

MMF Ireland Submission for Consultation on Amendment to Copyright and Related Rights Act, 2000

Overview & Summary

The Music Managers Forum Ireland is a not-for-profit organisation for music managers in Ireland. The MMF Ireland is a chapter of the International Music Managers Forum which represents similar organisations in more than 15 countries. MMF Ireland is active both here in Ireland and overseas with our international colleagues through the IMMF.

Music managers are typically paid commission by their artists clients from the net income the artists, receives and therefore, in the most general terms, music managers interests are very much aligned with the best interests of the artists.

Digital piracy and widespread infringement of copyright has decimated the recorded music industry as it had previously existed. This not only had a huge impact on record labels, but also a massive impact on other areas such as music retail & distributors, recording studios & producers, music publishers, artists and their managers.

There is no doubt that the possibility of major label deals has diminished for new artists and in terms of significant advances artists are less well rewarded. However the structural change in the music industry has allowed many artists to approach their careers in completely new ways and engage with fans and independently create income streams around their musical careers. The rewards for success today may often be less than before, however the extent to which artists can control and dictate their own path provides a great opportunity that did not exist in the past.

Undoubtedly many music-related businesses have struggled and in some cases disappeared. However a new generation of music-related businesses are appearing, including in Ireland, and some are starting to experience success in the new reality of the music industry.

Our recommendations based on the comments below are to implement the EU directive into Irish legislation and encourage the consideration of a graduated response regarding ISPs and copyright infringement. However longer term, the key strategy for content owners is to openly and constructively license content to legitimate, new technologies. There is an important lesson to be learned from the experience of the music industry in relation to accepting the inevitability of technological innovation and partnering with innovators early on, rather than refusing to collaborate and develop the music industry business model to reflect the reality of the age in which we live and work.

Music Piracy Definition

We believe that for the purpose of commenting on ISP intervention in user's activity, piracy should be defined as large-scale 'industrial' upload/download & sharing of content. This can include individuals non-commercially sharing content, or companies/websites that through ads or other means commercially exploit download/streaming of content without licenses.

In the long-term we believe that piracy in terms of file-transfer to local hard drives will become irrelevant as streaming in conjunction with mobile internet will become ubiquitous and licensing for streaming services will become key (as it increasingly already is today). This is a positive development and in the longer term rather than the 'model' of content

owners punishing users/fans/consumers, it will be to license streaming products to give the best possible product and service choice to consumers.

Obligation for ISPs to Intervene where copyright infringement is being carried out on their networks

ISPs do have a responsibility to content owners especially in the short term when large scale file-sharing continues to be a significant source of illegitimate music. The fact that ISPs commercially benefit from the traffic on their networks means that they have a responsibility to the owners of that content being disseminated.

Graduated response

As music managers we do not believe that targeting individuals, in most cases, is a positive approach. It has also created little sympathy or support for the music industry.

As always has been the case for music fans, whatever the technology available, sharing music is an essential part of music discovery and enjoyment.

There should however be differentiation in the treatment of individuals whose file-sharing behaviour is clearly excessive and flagrant.

Digital Innovation / barriers to innovation

As far as content creators are concerned, music creation continues as always and there is no evidence that piracy has discouraged creativity. Furthermore the challenges of reaching fans and connecting digitally has encouraged innovation amongst artists and created many new opportunities. Despite this, it is a very challenging environment for artists and managers at this moment of profound structural change in the industry.

As far as technology innovation is concerned one of the barriers to digital innovation has been the difficulty in major labels and digital platform providers being able to agree terms. Therefore whilst it is valid to seek a response from ISPs to blatant copyright infringement, that can only work as part of a constructive strategy to collaborate and license new services in the digital domain.

'Fair Use' doctrine

Our understanding is that unlike under US law, 'Fair Use' is not yet enshrined in Irish/EU law. We believe that whilst certain fair use is inevitable and acceptable, rather than have fair use enshrined in law with the resulting complications of interpretation and potential abuse, it is more desirable for robust copyright to be retained for the benefit of content owners and for fair use to in practice be accepted where it can reasonably be considered just that.

Thank you for considering our views. We would be very happy to discuss and expand on these comments at some future time if you wish.

Yours Faithfully,

Alan Cullivan, Chairman MMF Ireland,
For & On Behalf of the Board of Directors of MMF Ireland.