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EDITORIAL

1999 has been a very active year for the GLS and the GLMN and our views have been sought in many areas. An enthusiastic and active Committee and membership have enabled us to participate fully in these activities. This issue of GLINT gives an overview of those activities and includes an account of our visit to Northern Ireland in October, which was, as always, both interesting and enjoyable. There is also an article on the new CD-ROM of the Irish Statutes. This CD-ROM has been a great achievement and is a very welcome addition to the information resources available to us all.

The Copyright Bill is the most important piece of legislation to affect libraries in many years. The GLS was very involved in identifying problems which the Bill could pose for libraries and was part of a representative group of librarians who had discussions with the Department of Enterprise, Trade and Employment to explain our difficulties. There has also been much interesting debate on the Bill in the Seanad, as a result of which there have been some amendments. However, there are still several provisions which could cause us unnecessary inconvenience and inhibit

the flow of information if not amended. Our last issue of GLINT was a special issue devoted to the Copyright Bill and carried an article by a group of concerned librarians. Because the Bill is so important and because there have been so many developments since that article was written we are reproducing the article in this issue, with updates to reflect the current situation. This will effectively supersede Glint 13. I must point out that the Copyright Bill is a very long and complex Bill and the article which we reproduce here, and the aspects of the Bill on which the GLS has concentrated, represent only a small part of that Bill. In studying the Bill I personally have gained a great appreciation of the difficulty of drafting a complex piece of legislation covering many different areas, the detailed operational aspects of which the formulators could not be expected to know. We welcome the changes made in the Bill to date and hope that some of the remaining concerns of librarians in relation to introducing some degree of flexibility into the legislation will be resolved before the Act is finally passed. The Bill is next due at Committee Stage in the Dáil. This will not be before the whole House, but before the Dáil

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Performance indicators for libraries

Select Committee on Enterprise and Small Business. We would like to take this opportunity to acknowledge the efforts of all those who have worked so hard on the various aspects of the Bill.

It should be remembered that there is a forthcoming European directive on copyright in the information society which could have far reaching effects. Historically copyright law in European countries has favoured the rights of the copyright

holders permitted in the Anglo American tradition. The ICLA also object to the many of the exemptions in the Irish Bill and have submitted that fur-

ther contributed to this newsletter and to GLS activities throughout the year.



Seminar on Knowledge Management 15th October 1999 Parliament Buildings, Stormont, Belfast

Seminar organised by the Government Libraries Service (Northern Ireland) and attended by Government librarians (North and South)

Friday 15th October 1999

The GLS deputation arrived just in time for the 11am start where introductions were made over tea and coffee. The seminar on knowledge management then commenced and we broke up at 12.30 for lunch. Lunch was a lively and classy affair with three large tables reserved in Aldens (a restaurant approximately 10 minutes drive from Stormont) and a strategic seating plan to ensure we all got to meet and converse with our northern colleagues.

After lunch, back to Stormont where a stimulating Q & A session on knowledge management ensued interspersed with a workshop-like team exercise.

We broke up just after 4 o'clock and George Woodman, the librarian in the Assembly Library in Stormont, kindly provided us with a brief, informative tour of the parliamentary chambers and the library. We would like to heartily thank our northern colleagues for organising and inviting us to such a topical seminar, for acquiring such a well-known name in the field to speak on the topic and finally for the magnificent hospitality accorded to us by everyone from the Northern Ireland Government Libraries Service. We eagerly await their return visit to Dublin next year!

Following are the proceedings of the seminar briefly recounted for interested readers.

“Knowledge Management in a climate of change” presented by consultant Sylvia Webb.

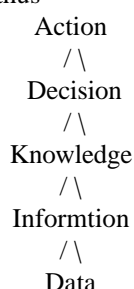
Sylvia Webb (SW) opened her seminar by emphasising the element of organisational change required to introduce/implement any knowledge management initiative.

Resistance to change was a barrier which would be difficult to overcome unless the change was endorsed and led by top management. Also, lots of consultation groups should be formed so that KM could be explained and promoted across the board.

SW pointed out that the need to introduce new or more sophisticated IT applications as a result of a KM programme was normally an element of change which would not pose too many problems for librarians or information managers as they were one sector that were quick to adapt to technological progress.

SW then explored the whole notion of knowledge management and what it means using *Wilson’s processing hierarchy*, an extremely concise and clear aide which distinguishes the differences between data, information and knowledge and demonstrating that it was knowledge that would ultimately lead to a decision in any business/organisation, leading in turn, to some action or other.

The hierarchy was thus



SW compared teething problems of KM as a management strategy to similar problems encountered when introducing TQM (Total Quality Management) initially into organisations. Resistance to change was mentioned again and SW surmised that the two basic motives for resistance to change were insecurity and fear of failure.

SW stated that “KM is often best served by technology” (This is a point I would take issue with given current trends in KM academic thought and practice; my perception would be that initially the processes of exploitation of knowledge focused on an IT-centred approach to reform, e.g. data mining, data warehousing and Intranets etc, rather than the processes of exploration, i.e. the creation and development of new knowledge. Now a distinct tendency is emerging in literature on KM which focuses less on explicit knowledge and concentrates on locating, articulating and preserving the tacit knowledge latent in an organisation).

SW made frequent reference to her case study “*Know-how and information provision in legal firms: an explanatory study*” by Sylvia P. Webb.

SW drew attention to the fact that legal firms were early exponents of KM with their know-how databases and opined that this practice or approach had great potential for other sectors and that the extent of the involvement by LIS (Library and Information) staff in setting up and maintaining know-how databases in legal firms in Britain could only be seen as an encouraging sign.

SW then outlined key considerations involved in any KM programme:

- 1) Examine the organisational structure, i.e. the channels of communication and the information flow, e.g. does information flow freely across functional boundaries?
- 2) Next the organisational culture - the traditional hierarchical and more individualistic Western business culture was contrasted with Japanese corporate culture where teamwork and knowledge sharing have always been paramount.
- 3) Systems organisation-wide have to be reviewed.
- 4) Skills have to be audited.
- 5) Finally, the potential role of LIS staff was mentioned and how KM could provide LIS with a new focus. SW believed that an Intranet would introduce a much wider range of users to LIS services.

The notion of knowledge as all-embracing, straddling the spectrum from personal knowledge to published information was also referred to as was the concept of ownership of knowledge (legal implications, copyright etc.).

Briefly the key points which SW sought to convey re KM;

- 1) recognise knowledge as a corporate asset
- 2) be systematic in managing knowledge
- 3) take a co-ordinated organisation-wide approach
- 4) have top management commitment & support.

The seminar concluded by putting questions from the floor.

Questions were posed such as:

- Feasibility study re KM - had SW ever been involved in one?
- Visualizing the KM structure - how ? Thesaurus of terms on an Intranet?

- KM in the public sector - realistically what could the Library and Information Service do if it wasn't being endorsed by top management?
- Does the corporate ethos reflect success of KM?

