

THE PUBLISHERS ASSOCIATION

The Copyright Review,
Room 517, Department of Jobs, Enterprise and Innovation,
Kildare Street, Dublin 2.
By email:
copyrightreview@djei.ie

8 July 2011

SUBMISSION to the CONSULTATION on the REVIEW of the COPYRIGHT AND RELATED RIGHTS ACT 2001

I write in support of the submission made to the Review by Publishing Ireland. The Publishers Association ('the PA') is the representative body for the book, journal, audio and electronic publishers in the UK. Our membership of 113 companies spans the academic, education and trade sectors, comprising small and medium enterprises through to globally successful companies. The PA's members annually account for around £4.6bn of revenue, with £3.1bn derived from the sales of books and £1.5bn from the sales of learned journals.

As with so many areas of our economies, the UK and Republic of Ireland share a strong level of trade in the publishing sector. There are high levels of integration between the two markets. UK's Revenue & Customs statistics show that the UK exported approximately £136m worth of publishing content to the Irish market in 2010, and imported £13m worth.

One of the central issues for the Review is the question of introducing a US style "fair use" doctrine into the Irish law. We support the case made by Publishing Ireland in its submission that such a move would introduce high levels of uncertainty into the Irish market, as rightsholders and users would initially be unsure as to how the provisions could and would be interpreted by the judiciary. Even allowing for the eventual establishment of legal precedent, many years of highly expensive and time-consuming litigation would have to be undertaken. The fair use doctrine operates tolerably well in the US and certain other jurisdictions, but even then it is characterised by high levels of litigation given the excessively elastic nature of its definitions. Transferring the doctrine into a jurisdiction governed by European law would, we believe, be counter-productive to the continued success of the creative and knowledge economy.

Although the differences between the Irish and British economies do not allow for direct read across, the parameters of the European law in which both operate are identical. It is notable that in the recent independent review of this issue by the UK government (conducted by Professor Hargreaves) it was found that "significant difficulties would arise in any attempt to transpose US style Fair Use into European law" (para 5.19). The Review also failed to come to a firm conclusion as to the economic benefits of a shift to Fair Use (the implication at the time of the launch of the Review in December 2010 had been that there were clear benefits to be had). Instead, the Review reported that whilst it is "worth noting that the creative industries continue to flourish in the US in the context of copyright law....it is equally true, however, that the economic benefits imputed to the availability of Fair Use in the US have sometimes been over-stated" (para 5.16).

The Publishers Association, 29b Montague Street, London WC1B 5BW

Tel: +44 (0)20 7691 9191 • Fax: +44 (0)20 7691 9199

Email: mail@publishers.org.uk • Website: www.publishers.org.uk

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The Review in the Republic of Ireland will naturally come to its own conclusions on this question, but hopefully it is instructive to note the findings of a similar study conducted in a neighbouring Member State.

Furthermore, whilst again noting that direct comparisons between the Irish and British markets are problematic, The PA challenges the notion implicit in the review that intellectual property is a barrier to innovation. In the experience of the British market, the reverse is true: the present intellectual property regime as enshrined in international law provides a fundamental foundation to the creative individuals and companies which drive innovation and growth. The publishing sector can support this assertion with a wealth of evidence, both in the personal testimony of the experts and leaders in the industry, and through the demonstrable on-going innovation in technology and content which is driven by publishing companies. To the extent that there are barriers to growth and innovation (in the British creative and knowledge economy at least) they are not to be found in copyright law itself, but in the impact of copyright infringement, the wider business environment and inefficiencies in the licensing system.

I hope that these comments are of use to the Review team.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Mollet', with a horizontal line underneath.

Richard Mollet
Chief Executive

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