

Good example of modernizing copyright law essay

[Parts of the World](#), [European Union](#)



Introduction

The western civilization has been fueled by the technological inventions that have flooded commodities in the market since mid-18th century. The Technological vibrancy of the west has been influenced by laws that seek to protect the intellectual property rights of the inventors and scientists. The British Statute of Anne 1710 was the first recorded copyright law in the world; it gave exclusive ownership rights to printers of books. The law prohibited the copying of books by other printers. With the development of modern technology the scope has been extended to motion pictures, maps and sound recording. Copyright laws have been extended to performances and Photographs. Globalization and the advance of the internet there it became paramount for copyright laws to be harmonized under the international law. The current copyright law is standardized by the Berne Convention and the regional agreements such as the European copyright directives. The campaign behind copyright law is aimed at safeguarding the moral rights of the original producers. Some jurisdictions have adopted copyright law claiming that the producers have a moral right to be credited for their production.

Modern technology has created a loophole through which people could infringe the intellectual property rights of others. Piracy became common especially over the internet. There has been a paradigm shift in the common law systems to amend Copyright statutes in order to cover the new field that have been presented by the modern technology. Countries that subscribe to the common law system have made steps and measures to ensure that their laws are in compliance with the modern technology. The archaic legal

precepts have been eliminated in the new wave of legal change. Ireland made amendments to the copyright rights in 2000 by enacting the Copyright and Related Rights Act of 2000. By the time the copyright review committee was publishing its report, the law was in effect in Ireland.

The Copyright and Related Act of 2000 allowed the fair use of copyrighted materials in research and study. The report exposed the limited nature of the fair sharing and the impact the constrained fair sharing on the users. The report tried to distinguish the fair use doctrine from its application in the related countries such as the United States of America. In addition, the report proposes the standardization of the immunities provided under the Irish law to be standardized to be in line with the European copyright directive. According to the report, the government of Ireland would enact legal provisions that would regulate the access and the use of copyrighted material. Regulatory parameters are to be incorporated on the internet search engines to regulate the access and the copyrighted material.

Irish Copyright Review Committee

The Copyright Review committee was formed in 2011 by the minister for jobs and innovation, Mr. Richard Burton. It was charged with the responsibility of scrutinizing the national copyright laws and examines the areas that require provide barriers to innovation. The committee would also examine the doctrine of fair use in the United States and access its applicability in the Irish law. The committee would propose recommendations to eliminate the barriers that limit creativity and state how the recommendations may be implemented through the national legislation. The committee would propose the amendments that have to the European Community Directive on

Copyright law, since it governs the operation of the copyright law in Ireland. The committee interviewed the public and collected over one hundred and eighty submissions. It drafted a proposed copyright amendment bill that would modernize the copyright law In Ireland.

Proposed Amendments

The committee proposed the formation of the Copyright council of Ireland to track down the breaches of copyright law in the district and circuit courts.

The council will address the tight exceptions to fair use of copyrighted material. It will also consider the extent to which copyrighted material can be innovated and finally the inclusion of copyrighted text in the online published materials.

The copyright Council of Ireland

The copyright council of Ireland will be formed in accordance to the section 3 of the proposed bill by the Copyright Council of Ireland. The council will be administered by a board that will be drawn from the Irish Community. In addition to encouraging for innovation, the board will advocate for the amendments for the changes to the copyright law both internationally and domestically. It educates the public on copyright issues and purpose to work towards providing a solution to the difficult copyright issues. The Copyright Council will form the Digital Copyright Exchange; it will be formed to administer the distribution of copyright licenses and certificates. The Digital Copyright Exchange will also act as an alternative mechanism of solving copyright disputes and, therefore, reduce the back log of copyright cases in the courts. The Exchange will form the collective administration of all

copyright issues. The Copyright council will help in the formation of the Orphan Works copyright Agency that will seek the formation of an office that will deal with the licensing of orphaned works. The Committee proposed the formation of the copyright Council of Ireland because of its wide application in other jurisdictions. The Copyright council in the majority of the western countries had been formed without statutory backing. They have been formed to enhance dialogue as a mechanism of solving disputes in the copyright community.

The Copyright Council will be a self-regulating and independent body that will run the affairs of the copyright community. Section 377 of the bill will authorize the Minister In charge to give recognition to the Copyright Council of Ireland. The Copyright Council would have high similarity with the press council. The proposed Bill would ensure that the council is completely independent of the government and other independent government agencies such as the Controller of Patent and the Designer of trade marks. The composition of the Board will consist of officials drawn from all parts of the copyright community. As suggested by the public in the oral and written submissions before the copyright Review Committee, the board will include of the consumers of the copyrighted works, the manufacturers of the technology in the country and lastly technological experts. The board will act in consensus. The only deviation the Copyright Council Makes from the Press Council is the granting of licenses. The licenses would be granted in accordance with the Waste Electrical and Electronic Regulations of 2005.