Overall the seminar was a clear success in outlining KM for newcomers to the subject. One criticism I would have was that it could have been tailored more to a public sector context instead of the constant reference being made by SW to the legal sector and law firms in Britain. Knowledge management has taken a foothold in industries such as advertising, consultancy, human resources and law but I was hoping to hear some more practical advice on how to tackle KM in a public sector context. Also the current trend to focus on capturing and capitalising and leveraging tacit knowledge as opposed to explicit knowledge was glossed over and seemed to be outside SW's scope.

Irish Statute Book on CD-ROM

by Madelaine Dennison, Law Librarian, Office of the Attorney General

Note: The information in this article was published in the *Internet Newsletter for Lawyers* November/December 1999. An article entitled 'Irish legal materials on CD-ROM and the Internet' was published in the *Internet Newsletter for Lawyers* March/April 1999.

Introduction

The Attorney General's Office published the second release of the Irish Statute Book CD-ROM in September 1999. This CD-ROM contains the Acts of the Oireachtas, Statutory Instruments (SIs) and Chronological Tables for the period 1922-1998. The Irish Statute Book costs IR£20 for both single and multi-user access.

The first release of the Irish Statute Book CD-ROM, which was published by the Attorney General's Office in December 1998, contained the Acts of the Oireachtas 1922-1997.

Neither the Acts nor the SIs were available electronically prior to this project. The Acts and SIs

amount to approximately 182,000 pages of text.

Contents of the Irish Statute Book

As well as including additional material the latest CD-ROM includes a number of improvements which were made following consultation with users of the first release. For example the screens are less cluttered, new search templates have been added etc. The new CD-ROM uses Folio Views 4.2 software.

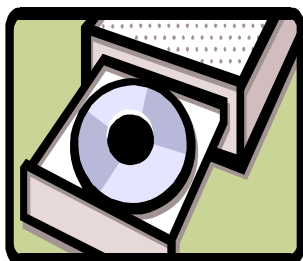
The Acts and Statutory Instruments, on the CD-ROM, appear in full text as published by the Stationery Office in bound volumes. The English language text only of the legislation is available except in those instances where the legislation was

passed in the Irish language. Constitutional amendments are available in both Irish and English.

The Acts are presented in expandable 'branches' each containing 10 years of legislation which aid navigation. An alphabetical list of Acts with hypertext links to the full text is provided.

The SIs are presented under two main headings: Statutory Instruments 1948-1998 and Statutory Rules, Orders and Regulations (SROs) 1922-1947. Under these headings the SIs and SROs are presented in expandable 'branches' each containing 10 years of legislation. Alphabetical tables for the SIs 1948-1998 and SROs 1922-1947 are provided.

The Chronological Table of Statutes 1922-1998 is an updated version of a hardcopy publication which covers the period 1922-1995. The Chronological Table lists amendments to primary legislation. The electronic publication has made it possible to provide hypertext links from the Table to the full-text of the legislation and its affecting provision. The Chronological Tables also provide information about Pre-Union Irish Statutes, Pre-Union British Statutes etc. It is possible, for example, to search the CD-ROM for the 1237 statute 'Concerning those born before wedlock' – the reference to this statute in the Chronological Tables will be retrieved and it is possible to hypertext link to the 1983 Act which repealed it.



Searching the Irish Statute Book

Six template searches are provided and these enable the user to search for a specific Act/SI by number and year or by a word in the title etc. It is also possible to search a specific Act/SI or group of Acts/SIs for a word or phrase. The advanced query facility enables the user to search the database using a range of boolean and proximity operators. Hypertext links enable the user to jump to other sections of the legislation being viewed and to other legislation referred to.

The Irish Statute Book includes the facility to create a 'shadow file'. This enables the user to create a personal copy of the database which can be used to search and retrieve information in the usual manner. More significantly it is also possible to add value to

this shadow file - the user can add personal notes, which are searchable, to the database, create personal hypertext links etc.

Each Act or SI can be printed in full or selected sections can be printed. Text can also be 'copied and pasted' into other applications.

The CD-ROM is accompanied by a user manual. The CD-ROM includes 16 animated help demonstrations which show how to navigate, search, print etc. The standard Folio Views help facility is also available. A Dublin based help desk has been established to answer users' queries.

The official version of the Acts of the Oireachtas and Statutory Instruments remains the printed version published by the Stationery Office.

Irish Statute Book on the Internet

The Acts of the Oireachtas 1922-1997 are available on the Internet at the Office of the Attorney General's web site. While the publication of the Acts of the Oireachtas on the Internet was a significant development it is realised that the website needs to be enhanced. Work is underway to improve the functionality and content of the website. It is envisaged that the Acts of the Oireachtas, Statutory Instruments and Chronological Table of the Statutes for the period 1922-1998 will be available on the Internet in Spring 2000.

Future

It is envisaged that the Irish Statute Book CD-ROM will be updated on an annual basis. Further phases of the project to make the Irish Statute Book more accessible will include an improved website, which will be updated regularly, and the publication on CD-ROM of pre-1922 statute law.

Contact information

The Irish Statute Book on CD-ROM, Release 2, ISSN 1393-760X can be purchased from Government Supplies Agency, 4-5 Harcourt Road, Dublin 2, Ireland.
Cost: IR£20
Phone: 00 353 1 647 6000
Madelaine Dennison, Law Librarian, Office of the Attorney General, Dublin 2, Ireland.
madelaine_dennison@ag.irlgov.ie

NOTES FROM THE COMMITTEE

Committee 1999 – 2000

Chair
Minutes Secretary
Correspondence Secretary and PRO
Treasurer
Glint Editor

Joe Donnelly
Mary Doyle
Carol Flynn
Nicola Maher
Mary Doyle

Committee Members Valerie Ingram, Michael O'Gorman, Madelaine Dennison, Denise Duffy

Madelaine Dennison (due to work commitments) and Denise Duffy (who moved to a new job) resigned from the Committee during the course of the year and Eunice Delaney and Charlotte Cousins were seconded to the Committee in their place.

1999 has been a very active year for the GLS and the GLMN and our views have been sought in many areas. An enthusiastic and active Committee and membership have enabled us to participate fully in these activities. In true GLS tradition the year also saw a generous and useful sharing of knowledge, expertise and ideas.

Copyright Bill

Michael O'Gorman first alerted us to some of the problems of the Copyright Bill and later study of the Bill, assisted by a special meeting of GLS members and their subsequent submissions, uncovered many other problems. Joe Donnelly and Mary Doyle made a detailed study of the Bill and have followed and reported on developments throughout the year. They have also represented the GLS / GLMN at various meetings with other library groups and at a meeting between a representative group of librarians and the Dept of Enterprise Trade and Employment.

Government Library Groups

The Government Library Manager's Network (GLMN) is now established and meetings will run in tandem with those of the GLS. Madelaine Dennison and Mairéad Mullaney have done a lot of work on setting up a Bulletin Board, which is for a closed user group of government library staff.

The address of the bulletin board is:

<http://www.idis.irlgov.ie/govlib/glnhome1.nsf?opendatabase>

This should get you into the registration page (Home Page). There are some teething problems in relation to access, so if this doesn't work contact Mairéad Mullaney (Office of the Taoiseach). Anyone who wishes to use the site must do so through Mairéad, who will register them and supply them with a password. The bulletin board contains: email, a discussion forum, web links, library resources and a search facility.

