

Submission for Copyright Review Committee

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Date: 31/05/2012

"Intellectual property is the oil of the 21st century"
- Mark Getty, chairman of Getty Images

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Declaration of Interest:

I am a concerned citizen, who so far is disappointed by the recent approach taken by the Irish and European governments in regard to copyright and IP based law. I feel that civic responsibilities and duty have taken a back seat to striking balance between the interests of two powerful industrial lobbies, namely, the content industry and technology industry. I have received no payment or compensation producing this submission, and have no affiliations to political parties, organisations or special interests other than my own perspective as an Irish citizen.

Notes on Links

As part of this submission I have included several links to publicly available articles, talks and examples to clearly illustrate and elaborate on key points. I am aware that submissions have been requested as text format for re-publishing, so I have telephoned the the copyright office to verify that linking to external information is permitted of if it is preferable to transcribe the videos to text for inclusion in the body of this submission. I was advised to use only the URLs and to include a note offering transcription to text if necessary. It is not a problem for me to find and include subtitle files for the videos, but it might be easier on your eyes and minds to watch the presentations rather than reading transcripts. Either way transcription of all linked content is available on request.

Assertions

In the CRC consultation paper, it was mentioned that in prior submissions contained many unproven assertions, in this submission I hope to illustrate essential, sometimes unpleasant truths behind the drive to strengthen copyright law, often at the expense of individuals' civil liberties and rights as consumers. While most of these assertions are clearly obvious, I will provide short examples, case studies or data to illustrate them, as I feel they are directly relevant to the subject matter of the CRC and so far remain unacknowledged in the existing documentation available. If you have any doubts or questions regarding the validity of any of these assertions whatsoever, please contact me, I will happily reply with further information.

I realise I have not designated the points made in this submission to specific numbered questions in the CRC consultation paper. This is as they cover several topics, or raise new issues not yet discussed in the paper.

Blocking or screening of internet content cannot be achieved without implementing a system of universal surveillance of all communications

This is a simple technological fact, but is not yet an idea that commonly occurs to people responsible for authorising measures and powers for media companies to implement specifications for systems designed to block or screen specific content from the citizen for any purpose. To block a specific file from being transferred, one must create a system to monitor all files being transferred, and to assign files to be blocked. There must be a person, or a team of people with access to this system, and those people must be entrusted with great power. Essentially a licence to wire-tap the internet communication of every Irish citizen, without a warrant, notification or due process.

If such a system is deployed, the processing, bandwidth and maintenance resource costs would be such that, there would be a temptation to extend the use of the system once in place., to distribute the cost and maximise the benefits of such a system to other departments. For example the utility billing system developed by the ESB for de-regulation of the Irish energy market, was recently re-purposed with the full blessing to the Data Protection Commissioner, to operate as a basis for implementing the unpopular household charge.

Imagine how a system with the capability of performing full unrestricted, unwarranted, domestic surveillance, might be utilised by members each of the existing Irish political parties, should they find themselves in power for even a single term within in the next 20 years?

The following link is to a keynote talk by Jacob Appelbaum about his work in open software and his first hand experience with domestic surveillance after speaking on behalf of wikileaks in 2010, he discusses this point in great detail...

Keynote - Jacob Appelbaum at linux.conf.au

www.youtube.com/watch?v=GMN2360LM_U

China implements a block on communication to the outside world using a censorship system commonly referred to as the 'Great Firewall of China' to block political or religious speech. When criticised in the past about this censorship, Chinese representatives have used the example of Western nations emerging internet surveillance as a justification.

“...in terms of China's lawful Internet management, its purpose is to maintain a good Internet environment and to safeguard public interest,” Jiang told reporters. “These are in line with internationally accepted practices.” - Jiang Yu, Foreign Ministry spokeswoman.

The internet and freely accessible information has been positive for innovation and prosperity

It almost goes without saying that in the 20 years since its emergence into mainstream society, the internet has revolutionised the lives of people on a global scale in a mostly positive way. That said the change it has brought about in its wake has not been entirely without cost to some individuals and some corporations. As individuals we still struggle with the costs to our privacy, and personal information incurred by by centralised supposedly free services, like search, social networks, free e-mail etc. some have lost their jobs to efficiencies brought about by internet services replacing bricks and mortar instances. Likewise, some of the worlds largest organisations have seen a huge shift in the way they do business as a direct result of the information age, some handled the change better than others. Overall though, the free access to information, knowledge data and services has improved the quality of life for everyone exposed to it.

