



TERRALEX®

CROSS-BORDER COPYRIGHT GUIDE 2018



Ireland

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1. Legislation and regulation

1.1 What are the main sources of copyright law?

The main source of copyright legislation in Ireland is the Copyright and Related Rights Act, 2000 (CRRA). The CRRA repealed the previous Copyright Act of 1963. The European Communities (Copyright and Related Rights) Regulations 2004 were enacted on 19 January 2004, transposing the remaining provisions of Information Society Directive (2001/29/EC) on the harmonisation of certain aspects of copyright and related rights in the information society. The 2000 Act had already implemented substantially the main terms of the then-draft Directive.

2. Subsistence of copyright

2.1 What type of works can be protected by copyright?

The categories of work that can be covered by copyright are: literary, dramatic, musical and artistic works; sound recordings, films, broadcasts or cable programmes; typographical arrangements of published editions; and original databases. They are broad categories, and can be summarised as follows:

Literary works

This is a work (including a computer program) which is written, spoken or sung. However, it does not include a dramatic/musical work or an original database.

Dramatic works

A dramatic work includes a choreographic work or a work of mime.

Musical works

This covers a work consisting of music. However, it does not include words or action intended to be sung, spoken or performed with the music. There is copyright in the sound recording of a musical work but this is a separate and distinct right (see below).

Artistic works

An artistic work includes a work of any of the following descriptions, irrespective of their artistic quality:

- photographs, paintings, drawings, diagrams, maps, charts, plans, engravings, etchings, lithographs
- woodcuts, prints or similar works, collages or sculptures (including any cast or model made for the purposes of a sculpture)
- works of architecture, being either buildings or models for buildings
- works of artistic craftsmanship.

Sound recordings, films, broadcasts, cable programmes

A sound recording means a fixation of sounds, or of the representations thereof, from which the sounds are capable of being reproduced, regardless of the medium on which the recording is made, or the method by which the sounds are reproduced.

A film means a fixation on any medium from which a moving image may, by any means, be produced, perceived or communicated through a device.

A broadcast means a transmission by wireless means, including by terrestrial or satellite means, for direct public reception or for presentation to members of the public, sounds, images or data or any combination of sounds, images or data, or the representations thereof, but does not include a Multipoint Microwave Distribution System.

A cable programme means any item included in a cable programme service, including a Multipoint Microwave Distribution System, which consists wholly or mainly of sending sounds, images or data or any combination of sounds, images or data, or representations thereof, by means of telecommunications system:

- for reception at two or more places (whether for simultaneous reception or at different times in response to requests by different users), or
- for presentation to members of the public.

Typographical arrangement of published editions

This protection is in respect of the typographical layout of a book or other publication. A published edition includes the whole or any part of one or more literary, dramatic or musical works or original databases.

Original databases

This work means a database in any form which, by reason of the selection or arrangement of its contents, constitutes the original intellectual creation of the author.

2.2 What is required for works to qualify for copyright protection?

A work may be protected by copyright if it is an original work that comes into existence within one of the above categories and is fixed in a stable medium. The requirement that a work is original is intended to connect the work with the person responsible for its creation. Copyright law is not concerned with the originality of ideas but with the expression of thought in its physical existence. The CRRA provides that to qualify for copyright protection, the author must be an Irish citizen, ordinarily domiciled in that state, or in any country, territory, state or area to which the relevant provisions of the Act extend to.

2.3 What rights does copyright grant to the rights holder?

The CRRA sets out the rights subsisting in copyright works which are the exclusive rights of the rights holder (before any licences are granted).

They include the right to:

- copy the work
- make the work available to the public
- make an adaptation of the work or undertake either of the acts referred to above in relation to an adaptation.

2.4 Are moral rights protected (for example, rights to be identified as an author of a work or to object to derogatory treatment of a work)?

Yes. In Ireland, the CRRA provides for the right to be identified as the author of a work and the right shall apply in relation to any adaptation of the work. This is known as a paternity right. There is a right of the author of a work to object to any distortion, mutilation or other modification or other derogatory action in relation to the work, which would prejudice his or her reputation. This is known as an integrity right.

Moral rights do not apply in relation to works where copyright vests in the employer. A work made for the purpose of reporting current events, a newspaper, a periodical, an encyclopaedia, a dictionary, a yearbook or other collective work of reference intended to be made available to the public will also be denied any moral rights.