Government Supplies Agency

Valerie Ingram is representing the GLS / GLMN on a working group which includes representatives from the GSA and Mairéad Mullaney on behalf of the Office of the Taoiseach. There have been useful discussions to date.

Web Publication Guidelines

Charlotte Cousins and Helen Bradley coordinated and were mainly responsible for drafting our response to a request to contribute to an inter-departmental group on guidelines for government web sites. Most of the recommendations in our submission were included in the final report, which is available on the Web Site of the Office of the Taoiseach. The GLS / GLMN have now been invited to participate in a new public service-wide group on web sites and Charlotte and Helen will be our representatives on that group.

Bound volumes of Acts etc

The Committee is very concerned that the Oireachtas has contemplated discontinuing the publication of the bound volumes of legislation and Oireachtas debates and has written a letter to the Clerk Assistant of the Dáil to express our concerns.

Union List

Madelaine Dennison and the staff of the library of the Attorney General's Office produced the first edition of the Union List of Government Libraries, which contains the holdings of 5 libraries.

Training

The Committee is actively planning to arrange training in a number of areas. To date it has been decided to run a course on metadata, and proposals for other courses are being drafted. The Northern Ireland Government Library Service invited us to attend a seminar on Knowledge Management in October. This was well attended by members of the GLS and all who attended found it very useful.

LAI Executive Board

Joe Donnelly attended several meetings of the Ex-

ecutive Board as an observer.

SMI

Eunice Delaney and Charlotte Cousins are currently drafting proposals to seek funding from the SMI Change Management Funds for some service-wide projects.

Prompt Payments of Accounts Act 1997 and VAT

PPPA: It was clarified at our meeting in January 1999 that the Act does not apply to periodical subscriptions if these are prepayments.

VAT: We would also like to remind you that VAT on periodicals was reduced in May 1998 from 21% to 12.5% and that there is no VAT on postage.

FOI

The proceedings of the Seminar on the Freedom of Information held in November 1997 was published in February by Blackhall Press and has been selling well.

GLS Web Site

This year the main addition to the site was the text of GLINT 13 on the Copyright Bill, which involved a lot of work for Lisa Shields. We are very grateful to Lisa, who is now retired, for continuing to main-

NEW APPOINTMENTS / DEPARTURES IN GOVERNMENT LIBRARIES

Recent appointments

Patricia Dowling, Library, Office of the Director of Telecommunications Regulation

Amanda Mahon, Library, Marine Institute

Deidre Quinn, Library, Revenue Commissioners

Ruth O'Flaherty has moved from the Dept of Health to the Health and Safety Authority

Denise Duffy has moved from the Dept of Agriculture, Food and Rural Development to Tallaght Hospital

The following reproduces GLINT 13 with slight revisions and with updates at the end of each section to reflect the current situation.

(References to the Bill in the Updates refer to the Bill as passed by the Seanad, i.e. 18 (b) of 1999)

Updates written by Joe Donnelly and Mary Doyle

NOTE FROM YOUR EDITOR

This special edition of GLINT is intended to give you a quick overview of some of the areas of the Copyright Bill, currently going through the Oireachtas, which may be problematic for librarians. The main article was produced by a group of concerned librarians, including members of the GLS and BIALL. It does not claim to be a summary of the Bill as a whole as the timeframe to look at the Bill and its implications was very limited. Nor does the group claim any special expertise in statutory interpretation. It is reproduced here in GLINT by kind permission, in the interest of debate. By publishing the document the GLS does not necessarily endorse all the views expressed in it.

In the Seanad Debate of the 17 June 1999 the Minister of State at the Department of Enterprise, Trade and Employment, Mr Tom Kitt, stated that the Department is still in consultation with a number of individuals. The indications are that amendments are still possible and others may feel it is important to convey their views either individually or through any body of which they may be members. Please feel free to re-use this material in anything you are preparing for that purpose, the one qualification being that the librarians who produced it do not claim any authority in interpreting this complex area of law, and we advise you to check the points for yourselves.

A special issue of GLINT which concentrates on areas within the Copyright Bill which have given rise to concern may create a false impression that the GLS is adopting a negative attitude to the legislation. This is not the case, and we are fully in favour of a reasonable and workable system of regulation in the area of intellectual property, which will, we hope, strike a fair balance between protecting the rights of creators of works and remunerating them equitably on the one hand, and ensuring a healthy flow of information without undue hindrance on the other. However, within this very long and momentous Bill there are a few areas which give rise to concern, and there are likewise doubts about how the regime will operate on a day-to-day basis after the legislation is passed.

The concerns arise not from a resistance to fair copyright provisions, but from our willingness to take the provisions very seriously, and our determination to observe strictly the new legislation. There is concern, however, that the legitimate role of the librarian should not be defined in an extremely restrictive way, particularly as the majority of us are not directly or indirectly involved in reusing the work of other people for our own commercial gain or that of our parent bodies, and are simply making useful information available where and when it is needed. Libraries are, in fact, an important part of the client base of the publishing world (and often pay higher subscriptions than individuals do, on the basis that they are obtaining the material for multiple users). In addition, if the scope of the librarian is defined restrictively, he or she will be exposed to quite severe penalties (such as those in s.135), more appropriate perhaps to the pirating enterprises which may have been uppermost in the minds of the draftsmen, and this will necessarily have an impact on our work-practices, and therefore on the communities which we serve.

Many of the issues were put forward by Senator Mary Henry as amendments during the Committee Stage of the Bill in the Seanad on the 17th, 29th and 30th of June 1999. The European and International Affairs Panel of the LAI is also looking at the Bill's implications for libraries and is seeking legal opinion on this before preparing a briefing for the Executive Board.

Mary Doyle, Editor

The Copyright Bill 1999

Matters which merit attention

Note: This overview of the Copyright Bill does not purport to be legal advice.

Materials on the Internet

A possible addition to Section 38

Materials made available on the Internet are a case which might be given particular treatment, although we understand that the legislation seeks to be “medium-neutral” and is stated as general principles. Whereas a book is sold by the copy, or a CD-ROM is licensed for use by a specified number of users, most of the material made available on the Internet is thereby made accessible to anyone with a computer attached to the Internet (and is capable of being downloaded, printed and copied). The medium is used to make material as widely available, without restriction, as possible. However, there is rarely a statement to this effect. A librarian who finds useful material will often decide to copy it in one way or another (downloading to disk, printing, sending by e-mail etc.) in order to furnish it to a reader, or to preserve it because materials often vanish from the Internet and material which was used in reaching a decision or choosing a course of action, for example, should be preserved. To obtain formal permission to make such a copy of this material, which has already been published in a manner which suggests it is intended to be freely accessible, the librarian will have to waste a great deal of time identifying the person who can give permission, contacting him or her and awaiting a reply, which is usually “of course you may”. We would suggest that, given the nature of the medium, there should be a presumption that there is no restriction on legitimate and accurate copying and storage (at any rate for non-commercial purposes) of material made readily available on the Internet, *unless there is a statement to the contrary on the material in question (or a request for payment for use of the material).*

The following amendment (No 15) was moved by Senator Henry on the 29th June 1999.