The following links are to a series that explains the brief but staggering history of the internet from a technological, psychological and philosophical standpoint.

Dr. Aleks Krotoski – The Virtual Revolution

The Great Levelling?

www.youtube.com/watch?v=VXsf-EPiFss

Enemy of the State?

www.youtube.com/watch?v=NX3-_kKSD04

The Cost of Free

www.youtube.com/watch?v=ROvFWynd5xs

Homo Interneticus?

www.youtube.com/watch?v=9mANMbHEmAk

Network neutrality is a fundamental principle of the functioning nature of the free internet

One of the reasons the internet became the global standard for digital communication is that it does not discriminate between the type of data that is sent or received, it does not discriminate between data traffic for your web browser and say skype or e-mail. This principle of net neutrality is essential to the functionality of the internet because it assures that innovation takes centre stage and that emerging technologies have a chance to thrive and compete with established commercial interests.

Skype is a good example of when the principle is neglected. Many 3G mobile data networks

around the world fear that users of Skype from their handsets would cost them revenue from their existing voice communications business plan to block access to the service.

<http://gigaom.com/mobile/telia-holds-skype-hostage-may-block-voip-in-sweden/>

Another recent example is the ISP Comcast in the US. They released a movie streaming service called Xfinity to compete with Netflix and other media distribution stores. However they gave preferential treatment to Xfinity traffic while limited/degraded service from Netflix was reported by Comcast internet customers.

<http://entertainment.slashdot.org/story/12/04/16/1738221/netflix-ceo-accuses-comcast-of-not-practicing-net-neutrality>

This is a slippery slope which would have the net effect of fragmenting the services available to consumers, the quality of those services and even the levels of censorship (in the case of expensive business plans, leased lines etc.), depending on ISP, price plan, while barring by default any new information technology based innovations.

Professional Lobbyists exert a huge effort in influencing the field of copyright law on behalf of private corporate interests

There is a powerful, global, well funded lobby infrastructure, whose goal is to utilise it's extensive resources to expand intellectual property based rights as far as possible for the benefit of it's clientèle. These organisations are not employed to progress the law in a fair and just way for the citizens of Ireland, but to represent their clients interests. They produce reams of paper, correspondence, commissioned reports favourable to their point of view.

[paragraph redacted]

“Those who count on quote ‘Hollywood’ for support need to understand that this industry is watching very carefully who’s going to stand up for them when their job is at stake. Don’t ask me to write a check for you when you think your job is at risk and then don’t pay any attention to me when my job is at stake,” - Chris Dodd, CEO of MPAA and Former Congressman, Publicly and Directly Threatens Politicians Who No Longer Support SOPA

These organisations are not above making threats or offering benefits to those making the decisions. Whatever the result of the CRC Copyright review and subsequent legislation, it is important that the extent of pressure from media organisations and/or corporate lobbyists are clearly acknowledged and documented, as such conflicts of interest reduce public confidence in government.

The State should protect itself in law from media groups legal threats of fiscal liability, not by sacrificing civil liberties in the name of a perceived subjective “imbalance”

During Minister Sean Sherlock's overturning of the law underpinning the IRMA/UPC case by Statutory Instrument debated on the Tuesday, 31 January 2012....

(open with internet explorer – skip to 04h02m)
www.oireachtas.ie/viewdoc.asp?DocID=20208&&CatID=130

...the minister implied that the State was under threat of legal fiscal liability if he did not sign the un-amended SI in full as proposed by himself, thereby ignoring 70,000 signatures collected that week asking him not to. The ending of this debate (at 05h28m) was a shameful disgrace to the Irish parliamentary process and to the democratic will of the Irish people. This display was at best the action of a cowardice, and at worst a blatant conflict of interest.

At international trade negotiations, pressure is exerted on delegates to adopt stronger copyright and intellectual property law

In exchange for continuing trade benefits and to maintain good relations with countries including the United States, there is an insistence in the implementation of strong copyright, Intellectual Property law. The **Special 301 Report** is prepared annually by the Office of the United States Trade Representative (USTR) under Section 301 as amended of the Trade Act of 1974, is effectively a international trading blacklist. Trade sanctions are threatened against countries who do not adopt laws against file sharing, software patents, or even those who utilise free open source software instead of their expensive, propitiatory (US made) counterparts.