Specialist Courts

The report released by the Committee suggested the formation of parallel and separate jurisdiction for the copyright cases. The committee suggested the formation of District circuit court and Specialist courts to handle copyright issues. Although intellectual property disputes can be solved amicably by the Digital Copyright exchange, the proposed legislation does not make it mandatory to solve copyright disputes in the Exchange. The majority of the people who were interviewed quoted section 287 of the copyright Designs and Patents Act, 1988 in the United Kingdom. The Act provided the formation of separate Courts to handle copyright issues. The act established the jurisdiction of the Copyright patents issues in the United Kingdom. The intellectual Property Courts in the United Kingdom have helped the parties in an intellectual dispute to solve their disputes amicably and save time and money which would have been incurred in the mainstream court system.

The committee proposed that the jurisdiction of District Courts to be extended to include intellectual property rights claims. The Proposal goes on to state that intellectual property rights claims of an amount less than fifteen thousand pounds should be included in the small court procedure claims. The extension of the jurisdiction of the District courts would also require the staff to be trained in intellectual dispute matters.

Drawing analogy from the United Kingdom, the bill proposed the formation of circuit courts. The courts would correspond to the circuit County courts that have been formed in the United Kingdom. Instead of using the mainstream court system in solving copyright claims, the report proposed the formation

of the Alternative Dispute Resolution service. The service will cater for those Irish citizens who do not seek to use the court system to solve intellectual property rights disputes

In accordance with the European Union Directives on Copyright Directives, the Committee proposed the formation of Irish Orphaned Works Agency. The Irish Orphaned Works Agency will grant a license to the people who seek to use copyrighted work whose owner is not known. The fee will be paid to the agency. After that the agency will look for the owner of the copyrighted work and render the fees to him or her.

The committee proposed the restatement of the copyright legislation laws. Under The Statute Law Restatement Act of 2002, the Attorney General can order for the restatement of the copyright law. As provided in section 12 of the Schedule provided, a consolidated restatement of the copyrighted law will make the law easily accessible. The Scope of the controller of patents needs to be extended to correspond with the Director of Patents in other countries such as India, Australia and the United Kingdom.

Rights Owners

The Bill suggests that the owner of copyrighted material should be the owner first owner of the work. The ownership will differ the original owner has commissioned the work in return of commission at the end of the month. The Bill seeks to eliminate the position taken by CRRA that a person automatically loses the copyright to the material that is submitted to the copyright office in exchange for a periodical commission. The bill is meant to seal that loophole that discourages creativity and innovation among the original creators. In movies, the bill seeks to eliminate the ambiguity in the

ownership of the soundtrack and the owner of the movie. The sound track will be owned by the production company that produced and distributed the movie.

The proposed act of parliament will seek to extend perpetual copyright ownership to unpublished work. The act would mean that unpublished work with a known author will have the copyright privileges accorded to the published works. The Committee proposed the copyright ownership to be extended to be extended for a period of seventy years after the demise of the owner. The reported recommended that section 24(1) of the CRRRA to be amended to extend the intellectual copyright of the owner to seventy years after the owner has died. The rights will not extend to published works that was obtained without lawful permission from an unpublished work's owner. Any author that publishes the unpublished work of the author without permission will amount to breach of confidence and also a breach of contract. The pirated work will be beyond the pale of the Irish law. The committee proposed the graduation of the fines and the penalties that are imposed on the unintentional infringement of intellectual property rights. Unintentional breaches should be met with light penalties and such as the award of damages. Significant breaches of contract should be accorded heavy penalties and should also be accompanied with punitive damages.

Levies

The committee suggested that levies should be paid by the machines that carry out the copying of copyrighted material. The decision was contested and as a result of that the issue was submitted to the public for discussion. The issue of levies had been expressly handled by the European

Commission. It has been discussed in detail, in the Senhor Vitrinoh's report that was presented to the European Union.

Photographs

Photography has been the subject of debate in the western intellectual property rights community. The issue again arose in the Irish Review Committee on the Copyright Laws. The committee suggested that measures have to be taken to prevent the unlawful publication of photographs that amount to the infringement of intellectual copyright rights of the owner. The final report suggested that technical control measures such as the robotics text to installed in websites and search engines. The control measures would reverse image searches that amount to a violation of intellectual property rights. The report suggested the creation of metadata that would act as a database for all photographs. The Meta data would incorporate the names of the photographers, the camera settings and the location where the photograph was taken. The Meta data would also include videos and films that have not been published in the mainstream media. The specifications of the video will also be included in the metadata.