There shall be a presumption that material which is published on the Internet may be copied accurately

and with an acknowledgement of its source, without formal permission, unless a statement to the contrary is published with the material on the Internet site.

There was quite a long debate on the subject with contributions from the Minister of State and Senators Cox, Quinn, Ryan and Norris, which was generally in favour of the Amendment. The Minister felt that the Amendment would be contrary to Article 5(2) of the Paris Act of the Berne Convention on Copyright, but also felt that Senator Henry had made a good case and he would be happy to consider her amendment at Report Stage. The amendment was, by leave, withdrawn.

We would be concerned that the most important issue for librarians, namely the transient nature of material on the Internet and the need to preserve the material for reference and evidentiary purposes, was not really debated, although it was mentioned in the introduction to the debate.

**** UPDATE

Senator Henry again moved the above amendment at Report Stage on the 19th October 1999. She was supported by Senators Quinn and Ryan. There was a detailed debate which included the transient nature of material on the Internet; the possible breach of the copyright law by the nature of technology (copy automatically cached to person's computer); the assumption by most people that if they put material on the Internet it will be copied and may be copied unless they include a statement to the contrary; and the delay and inconvenience of having to contact authors for formal permission to make a copy of their material. Mr Kitt said that the Senators had introduced another interesting aspect to the debate. However the amendment would have the effect of making the enjoyment of copyright by rights holders subject to a formality. Such a formality would be contrary to Article 5(2) of the Berne Convention. It was generally accepted that it was difficult to enact leg-

isolation to comply with a Convention that was last updated in 1970s. The Minister said he would consider this in the context of the EU directive and the discussion on the information society. In relation to the transient copying which is part of the process of viewing a web page he referred Senators to Section 83 of the Bill, which allows for such transient copying. The Amendment was withdrawn.

At the meeting between the Dept of Enterprise of Enterprise Trade and Employment and the representative group of librarians the Department said that there was widespread awareness of the problem in Europe and sites are being exhorted to clarify what copying and usage is permitted. The Department will bear the views of the librarians in mind when making an input to the Directive on the Information Society.

Berne Convention Article 5 (2)

The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(2) Facilities for making copies available

Section 39 (3) and (4)

Section 39 (3) and (4) seems to place an obligation on someone who has provided facilities for making copies available to remove the *copies* if informed that they are an infringement. We assumed that this is to cover cases such as Internet Service Providers who facilitate the setting up of a Web Site and who might then be obliged to remove offending parts of it, or libraries which make packs of photocopies available for loan and who might be obliged to remove them. However, as currently worded, the provision could be interpreted as applying even in cases where the person has provided facilities for making copies (e.g., a photocopier) even after the copies have been removed from his or her control, (e.g., photocopies made and taken away, rather than in a loan collection).

“[T]he provision of facilities for enabling the making available to the public of copies of a work shall not of itself constitute an act of making available to the public of copies of the work”. However “... where a person who provides facilities ... is notified

by the owner of the copyright ... that those facilities are being used to infringe the copyright ... and that person fails to remove that infringing material ... that person shall also be liable for the infringement”. Although it does not make sense, the provision seems to be saying that someone who makes a copying machine available can become responsible for the *copies* made on it (“infringing material”).

The following amendment (No 17) was moved by Senator Henry on the 29th June 1999.

In page 40, subsection (4), line 6, after “subsection” to insert “retains control over the copies so made available and”

This would have the effect that s. 40 (4) would read “... where a person who provides facilities referred to in that subsection retains control over the copies so made available and is notified by the owner of the copyright ...”

It was explained by the Minister that the Section was intended to ensure that Internet service providers removed infringed material. He will, however give the amendment further consideration. The amendment was then, by leave, withdrawn.

****** UPDATE**

In the Senate on 13th October the Minister reiterated that the purpose of Section 39 (4) was to ensure that material which infringing copyright would be removed from an internet site. At the meeting between the Dept of Enterprise Trade and Employment and the representative group of librarians the Department said that it was intended to cover the internet and also computers generally. The Librarians explained that they considered that the wording was broad enough to include owners of photocopiers. The Department agreed to look at the wording.

(3) Definition of research & study for Fair Dealing and for Library provisions

Section 49 (1), 49 (2), 49 (3) and Section 60 (2), Section 61 (2)

The formula “private research and private study” also occurs in **Sections 65 (3), 218 (2), 222 (3) and 312 (1)**

The Fair Dealing provisions (s. 49), and the analogous provision for copies made by a librarian (s. 60-62) now change the previous terminology from “research or private study” to “private research or private study”. As the author of Lloyd: *Information Technology Law* (Butterworths, 1993) says in relation to the old wording ‘it is to be noted that the word “research” precedes the phrase “private study” in the Act. It would appear to follow therefore that its application is not restricted to the area of individual research but will extend into the commercial sphere’ (p.260). It may be that the change in wording was intended to deprive commercial, profit-making organisations of the “fair-dealing” exception; however, it also (inadvertently?) seems to have the effect of removing the benefit from anyone doing research on behalf of any governmental, research, charitable, or educational body (if the word “private” now suggests that the research must be solely for the individual’s interest).

The following amendment (No 18) was moved by Senator Henry on the 29th June 1999.

In page 45, subsection (1), line 9, to delete “private”

As there were several related amendments (18, 19, 20, 24 and 26) it was agreed that all would be discussed together. The Minister stated that “the intention ... is to remove all exceptions in respect of commercial research”. However, as Senator Brendan Ryan pointed out (joining Senators Henry, Norris, Coughlan Quinn and Dardis in supporting the amendment) “commercial” and “private” are not the only categories. Senator Ryan also made the interesting point that **commercial research** might often qualify as **private research** as it is frequently not published. On that interpretation the provision would defeat the Minister’s stated intention to remove all exceptions in respect of commercial research. Senator Paschal Mooney, however, spoke in favour of the word “private” in “private research” on the basis that it prevented commercial concerns from benefiting by having universities do research for them.

The Minister also defended the restriction by saying that under the Berne Convention exceptions must be limited, specific, and not capable of interfering with the normal exploitation of works. However, the Berne Convention does not seem to require the specific restriction to “private” research.

We need to ensure that a copy can be made for legiti-

mate research whether by an individual or a staff member of an organisation (or at least by a not-for-profit organisation). We have been given to understand by the Department of Enterprise Trade & Employment that it is not the intention of the Bill to exclude, for example, a librarian in a government department from providing a copy for research being done by a staff member of that department. However, the expression “private research” might be interpreted as excluding research within an organisation (such as research organisations, charitable bodies, public administration etc.).

An alternative amendment to that that moved in the Senate might be:

instead of dropping the adjective “private” from the noun “research” it might be clarified to **“private or in-house organisational research or private study”**.