As above it is important for any such informal threats in International agreements conditions regarding copyright that transpose into motivational factors for legislation to be acknowledged and documented during the process.

An individual has a right to ownership of his/her own personal data and is entitled to protection against 3rd party resale of personal data

After reading the CRC consultation paper I am left with the impression that the strength of copyright is to be divided into 2 tiers to strike a balance between the 2 most economically influential powers with stakes in copyright law: The media companies, and the internet businesses who thrive on selling user generated content. It appears that both parties can be placated by giving strong copyright protection to artists signed under the umbrella of the media elite, while designating independent artists as 'user generated content' class who have few rights or control that can be easily signed away by clicking the 'I agree' button while signing up for a youtube, facebook or boards.ie account.

From the seemingly neglected perspective advocating civil and individual rights, I would strongly suggest the idea that that an individual (designated in the CRC as merely a 'user') is entitled retain ownership of all the media they create as a right and have the permission to retain control of it's publishing, 3rd party distribution, advertising revenue etc. As is clearly already the case with individuals signed under a media distributor contract.

I would go on to state that all people are creators, and that their recorded trail as they navigate the web, associated meta data, and personal data submitted about them by others, are extensions of this. Recorded and retained data should also remain in control of the individual, and that the individual should have powers equal or exceeding that of mere mere merchants, in order to protect their identity and privacy while online.

The consumer should have the right to circumvent embedded political/corporate propaganda/advertisements on media/devices that they own.

Image of what you get as a pirate vs. what you get as a paying customer...

<http://cdn.thenextweb.com/files/2010/02/piratedvd.jpg>

The DMCA, The US copyright Law passed in 1998 and since exported to Ireland in the form of EUCD and ACTA contains an anti-circumvention clause. This essentially outlaws those who would attempt to circumvent locks on media that enable fair use, such as skipping ads, playing media on “non-approved” hardware. This actually discourages users from buying media and forces them towards copied media to avoid intrusive advertising and technical complications when using inferior DRM encumbered media formats.

For an example of someone who circumvented DRM copy protection, look at the case of Jon Lech Johansen a Norwegian teenager who wrote a software DVD player so that he could watch his own films on his Linux computer this bright young man was dragged through the courts for many years under existing laws, under 'modern' copyright law (e.g. ACTA), he would be a criminal and imprisoned.

http://en.wikipedia.org/wiki/DVD_Jon

Under Fair Use some circumvention is excused (with expensive periodic review) while others remains illegal completely. Take another example of the Sony PS3 compared to Apple iPhone circumvention. In the case of iPhone the user was granted the right to reprogram the device and run whatever software they desired, for the device was their property, they could tear it apart and do whatever they liked with it. The complete opposite was the case when computer researcher George Hotz (same person who unlocked the iPhone) was a defendant in an anti circumvention case for the PS3. A year previously, Sony had remotely removed an advertised feature from the PS3 called OtherOS, an advertised feature that allowed free software to be run on the console. Sony claimed that the feature was not compatible with the new 'slim' version of the PS3, and so removed it from all consoles. This was later proven to be a lie, as when the protection was circumvented, it was revealed that the feature could be easily re-enabled on all versions of the hardware. For publishing his findings, Hotz was brought to court under the DMCA, he eventually settled after securing funding and legal representation from the internet community and the EFF, agreeing never to touch another Sony product as part of the deal.

Hotz was soon snapped up by Facebook who recognised his abilities, after the settlement he gave all remaining donations he received to the EFF to help others in similar situations.

Anti circumvention in law redefines the role of physical ownership to be less meaningful than than the more abstract idea of imaginary intellectual property ownership. If you want to protect innovation, true innovation, look the maker movement, employees at tech firms, and the geeky kids who tear apart their consoles, microwaves and toys to see how they work. If you give a kid a computer, and tell him/her you can only play games on it, disable the learning aspect, you are essentially stripping any ('unapproved') creative aspect out of the experience.

When a consumer exchanges money for a work, they should retain full rights and entitlements to privacy, ownership and 2nd hand re-sale

Since content has moved from physical media to digital distribution, companies and re-sellers have started to take advantage of the situation by exerting new post-sale controls on media and attempting to maximise sales destroying the second hand market that exists for traditional media.

Amazon's kindle e-reader device allows users to buy e-books and read, make digital notes on the pages a book etc. however soon after it's release the company suffered issues with publishers and revealed a more sinister feature of the platform, they had the ability to remove books from from the kindle after they had been sold. It's ironic that this 'feature' was first discovered by kindle users who had bought the George Orwell dystopian classic '1984'...