3. Ownership

2.5 What is the duration of copyright in protected works?

The duration of protection for copyright works can vary according to the type of work created. The duration of copyright protection is as follows:

Category of work
Literary, dramatic, musical or artistic works
Duration
Copyright expires 70 years from the end of the calendar year in which the author dies. Where a work has a joint author/co-author, 70 years from the end of the calendar year in which the last known author dies.
Where the author's identity is unknown, copyright expires 70 years from the end of the calendar year in which the work was made or first made available to the public.
Category of work
Sound recordings and films
Duration
Copyright expires 70 years from the end of the calendar year in which the recording or film is first published.
Category of work
Broadcasts
Duration
Copyright in a broadcast expires 50 years from the end of the calendar year in which the broadcast was made.
Category of work
Published editions of works
Duration
Copyright expires 25 years from the end of the calendar year in which the work was first published.

2.6 For how long do moral rights subsist in copyright works?

An author's moral right to be identified as the author, right against false attribution and right to object to derogatory treatment lasts for the life of the author plus 70 years. An author's right to object to derogatory treatment in respect of a film lasts for the life of the author.

3.1 Who is the first owner of a copyright work?

As a general rule, the first owner of the copyright is the author.

There are three exceptions to this rule:

- where the work is made by an employee in the course of employment, the employer is the first owner of any copyright in the work subject to any agreement to the contrary
- where the work is the subject of government or *Oireachtas* (the Irish legislature) copyright then the author is not regarded as the first author. If the work is the subject of the copyright of a prescribed international organisation or the copyright in the work is conferred on some other person by an enactment, then the author will not be the first owner of the copyright
- where the work, except a computer program, is made by an author in the course of employment by the proprietor of a newspaper or periodicals, the author may use the work for any purposes except for making it available to newspapers or periodicals without infringing the copyright.

The author is defined as the person who creates the work. The CRRRA provides guidance for the specific categories of work where the creator is less clear:

- for a sound recording, the author is the producer
- for a film, there are two authors; the producer and the principal director
- for a broadcast, the author is the person making the broadcast or, in the case of a broadcast which relays another broadcast by reception and immediate retransmission, without alteration, the author is the person making the other broadcast
- for a cable programme, the author is the person providing the cable programme service in which the programme is included
- for a typographical arrangement of a published edition, the author is the publisher
- for a work that is computer-generated, the author is the person by whom the arrangements necessary for the creation of the work are undertaken
- for an original database, the author is the individual or group of individuals who made the database
- for a photograph, the author is the photographer.

4. Infringement

3.2 Can copyright in a work be jointly owned? If so, what are the rights of a co-owner?

Copyright in a work can be jointly owned by two or more persons. This can occur where a work is produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors. Joint owners have their own individual rights with respect to work that can be assigned independently of the other or others, such as works in relation to a compilation.

3.3 Can you register copyright? If so, what are the benefits of such registration and what other steps, if any, can you take to help you bring an infringement action?

In Ireland, there is no registration procedure for owners of copyright. The act of creating work creates the copyright, which then subsists in the physical expression of the work. Copyright holders may choose to create evidence of their claim to authorship of a particular work. A copyright notice, including the copyright symbol (©), does not *per se* constitute evidence of ownership but it does show a claim to copyright and date of authorship which may prove to be useful if that claim has to be upheld in court at a later date.

3.4 What steps should you take to validly transfer, assign or license copyright?

An assignment of a copyright work, whether in whole or in part, must be in writing and signed by or on behalf of the assignor. A licence of copyright does not have the same legal requirements attached to itself as assignments. Licences can be created by way of express or implied contract. There is more legal certainty with an express licence. An exclusive licence can have much the same effect as an assignment. If such a licence is in writing and signed by or on behalf of the owner, it will be binding on successors in title.

3.5 Can moral rights be transferred, assigned or licensed?

Moral rights are not capable of assignment or alienation but may be passed on the death of the person entitled to the right. Pursuant to the CRRA, moral rights can be waived.

Owners/authors of copyright can take action if any of the acts restricted by copyright (as set out in 2.3 above) have been infringed. There are two classes of infringement: primary infringement and secondary infringement.

4.1 What acts constitute primary infringement of copyright?

Primary infringement occurs where a person performs any of the following restricted acts without the consent of copyright owner:

- copying the work
- making the work available to the public
- adapting the work.

There is no need to show that the alleged infringer had knowledge of another's subsisting right, or intention to infringe that right, in primary infringements. Carrying out one of the above mentioned restricted acts in relation to the work as a whole or to any substantial part of the work will be an infringement whether the act is undertaken directly or indirectly.

