



Copyright Review,
Department of Jobs, Enterprise, Trade and Innovation,
Room 517,
Kildare Street,
Dublin 2

Re: Consultation Paper on Copyright and Innovation

RAAP welcomes the opportunity to make a constructive contribution to this second stage of submissions in relation to the on-going Copyright Review in Ireland and thank the Committee in advance for their consideration of same.

Since its inception in 2001 RAAP has been instrumental in the practical realisation of many provisions of the CRRRA 2000. As a collection society RAAP ensures that recording artists are adequately remunerated for the exploitation of their work as provided for under the Act. With a membership of over 2,500 artists and contractual bilateral agreements with more than 45 overseas territories it is important to recognise that RAAP represent the interests of a vast proportion of the Irish cultural and creative industry.

The cultural and creative industry represents a consistent and relatively stable section of the Irish economic texture and has been estimated to account for up to €11.5 billion or 7.35% of Ireland's total GDP generating more than 116,000 jobs.

(D.K.M. Report "The Economic Contribution of the Copyright Based Industries" May 2012)

Irish performers rely heavily on the provisions of current copyright legislation. To date this legislation, through its relatively clear and certain provisions, has facilitated the development of a strong performing arts profession in Ireland. For many performers the provisions of current copyright legislation are of great consequence in the development of viable and sustainable business models. Any unfavourable or potentially regressive reform in this area could have the effect of stifling the progress of a thriving profession whose work represents an intrinsic aspect of modern Irish brand and image development overseas. It should be remembered that from the perspective of potential overseas investors and partners our performers in all idioms represent a gauge by which social and educational advancement are often measured. Many of our internationally acclaimed artists, by way of extensive selfless ambassadorial work, have represented Ireland as a culturally desirable destination, attracting tourism and generating an image of a cultured and educated nation in which intellectual, creative and forward-thinking business can thrive. It follows that future copyright reform should serve to incentivise performers and to protect and adequately reward their personal work which in turn becomes an invaluable National resource in the promotion of an advanced and educated Ireland.

In considering the place of creativity in Irish society it is important to note that this sector often transcends and is not limited by economic considerations. The intangible cultural, social and political benefits inherent in the creative process have long been recognised as indispensable assets in the development of a modern Ireland. As the Copyright Review Committee face the onerous task of directing reform in Irish copyright law it is important not to overlook its relevance in the creative sector which continues to contribute so positively to the psyche of the Irish nation.



While RAAP recognise and appreciate the role that extensive non-legislative policy considerations have played, and continue to play, in the stimulation of Ireland's creative and cultural sector, it is submitted that the prominent and influential position of Irish copyright legislation which sits at its core should not be disregarded. It is important that any legislative reform will continue to promote and advance the spirit of the initial legislation and not detract from a legislative framework which already stimulates creativity.

Q1. Is our broad focus upon the economic and technological aspects of entrepreneurship and innovation the right one for this Review?

We feel that the focus on economic and technological aspects of entrepreneurship and innovation are far from broad as suggested in question 1 and in fact are very narrow failing to see the need to encourage and reward the creativity that fuels innovation.

Q2. Is there sufficient clarity about basic principles of Irish copyright law in CRRA and EUCD?

Yes there is clarity about the basic principles of Irish Copyright Law in the current CRRA.

Q3. Should any amendments to CRRA arising out of this review be included in a single piece of legislation consolidating all of the post-2000 amendments to CRRA?

Yes if there are amendments arising from the Review we would welcome a consolidated piece of legislation.

Q.4 Is the classifications of the submissions into six categories (i) rights-holders; (ii) collection societies; (iii) intermediaries; (iv) users; (v) entrepreneurs; and (vi) heritage institutions – appropriate?

The categories are reasonable but there is always overlap and hopefully it is understood that an interdependent relationship exists in society as a whole, for example the rights-holders are often users etc.

Q.5 In particular, is this classification unnecessarily over-inclusive, or is there another category or interest where copyright and innovation intersect?

Refer to Q4

Q.6 What is the proper balance to be struck between the categories from the perspective of encouraging innovation?

To encourage innovation the legislation must provide clarity with regard to Intellectual Property Rights.



Q.7 –Q.11 The Copyright Council

RAAP supports a Copyright Council made up of creators and their representative Organisations providing a platform to promote and inform the public on relevant issues of Copyright, provide input to Government on formulation of Policy and legislation.

Q.12 How should it be funded?

Funding for the Copyright Council should come from central Government.

Q13. Should the council include the establishment of an Irish Digital Copyright Exchange?