Amazon Erases Orwell Books From Kindle
www.nytimes.com/2009/07/18/technology/companies/18amazon.html

...the company quickly apologised and promised never to delete books again, but knowing the technology is there to monitor what books people read, and the ability to remove 'un-desirable' books is troubling.

There is also an emerging trend with online sellers of e-books, music, films and games, building their distribution and copy protection systems to eliminate the 2nd hand market, for used media. Even off the shelf content is effected in the case of games.

In the event where an online media store goes out of business, their assets are liquidated, and their control servers removed, potentially leaving all customers out in the cold without access to the goods they paid for, and without recourse or a right to a refund.

If media companies want additional rights against copyright infringement and piracy, they should pay for those rights by being subject to strict regulation and penalties for restricting and controlling the paying consumer unnecessarily. This can be easily achieved through corresponding strengthened consumer rights in the digital domain (which at present are virtually non-existent).

Media companies skew statistics and overstate their losses to copyright infringement.

Every download does not represent a lost sale, There are probably many other submissions discussing this point, so I won't labour it. Suffice to say that is is no less than laughable, if we are to believe the damages of \$150,000 estimated from a single downloaded song (from US law) are justified.

TED Talk - Rob Reid: The \$8 billion iPod
www.ted.com/talks/rob_reid_the_8_billion_ipod.html

There is a danger of implementing disproportionate priority to copyright infringement as a criminal offence.

I'm not going to start talking about the philosophical nature of stealing intellectual property, this illegal downloading is ok, or that it is, or isn't stealing in the traditional sense of the word.

[paragraph redacted]

[paragraph redacted]

In Law, culture and popular opinion there is an element hierarchical bias of intellectual property based on the medium used to reproduce it.

I find a little strange, that the media often defines the degree of copyright protection. If you look at all of the devices that people use to copy content and how people respond differently to their use.

Photography: the person copying content from their surroundings is considered the owner, so much so, that they can release it into the public domain (the internet) and anyone who copies the image in turn is stealing.

Text Print: weak copyright protection, can more or less be copied freely so long as permission asked and attribution given to the author. Photocopying is generally ok (so long as you are not trying to educate children).

Audio: strict copyright laws begin being applied to audio recordings. Generally distribution of copies is frowned upon, but recording machines, twin tape machines, CDRs are acceptable

Film: extremely defensive and powerful laws surrounding copying of film, dual VCR/DVD machines were strongly resisted, software for format shifting film from DVDs was banned (including real player), overzealous warnings embedded in legal copies

Computer Code/Games: Employs active online tracking and surveillance of paying customers, by including DRM Software that tracks the users IP address, running programs, location, computer details. Some games have been known to allow the operators view the screen of the user if they are suspected of cheating.

Gathered Statistics on the Steam Games Store – seen as one of the least intrusive in the industry
<http://store.steampowered.com/hwsurvey>

This leads me to question how future copying technology might be handled by Intellectual property evangelists should it step on the toes of other existing industrial giants.

3D Printing: Is an emerging technology that allows people to print plastic objects from their desktops. If I download and print some lego bricks for the kids to play with, am I going to be disconnected from the internet or sued by toy companies?

Replicator: Stay with me here: In the TV show Star Trek, they had a device called a replicator. It would turn energy into matter, any object, food, drink, tennis rackets could be produced instantly. In the show the technology abolished world hunger, brought about world peace and humanity ascended to explore the stars. In the reality of IP and Copyright law, if this device were invented tomorrow, the first person to replicate a plate of fishfingers would have Captain Birdseye's lawyers banging on their front door looking for a royalty payment.

Need for transparency about intentions involving pre-agreed aspects of Copyright Law - ACTA

Regarding ACTA in the past, the government and the CRC have been coy regarding the reasoning behind it's signing. Much of the CRC consultation paper, echos implementation guidelines of this unpopular and frankly dangerous, unratified treaty which has since been rejected by the European Parliament and several European Countries (Germany and the Netherlands most recently).

www.europarl.europa.eu/news/en/pressroom/content/20120423IPR43742/html/ACTA-reject-and-maybe-renegotiate-says-European-Parliament-rapporteur

The following is of an analysis of the practical problems with the ACTA treaty, produced for MEPs and the online community earlier this year. Government policy regarding this treaty needs to be completely transparent and concerns need to be faced head on. One of the biggest criticisms of ACTA has been the secrecy surrounding it's implementation.