The Report suggested the amendment of the Broadcasting Act to incorporate internet Broadcasting. The Committee suggested the amendment of section 163 of the Broadcasting Act of 2009 to assimilate the meaning of broadcasting provided in the European Union directives. Section 103 and 253 of the CRRA to be amended to incorporate digital broadcasting, although the language that is expressed in the act allows digital broadcasting it is clear that the Act did not intend to allow digital production.

Intermediaries

The proposed bill makes the intermediaries who transmit copyrighted data to be criminally responsible for the breach of the intellectual property rights of copyrighted work by the users. The people or the companies those are responsible for the distribution of the copyrighted work. The European directives give the companies that host the internet websites immunity from the secondary liability. Under the European Law, the online intermediaries are not responsible for the caching and the hosting. The report seeks to make a clear distinction in the bright-line rules that provide immunity to the hosting community. The Review committee would pursue the copyright infringement issues with the European Union to determine the extent of copyright infringement that necessitates a notice to the hosting community to remove the material from the internet. The European Union should also provide the mechanisms that will be used to reload material that had been accused of copyright infringement back to the internet. The search engines would be tailored to be in accordance with the proposed legislation. If the consultation with the international community does not come into fruition, the Intermediaries will be handled in accordance with the Irish legal immunities.

Users

The Irish copyright law has been criticized of placing too much emphasis and neglecting the rights of the users. The Review Committee made provisions the copyright bill to incorporate the interests of the users. The Committee suggested that Ireland should incorporate the full exceptions and limitations that are outlined in the European Union Directives. The EU Directives state

that copying of copyrighted work should be made legal under the Irish law. The legalization should cater for the copying of copyrighted work for personal use provided that the copying does not infringe the intellectual rights of the owner. The committee reiterated that other countries in the common law system such as Australia and Canada have adopted similar exceptions and limitations similar to the provision set out in the in the European Directives on Copyright laws. Ireland, therefore, is at competitive disadvantage compared to other countries such as the United Kingdom and Canada. The Committee in its report argued that the public did not object to the incorporation of the European Union Copyright Directives. The decision not to accept the European Union Copyright Directive exceptions is considered as uncalled for and a decision that puts Ireland at a competitive disadvantage in relation to other countries. The partial and incomplete implementation of the EUCD directives will undermine the efforts to compete fairly with the other western countries.

The Committee suggested the adoption of fair dealing in the copyright law. The principle that is widely applied in almost all states of the United States of America will seek to transform the way copyright material is handled. The public also did not object the application of fair dealing in copyright issues. Fair dealing allows the creative transformation of copyrighted work. The committee, however, cautioned against the belief by the public that private use of copyrighted material entails the storage of materials in any form the public deems fit provided the copies are not used for commercial purposes. According to the committee, the changes would lead to the disrespect of the copyright laws. Incorporating the legitimate and reasonable user expectation

into the act makes copyright laws stable and increases the understanding of the laws by the users. The Vitorino Report states that making copies of copyrighted materials does not do any harm to the owner that would require the remission of levies. The proposed legislation allows the production of copies of computer programs for personal use but prohibits the commercial distribution of tailored computer programs.

The proposed bill seeks to make additional exceptions to the European Union Copyright Directives. The bill seeks to make an exception of the non-commercial user generated content. The copyright laws exceptions are found in the United States of America. The government should provide an IP protocol so that companies can use so that they contribute material that could be used by the university and research institutions. Article 5 (3) a, of the European Union Copyright Directive, EUCD makes an exception to academic research institutions. The Exception allows the modification of copy Righted material as a way of encouraging innovation and research in the academic institutions. The Committee proposed an amendment to section 2 of CRRA to include the Academic institutions that provide training services for the purposes of Qualification and Quality Assurance as provided in the Education and Training Act of 2012.

Persons with Disability

For persons with disability to fully enjoy the services that are provided by manufacturers, copyrighted material has to be modified to incorporate the needs of the persons with disability. Article 5(3) b of EUCD makes certain exceptions for the production copyrighted works for the physically challenged. The exception has not been fully implemented in Ireland. Article

104 of the CRAA provides for the partial implementation of the exception.

The committee suggested the full implementation of article 5(3) of the European Union Copyright Directives. The contentious issues concerning the implementation of this exception have been addressed by the United Kingdom, the World Intellectual Property organization and other organization of manufacturers and intellectual property rights organizations. The proposed bill will address the issues concerning the implementation of Article 3 exceptions. The amendment of section 103 of the CRRA will enable Ireland to comply with the WIPPO'S Marrakesh Treaty on peoples with disability and which Ireland is a signatory.