****** UPDATE**

It's official: the word "private" is to be dropped from "private research". This was announced during the Seanad Debate on the 13th October 1999. The detailed discussion of this was taken, for procedural reasons, under amendment number 5, which was actually an alternative amendment proposed by, among others, Senator Brendan Ryan, and which would have had the effect of making the exemption available not to "private research" (as in the Bill) nor "research" (as we would like) but to "public research" defined as "research the complete results of which are intended to be published". The Senator had in mind the distinction between academic research (generally widely accessible) and commercial research (often closely guarded). However, we would have had problems with that amendment because not all the research which we would facilitate would be "intended for publication" and in addition the definition went as far as to say "the complete results of which are intended to be published" - a great deal of material is usually researched and gathered but as a rule only a small proportion is ultimately published, even when publication is intended. Nor could we operate a system where we had to ask each requester whether he or she intended to publish the results. In the event, the Minister said that he was accepting the other proposed amendment, and dropping the word "private" from "private research". We understand that this will be kept under review by the Department of Enterprise, Trade and Employment.

(4) Quantitative limit on copies provided by librarians.

Section 60 (2)

A limit of one article from one issue of a periodical is laid down in the provisions on copying by a librarian, s. 60 (2), by the words "...shall not be furnished ... with copies of more than one article contained in the same issue of a periodical". "Article" is defined to include "an item of any description in a periodical".

In the past, there have been informal assessments within the bookselling trade and library profession as to the limits of fair dealing. However, this had never been legally defined, and while one rule of thumb which was suggested was "one article from one issue", it might well be argued that this was unnecessarily restrictive, and that it might just as fairly be stated as "one article from one issue *or* a percentage of one volume" - which would also allow a degree of flexibility, e.g., where a user wanted a couple of related articles from one issue, but nothing at all from the rest of the volume, or even series of volumes. It should be remembered when defining fair quantity that

- a) it is often the case that an issue of a journal concentrates on a single topic, so that several articles in that issue might be of value to a researcher (while nothing else from the rest of that volume, or other volumes, is required);
- b) the library has often purchased the material to begin with, often at a higher rate than individual subscriptions, implying multiple use;
- c) it may not be possible to purchase single issues of the journal;
- d) we are often dealing with back issues which are no longer readily available from the publisher;
- e) the placing of an article in a particular issue can be quite arbitrary or fortuitous.

Although a licensing arrangement would provide a mechanism to pay for some cases of substantial copying, the definition of a reasonable quantity should not be so restrictive as to trigger the licensing arrangement every time a reader requests more than one article from an issue, especially when the delay caused is probably a greater problem than the cost involved. It also seems strange to introduce this one restriction in the area of journal articles, when there is no such definition in the case of books or other media, nor is there a defined quantitative limit in the "Fair-dealings" provisions of s. 49 (4) ("to an extent reasonably justified by the non-commercial purpose to be achieved").

We considered an alternative of 10% of a volume, but this could in some cases be even more restrictive than one article per issue, as even one article might, in some circumstances, be more than 10% of a volume.

Apart from being unnecessarily restrictive, this provision will often be very difficult to put into practice. It should be remembered that if, as is often the case, the issues of a periodical have continuous page numbering and no reference to the issue on each page, it is often not possible to know where one issue ends and the next begins when those issues are bound into a continuously numbered volume (as they are designed to be).

We also wonder whether it is in the interest of either librarians or publishers that the definition of "an article" in a periodical should be so sweeping as to include the "contents page", except in the case of commercial exploitation, such as "current contents" services.

The following amendment (No 25) was moved by Senator Coughlan on behalf of Senator Henry on the 29th June 1999.

In page 50, subsection (2), lines 22 and 23, to delete "or with copies of more than one article contained in the same issue of a periodical".

This would have the effect that s. 60 (2) would read:

A copy made under subsection (1) shall not be supplied other than to a person ... and he or she shall not use it for any other purpose and that person shall not be furnished with more than one copy of the same article.

It is unfortunate that there was no explanation or discussion of the reasons for the proposed amendment. It was the Minister's view that the amendment would have the practical effect of allowing entire journals to be copied by librarians. **This is certainly not our intention.** However, we do feel that such a specific limitation as one article per issue, which is also so broadly defined as to include the contents page, is too narrow, especially as nothing so specific is prescribed in relation to any other form of publication. In our opinion the author's and/or the publisher's rights would be protected under the Fair Dealings provisions in the same way as those rights are protected in the case of works other than periodicals. The amendment was, by leave, withdrawn.

**** UPDATE

This issue was again debated at great length at Report Stage 13-19th October (Amendment 54 moved by Senators Henry and Quinn) and the Minister seemed determined not to give librarians too much licence. He is convinced that any change would give librarians leeway to photocopy everything wholesale. At a subsequent meeting between the Department of Enterprise Trade and Employment and a representative group of librarians, including Joe Donnelly and Mary Doyle on behalf of the GLS, the Department agreed that the librarians could submit alternative formulae and that the Department would look at the issue again, though it doubted that an acceptable alternative could be found. In our opinion flexibility is required to cope with the variety in the nature of periodical 'articles' and we do not see why quantitative limits should apply to librarians who are copying for end users' research which do not apply when the end user is doing his or her own copying. It should be borne in mind that librarians will be more aware of and better disposed towards complying with both the letter and the spirit of the law. Therefore, having considered all the options we are still convinced that the best restriction to apply to librarians is that currently proposed for 'Fair Dealing'. Under Fair Dealing copying directly by the end user is allowed for 'research or private study', subject to it being 'to an extent reasonably justified by the non-commercial purpose to be achieved'. Under the provisions on Libraries and Archives librarians are also allowed to copy on behalf of end users for 'research or private study', but with the restrictions outlined above. Generally librarians only copy for users who are unable to do so themselves due to disability, geographical location, or some other reason. In our opinion it is discrimination to have different criteria for those who can copy for themselves and those who cannot. We are awaiting a response from the Department of Enterprise, Trade and Employment on this view.

In the meantime, having looked at the relevant sections again, we wonder if perhaps there is not a contradiction between the sections on 'Fair Dealing' (s. 49) and some of the provisions on 'Libraries and Archives' (s. 60-62).

Section 49 (4) limits fair dealing to "... for a purpose and to an extent reasonably justified by the non-commercial purpose to be achieved."

Section 49 (3) implies that a person, including a librarian, may make a copy of copyrighted material on behalf of a researcher or private student provided they do

not supply multiple copies (in the case of a librarian they do nothing prohibited under *Section 62*; in the case of any other person "will [not] result in copies of substantially the same material being provided to more than one person at approximately the same time and for substantially the same purpose").

Sections 60 and 61, on the other hand, lay down specific quantitative limits when a librarian makes and supplies a copy of material, which are more restrictive than "for a purpose and to an extent reasonably justified by the non-commercial purpose to be achieved".

These sections seem to us to contradict one another.

In discussions 2 possible interpretations have emerged:

- a) that because Section 62 refers to Sections 60 and 61, therefore under 49 (3)(a) (fair dealing), copying is implicitly governed not only by Section 62 (multiple copies), but also by Sections 60 and 61 (quantitative limits), or
- b) that the only restriction on fair dealing for librarians under 49 (3)(a) is that of multiple copying.