ACTA Analysis

Opening Paragraph - "The Parties to this Agreement"

This chapter establishes the tone of the treaty and from the beginning obfuscates the differences between actual property/trademarks (and their centuries of legal baggage) and the relatively new concept of intellectual property and copyright infringement. it also emphasizes focus on the digital world and copyright. The treaty itself offers few guidelines in respect to protecting citizens from specifically dangerous counterfeit products, making no differentiations based on physical safety, low quality counterfeits.

Also introduced here is the concept of balance of the the rights and interests of the relevant right holders, service providers, and users. This is a common talking point of the media lobby, and is used often to justify increasing the rights of IP holders at the expense of the rights of internet operators and citizens fundamental rights to free speech, privacy. The language is crafted to imply a sense of fairness and balance, however, civil liberties and human rights are enshrined at the highest levels in law. Weather the ideology of Intellectual Property should hold equal standing should be an issue of vigorous debate and not an issue to be taken at face value.

Article 5 part (I)

Right holder is defined in the treaty as including "includes a federation or an association having the legal standing to assert rights in intellectual property". it's worth mention that this agreement is designed primarily to hold these organisations interests ahead of individuals creative rights holders.

Article 8: INJUNCTIONS

"Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority to issue an order against a party to desist from an infringement, and inter alia, an order to that party or, where appropriate, to a third party over whom the relevant judicial authority exercises jurisdiction, to prevent goods that involve the infringement of an intellectual property right from entering into the channels of commerce."

This definition is vague and very much open to interpenetration. What goods are we talking about here? physical goods like VCRs, Cassette recorders, DVD burners, or even computers? Software goods that allow the copying of home videos and music production, Real player, Adobe Premier, etc? or even goods in the form of packages by internet service providers, would providing access to a means of a communications channel to the internet, through which copyright infringement might occur count as providing goods that involve copyright infringement?

This kind of uncertainty is often passed down while making local law, and opens individuals and small business to the threat of defending themselves from injunctions, involving expensive legal fees.

Article 9: DAMAGES

This is a tricky section, paragraphs 1 and 2 are presented as mild suggestions of damages, but paragraph 3 states that these suggestions must be implemented as an alternative at the request of the rights holder (defined earlier as media companies). This to me requires participants of ACTA to sign into effective law, the myth that every single illegal download of a copyrighted work represents a lost sale and that the right holder should be compensated as such. In reality this is not the case, and there are several conflicting studies carried out by interest groups and independent researchers around this topic.

This topic is important as you will see later, as an individual downloader of a single song can be classified legally as a mass distributor of the same song and charged for tens of thousands of lost sales as a result. This is what happened in the US thousands of times over since the introduction of the DMCA act, on which ACTA is based.

Article 10: OTHER REMEDIES

This article has huge impact on on physical copyright infringement liability because of it's vagueness, there is no reference to the suitability of the product or regard of if it's fitness for purpose or completely dangerous. I can offer several examples of 'good copies' of physical goods and initiatives that would be declared illegal under this article.

1. Generic drugs, 100% perfect copies of expensive medications that can be cheaply distributed to the poor or made en mass in the event of an epidemic emergency.
http://en.wikipedia.org/wiki/Generic_drug
2. Genetically Modified Seeds, natural reproduction of GM plants could be classified infringing the Intellectual Property of the corporation who produced it.
http://en.wikipedia.org/wiki/Monsanto#Terminator_seed_controversy
3. 3D Printing, a new emerging technology that allows people to print downloadable objects, the same as they would download and print a document today.
<http://www.youtube.com/watch?v=fScRYhq-5M0>
<http://www.thingiverse.com/featured>

If ACTA is to really prevent dangerous counterfeits, then this notion should be clearly defined here in article 10. It is not.

Article 11: INFORMATION RELATED TO INFRINGEMENT

This Article suggests that a legal framework be set up to allow rights holders to request personal information on suspected copyright infringers through the courts, and that framework be defined within the frame of existing personal data protection law. in the case of existing data protection law I understand that individuals personal details records are secure, but that there are outstanding issues with ISP data logging and data retention that are as yet unresolved. I want to

point out that because of the nature of how file transfers occur on today's internet, that from a legal perspective, anyone downloading illegal content using the popular bit-torrent protocol would also be liable for distribution and copyright infringement. This article although vaguely worded, opens a quagmire of messy law that flies in the face of the right to privacy for a huge proportion of EU citizens.

