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Copyright and the Creative Commons

Darius Whelan and Louise Crowley

Irish Times, 10 February, 2014

As a digital hub for Europe, Ireland is a key location for policy debates on internet innovation. One of the fundamental issues in internet policy is the appropriate balance to strike between free availability of information and copyright interests. Ireland's main copyright legislation - the Copyright and Related Rights Act 2000 - is 13 years old, and is in need of change to reflect the huge changes in the internet in that time, and their impact upon the availability and vulnerability of copyright-protected material. Critical questions arise about whether current copyright law restricts or promotes innovation. Those who call for stricter copyright controls argue that these controls incentivise innovation by providing a monetary reward for innovators, while others argue that aspects of copyright law discourage innovation and act as an impediment to internet businesses.

In its recent report, *Modernising Copyright*, the Copyright Review Committee made some sensible suggestions as to how Irish copyright law might be amended to facilitate modern digital business, education, research and creativity. These amendments cover areas such as hyperlinks, parodies, orphan works, photographic metadata and establishment of a Copyright Council. With a view to prompting the necessary reforms in the law, the committee submitted a draft Bill to the Department of Jobs, Enterprise and Innovation.

To take just one example of the report's proposals: the committee suggests that there be a general "fair use" provision in the legislation which would enable material to be used if some or all of nine factors were considered. These factors include, for example, the amount of the material used, the impact of the use upon commercial exploitation of the material and whether the legitimate interests of the copyright owner are unreasonably prejudiced. The committee states that experience in other jurisdictions shows that a fair use exception sits comfortably alongside the successful exploitation of copyright by rightsowners. It also argues that the provision would enable context-sensitive accommodations to be developed as the occasion arises in respect of technological innovations such as cloud computing and 3D printing. Additionally, it would send important signals about the nature of the Irish innovation ecosystem, it would provide the Irish economy with a competitive advantage in Europe, and it would give Irish law a leadership position in EU copyright debates.

The committee states that such a new fair use provision would "not convert Sandyford into SiliconFord or otherwise transform Irish intellectual property law overnight". But it would be a step in the right direction, when combined with other proposals in the report, such as the introduction of exceptions for innovation and content-mining.

The report comes at a time when there is growing recognition that the law is unduly restrictive in respect of online activities. For example, Prof David Post of Temple Law School, Philadelphia, argues that copyright law has "run amok in recent years". Every email, every Twitter comment and every picture posted on social media is protected by copyright and this is a "crushing burden for the global conversation to bear". The fact that copyright protects so much may mean that it is becoming an impediment to the very creative activities which it was originally supposed to fuel.

In the UK, a recent report by Prof Ian Hargreaves found that copyright law acts as a regulatory barrier to innovation, exceptions have failed to keep up with technological and social change, and the current law alienates consumers.

However, there are movements that seek in a reasonable manner to maximise digital innovation within the current copyright regime. Creative Commons (CC) is a worldwide movement which enables a new approach to copyright licensing and provides licences which people can use to enable re-use of their work.

These licences mean on a practical level that a database of images can be provided to teachers at imagebank.ie for copyright-free usage in their classes and traditional music is shared using CC licences at the website of Inishowen Traditional Music Project. These licences are also widely used worldwide by universities, public bodies, Governments and artists.

The White House publishes many of its photographs and documents under CC licences, Research Councils UK requires CC licensing for grant-holders and all Wikipedia articles are CC licensed.

The Creative Commons movement is only one example of the use of original methods to enable online innovation and creativity. It fits well with related movements such as Open Education Resources, Open Data and Open Knowledge. However, those concerned about the unsuitability of current copyright law must continue to urge reform of the underlying legislation, as it is insufficient to have innovative voluntary open access movements without also fixing copyright law in general.

Dr Darius Whelan and Dr Louise Crowley teach at the Faculty of Law, University College Cork.
This piece arose out of the event Maximising Digital Creativity, Sharing and Innovation recently held in the National Gallery of Ireland, organised by Creative Commons Ireland and UCC Faculty of Law.