange would provide a platform for archival and datamining facilities.

(15)

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

This should be the primary resolution for all disputes. This will level the playing field for small business, which would encourage innovation. This mechanism could also help individual users where disputes arise around blogs and other social media.

(16)

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

I would support strict legislation to support a balanced organization which fully facilitates all interests. The Council should be staffed by civil servants.

Chapter 4

(27)

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

The idea that a film screening has two different copyright payments is farcical. This causes extra bureaucracy and adds extra costs to cinemas. It acts as a clear barrier to innovation and should be changed immediately so there is only one royalty payment for a film.

(28)

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

The exception for unpublished works should be removed. I believe that when a work is opened into the public domain it allows new innovation, and makes it easier to archive and preserve works. There is no reason to protect unpublished works in this way.

(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?

I believe companies should be allowed to broadcast on the web and should let their programs be made available for on demand viewing online.

(33)

Is there any evidence that strengthening the provisions relating to technological protection measures and rights management information would have a net beneficial effect on innovation?

These technological measures are usually referred to as Digital Rights Management (DRM). DRM is anti-consumer because it limits the ways in which people can access content they paid for. Rights holders need to face facts, the internet is here and they can't make it go away. Consumers want the option to buy media in digital formats, this includes e-books, music tracks and videos among other products. Consumers want to know that if they spend money on something for one device that they can move it on to their new device. Currently, buying e-books means you are locked into one device.

On the other hand, file sharing provides DRM free options which can offer consumers a better experience. If rights holders want people to buy products online, they need to accept that DRM can play no part in these products.

One key example of how DRM can violate Irish law, the Amazon Kindle has a text-to-speech feature which allows users to hear the text of a book in a computer voice. The issue here is that publishers have the ability to turn this feature off. Some do because they believe it clashes with rights to audio books, a claim which is widely disputed. The violation of the law comes with the Equality act which means products and services can't discriminate against people with disabilities. Amazon's decision to allow publishers to block text-to-speech means the e-book is inaccessible to blind and other print disabled users.

In this case, nobody could argue that breaking DRM to read the book is illegal, as the person bought the e-book, and is only breaking DRM because it is the only way to read it.

This isn't the only issue with DRM. If a consumer wants to move from one device to another, they would have to leave their DRM content behind, and buy it all again. This discourages innovation in device manufacturers, and is a barrier to competition. The consumer suffers because of poor choice in devices.

Legal disclaimers like you can't copy any of a book or film without permission are not enforceable as consumers have rights under the copyright in terms of the exceptions. DRM can violate these rights.

DRM requires a service provider to allow customers to access content. A lot of DRM services have shut down preventing consumers from accessing content they pay for. This is absolutely unacceptable. DRM also prevents legitimate backups.

My recommendation is that DRM should have no legal force. People who break DRM to violate copyright law are already breaking a law, so there is no reason to add anything on technical measures.

At the very least, clear exceptions should be made for users of electronic media to break DRM for legitimate purposes. Rights holders and collection societies need to acknowledge that digital products need to have the same rights as physical ones.

Consumers don't want to licence an e-book, they want to buy it and have access to it in the same way they would with a paperback.

(37)

Is it to Ireland's economic advantage that it does not have a system of private copying levies; and, if not, should such a system be introduced?

I'm presuming private copying levies means a charge on devices which play media. This would clearly act as a barrier to innovation. My question about this is, once you buy one of these devices and pay the leavy, can you then copy with impunity? I believe the answer is no.

(40)

Has the case for the caching, hosting and conduit immunities been strengthened or weakened by technological advances, including in particular the emerging architecture of the mobile internet?

It is quite clear the web is here to stay, and the web is designed to make copying things easy. Intermediaries need very strong protections to protect innovation.

(41)

If there is a case for such immunities, has technology developed to such an extent that other technological processes should qualify for similar immunities?

I believe there should be a separate classification for user generated content websites.

(42)

If there is a case for such immunities, to which remedies should the immunities provide defences?

Immunities should provide a wide range of defences, if Social Media is to thrive companies need to know that they won't be taken down by over litigious rights holders. I propose a DMCA take down style immunity with stronger protections for the users.

(45)

Is there any good reason why a link to copyright material, of itself and without more, ought to constitute either a primary or a secondary infringement of that copyright?

There are absolutely no reasons why links should constitute copyright violation. The world wide web requires links to operate, and attacking this piece of basic infrastructure is going to damage the web.

One thing to remember about links is that they aren't always or even mostly produced by a human author. I believe the most common source of links to third party sites users interact with are search engines. There is no good way to filter search engines for such

copyright links, as a result making these links copyright violations will massively impact on innovation in terms of current search technology and act as a barrier to entry for smaller search companies who may be discouraged from entering the market.

(46)

If not, should Irish law provide that linking, of itself and without more, does not constitute an infringement of copyright?

I fully support this recommendation, links should not be copyright violations, furthermore, providing information about breaking DRM, or how to access copyright material shouldn't be an offence either.

(47)

If so, should it be a stand-alone provision, or should it be an immunity alongside the existing conduit, caching and hosting exceptions?

Which ever of these provisions gives it stronger protection

(48)

Does copyright law inhibit the work of innovation intermediaries?

It does in several ways. The main one is around takedowns. Recent figures show that 2 days of video is uploaded to YouTube every minute. This means that it isn't possible to screen all the videos. Automated attempts to block copyright content don't work and result in videos that are legal under exceptions like fair dealing get blocked. In a ECJ judgement, content filters have been banned.

[\(http://torrentfreak.com/eu-court-bans-anti-piracy-filters-on-hosting-services-120216/\)](http://torrentfreak.com/eu-court-bans-anti-piracy-filters-on-hosting-services-120216/)

(50)

Is there a case that there would be a net gain in innovation if the marshalling of news and other content were not to be an infringement of copyright?