Article 23: CRIMINAL OFFENCES

Paragraph 1 declares the one-word description of cases of "copyright" as being criminal offences with corresponding criminal judicial procedures. Page notes go on to define commercial trademark infringement being defined by scale rather than commercial profit made by the counterfeiters.

Paragraph 3 allows for the criminalisation of operating a video camera in the vicinity of a performance of a copyrighted work, E.g. recording a childrans party in a cinema.

Paragraph 4 allows for the criminalisation of aiding and abetting copyright infringement!

Article 24: PENALTIES

Defines the penalty for copyright infringement or the aiding and abetting copyright infringement to be imprisonment and/or large, disproportionate fines based in the criteria of the '1 Download = 1 Lost Sale' myth detailed above.

Article 25: SEIZURE, FORFEITURE, AND DESTRUCTION

Paragraph 5 allows for property of equal value to perceived 'lost profits' be ceased from a copyright infringer. under this section, someone sharing a handful of movies online with could potentially have their home and possessions ceased.

Article 27: ENFORCEMENT IN THE DIGITAL ENVIRONMENT

Paragraph 5 implements law that protects DRM (Digital Rights Management) and copy protections systems designed to protect media from being copied. This is an enormous issue in the tech world. summarised here:

http://en.wikipedia.org/wiki/Digital_rights_management

In short DRM is the worst thing for consumers who pay for media and products, it is the technology that prevents you from playing songs you paid for on itunes on non-apple devices, it is the reason you can't fast forward through the ads and trailers on DVDs, it is the reason you can't play a video game you have paid for because your internet connection is down.

For an example of someone who circumvented DRM copy protection, look at the case of Jon Lech Johansen

http://en.wikipedia.org/wiki/DVD_Jon

Article 30: TRANSPARENCY

Missing transparency and accountability for the ACTA committee and sub-committees set up and detailed later in Article 36

Article 31: PUBLIC AWARENESS

Outlines a taxpayer funded propaganda campaign to promote the myths and ideology of Intellectual Property.

Article 36: THE ACTA COMMITTEE

Paragraph 3 (a) and (b) allows committee to invite undefined groups including media industry representatives, without regard for balance, or for stakeholders in other industries, or civil rights group consultation.

Paragraph 3 (d) gives the committee directive to recommend 'best practise' methods of monitoring citizens for copyright infringement activity.

Paragraph 3 (e) gives committee an open ended directive to do whatever it wants

ACTA Conclusion

ACTA is a treaty written from the beginning by the media industry, for the media industry, every article is beneficial for this single industry in one way or another. not one single sentence takes regard to adding additional law to protect citizens fundamental rights past what is already in place. It is a point by point wish-list for the media industries who exploit creative artists and customers alike. any renegotiation or removal of specific paragraphs still leaves them with more powers while excluding other stakeholders entirely.

Additional Points of Discussion

There are other points of discussion for consideration, while one can't make definitive assertions regarding them, they are certainly worth consideration in the frame of the CRC, and would enhance the depth of discussion surrounding it.

Criminal penalty or implementation of censorship without due process

When considering any kind of new law, the principle of due process should be of paramount importance. Much of the complexity of copyright laws implemented are introduced bad or obscure law being put into place and innocent people being targeted for the actions of others, and those being imposed with penalty deliberately not being represented in the proceedings.

Examples:

- Proposed 3 strikes law to disconnect users
- Criminal offences defined in ACTA (detailed above)
- Case of thepiratebay.se domain being censored in the UK by the high court.
No one from TPB was called to defend the site.

There is a huge scope for miscarriage of justice to occur, and it is not sufficient to rely on the appeals process to force innocent people to prove their innocence as a matter of course. If a court case is between a media company, and an ISP, with a request to impose an injunction to block a 3rd party site, that 3rd party, and the customers of that service provider should have the opportunity to have their say, as it is they who will be primarily effected by the outcome. With that in mind, 'Steal This Film II' is the story from the perspective of those many of the submitters to the CRC review would seek to suppress. I believe that their point of view is worth consideration during the CRC and Copyright law making process.