R.A.A.P. would need greater clarity on what exactly is proposed by the establishment of an Irish Digital Copyright Exchange.

Q15.Should the Council include the establishment of a copyright alternative dispute resolution service (ADR Service)?

The Copyright Council would not be the place for a Copyright Alternative Dispute Resolution Service. We envisage a future Copyright Council as a platform for constructive and progressive debate facilitated through close ties of co-operation between all parties in the interest of a common objective. The existence of an alternative dispute resolution service as a feature of a Copyright Council could serve to hinder progress between members should they become party to any dispute in relation to the alternative dispute resolution service.

Q16. How much of the Council/Exchange/ADR service architecture should be legislatively prescribed?

Refer to Q15

Q17. Given the wide range of intellectual property functions exercised by the Controller, should that office be renamed, and what should the powers of that office be?

R.A.A.P. has no opinion on the renaming of the office of the Controller, but would suggest more resources made available to the office.

Q20. Should there be a small claims copyright (or even intellectual property) jurisdiction in the District Court, and what legislative changes would be necessary to bring this about?

R.A.A.P. would welcome a specialist copyright jurisdiction in the District Court, but accepts that exchequer costs and available legal expertise could pose a difficulty.



Q.21 Should there be a specialist copyright (or even intellectual property) jurisdiction in the Circuit Court, and what legislative changes would be necessary to bring this about?

R.A.A.P. welcomes the idea of a specialist copyright jurisdiction in the Circuit Court.

Q.23 Is there any economic evidence that the basic structures of current Irish copyright law fail to get the balance right as between the monopoly afforded to right-holders and the public interest in diversity.

There is absolutely no economic evidence to suggest an imbalance in Irish Copyright law between rights-holders and the public interest in diversity.

Q.24 Is there, in particular, any evidence on how current Irish copyright law in fact encourages or discourages innovation and on how changes could encourage innovation?

Yes the existing CRRA provided certainty of ownership and therefore potential reward and economic independence to creators and innovators in the off-line economy however lack of adequate protection allowed wholesale piracy in the online economy devastating the economic wellbeing of thousands of Recording Artists.

The ISP's illustrated that without clear legal guidelines they found difficulty in engaging properly in this environment the introduction of the Statutory Instrument 2012 has provided the necessary clarity, now for the practical implementation (a code of practice)

Q.25 Is there, more specifically, any evidence that copyright law either over – or under – compensates rights holders, especially in the digital environment, thereby stifling innovation either way?

As stated in 24 above once clarity was established as to breach of copyright specifically for ISP's this has allowed new business models to be developed and we have seen the roll out of new products.

Q.30 Are any other changes necessary to make CRRA platform-neutral, medium-neutral or technology-neutral?

Yes R.A.A.P. believes that the Copyright Legislation should state clearly that it is understood to be platform, medium and technology neutral.

Q.32 Is there any evidence that it is necessary to modify remedies (such as by extending criminal sanctions or graduating civil sanctions) to support innovation?

The main concerns that R.A.A.P. would see here is the lack of enforcement of the protection provided to creators and innovators, by their nature most innovators especially start-ups do not have the financial wherewithal to challenge the rampant piracy and therefore they require robust enforcement provisions to discourage potential criminality.



Q.33 Is there any evidence that strengthening the provisions relating to technological protection measures and rights management information would have a net beneficial effect on innovation?

The certainty that Copyright protection and enforcement would bring to the table allows innovators concentrate on their works with the confidence that their economic wellbeing is protected.

Q.37 Is it to Ireland's economic advantage that it does not have a system of private copying levies; and, if not, should such a system be introduced?

R.A.A.P. supports the introduction of a Format Shifting exception subject to compensation, and as long as the exception relates to legally owned copies for private use and not for distribution to third parties.

Q.38 If the Copyright community does not establish a Council, or if it is not to be in a position to resolve issues relating to copyright Licensing and collecting societies, what other practical mechanisms might resolve those issues?

R.A.A.P. as a collecting society currently registers with the Controller on an annual basis outlining all schemes it operates in an open and transparent way and we are also awaiting the E.U. directive on Collective Management.

Q.55 Should the definition of "fair dealing" in section 50(4) and section 221(2) CRRA be amended by replacing "means" with "includes"?

R.A.A.P. believes that **no** amendment of the words "means" to "include" should take place as this will only lead to uncertainty where certainty exists with the current wording, we are baffled at why such a suggestion would be made and question how bringing uncertainty into law can further innovation?

Q.56 Should all of the exceptions permitted by EUCD be incorporated into Irish law?

R.A.A.P. is happy with the existing exceptions and sees no benefit in incorporating all of the exceptions permitted by EUCD.