The argument that marshalling of news is a copyright violation is silly and dangerous for a number of reasons. First, exceptions exist for things like news and comment, as well as quoting. I believe these exceptions cover any news marshalling. This is a general point; we aren't in the 19<sup>th</sup> century any more. You don't just buy a paper and have your views shaped by the publishers agenda. You can view multiple news sources, from news papers, blogs, tweets, photos and videos. This provides an important opportunity to look at all sides of the story.

Considering the shocking revelations about the conduct of journalists in the News of the World news paper and other tabloids in the UK, I believe that news marshalling services provide a critical opportunity to hold the press to account.

I accept the press hasn't got a funding model that works on the Internet, and support them in identifying one. I would support looking into ways for exchequer funding to be used to support full time professional journalists. I do not however support banning an important and innovative group of technologies in an attempt to resurrect a dead business model.

(51)

If so, what is the best blend of responses to the questions raised about the compatibility of marshalling of content with copyright law?

I think if a site derives profit from reproducing a full article then it should pay for it, but linking and quoting should not charge. I believe the state has a role in supporting journalists.

(52)

In particular, should Irish law provide for a specific marshalling immunity alongside the existing conduit, caching and hosting exceptions?

I would support this immunity.



(53)

If so, what exactly should it provide?

The marshalling immunity should be for anything less than the full article.

(54)

Does copyright law pose other problems for intermediaries' emerging business models?

A bug issue is take down notices. They provide a channel for rights holders to submit malicious requests and the intermediary is afraid to fight because they have no legal protection.

I believe intermediaries should have protection so that if they can show it was reasonable to believe a take down request was wrong they could ignore it without facing any legal sanctions.

Chapter 7

(55)

Should the definition of "fair dealing" in section 50(4) and section 221(2) CRRA be amended by replacing "means" with "includes"?

This would be a good start, but I support stronger fair use type laws.

(56)

Should all of the exceptions permitted by EUCD be incorporated into Irish law, including: (a) reproduction on paper for private use (b) reproduction for format-shifting or backing-up for private use (c) reproduction or communication for the sole purpose of illustration for education, teaching or scientific research (d) reproduction for persons with disabilities (e) reporting administrative, parliamentary or judicial proceedings (f) religious or official celebrations (g) advertising the exhibition or sale of artistic works, (h) demonstration or repair of equipment, and (i) fair dealing for the purposes of caricature, parody, pastiche, or satire, or for similar purposes?

Adding all these exceptions makes sense

The disability exception is most important because copyright could serve as a barrier to accessing information which through the internet can be made easy to access for print disabled people.

(57)

Should CRRA references to "research and private study" be extended to include "education"?

This makes sense, Education in Ireland is under funded, so helping them access content free makes sense. A lot of artists and creators get an artist exemption from taxation, so I feel it is correct they contribute something to the state.

(58)

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

This makes sense

(62)

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?

Licence agreements which violate user's rights under the CRRA are a huge problem, and it is only fair these violations are rendered void.

#### Chapter 9 Libraries

(67)

Should there be an exception permitting format-shifting for archival purposes for heritage institutions?

There is a real danger that digital artefacts will be lost due to incompatible formats or corrupted media. It is hugely important that digital archives are kept on up to date hardware to preserve them. Copyright cannot stand in the way of preservation.

(68)

Should the occasions in section 66(1) CRRA on which a librarian or archivist may make a copy of a work in the permanent collection without infringing any copyright in the work be extended to permit publication of such a copy in a catalogue relating to an exhibition?

Preventing institutions from advertising their collection is a clear barrier to innovation as it would mean less people engaging with our cultural heritage. It would also damage tourism. For these reasons this should be cleared up.

(69)

Should the fair dealing provisions of CRRA be extended to permit the display on dedicated terminals of reproductions of works in the permanent collection of a heritage institution?

This makes sense for several reasons. For people with disabilities it allows closer access to the painting. It could mean zooming into parts of the painting which can't be

visualised. If a painting repaired or wasn't on display at a particular time a terminal could act as a substitute. This is clearly innovation and should be legislated for.

(70)

Should the fair dealing provisions of CRRA be extended to permit the brief and limited display of a reproduction of an artistic work during a public lecture in a heritage institution?

Public lectures are very important. Public collections should be enjoyed by everyone, and public lectures are an important way of letting people engage with the work. For this reason display of images should be exempt for copyright.

(71)

How, if at all, should legal deposit obligations extend to digital publications?

I believe this should have it's own review and consultation as it is very broad. At a fundamental level I believe digital content should be archived as it is very important. There are a lot of platform specific questions to be answered such as social networks and which sites to archive, but in general an attempt should be made to archive them, and legislation should provide for this.

(72)

Would the good offices of a Copyright Council be sufficient to move towards a resolution of the difficult orphan works issue, or is there something more that can and should be done from a legislative perspective?

This is difficult under international law because of commitments we signed up to, but I believe if an orphaned work owner doesn't make themselves easily contactable then it should be assumed the work is in the public domain. At the very least, these works should be archived, and if they aren't widely available then libraries should be allowed to make copies to make the work available.

(73)

Should there be a presumption that where a physical work is donated or bequeathed, the copyright in that work passes with the physical work itself, unless the contrary is expressly stated?

(74)

Should there be exceptions to enable scientific and other researchers to use modern text and data mining techniques?

This is crucial to the scientific community and to innovation in many fields including genetics. Data Mining should be exempt under copyright, and any attempt to block it by abusing copyright is holding back science.

<http://www.guardian.co.uk/science/2012/may/23/text-mining-research-tool-forbidden>