



This addendum to the submission of Publishing Ireland briefly illustrates the copyright infrastructure in other common law countries. It is provided for comparison purposes, and to support certain arguments made in the PI submission, principally:

- That however constituted, it would be inappropriate to abdicate any aspect of policy-making to a Copyright Council.
- That the appropriate governance model for a Copyright Council is a non-profit entity established and funded by right holders.
- That Ireland is unusual in not having an independent Copyright Licensing Board to determine disputes and fulfill other possible functions relating to licensing of copyright material.

The role of the State

The WIPO Handbook on Intellectual Property says the following about copyright administration:

“The administrative role of the State in the field of copyright and related rights varies greatly from country to country...

A minimum role generally implemented in a government structure is the policy level function, monitoring legislation and enforcement strategies. In addition, a number of administrative tasks may be performed, depending on the role attributed by national legislation to public administration... [Another] administrative task may be the issuing of compulsory licences..... furthermore national legislation may provide for administrative control of the establishment and/or the operation of private organisations exercising copyright and/or related rights collectively or jointly on behalf of right-holders represented by them. In certain countries, such government supervision is limited to the prevention of possible abuses of a monopoly position of rights management organisations.”

The copyright infrastructure in a range of countries is reviewed below.

1. The IPO

The Intellectual Property Office is the government body responsible for intellectual property. It is an executive agency of the Department for Business Innovation and Skills. It has an independent Steering Board, consisting of non-executive members, to advise on strategy and performance.

Copyright is treated equally with patents, trademarks and designs. In relation to copyright, the IPO:

- Conducts research, including by way of extensive consultations with stakeholders, and reports on the same.
- Prepares detailed policy papers for government.
- Holds a wide variety of seminars, clinics and training events, nationwide.
- Provides online supports (e.g. “IP Healthcheck”) and holds events for small business, designed to boost innovation.
- Provides research supports for legal practitioners
- Provides administrative support to the Copyright Tribunal, which settles licensing claims.
- Hosts a mediation facility for resolution of disputes.
- Maintains a register of IP practitioners.

The IPO formed part of a detailed study carried out in 2010 over six governmental entities, to look at ways of better aligning and coordinating the services offered by the “Innovation Infrastructure”.

2. The Copyright Tribunal

The Copyright Tribunal is an independent body established under the UK Copyright Designs and Patents Act 1988. Its main role is to adjudicate commercial licensing disputes between collecting societies and users of copyright material in their businesses.

A decision was published in 2010 that the tribunal was to be merged with the Tribunals Service. It is unclear whether this has occurred. The Tribunal is (or was) administered by the IPO.

3. The British Copyright Council

The BCC was formed in 1965 and incorporated as a not for profit company in 2007.

It represents those who create, hold interests in or manage rights in literary, dramatic, musical and artistic works, films, sound recordings, broadcasts and other material in which copyright or related rights exists.

Members include professional associations, industry bodies, trade unions and collecting societies representing right holders

Its objectives include:

- To inform and represent its members
- To promote effectiveness of copyright
- To encourage respect for copyright

Key activities include:

- Prepare consultation responses and policy papers and make representations to the EU Commission, WIPO and the UK Government on legislative change and other development affecting its members
- Organise training with WIPO for governmental officials in developing countries
- Identify areas of common interest between BCC members and right holders not represented by the Council.

The BCC is an independent body and does not receive government funding.

Australia

1. IP Australia

This administers patents, trademarks designs and plant breeders rights. It has *no* role in relation to copyright. Copyright is administered by the Attorney-General's Office.

IP Australia has an *Advisory Council on IP*, which is an independent body appointed by Government. It advises the Minister on strategic administration of IP.

2. Australian Copyright Tribunal

Australia has a Copyright Tribunal. It is an independent body. It has jurisdiction to determine remuneration for the purpose of compulsory licences under statute. It also has a jurisdiction in relation to voluntary licences, permitting it to vary the terms of blanket licence schemes, and settling licence terms where there has been a failure to agree. It may also of its own volition refer a question of law to the Federal Court of Australia.

3. Australian Copyright Council

This is a representative body for right holders. It has 24 members, from relevant industries and the creative sector. Its objectives are

- To help members to exercise their rights
- To raise awareness about copyright
- To lobby in relation to legislation
- To conduct research
- To foster co-operation in the sector

The services it provides include:

- Publications on copyright
- A news service
- Online bookstore
- Seminar programme
- Free legal advice for artists, creators, educational institutions and libraries.

The Council is funded by earnings and by Government, through the Australia Council.

New Zealand

1. Intellectual Property Office

This seems to be very similar to the Irish Patents Office, in that it administers industrial property rights but offers very little in relation to copyright.

2. New Zealand Copyright Tribunal

New Zealand has a Copyright Tribunal, administered by the Ministry of Justice, as part of its Tribunals Unit.

The Tribunal hears disputes and applications about existing and proposed licensing schemes and file sharing infringements. The jurisdiction concerning file sharing infringements is particularly interesting. It enables a right holder to obtain an order and damages against a file sharing user. It appears to be part of a three strikes process (“three notices process”). The link is here:

<http://www.courts.govt.nz/tribunals/copyright-tribunal/file-sharing-infringements/file-sharing-infringements#Heading 2>

The legal authority is provided by Sections 122A to U of the Copyright Act 1994. In relation to the role of the ISP the provision is s122T.