Section 49 (3)(b)* would seem to corroborate the latter interpretation, i.e. that it is only multiple copies which are prohibited if someone (including a librarian) is copying on behalf of someone else. Further corroboration is provided by the fact that Section 49 (3)(a) does not specifically refer to Sections 60 and 61, but only to 62. Giving librarians a right to copy under Section 49 (fair dealing) only makes sense if that right to copy is less restricted than the right given separately under Sections 60 and 61. If the restrictions in Sections 60 and 61 are to reach into copying by librarians under Section 49 there seems to us to be little rationale in including librarians in Section 49.

* 49 (3)(b) "...the person [other than the research or private student] knows...that the copying will result in copies of substantially the same material being provided to more than one person at approximately the same time and for substantially the same purpose."

We have written to the Department for clarification on this point and are awaiting a reply.

In relation to the Minister's concern that publishers should be properly remunerated for their products we would make the following points:

We agree that the authors and publishers should be properly remunerated and it is not our desire to deprive them of reasonable remuneration. However, flexibility is required to take account of the following:

- Libraries or organisations are often the only market for many specialist or very expensive publications.
- Recognising this some publishers have a 2-tier subscription system whereby subscriptions for individuals are often a fraction of the price of a library subscription. This is both an inducement to the individual to subscribe and a built-in recognition of, and compensation for, the multiple use that will be made of library copies.
- Organisations will frequently buy multiple copies of popular journals or newspapers for staff, who will not hold on to them indefinitely. They will depend on the library reference copy for subsequent use. Again the publisher has already been well recompensed.
- Copyright gives publishers a monopoly as they are the only source of the material, and some publishers use this monopoly position to charge exorbitant rates. Therefore there needs to be a balance in the legislation between the rights of the publishers and the rights of the consumer. The exemptions need to be reasonable and workable.
- In most cases a copy is made not in order to deprive the publisher of remuneration, but as a matter of convenience (in order to read it at home, or when the person has more time, or in order to make notes in the margin). This principle of convenience is recognised in the Bill in relation to broadcasting - Section 96, which permits the fixation of a broadcast or cable programme for the purpose of enabling it to be viewed or listened to at another time or place. Before the advent of photocopiers organisations didn't necessarily buy extra copies of expensive journals - staff took notes from the articles.
- Users will normally only require a second copy of an article because they have lost the first copy supplied, perhaps several years before, or felt they had no further use for it at the time.
- In our opinion it is not in the interest of publishers to consider the table of contents as an article. Many libraries use copies of the table of contents to notify their users of interesting articles. Many people are too busy with their day-to-day work to visit the library to check on new material. If the contents alerting service was discontinued the resultant fall-off in the use of the periodical might lead the library to question the value for money of the subscription.

What we are arguing is that, while we recognise that publishers should be paid for what is commonly accepted as 'bulk copying', current commercial practice already provides sufficient compensation to publishers to justify a more liberal set of exemptions for libraries than those proposed in the Bill. We agree that bulk copying should require extra payment to publishers but we would argue that the occasional provision of more than one article in an issue of a periodical or the provision of an occasional second copy of an article does not. What we are not arguing for is the wholesale copying that the Minister seems to fear.

The separate areas of concern were the subject of proposals for amendments by an Ad-Hoc Group of Librarians to the Joint Oireachtas Committee on Enterprise and Small Business.

Definition of an article S. 60 (3)

"Article" is currently defined in the bill as including any item. It is not in the interest of a publisher, librarian or end-user to include the table of contents in the definition of "article". The copying and circulation of the table of contents boosts usage of a periodical and thus increases the likelihood of a subscription being taken out or continued. This may already be the intention because s. 60 (1) refers to "an article or the contents page", distinguishing between them.

Proposed amendment:

In Section 60 (3) insert after the word "periodical" ", with the exception of the table of contents"

If accepted Section 60 (3) would read:

"In this section "article" includes an item of any description in a periodical, with the exception of the table of contents."

One article in a lifetime S. 60 (2)

The bill as currently worded would have the effect that a person could never be supplied with a second copy of an article, regardless of the circumstances.

Proposed amendment:

In Section 60 (2) insert after "more than one copy of the same article" "unless the person satisfies the librarian that the previous copy has

been lost, stolen, discarded or destroyed or a reasonable period of time has elapsed, and that person shall not be furnished"

If accepted Section 60 (2) would read:

"A copy made under *subsection (1)* shall not be supplied other than to a person who satisfies the librarian or archivist that he or she requires that copy for the purposes of research or private study and he or she shall not use it for any other purpose and that person shall not be furnished with more than one copy of the same article unless the person satisfies the librarian that the previous copy has been lost, stolen, discarded or destroyed or a reasonable period of time has elapsed, and that person shall not be furnished with more than one article contained in the same issue of a periodical. (See below in relation to "one article in the same issue of a periodical")."

Note: We have since noticed that the passage beginning "one copy of the same..." also appears in s. 61 (2). In comparing s. 60 (2) and s. 61 (2) we have also noticed an interesting difference. S. 60 (2) says "[the user]

shall not use it for any other purpose" while s. 61 (2) says "[the user] **will** not use it for any other purpose". Is this an error or is there a policy difference between the two Sections. There is certainly a policy difference between the two in relation to the quantitative limit.

No more than one article in the same issue of a periodical S. 60 (2)

As outlined above the group of librarians consider that this is too restrictive because it is too inflexible and does not reflect the nature of the product. However there is a lot of resistance on the part of the Department of Enterprise Trade and Employment to changing this, though they say they are prepared to consider options.

Four options have been considered by the librarians - listed in order of preference.

- 1) Remove "**or with copies of more than one article contained in the same issue of a periodical**" altogether and operate under the restrictions which would continue to apply to fair

dealing by librarians under s. 49 (3) and s. 60 (2). The Dept of Enterprise Trade and Employment would argue against this on the basis that Article 9 (2) of the Berne Convention requires specific restrictions. We do not agree with this interpretation -

- a) on the basis of the wording of the Convention
- b) because there is no quantitative limit in the fair dealings provisions of s. 49 ("to an extent reasonably justified by the non-commercial purpose to be achieved"), and
- c) because there is no quantitative limit for material other than periodical articles (see s. 61 (2) - "a reasonable proportion of any work").

If this option is taken the quantitative limit which would then apply would be that under fair dealing, i.e. "to an extent reasonably justified by the non-commercial purpose to be achieved".

- 2) Remove "**or with copies of more than one article contained in the same issue of a periodical**" and replace with the wording in Section 61 (2), i.e. "**[no] more than a reasonable proportion of any periodical**".
- 3) If there must be specific limits Convention reword from "**more than one article contained in the same issue of a periodical**" to "**not more than a quantity specified by the Minister by regulation**" - the amount to be specified in a statutory instrument (e.g. the formula suggested in 4 below). A statutory instrument would allow more flexibility in setting formulae and could be more easily amended if necessary in the future.
- 4) Change the formula in the Bill to "**that person shall not be furnished with more articles from a volume of a periodical than the number of issues that comprise that volume or 10% of the volume, whichever is the greater**". Thus if there are six issues in a volume six articles from that volume could be copied. This is the same quantitative amount as that in the Bill, but is more flexible.