4.2 What acts constitute secondary infringement of copyright?

Secondary infringement comprises a number of dealings with a work without the permission of the copyright owner, including:

- selling, importing, making or having in his or her possession, custody or control a copy of the work knowing it to be an infringing copy
- having an article specifically designed or adapted for making copies of that work knowing that it has been or is to be used to make infringing copies.

4.3 What acts are permitted with respect to copyright works (ie what exceptions apply?)

Irish legislation provides for a number of circumstances in which certain acts are permitted in relation to copyright works. Many of these provisions are based on traditions and matters such as fair dealing, which is making use of a work to the extent that it is reasonably justified by the non-commercial purpose to be achieved. The Information Society Directive (2001/29/EC) contains what has been termed a 'shopping list' of exceptions and limitations, many of which the CRRA has implemented into Irish law.

These permitted acts are wide in variety but often relate to very specific scenarios. They include (amongst others):

Act
Research and private study
Description
Research is permitted where a person is researching for a non-commercial reason. In addition, the research must contain acknowledgement of the copyright work where it is referenced (ie identify it by title and author). Copying is always allowed for private study.
Act
Criticism or review and reporting current events
Description
Where the copyright work is being used for the purpose of criticism or review. It can be the criticism or review of that copyright work, or another work or performance provided the copyright work has been made available to the public. There must be a real contemporaneous event to use the defence relating to reporting current events. There must be a sufficient acknowledgment of not only the source of the work but also the author of the work.
Act
In the course of educational instruction or in preparation of education and instruction
Description
Reproduction for educational use does not infringe copyright as long as the copying is done by or on behalf of the instructor or student and is accompanied by sufficient acknowledgment.
Act
Librarians and archivists are permitted to make copies of a work for various non-commercial purposes
Description
Libraries and archives are given limited rights to copy works under certain conditions. Public libraries may also lend works without infringing the rights of the author.
Act
A back-up copy of a computer program
Description
It is not an infringement of the copyright in a computer program for a lawful user of a copy of the computer program to make a back-up copy of it which it is necessary for him or her to have for the purposes of his or her lawful use.

Act
Incidental inclusion
Description
The test for this defence is one of unreasonable prejudice to the copyright owner. The use of quotations or extracts from the work is permitted, where such use does not prejudice the interests of the owner of the copyright in that work and such use is accompanied by a sufficient acknowledgement.

4.4 Is it permissible to provide a hyperlink to, or frame, a work protected by copyright? If so, in what circumstances?

The CJEU has ruled in *Svensson and Others v Retriever Sverige AB* (C466/12) that providing a hyperlink to copyrighted works which are already freely available online does not constitute an infringement of copyright. Copyright infringement will only occur in circumstances where a hyperlink is created without the copyright holder's consent and where the protected work is directed to a 'new' public.

However, where a work is not freely available on the internet, such as where the work sits behind a paywall, the copyright owner cannot be said to have communicated with the internet as a whole, so linking to that work in a way that circumvents the paywall would, it appears from recent case law, constitute a communication to the public and infringe the rights of the rights holder. It was important to obtain clarity on the issue of hyperlinking as it is fundamental to internet and social media usage. The CJEU subsequently ruled in *BestWater International* (C348/13), which concerned whether a website operator who embeds copyright-protected videos in his website by framing technology infringes the copyright on these videos.

It was held that in order to establish a new communication to the public according to Article 3(1) of the Information Society Directive (2001/29/EC), the copyright-protected work must have been communicated by technical means, which differs from the means of the initial communication or communicated to a new public. Pursuant to the CJEU judgment in *GS Media v Sanoma Media* (C160/15), posting hyperlinks to protected works which are available on other websites (but where such works are made available without the consent of the copyright holder), may amount to infringement where such hyperlinks are provided in return for financial gain.

5. Remedies

4.5 Is a licensee of copyright able to bring an infringement action?

An exclusive licensee has, except as against the copyright owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

5.1 What remedies are available against a copyright infringer?

The CRRA provides for the following remedies for rights holders:

- commencement of proceedings
- search and seizure orders
- damages
- account of profits
- delivery of infringing articles
- forfeiture of infringing articles
- injunctive relief.

5.2 Are there any specific remedies for online copyright infringement?

In relation to online copyright infringement, a 'notify and take down' approach is often adopted whereby, if infringing material is being carried on a website, and the rights owners inform service providers that infringing material is being carried on their service, the service providers will be asked and often obliged to remove that material as soon as possible. In Ireland, court orders are being obtained by rights holders to require internet service providers (ISPs) to prevent internet users accessing certain websites which are known to allow copyright material to be downloaded without the permission of the owners.

