

I hope you will accept this submission to the public consultation process in the Review of the Copyright and Related Rights Act 2000.

My submission relates not to specific barriers that may exist to innovation due to our current copyright legislation nor to the merits of the 'Fair Use' doctrine which is highlighted in your consultation document but rather to the broad conceptual framework which I believe should be used in the consideration of any new regulations for this new digital economy.

My argument is that our public policy approach should first and foremost include a wider review of the principles we seek to promote in the development of these new digital technologies. At the same time as completing and publishing such a review we should also outline our understanding of the nature of the technological change that is occurring. Having completed these reviews we can then develop a formatted approach to help us make decisions when there is a trade off between competing principles or when there is a variation between the desire to enforce a certain principle and the technological capability to do so.

The alternative to such a structured 'top down' approach would be to delve straight into consideration of specific legal or regulatory measures. This runs the risks of introducing policy measures which either have unintended consequences or are immediately ineffective.

The copyright area is a good example of where sometimes conflicting objectives can exist. There is obvious merit in promoting a more flexible and Innovative Irish or European 'rights' regime, until you come up against the equally persuasive principle that creative producers deserve to be paid for the content that they produce. Meeting those two objectives will determine not just how our music, gaming, media and technology industries evolve but also how we address core democratic questions such as how we will have well funded and independent news and reporting institutions within our country.

The complexity is added to by the fact that some of the proposed enforcement measures such as the 'three strikes' regulations, that the department is considering in a separate public consultation exercise, may either be impossible to implement or may hinder the innovation environment that this separate consultation process is designed to promote.

A further complexity will come from the fact that much of the new innovation opportunities will arise from the use of personal and public data streams to provide better, transport, energy, water or other services. In many of these cases the 'rights' issue may not relate to the use of creative content but to the use of personal data where network, privacy and security issues have to be considered. Adopting an overarching 'principles based' approach would allow the various and sometimes competing objectives of the Departments of Justice, Finance, and Communications, as well as the Department of Enterprise to be recognised and coordinated along with other private and public sector needs.

My understanding of the need for such coordination arose during my involvement in the production of a previous Government report published in 2009, *Technology*

*Actions to Support a Smart Economy'* which had a similar remit to support the development of digital innovation in Ireland. The working group of public service, industry and civil society experts recognised the need for a wider approach and included it as one of the recommendations in that report.

I hope that you may have certain flexibility within your terms of reference to allow for the mapping of these different principles and of the technological opportunities and constraints that exist. Such a process would then allow for informed working meetings as part of this consultation process where content producers, suppliers and users as well as public policy makers could have a better chance of reaching agreement on a legal approach which allows new business models to develop to suit each party and the wider public interest.