

C Murray

Re : ' A more complex definition describes innovation as the exploitation of new ideas in pursuit of a competitive advantage, including the development of new or enhanced products and services and the introduction of new business models, new organisational structures or new work practices.' ( P 4, CRC , March 2012 )

Re : The above paragraph P4 of  
[http://www.djei.ie/science/ipr/crc\\_consultation\\_paper.pdf](http://www.djei.ie/science/ipr/crc_consultation_paper.pdf)

1. In terms of recognition of the ongoing development of internet , which has in truth been occurring for more than a generation via GNU , Drupal , wordpress and Linux et al , the issue of copyright entitlement for innovators and developers was dealt a heavy blow by the introduction of an SI (Statutory Instrument) in February 2012 .

A generation of innovative work should not be exposed to arbitrary censorship on the basis of claims of copyright breach, this does not recognise the work of the innovator , web-developer, or of creator of the work. It fails to recognise the user of the innovative web-systems who have developed their original works alongside the web-developers. For example a user of wordpress or Drupal can be blocked under current SI 'innovation' thus negating their original works and their effort. An artist or writer who is platforming their original works on systems like Drupal or wordpress stands to lose their innovative work because of a lack of primary legislation or statutory agency in the area of copyright reform. This lack of excellence in defining ownership through adequate consultation in the area of arts and developer innovation is starkly defined, and amounts under current law to a top-down censorship regime with the vague promise of legal-remedy.

2. In layman's terms, if my blog, which represents almost four years of original work and is protected via a CC-NC-ND /3.0 is ripped off, I have no recourse legally or morally to recompense, nor to my moral right to it's ownership ! I cannot afford to prove in a court of law that I own it. In terms of Innovation, I am denied my property right by virtue of poverty. ( I know how much legal cases cost)

3. In terms of remedy for piracy/copyright abuses : Small developers, writers and owners of blogs which are their intellectual property, have no viable remedy in law. A top-down censorship regime is now inherent in Irish legislation by virtue of a Statutory Instrument. The timing of this CRC review is bad, as it should have preceded the signing of the SI, by Richard Bruton ,T.D. There is an absence in transparency and opinion with regard to censorship in Ireland, reflected in the lack of either NGO or Statutory Agency with expertise in governmental advisements on issues pertaining to copyright, orphan works and intellectual property-rights.

Fair Use

I have argued before now on the issue of Fair Use based in discussions at The Centre For Social Media (US) which places emphasis of sharing and copyright into the hands of the originator of the work. There is a moral requirement in Ireland for discussions to be broadly-based on issues of Intellectual Property Right and Fair Use. whilst we have updated our Creative Commons Licences (February 2012) , many originators of works are not fully aware of their uses in terms of disseminating original works on the internet. There is no equivalent body in Ireland which brings together originators of works, social-media and the legislature. There is no proposed Statutory Agency that exists independently of the State, appointed to oversee issues pertaining to copyright and censorship in Ireland. Legal remedies and/or blocking of isp are the only current envisaged remedies for non-compliance to copyright /intellectual property rights and ownership of original materials.

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This is an unfair and biased methodology of proving ownership of material online which ignores the work of innovators in the online creative arena. It will be shown to be unequal in terms of access to remedy by way of the courts. Ireland has a reputation for arts and innovation which requires that there is an independent advisory infrastructure in place such as a Statutory Agency composed of expert opinion, rather than of financial interest. The fact that no government has proposed such an agency points to an attitude of laissez-faire in accessing expert opinion from innovator or artistic representatives.

RE: The Need for an Independent Statutory Body to review issues of censorship and isp-blocking in Ireland.

In order for discussion on issues of censorship, copyright and intellectual property right to have any weight there should be an Independent Statutory body based in those advocacy-agencies who are expert in this area : media , legal, ICLA, IIA, PEN , Independents, Arts Council, and industry reps. In terms of the SI (Feb 2012) , the issue was not even discussed nor was there adequate notice regarding how it would impact on innovators and artists .One of these groups did not even take part in the consultation. The fact that industry , who are not the originators of works were consulted above those who represent writers and artists points to an inherent weakness in legislation based in a narrow consultative forum with a vested interest in the matter of blocking other people's work. This can be translated as audacious, as it leaves aside a huge amount of expertise in areas that represent smaller writers and artists. It copper-fastens the image that there is a lack in awareness of how censorship impacts reputationally . In terms of setting up such a body for review of legislation on blocking and censorship , there would be a need for appointees to that body to have equal voting rates on issues of import regardless of their size /and or wealth. The Arts Council and the ICLA should have equal influence on any decision-making regarding fair-use and copyright as an industry expert. Members of a Statutory body should have a working knowledge of conventions and agreements regarding Intellectual Property Right, Ownership, Fair-use and Censorship , both in Ireland and Internationally.

Re : A Statutory Body should:

1. Be independent of the government and it's agents.
2. Should be able to openly discuss all aspects of proposed legislation from the viewpoint of the originator of works, and from the viewpoint of the user of the internet.
3. Should be called upon by a Minister for advisements with regard to proposed legislation on any aspect of copyright laws that will impact on issues of free-expression, free-speech and censorship.
4. Should be appointed by those bodies with expertise in the area of censorship and intellectual property right.
5. members of a Statutory body charged with responsibility to advise on issues of Intellectual Property rights and Copyright should be appointed for fixed terms of no more than four years and should have cognisance of their responsibilities to our standing internationally in regard to excellence in all aspects of recognition of both domestic and International laws and conventions in ownership of original works - specifically in the arts and in areas that impinge of human rights including those of free-speech and other accepted entitlements.

RE: Ownership of Orphan works

This issue has been in progress for some considerable time under the ARROW System and is part of the EU identification system. Ireland is currently participating in an ARROW project discussion under the aegis of the ICLA.

Re: Conclusion

The infrastructure required to create primary legislation in areas as sensitive as copyright and free-speech was manifestly not in place when the SI was signed. In order for Ireland to even regain some dignity in recognition of it's

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artists (originators of works) there should be an open and fair system of advisement such as an statutory agency composed of expert opinion in situ. There should be remedies available to smaller owners of original materials that do not require what are essentially expensive and prohibitive recourse to the courts. There should be an expert group available to discuss issues arising in the area of censorship which should function as a charity or NGO to allow for opinion to be cognisant of our responsibility to all innovators in this area. There is not. There is quite simply a media and a government who will bring in ill-advised legislations without expert input for a group of unnamed industry and business types, who have created a reputational damage and a censorship regime based in a vested interest which is entirely unfair to real innovation.

I will add to this at a later date, but if the Government and those interests persist in viewing innovation as an exploitable quality, they risk losing their standing on issues that are based in the field of artistic and creative innovation and to which we have been noted adherents: those of intellectual freedom and creativity based in our understanding and support of conventions on human rights since the foundation of the state. The required balance between exploiting the internet and allowing for freedoms is a delicate one which requires an openness in law and potential infrastructure that is conveniently not in place at this time. Our legislation on censorship is based solely in a small group of people's views of blocking without expert input or advisement, thus leading to top-down attacks on a generation of innovation and recompense for breach of copyright being solely in the gift of those unnamed parties to the SI who may as well have written it. That is simply not good enough for originators and net-users.