

Copyright Review Committee 2012, Submission by C Murray

The Arts and the Public Domain.

' Ireland requires not alone a statutory organisation , such as a copyright council. It requires a non-governmental centre for social-media where artists and developers can discuss and decide manifestos which will protect their original works and rights.

The nature of arts practices lends itself to derivatives which allow original works to be adapted, used, translated for the benefits of the entire community. A locked-in copyright system deprives the community of access to original-works in theatre, film, music and performance.'

Further to my submission of July 2011 and my engagement with the online questionnaire, I wish to expand on the issue of arts practice and the public domain under the following specific headings:

Use of Creative Commons Licences in arts practice.

Use of social-media by artists/rights holders and innovators.

Derivatives in arts practice.

Intellectual rights and access to legal remedies

Summary.

Initial remarks regarding the difference between arts practice at cultural level, and the entertainment industry.

There is a very real danger of the copyright review committee leaving out originators of creative works due to issues which include, but are not limited to : artist's lack of online capacity and know-how and awareness and knowledge of tech by artists. Artist-intermediaries include, web-

designers , agents, publishers and others like tech-innovators. It is the intermediary's job to understand current thinking on copyright. Not all artists, indeed the vast majority of artists lack agents or other intermediaries.

Innovation occurs at the base level and is not top down. Further to that a distinction must be made between arts practice which is a cultural form, and entertainment which is mass-dissemination of a product and is generally profit-based in it's thinking. The fact that media tend to swap and blur the boundaries between culture and entertainment should not advise the issue.

There is no demonstrable parity of esteem evinced by legislators who wish to protect the intellectual property rights and/or rights of transmission to those who are not protected within corporate legal frameworks. The majority of artists, translators, tech-developers are innovators and are thus not fairly treated with regard to accessing legal remedy because of the prohibitive cost of legal-remedy. Tech-development has been ongoing for over a generation with artists using licensing such as ccs for permitted sharing based in attribution, this issue is not discussed demonstrably within the media-coverage and current discussion within CRC12.

Use of Creative Commons Licences in arts practice.

Legislators are necessarily not reviewing copyright at the level of innovation but at the level of business where original works are not created, but where funds are immeasurably larger for access to legal remedies. There is a pre-supposition on the part of legislators that artists are managed or governed by a few limited companies, this is inherently wrong. An example of this would be a person who has caught a film or photograph and put it up online, if the thing goes viral but is ripped off there is no remedy for someone who happened to be in the right place at the right time to get an exclusive coverage of an event.

Media platforms such as France24 and Guardian Open-source (and Telegraph co.uk) have provided copyright remedies for attribution over a period of some years to allow for ground-up access to mass-media by individuals and artists.

There is an inherent responsibility on the part of legislators to allow for innovation and open-source work to develop for fear of ossification by what is sometimes referred to as mainstream media. In free-speech terms, current media tends to be quite male-dominated and uncaring of women's perspective in issues that are often made invisible by the signal to noise level of mass media. There is a responsibility to protect and nurture free-speech in relation to avant-garde web-use by women, by artists and by those people who are using the web in an innovative manner. To that end one wonders why media and government have been under-utilising open source and other modes of communication that have been developed over a generation.

Use of social-media by artists, rights-holders and innovators.

The Harriet Monroe Institute (The Poetry Foundation), and the Center for Social Media (U.S) have been leading on issues pertinent to artists with regard to Fair-use and online distribution of original works I have cited this discussion before in my July 2011 submission to DETI on 'Radical Copyright Reform'.

Artists wish for attribution and fair-use policies to both protect and allow for the online distribution of their original works. The difference between the development of a fair-use doctrine in the US and In Ireland is that the issue is led not by business but by those people who understand creative practice. The fact that the discussion here in relation to copyright reform and to ISP-blocking has been led by increasingly narrow interests, with little desire to communicate widely on issues of pertinence to originators: innovators, poets, artists, and those who use licences to protect their work.

The severe limitation here is that there appears to be a generational bias that does not countenance how artists are actually using blogging and tech platforms that are available to them. The matter of choice in how one accesses a song or poem is reduced to a profit-based understanding of artistry. Many bands and artists are streaming their original works online and fully utilising social-media to reach mass-distribution levels for their works. In cutting out the middle-men they are working directly with their audiences to bring their work to newer and younger audiences who use online very naturally and have little awareness of issues like copyright. The reduction of, or threatening of social-media methodologies of arts transmission could actually impact an entire generation who rightly perceive the use of blocking tools to be

a desperate and badly educated attempt to corner profit for those people who have thrived on other's work and who proffer a mostly limited idea of what is actually entertaining for young people.

I question why there is a resistance amongst corporate interests to broadening out the discussion on rights to include those people who they actually claim to represent. Very few artists are represented by big business who have access to parliaments and to lobbying materials. Interestingly avant-garde arts were never subject to ownership by business, but developed upward from creative works. Limiting avant-garde approaches to web-desemination of arts practices can also have impact on freedom of speech which is demonstrated in censorship of civil-society groups and artists in repressive regimes. Having what could be called an 'acceptable art' is both anti-art and anti creative-practices. People are moving away from mass-consumption of 'entertainment' towards cultural discourses and expression, necessarily limiting that in order to create a cultural locus based in what is considered 'entertainment' only contributes to ossification at a cultural level.