If accepted together with the proposal on "one copy in a lifetime" Section 60 (2) would read: "A copy made under *subsection (1)* shall not be

Berne Convention Article 9 (2)
It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

supplied other than to a person who satisfies the librarian or archivist that he or she requires that copy for the purposes of research or private study and he or she shall not use it for any other purpose and that person shall not be furnished with more than one copy of the same article unless the person satisfies the librarian that the previous copy has been lost, stolen, discarded or destroyed or a reasonable period of time has elapsed,
[and if a quantity has to be specified it would be stated as follows:]
and that person shall not be furnished with more articles from a volume of a periodical than the number of issues that comprise that volume, or 10% of the volume, whichever is the greater.”

(5) Similar or related requirements

Section 62

The exemption applying to prescribed librarians will only apply where the librarian is satisfied that the requirement is not related to any similar requirement of any other person. As Senator Ryan pointed out in the Seanad on 29 June 1999, some research is not possible if colleagues (perhaps in different countries) cannot each have a copy of necessary documentation. To submit non-commercial research to such restrictions seems unfortunate, especially as the definition of “similar” or “related” research is so sweeping.

***** UPDATE

It is the view of the Department of Enterprise, Trade and Employment that multiple copies should always be subject to payment. We can accept that bulk copying should not be free of payment and that it is important to have a provision which will ensure that this is not circumvented by allowing individual recipients of bulk copies to request their copies on an individual basis. However, the provision is draconian because

- it does not draw a distinction between bulk copying and a limited exemption which might be provided in order to permit, for example, two researchers who are geographically separated to obtain the same material without setting in motion the mechanism necessary for a very small

payment and

- it applies to two people with related needs approaching two *separate libraries*.

Again we would argue for a little flexibility to allow for a limited exemption for two or three people working in the same area.

The following amendment was proposed by the Ad-Hoc Group of Librarians in their submission to the Joint Oireachtas Committee on Enterprise and Small Business:

Replace **"other than to a person who satisfies the librarian or archivist that his or her requirement is not related to any similar requirement of any other person"** with **"to more than three persons whose requirements are not related to any similar requirement of any other person"**.

If accepted Section 62 (1) would read:

"A copy of a work shall not be supplied under *section 60 or 61* to more than three persons whose requirements are not related to any similar requirement of any other person".

(6) Lending rights

Sections 37, 39, 41, 44, 57

Under s. 37 (1) (b) the rights of the copyright owner include the right “to make available to the public the work”. “Making available to the public of a work” is defined in s. 39 and includes (s. 39 (1) (g)) “lending copies of the work without the payment of remuneration to the owner of the copyright in the work”.

S. 41 (2) (b) defines “lending” as “making a copy of a work available for use, on terms that it is to be or may be returned after a limited period of time, otherwise than for direct or indirect economic or commercial advantage, through an establishment to which members of the public have access”. On the spot reference is not considered “lending” under s. 41 (3) (c). s. 41 (4) states that “the making of a copy of a work available between establishments to which members of the public have access shall not infringe the copyright in the work” and s. 41 (5) permits an administrative charge for such lending to cover operating costs. Under s. 41 (6) (b) the right of the copyright owner to lend copies or authorise others to do so shall be known and referred to as the “lending right”. The only excep-

tion to the obligation under s. 39 (1) (g) to pay remuneration to the owner of the copyright in the work when lending a copy of the work would appear to be in s. 57: “Educational establishments and establishments to which members of the public have access and are specified by the Minister for that purpose shall be exempt from the payment of remuneration under s. 39 (1) (g) and shall not infringe the copyright in a work by the lending of copies of the work”.

There is a very grey area here in the case of special libraries serving an organisation, or even in the case of an organisation which does not have a library as such. For civil service libraries, in particular, it is a grey area.

They do lend books within the definition

- “that it is to be or may be returned after a limited period of time”
- “otherwise than for direct or indirect economic or commercial advantage”, i.e. without charge and
- “through an establishment to which members of the public have access” (in some cases).

They are not an “educational establishment” or NECESSARILY “establishment(s) to which members of the public have access” and which could be specified by the Minister for that purpose under s. 57.

While some (though not all) civil service libraries allow occasional access to members of the public they are not as such public libraries. If civil service (or other libraries) were to totally exclude access to members of the public they would then not be covered by the definition of “lending” and would not have a problem, except perhaps in the case of inter-library loans, which might be interpreted as giving “access to members of the public”. However such a blanket exclusion would not be desirable in the case of civil service libraries and might not be possible under FOI legislation. “Members of the public” also begs definition in the case of civil service libraries. Would they for instance have to exclude everybody except the staff of their own Departments? It also has implications for lending to and borrowing from other libraries.

A possible solution would be the addition of a provision in the part of the Bill dealing with “Libraries and Archives” (similar to s. 57) which would ex-

empt civil service and possibly other types of library, on the basis of providing a public service, from infringing the copyright in a work by the lending of copies of the work.

**** UPDATE

During the Report Stage in the Seanad Senator Henry moved the following amendment:

The librarian or archivist of a library or archive prescribed by the Minister for the purpose of lending shall be exempt from the payment of remuneration under section 39(1)(g) and shall not infringe the copyright in a work by the lending of copies of that work. A librarian, archivist, person or establishment shall be exempt from the payment of remuneration under section 39(1)(g) and shall not infringe the copyright in a work by the lending of a copy of that work to a library or archive prescribed by the Minister for the purpose of receiving such loans.

The Minister said that he accepted the object of Senator Henry’s proposed amendment but he was of the view that Section 57 in combination with Section 39 is designed to produce the effect desired by the Senator and that this view was supported by legal advice given to his Department by the Office of the Attorney General on the matter. We are not convinced that this is the case as in our opinion Section 57, which falls under the umbrella of “Education”, does not cover libraries or organisations unless they are educational or open to the public and this is supported by legal advice which we sought via the Executive Board of the LAI and by legal advice sought independently by CHIU. In discussion with the Department of Enterprise Trade and Employment we established that it is the view of the Department that lending within an organisation of goods purchased by that organisation would not constitute lending within the meaning of the Bill. However they will consider the implications that the Bill would have for inter-library loans as currently worded. This is now our main concern. Our legal advice is that Section 57 does not provide a mechanism to allow the Minister to extend lending exemptions to libraries generally. If Senator Henry’s amendment is not accepted even prescribed libraries under s. 57 will not be able to borrow from non-prescribed libraries or other sources without payment. Inter-lending between libraries, and be-

tween libraries and other sources, is essential to the flow of information.

In its submission to the Joint Oireachtas Committee on Enterprise and Small Business the Ad-Hoc Group of Librarians made these points. It has since become apparent that s. 57 would also need to be amended to include a provision to allow libraries and establishments which would be covered under s. 57 to borrow from sources not covered by s. 57 or by the new Section proposed by Senator Henry and included in the above submission.