5.3 Under what circumstances is copyright infringement a criminal act and what sanctions may apply?

There are a number of criminal acts under the CRRA in relation to copyright. The main offences relate to selling or making available for sale copies of a copyright work. The sanction for committing a criminal offence in relation to copyright is likely to be either a fine and/or a prison sentence. If an offence is committed by a body corporate and it is proven to have been committed with the consent or approval of, or attributable to any neglect on the part of, an individual officer of the company, then that person shall be guilty of an offence.

Each offence requires a level of intention, knowledge or belief on behalf of the potential offender:

Criminal Act
Making a copy of a copyright work for sale, rental or loan.
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the copy is an infringing copy of the work.

Penalty
On summary conviction, a fine not exceeding €1,900 in respect of each infringing copy, article, device or a term of imprisonment not exceeding 12 months, or both. On indictment conviction, a fine not exceeding €125,000 or a term of imprisonment not exceeding five years, or both.
Criminal Act
Sells, rents or lends, or offers to sell, rent or lend a copyright work without the consent of the copyright owner.
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the copy is an infringing copy of the work.
Penalty
On summary conviction, a fine not exceeding €1,900 in respect of each infringing copy, article, device or a term of imprisonment not exceeding 12 months, or both. On indictment conviction, a fine not exceeding €125,000 or a term of imprisonment not exceeding five years, or both.
Criminal Act
Importing a copy of a copyright work into Ireland for private or domestic use.
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the copy is an infringing copy of the work.
Penalty
On summary conviction, a fine not exceeding €1,900 in respect of each infringing copy, article, device or a term of imprisonment not exceeding 12 months, or both. On indictment conviction, a fine not exceeding €125,000 or a term of imprisonment not exceeding five years, or both.
Criminal Act
Possessing or making available a copyright work to the public in the course of business or trade.
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the copy is an infringing copy of the work.

Penalty
On summary conviction, a fine not exceeding €1,900 in respect of each infringing copy, article, device or a term of imprisonment not exceeding 12 months, or both. On indictment conviction, a fine not exceeding €125,000 or a term of imprisonment not exceeding five years, or both.
Criminal Act
Making a copyright work available to the public to such an extent to prejudice the interest of the owner of copyright otherwise than in the course of business or trade.
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the copy is an infringing copy of the work.
Penalty
On summary conviction, a fine not exceeding €1,900 in respect of each infringing copy, article, device or a term of imprisonment not exceeding 12 months, or both. On indictment conviction, a fine not exceeding €125,000 or a term of imprisonment not exceeding five years, or both.
Criminal Act
Making, possessing, importing into Ireland, selling, letting for hire or offering for sale or hire a protection-defeating device intended to circumvent protection measures.
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the device is to be used to circumvent rights protection measures.
Penalty
On summary conviction, a fine not exceeding €1,900 in respect of each infringing copy, article, device or a term of imprisonment not exceeding 12 months, or both. On indictment conviction, a fine not exceeding €125,000 or a term of imprisonment not exceeding five years, or both.
Criminal Act
Providing information or performing a service intended to enable a person to circumvent protection measures.
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the copyright in the work would be infringed.

Penalty
On summary conviction, a fine not exceeding €1,900 in respect of each infringing copy, article, device or a term of imprisonment not exceeding 12 months, or both.
On indictment conviction, a fine not exceeding €125,000 or a term of imprisonment not exceeding five years, or both.
Criminal Act
Making or possessing, selling or lending or importing into Ireland an article specifically designed for making copies of a copyright work.
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, the article is to be used to make infringing copies of the work.
Penalty
On summary conviction, a fine not exceeding €1,900 in respect of each infringing copy, article, device or a term of imprisonment not exceeding 12 months, or both.
On indictment conviction, a fine not exceeding €125,000 or a term of imprisonment not exceeding five years or both.
Criminal Act
Causing a work protected by copyright to be performed, broadcasted, played or shown in public.
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the copyright in the work would be infringed.
Penalty
On summary conviction, a fine not exceeding €1,900 in respect of each infringing copy, article, device or a term of imprisonment not exceeding 12 months, or both.
On indictment conviction, a fine not exceeding €125,000 or a term of imprisonment not exceeding five years, or both.

5.4 Is there a time limit for bringing a copyright infringement claim?

The time limit is six years to bring a claim for breach of copyright. Time begins to run from the date on which the cause of action accrued.