Steal This Film
www.stealthisfilm.com/Part2/

Other examples misuse of power related to copyright issues:

- Wikileaks – copyright used as a method of censorship and repressing the release negative information that is in the public interest.
- Kim Dotcom - Megaupload Case.
- Universal and Youtube censorship agreement - megaupload song

<http://torrentfreak.com/universal-censors-megaupload-song-gets-branded-a-rogue-label-111210/>

Kim Dotcom is an interesting case, because it was speculated that he was in the process of making a deal with leading signed rap and r&b music artists for exclusive distribution rights. If that plan was to succeed, it would set a precedent for eliminating the middleman business of the large media distributors. His home was raided by armed police and his assets and computers containing the evidence needed for his defence were confiscated.

Clearly distinguish rights holders from publishers/distributors

In the CRC consultation paper, the categorisation of Irish citizens dismissively as users/consumers undermines their role while creating law. Irish law should be in the interest of citizens primarily. Business interests, while providing a valuable service to the Irish economy, and to the quality of life etc. should remain secondary to civic integrity and justice. In my opinion the

language of the CRC consultation draft paper omits this sense of civic importance. With this in mind I want to take issue with regard to the grouping of creative individuals and businesses, with collection agencies, media lobby groups, business interest alliance groups etc. In the 6 identified stakeholders in the CRC, as in much proposed copyright law, the roles of such groups are obfuscated and merged with creators of original content. Yet such groups may not always act in the best interests of all their clients and in the case of contract negotiation would have completely opposing interests. It benefits collection agencies to label themselves as creators as opposed to middlemen who have a motivation to take a disproportionate share from both ends when supplying content. There is no reason to clarify this distinction.

The public interest, and innovators are harmed by protectionist legislation such as perpetual copyright extension, decimation of the public domain, software patents

Businesses have been known to block trade using childish patent pooling methods to exclude competition and create barriers to new entrants into their markets. Naturally incremental advancements in software, and tiny steps in the use of existing hardware are patented en-mass and used as offensive weapons for suing competitors. There's a joke that Microsoft would patent 1s and 0s if they could. This has the net affect of limiting innovation to the few companies large enough to collect huge numbers of software patents.

Patent trolling is the practise of a company that produces nothing and waits for others to innovate products based on patents they hold, after the product is successful, the patent troll will sue for royalties.

Successful open source projects like Linux that are highly innovative, have near infinite creative and innovative resources, but less financial resources, yet used widely in most of the worlds top 500 companies (Linux is to Microsoft what Tesla was to Edison). Is vulnerable undisclosed patent extortion and trolling, as it's software generates less revenue as a free alternative.

Examples:

- Microsoft vs TomTom http://en.wikipedia.org/wiki/Microsoft_v._TomTom
- Linus Torvalds Responds To Microsoft Patent Claims www.informationweek.com/news/199600443
- Technicolor Takes Aim At Apple, Samsung, Others for Patent Infringement <http://yro.slashdot.org/story/12/05/30/2053220/technicolor-takes-aim-at-apple-samsung-others-for-patent-infringement>

The CRC would do well to recommend exemptions and protections for non profit, voluntary projects, open source/free software, wikipedia etc. as they are extended to libraries and educational institutions as they contribute greatly to learning, and offer a great benefit to society

The role of copyright to help or hinder the creative process:

TED talk : Larry Lessig on laws that choke creativity
www.ted.com/talks/larry_lessig_says_the_law_is_strangling_creativity.html

How to companies and lobbyists skew statistics and reports?

This informative talk is about pharmaceutical companies methods for controlling statistics for promoting their interests and products, by legally withholding information from doctors, government agencies and committees. *“We cannot make decisions in the absence of all the information”*

TED talk : Ben Goldacre: Battling bad science
http://www.ted.com/talks/ben_goldacre_battling_bad_science.html

IP restrictions on medical devices' source code, no peer review or approval structure in place from FDA or health organisations

Complex medical devices that are implanted in humans bodies, e.g. insulin pumps, heart defibrillators etc. run software and operate more and more like computers. Here is a case of Karen Sandler, a woman who asked to see the code for the device she was to be implanted with to verify that it was safe. And what she discovered in the process.

OSCON 2011: Karen Sandler
www.youtube.com/watch?v=nFZGpES-St8

Conclusion

I hope this input has helped guide and inform your decision making process. There are already many positive, progressive aspects of the draft CRC paper, and I hope that there is more emphasis on civic responsibility in the final draft of the CRC recommendations to a government who may well be inclined to turn a blind eye otherwise.