Derivatives in arts practice.

At one end of the scale globalisation contributes to calls for censorship of the corner-stones of western culture, such as in the recent calls for the filtering of Dante's 'The Divine Comedy' from Italian universities, and at the other end of the scale writers of original works face into mass-distribution systems of art-works which include machine-based translations and bad derivatives of their original works. Whilst debates about how to cope with these issues are ongoing, the people who create the works are left out of the discussions by intermediaries who do not comprehend arts practices.

I have used before now examples of derivatives in arts-works. They include theatrical and musical adaptations, translations, pictorial adaptations from, and use of original lines from works, including how artists like Leonard Cohen or Sinead O Connor use lines and quotes from Lorca, or from biblical sources - Who owns the original ? Lorca or Cohen , when the source of the work is creative practice based in inspiration from an object or piece of art ?

Where is the legal remedy for me if a line that I wrote is ripped off and makes some person a millionaire ?

The fact is that I can set my derivatives licence in a manner that allows for certain adaptations of my original work and hope that it isn't ripped off or badly translated. In poetry, for instance, there are numerous translators like google and babel who have adapted my lines through machines and lost the sense of the poem. Vast machine-like translations of poets can destroy the original work and take from it the intent of the originator of that work. Interestingly this aspect of internet discussion is wholly absent from current debate because the company or entity involved in leading discussions has not the experience of how bad derivatives can effect the work, their interest is solely in protecting their income source without reference to the artist.

This is why I have called again and again for the wider and broader discussion about the type of platforms, open-source systems and methods of creative practice and licensing that are available to originators -again I see little discussion of these issues in the media or the

legislature.

Intellectual rights and access to legal remedy.

Robert Spoo, in his essay *Tithonus, Dorian Gray, Ulysses*, discusses the problems related to locked down (locked-in) copyrights which do not recognise the relative merits of the three above-mentioned works. He cites the case of the Joyce estate v David Fennessy in relation to a musical adaption from *Finnegans Wake*, and other cases wherein copyright has become little more than a toll-booth with negative repercussive impact on arts and adaptations from original works. A Fair Use doctrine would have allowed Mr Fennessy to adapt the few words from the *Wake* in order to create a work that had been commissioned in Europe.

The difficulty inherent in a straitened and overly legalistic approach to copyrights is that ossification occurs at a cultural-level. The artist has the right to ownership of their original work which should benefit their estate. However, there is an understanding with arts and art's practice that derivatives do occur at the levels mentioned above here in regard to theatrical/ cinematic/ musical and other adaptations. The right of ownership and attribution should be clearly established with creative works but the knowledge that creative works, such as *Ulysses*, or the songs by Leonard Cohen which clearly are adapted from, or inspired by the work of the late Federico Garcia Lorca require some degree of flexibility in terms of copyright. A fair use doctrine in the intellectual and artistic sphere is necessary for the protection of the rights of the originator and for the rights of the adapter.

Robert Spoo refers to this as 'overlong copyright protection' which exists as 'an inhibition on the full organic development of a masterpiece'. In the case of access to legal remedy, it is the intermediary or the corporate entity who have access and rarely the individual blogger or developer whose works are barely protected under law. A more mature approach to parity before law would be for the artist to have good access to licences like Creative Commons, and copyrights to protect their works coupled with an ability to access remedy in smaller courts. This isn't discussed with any seriousness in what has become a tit for tat set of threats and soundbytes which include the words 'banning', 'blocking', 'criminalisation'.

Summary

Ireland requires not alone a statutory organisation , such as a copyright council but a non-governmental centre for social-media where artists and developers can discuss and decide manifestos which will protect their works and rights. The nature of arts practices lends itself to derivatives which allow original works to be adapted, used, translated for the benefits of the entire community. A locked-in copyright system deprives the community of access to original-works in theatre, film, music and performance.

Those that need to be brought into this discussion on copyright are not being brought in because the issue is considered to be ephemeral and that others (intermediaries) can transmit information to them. As I quoted from Spoo above here I will reiterate my comments again,

'*** **a work does not really become a classic until it is unqualifiedly available for cultural exploitation.' *****

Spoo was referring to the Joyce Estate's blocking of Ulysses which deprived the international community of adaptations from the original works of James Joyce, including in readings from 'Penelope' , orchestral adaptations for Finnegans Wake and others. Whilst entertainment and industry may benefit to a degree from the dissemination of original works the assumption that these works and general industry-pap appeals to all because of its mass-effect is a fallacy that under estimates the importance of arts practices to the community in its entire. Liberalising the copyright regime in Ireland is a step in the right direction but it is necessary to balance that with an increase in regard for the benefits of arts here, as opposed to discussion being driven by industry.