3. New Zealand Copyright Council

This is a right holder umbrella organisation, with 23 members. It is a non-profit incorporated society established in 1983. Membership is open to national organisations and associate membership to bodies or persons with sufficient interest to warrant membership, but in all cases subject to discretion of the Council.

The aim of the Council is to protect, preserve, and promote the rights of copyright creators and owners.

It provides services to cultural and copyright-based industries, and an interface to government.

Its work includes:

- Conducting research and producing reports
- Liaising with government
- Providing general advice on copyright
- Holding workshops and seminars on copyright
- Maintaining bi-lateral relations with organisations in other countries

The Council depends on its members for funding. Each organisation pays an annual fee based on the number of members it has.

Canada

1. Canadian Intellectual Property Office

This is a government agency of Industry Canada. It is responsible for registration of patents, trademarks, designs. It also registers copyrights.

2. Policy units

Industry Canada has a *Copyright and International Intellectual Property Directorate*, which is responsible for copyright policy. It conducts studies and holds consultations to inform policy. *The Department of Canadian Heritage also has a Copyright Policy Branch*, which is

responsible for ensuring that Canada's copyright policy framework supports creativity, innovation and access to cultural works.

3. Copyright Board

There is also a *Copyright Board*. It is an economic regulatory body empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyright works, when this is entrusted to a collecting society. The board is also empowered to supervise agreements between users and licensing bodies and can issue licences for the use of orphan works.

The Board is established under S 66 of the Copyright Act 1985, as amended.

4. Canadian Intellectual Property Council

This describes itself as a business coalition, supported by the Canadian Chamber of Commerce, which aims to provide a central voice to press for stronger intellectual property protection.

Members represent a broad range of industries, including pharmaceuticals, software, entertainment and consumer goods.

The US

1. The US Copyright Office

This is an agency of government, part of the Library of Congress.

The mission of the Copyright Office is to promote creativity by administering and sustaining an effective national copyright system. Its functions include:

- Maintaining the Register of Copyrights
- Maintaining bibliographic material of registered works – a valuable archive.
- Providing copyright policy advice to Congress
- At the request of Congress, drafting legislation, and preparing technical studies on copyright-related matters
- Consulting with copyright owners, industry and library representatives, bar associations and other interested parties, on copyright issues.
- Providing public information services on copyright matters

- Through its International Copyright Institute, providing training for high-level officials from developing countries

2. Copyright Royalty Board

The Copyright Royalty Board deals with licensing disputes. It is a statutory body, deriving its authority from the Copyright Act, Section 801 et seq. It replaced a Copyright Royalty Arbitration Panel established by the Copyright Office.

Ireland

The Office of the Controller

The Controller of Patents, Designs and Trade Marks has a limited role in relation to copyright administration. On the website of the Patents Office, although there is a small amount of information about copyright law, the mission statement of the Office omits any reference to copyright.

In so far as copyright is concerned, the role attributed to the Controller by statute consists as follows:

- Registration of Licensing Bodies

The Controller maintains a register of copyright licensing bodies. It is an offence to act as a licensing body if unregistered. Licensing bodies are obliged to furnish details of their licensing schemes and tariffs to the Controller.

- Resolution of disputes

It is a function of the Controller to determine disputes arising under the Act between licensing bodies and persons requiring licences, or organisations claiming to represent such persons. The Minister has made rules relating to proceedings before the Controller. An appeal lies to the High Court.

The Controller is at liberty to designate an arbitrator to hear the dispute.

In relation to the operation of the dispute resolution function of the Controller, Clark, Smith & Hall *Intellectual Property Law in Ireland* (2010) say:

“These provisions are not working transparently at the present time.... It is submitted that the current situation is entirely unsatisfactory and raises grave doubts about whether Irish law meets the requirements of Art 49 of TRIPS and the need for administrative procedures to meet certain standards in respect of the costs and speediness of remedies”

Policy Making

UK	Australia	New Zealand	Canada	US	Ireland
Government Department (BIS)	Attorney-General	Government Department	Industry Canada	Library of Congress	Government Department (DJEI)
IPO – strong support by extensive research and consultations	Advisory Council on IP		Copyright and Intellectual Property Directorate/ Policy Branch of Department of Canadian Heritage	Copyright Office	

Copyright Tribunal for Licensing Disputes

Yes	Yes	Yes	Yes	Yes	No - by Controller
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Copyright services by IPO

Research	Minimal information on website	Minimal information on website	Registrations; information on website	Registrations; extensive information on website	Minimal information on website
Policy support				Policy support	
Education & training; Extensive information on website					Occasional information events
Small business support; Legal practitioner supports					
Mediation facility					

Copyright Council in the form of Voluntary Right Holder Body

Self-funded	ACC - Government funding	NZCC - Funded by members	CIPC - Funded by members		
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Role of Copyright /IP Council

Promote copyright	Promote copyright	Promote copyright	Lobby for stronger IP		
Research	Research	Research			
Propose policy	Propose policy	Propose policy			
Education & training	Education & training	Education & training			
	Legal advice				