The Report by the Review Committee proposed the amendment of any prohibition or casts a limitation to the access and the use of materials that have been authorized for use by the act. The exceptions that allow the users to enjoy user rights should not be prohibited by any statutory law. The prohibition would inconsistent with the European Union copyright Directives. It should be noted that the committee in its report stated that the implementation of the consumer protection clause should not be implemented in a way that will make all the provision that prohibit the infringement of intellectual property rights void. The same argument is proposed by the Unfair Contracts Terms Directive.

The Committee proposed that there should be an office whereby the users can report the technological protection measures that prohibit them from accessing the legitimate services offered over the internet. In the United Kingdom, the citizens are given the opportunity to complain if the technological control measures are preventing them from accessing vital

services. The circumvention survived for the last decade on the internet because it protects vital protection rights of the owners. It would be difficult to include a provision in the act to arrest any person who makes and uses a circumvention device to access the services offered on the internet.

There has been an argument on the exact definition of the term ‘ public security’ in section 5(3) e of the European Union Copyrights Directive (EUCD) article 3, e. The article provides the exception of the material that is considered too vital for the maintenance of public security. The article also protects the confidentiality of court proceedings.

Heritage

Ireland has a rich heritage history including paintings, galleries, drawing, museums and libraries. The Committee proposed the protection of the rich cultural heritage of the Ireland. The works that are considered to be part of the heritage of the Ireland should be given copyright protection. The Copyright Review Committee of Ireland proposed the amendment of the CRRA to remove the generic meaning of the heritage institutions to include; libraries, archives, museums, Ireland literature and music. The Review Committee proposed the copyrighted material to be modified so that that they are made available to the persons with disability. The proposed changes enable educational institutions to receive electronic books form heritage institutions to facilitate the access of the right to education. The new bill has additional exceptions to the heritage institutions. Heritage institutions will be allowed to perform format-shifting on copyrighted material for the purposes of preservation. The new proposal would require the amendment of Section 59 of the CRRA. The committee proposed a

review of Section 69(1) A to include the display of copyrighted work in a heritage institution.

The proposed bill will also regulate the use of copyrighted material in heritage institutions after the heritage institution had failed to implement the changes themselves. The publication of a catalogue is one of the proposed way in which a librarian can make a copy of a copyrighted material without infringing the property rights of the owner. Catalogues usually contain the publications that are available in the gallery, a library or a museum. The publication of images that are available in a heritage institution is by the way of a catalogue is one of the exceptions that are provided in the newly proposed bill. The heritage institution can make a copy of a permanently displayed object in a heritage institution for the purposes of displaying it in the catalogue. Making copies of copyrighted materials is prohibited by the IRRA but under the newly proposed bill, catalogue productions will be allowed under the heritage institutions exception.

The European Union Copyright Directives allow the publications that are protected under copyright laws by institutions for the purposes of commercial exhibition. The publication by heritage institutions is allowed by the EUCD exceptions to the extent that it facilitates the exhibition. The publication by the heritage institutions is restricted to the popularization of the event. The exception by the European Union Copyright directives does not include the selling of catalogues.

There is a presumption that the donation of works displayed in a public gallery, archive or a museum, the ownership and the copyright of the publication shifts with a change in ownership. A rebuttable presumption can

be refuted if the contrary is proved. The public suggested that the language of the draft legislation to be simplified to eliminate the potential to disturb and negatively affect the existing transfers.

Section 198 of the CRRA provides for the creation of digital deposit where all the copyrighted materials are deposited for preservation and storage. The material is systematically preserved in the digital library for the use of future generations. The material is made available within designated digital libraries where it can be accessed by selected educational facilities for use. The proposed bill seeks to extend the storage of digital library to the heritage digital materials. The committee argued that the preservation of the cultural and social heritage of the people of Ireland is imperative. The Review committee proposed the extension of the copyright deposits to the heritage books. Section 198A of the proposed bill gives the Copyright deposit the right to request for a deposit from a publisher. Under the proposed law, unpublished work can also be deposited in the Digital Deposit. Section 198A provides the penalties for those publishers who fail to comply with the requirements of section 198. The copyright digital deposits should give receipts for all the deposits that have been made. Section 198 of the proposed bill mandates the Copyright deposit authorities to make copies of the heritage materials when the material is available.

Conclusion

The proposed bill, however, does not prohibit data mining for educational use. Copyright laws do not eliminate the facts that are commonly referred as general knowledge. Data mining is a phenomenon that is common in medicine and biology, where students carry out research by reading

copyrighted works to get the content. Data mining is difficult to detect because it requires the use of special software algorithm. The outstanding change in the copyright laws is the doctrine of fair use that is in the application, in countries such as the United States and South Korea. The committee argued that the doctrine of fair use hindered creativity. The Copyright Review committee did not propose the importation the US copyright regime, but the restructuring of the doctrine to fit the exceptions in Ireland.

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