5.5 Can legal (or any other) costs be recovered in an action for copyright infringement? If so, what percentage of costs will typically be recovered by the successful party?

In Ireland, only costs which are reasonably incurred can be recovered. The courts usually decide the issue of costs on the basis that the costs shall follow the event; however, there are statutory provisions that provide that the costs of proceedings shall be at the discretion of the courts.

6. Enforcement

6.1 What courts can you bring a copyright infringement action in, and what monetary thresholds, if any, apply?

The monetary value of the damages, or any other relief being sought, will determine which court to bring the copyright claim in. For lower value claims up to €15,000 the appropriate court will be the District Court. For claims greater than €15,000 but less than €75,000, the appropriate court will be the Circuit Court. The High Court has an original jurisdiction to hear virtually all matters irrespective of amount.

As the Circuit Court has jurisdiction to hear claims up to a value of €75,000, the High Court will usually only hear claims that exceed that figure. There is no limit on the amount of damages which the High Court may award. Proceedings in respect of a copyright claim, with a value of at least €1 million, may be heard in the High Court Commercial List, which moves faster and more efficiently than the traditional High Court list.

6.2 Are there any other ways in which you can enforce copyright?

Seizure

A copyright holder may request seizure by the Revenue Commissioner of infringing articles which would be treated as prohibited goods in the State.

Criminal proceedings

Criminal proceedings can be brought on the grounds described in 5.3 above and are pursued through the criminal courts.

Controller of Patents, Designs and Trademarks

Pursuant to the CRRA, the Controller can determine disputes arising under the Act between licensing bodies and persons requiring licences or organisations claiming to be representatives of those persons. In certain circumstances, and with the consent of both parties, a dispute may be referred to arbitration.

6.3 What agency bodies are responsible for promoting and/or enforcing copyright? What do they do?

The Irish Patents Office is the official government body responsible for intellectual property rights including patents, designs, trade marks and copyright in Ireland. The Department of Jobs, Enterprise and Innovation has responsibility for certain legislative and policy matters

relating to intellectual property.

The Irish Patents Office is responsible for:

- granting patents
- registration of trade marks and design rights
- administration and maintenance of industrial property rights.

The Controller of the Irish Patents Office has certain statutory functions under the CRRA. These functions are concerned with registration of copyright licensing bodies, references and applications relating to licensing schemes operated by those bodies and the resolution of disputes regarding royalty amounts.

6.4 What are the main collective rights management agencies that operate in your jurisdiction and who do they represent?

To use copyright material without infringing the rights of another, you usually need to gain permission of the copyright owner. In accordance with the CRRA, the Controller of the Irish Patents Office maintains a Register of Copyright Licensing Bodies. The following collecting societies have been registered with the Controller to date:

Agency
Authors' Licensing & Collecting Society
Who it represents
Writers
Agency
Association for the International Collective Management of Audiovisual Works
Who it represents
Audiovisual performers
Agency
Christian Copyright Licensing International Limited
Who it represents
Music and book publishers
Agency
The Irish Copyright Licensing Agency Limited
Who it represents
Creators and publishers
Agency

Irish Music Rights Organisation
Who it represents
Musicians
Agency
Irish Visual Artists Rights Organisation
Who it represents
Visual artists
Agency
Mechanical Copyright Protection Society (Ireland) Limited
Who it represents
Music composers and publishers
Agency
Motion Picture Licensing Company International Limited
Who it represents
Film and TV producers and distributors
Agency
Newspaper Licensing Ireland Limited
Who it represents
Newspapers
Agency
NLA Media Access Limited
Who it represents
Newspapers, magazines and websites
Agency
Phonographic Performances Ireland Limited
Who it represents
Musicians
Agency
The Screen Directors Collecting Society of Ireland
Who it represents
Directors

Information Society Directive (2011/29/EC) provides for levies to be paid to compensate copyright holders for the private copying of their work. However, this provision was never implemented in Ireland. Ireland, along with countries like the UK and Cyprus, has taken the view that copies made for private use do not cause any harm that requires additional remuneration in the form of private copying levies over and above the purchase price.

In the Member States that do provide for such levies, the tariff and scope of these levies vary from one State to another. The CJEU's recent decision in *Copydan Bandkopi* (C463/12) demonstrated that Member States have discretion to set the minimum threshold for when a levy is payable, provided that it is applied consistently with the principle of equal treatment.