Q61. Should there be a specific exception for non-commercial user-generated content?

R.A.A.P. would need to have a very clear definition of what is non-commercial user generated content before commenting on providing a specific exception.

Q63. When, if ever, is innovation a sufficient public policy to require that works that might otherwise be protected by copyright nevertheless not achieve copyright protection at all so as to be readily available to the public?

Works that are protected by Copyright and fulfil all the criteria of ownership should remain protected.



Q.66 Should there be a specialist copyright exception for innovation? In particular, are there examples of business models which could take advantage of any such exceptions?

The last four questions are based on the misconception that Copyright in some way inhibits innovation; there is a danger that questions loaded with such a slant miss the whole point of reviewing existing copyright.

Q.72 Would the good offices of the Copyright Council be sufficient to move towards a resolution of the difficult orphan works issue, or is there something more that can and should be done from a legislative perspective?

The review should await the outcome of the E.U. Directive on Orphan Works

Q.76 What is the experience of other countries in relation to the fair use doctrine and how is it relevant to Ireland?

R.A.A.P. understand that the fair use doctrine and all the uncertainty that it brings to both owners and users is mainly practiced in the U.S. and is the product of extensive case law developed over a significant period of time. We believe that sufficient consideration has not been afforded to the context and the climate in which this doctrine initially developed.

Ireland is presently ill-equipped to deal with many issues of copyright law, at least in so far as judicial interpretation is required, fair use doctrine is highly dependent upon the expertise of a specialist judiciary who are in a position to deliver an informed judgement facilitated through a faculty for the analyses of both the legal provisions and the characteristics of the relevant creative discipline in which the legal provisions were invoked either in favour or against.

What may appear to an under qualified member of the judiciary as the fair use of a mere four bars in an eighty bar work may otherwise be properly construed by a qualified member of the judiciary as the most important theme from which the entire work has been developed.

R.A.A.P would be totally against the introduction of a fair use doctrine into Ireland and see no value to it for innovators.

Q.77 (a) R.A.A.P. believe that the fair use doctrine breaches the E.U. system

(b) R.A.A.P. is totally opposed to a fair use doctrine.

Q.78 How, if at all, can fair use, either in the abstract or in the draft section 48A CRRA above, encourage innovation?

There is no evidence to show that fair use encourages innovation.

Q.80 How, in fact, does fair use, either in the abstract or in the draft section 48A CRRA above, amount either to an unclear doctrine or to a flexible one?

Section 48A highlights the vagueness and uncertainty that surrounds the whole issue of fair use and it is this uncertainty with all the inherent costs that will hamper innovation and creativity, the risks involved for Entrepreneurs are just too great.



Q.81 Is the ground covered by the fair use doctrine, either in the abstract or in the draft section 48A CRRA above, sufficiently covered by the CRRA and EUCD exceptions?

R.A.A.P believes that the existing exceptions in the CRRA offer certainty and clarity.

Q.82 What empirical evidence and general policy considerations are there in favour of or against the introduction of a fair use doctrine?

The evidence against the introduction of a fair use doctrine is that it is not compatible with the three step test in Berne, it introduces legal uncertainty and it breaches International Law, the general policy considerations are that there is no evidence to suggest that the existing fair dealing exceptions in the CRRA have hampered innovation in our economy.

Q.84 Should the post -2000 amendments to CRRA which are still in force be consolidated into our proposed Bill ?

Yes the post-2000 amendments that are still in force should be consolidated into the proposed bill.

Q.86 What have we missed

R.A.A.P. see this review as the ideal opportunity to amend the CRRA to rebalance the relationship between Producers and Performers in the area of public performance , under the current copyright legislation Performers and Producers are entitled to “Royalties” from the broadcast of their performances .The legislation currently provides that only, the Producers are entitled to collect the Royalties and Performers are entitled to “equitable remuneration” from the monies collected by the Producers.

This latter point creates the imbalance and dependant relationship which could prejudice Performers.

We believe that a very simple amendment of Section 38 of CRRA to state that the payment is now to be made both to a producer’s licensing body and a performer’s licensing body and that the provision from section 208 requiring performers to administer this right to equitable remuneration through a collecting society (i.e. rather than directly themselves) could be moved to section 205 of the CRRA and then section 208 of the CRRA could be deleted.

This proposal will merely ensure that the right to collect Royalties is shared, it will not increase the cost of collection nor will it impose any further costs on end users. Performers merely wish to control their own destiny, protect their rights and entitlements and allow them plan ahead with the certainty that they deserve.

Éanna Casey
Chief Executive