6.5 Are copyright levies payable? By whom, and in what circumstances?

Ireland does not impose levies on goods as our copyright legislation does not have exceptions which require the payment of fair compensation. Article 5(2)(b) of the

7. Copyright reform

7.1 What do you consider to be the top two recent copyright developments?

Report of the Copyright Review Committee entitled Modernising Ireland

In Ireland, an independent committee was appointed by the Minister for Jobs, Enterprise and Innovation to examine Irish copyright legislation, as it was evident that reform was needed in order to meet the demands created in our modern society. The committee published a report with wide-ranging recommendations, such as the establishment of an independent, self-funded Copyright Council of Ireland, the introduction of specialist IP tracks in the District and Circuit Courts and introducing the full range of copyright exceptions permitted by EU law through the Information Society Directive (2001/29/EC). Last year the Government announced approval for the drafting of the Copyright and Related Rights (Miscellaneous Provisions) Bill 2016, which will seek to cover a number of recommendations in the Modernising Ireland report.

Sony Music Entertainment [Ireland] Ltd & Ors v UPC Communications Ireland Limited [2015 IEHC 317]

Three music companies (Sony Music, Warner Music and Universal Music) brought proceedings against UPC Communications Ltd, Ireland's second largest internet service provider, in order to take measures to stop the illegal downloading of music. Similar actions failed in the past; however, the CRRA was recently amended to allow a copyright owner to seek an injunction against an intermediary whose services are being used to infringe a copyright (SI 59/2012 EU (Copyright and Related Rights) Regulations 2012 inserted s40(5A) into the CRRA). The High Court granted an injunction requiring UPC to take measures against those of its subscribers who illegally download music and other copyright material. It is likely to work as a 'three strikes' policy. UPC will send two warning letters and then in the third instance, the music company will seek the disconnection of the offender's internet service through a court order. The High Court ordered that such a detection system would be set up within 12-15 months. The judgment was subsequently appealed; however, the Court of Appeal ruled in July 2016 that the High Court decision be upheld.

7.2 What do you consider will be the top two copyright developments in the next year?

Digital Single Market Strategy for Europe

On 6 May 2015, The European Commission released its Digital Single Market Strategy for Europe, which proposes a series of reforms in telecoms regulation, copyright and data protection, aimed at creating a Digital Single Market. The strategy aims to make it easier for businesses to operate

throughout the 28 Member States. Modernising copyright across Europe and bringing it in line with today's digital reality is an important component of the overall strategy.

The proposals include:

- harmonising copyright law between Member States
- improving access to cultural content online
- ensuring users who buy film, music or articles can use them throughout Europe
- reviewing the role of online intermediaries in relation to copyright-protected work
- stepping up enforcement against commercial-scale infringement of copyright.

The European Commission is halfway through its mandate and has identified areas where more work is needed in its mid-term review of the Digital Single Market Strategy. The review found that more action is needed in developing the European Data Economy, protecting against cybersecurity challenges, and promoting online platforms as "responsible players of a fair internet ecosystem.

The Strategy sets the Commission's agenda for EU-level copyright reform over its term and is worth watching closely.

Stichting Brein v Ziggo BV, XS4ALL Internet BV.

The ECJ returned a preliminary ruling holding that making available and managing an online platform for sharing copyright-protected works may constitute an infringement of copyright. The ruling comes after a seven-year legal battle, which has seen the BitTorrent site The Pirate Bay's offices blocked and seized, its offices raided, and its three founders fined and jailed.

Stichting Brein alleged that Pirate Bay infringed copyright by making works available to the public without authorisation and brought an action against two internet service providers seeking an order blocking access to the Pirate Bay. The case was referred to the CJEU by the Dutch Supreme Court. The question for the CJEU was whether there could be a communication to the public in circumstances where Pirate Bay did not host any infringing content but instead provided a way for its users to access such content from the computers of other users (i.e. peer-to-peer).

The court observed that Pirate Bay actively manages the torrent files on its platform, categorising them according to popularity/genre, removing faulty files and filtering some content, in order to make locating files easier. As a result, Pirate Bay cannot be said to be providing mere 'facilities' being used by third parties to make copyright works available.

The case will now be sent back to the referring Dutch court for a decision on the original request for an order requiring the ISPs in question to block access to Pirate Bay.

The Court emphasised that the principal objective of the Copyright Directive is to ensure a high level of protection for authors, meaning that the concept of 'communication to the public' should be interpreted broadly and to reflect modern technological developments. This decision is a welcome boost to the position of rightholders as they continue to battle infringement on the Internet.

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