Libraries covered by Section 57 for *lending*, would not be able to *borrow* freely from other categories of libraries not covered by the legislation. At present Section 57 exempts educational establishments and establishments to which members of the public have access from the payment of remuneration as required under *section 39(1)(g)**, when they lend publications. However, such an establishment might need to *borrow* a publication from a body which does not enjoy the same exemption. If, because of the copyright regulations, the administrative inconvenience was too great for such a body, it might not be prepared to lend the publication. This could arise even if the new Section 67 proposed by Senator Henry and supported by the librarians were accepted, as there will still be bodies outside the scope of either Section 57 or the proposed new Section 67. To overcome this it has been suggested that Section 57 should be amended.

(* Section 39(1)(g) requires payment of remuneration to the copyright owner if a work is lent.)

The suggested amendment is:

Insert at the end of Section 57

Any person or establishment shall be exempt from the payment of remuneration under *section 39(1)(g)* and shall not infringe the copyright in a work when lending to educational establishments and establishments to which members of the public have access and are specified by the Minister for the purpose of such borrowing.

If this proposal were accepted Section 57 would then read:

“Educational establishments and establishments to which members of the public have access and are specified by the Minister for that purpose shall be exempt from the payment of remuneration under *section 39(1)(g)* and shall not infringe the copyright

in a work by the lending of copies of the work. Any person or establishment shall be exempt from the payment of remuneration under *section 39(1)(g)* and shall not infringe the copyright in a work when lending to educational establishments and establishments to which members of the public have access and are specified by the Minister for the purpose of such borrowing.”

Such an amendment, together with Senator Henry’s proposed amendment, is necessary to give the Minister the power to allow specified libraries to lend, and to borrow, without seeking permission or paying a fee. Librarians are greatly concerned about any impediment to inter-lending between libraries, and between libraries and other sources, which is essential to the flow of information.

Note:

We wonder whether “for that purpose” in the first sentence of s. 57 may be ambiguous. Is it

- a) for the purpose of defining them as educational establishments or establishments to which members of the public have access, or
- b) for the purpose of lending?

(7) Review of licensing fee by the Controller

Sections 144 and 145

We welcome the fact that provision has been made (e.g., in Chapter 16, ss.144 & 145) to give the Controller a role in ensuring fair charging schemes by licensing bodies, and to make such schemes relatively transparent (s.168 (e)) by having “details of the scales of charges” included in the Register of Copyright Licensing Bodies. There were a few points which seemed unnecessarily restrictive, however.

First, it seems the terms of a scheme may be referred to the Controller only by an *organisation* representing needs of *persons*. Second, the Controller’s role seems to be limited to schemes of *licensing bodies* (bodies negotiating for more than one copyright owner), and registration by such bodies is, we understand, to be voluntary. Thirdly, we wonder whether the use of the term “scheme” excludes any fees which might not fall within a pre-defined scheme (if such a fee is possible).

A fourth, and most important point, relates not so much to the terms of the legislation, but to the way in which it will be operated. We are interested to know what system will be used to determine a pricing scheme. In particular, we are concerned that any system which involved keeping a record of actual copies of named works as and when they are made would introduce an impractical burden on librarians who are frequently required to provide copies of journal articles etc. for researchers served by their libraries, often as a matter of some urgency. (In many cases, the copy is made not because the original has not been purchased, but in order to provide a copy which may be written on, and held for long periods without putting an entire issue of a journal out of circulation.) We wonder whether the possible methods of assessing charges have been considered (possibilities would include the tedious pay-as-you-go system just mentioned, but there might be alternatives, e.g., a blanket licence with a fee based perhaps on the number of readers served by a library).

One final point is that, in assessing what is a fair price to charge for a copyright licence, account should be taken by the Controller (and licensing bodies) of the social role of the organisation seeking the license and its resources (e.g., there is a difference between a body involved in public administration, education, charitable objectives, etc. and one engaged in purely commercial gain).

The following amendment (No 31) was moved by Senator Coughlan on behalf of Senator Henry on the 29th June 1999:

Section 144

In page 85, subsection (1), line 19, after “a” to insert “licensing contract”

This amendment would allow for review of pricing on behalf of individuals as well as organisations, review of once-off contracts as well as schemes, and price demands by copyright owners as well as by licensing bodies.

The other two points (i.e. assessment of fees should not place an unbearable administrative burden on librarians, and, in determining what is fair, consideration should be given to the fees libraries already pay for subscriptions, and to their social role) may not arise in the context of the legislation but should be discussed with the Department of Enterprise Trade & Employment.

It was explained by the Minister that it is not the intention that the Bill should cover parties negotiating individual contracts where an individual bargaining process is involved. The amendment was, by leave, withdrawn.

(8) Prescribed libraries

We understand that, since some (slight) provision is being made (ss.58-66) for libraries, it is necessary to ensure that only *bona fide* libraries benefit from this and not everyone who possesses a collection of books.

The Minister may make Regulations under Section 58 for the purposes of prescribing libraries or archives and the conditions on which they may make works available to the public or may copy copyright works. However, we would hope that in listing “prescribed libraries and archives” the full breadth of the library/ information/ archive world will be represented (including Public, Academic, Governmental, Voluntary, Research, Commercial, Professional Libraries etc.). It is unclear at present as to what might constitute a prescribed library. Will it be confined to public libraries and/or libraries in educational establishments and representative institutions? Will it be a broad definition or specific listing? Will it include professional libraries in commercial organisations? Will it refer to membership of library organisations as a qualifying feature? In this context it is well to remember that even if your library is likely to be a prescribed library, your ability to obtain copies from another library (e.g., a firm which holds a journal not taken by any other library in the country) may be restricted if that other library is not prescribed, and therefore cannot readily make copies for you - see for example s. 58 (2) (c).

In addition to ensuring that an acceptable range of libraries is included in the “prescribed libraries” we should pay some attention to the conditions which may also be laid down in any future Ministerial regulation, which obviously has the potential to have a profound impact on the way libraries work.

On the 17th June 1999 the subject of the definition of a library was raised by Senator Hayes. Senator Coughlan suggested that it should be defined to describe it as a library of a public or institutional nature rather than a private collection. The Minister

assured the House that he would send it back to the parliamentary draftsman and in that context would be happy to consider requirements for greater clarity.

****** UPDATE**

At the meeting between the Dept of Enterprise Trade and Employment and the representative group of librarians the Department said that the criteria to be used for “prescribed libraries” would have to be very flexible. The Department would consult with interest groups when drawing up the criteria and would also accept submissions.

(9) The role of licensing agencies

If the librarians’ right freely to make photocopies etc. is to be too restricted, licensing arrangements will be very important. While there is no objection whatsoever to the principle of paying the authors fairly, we are concerned about the impact this may have on our day-to-day work. How the system will be operated after the Act becomes law will be of the greatest importance. If a blanket fee could be negotiated with a small number of licensing bodies, the matter would not be serious. However, it seems likely that the huge range of authors and publishers who produce materials (published commercially, privately, by voluntary bodies etc.) will not be covered by a small number of licensing bodies (some may opt not to have an arrangement with any licensing agency), and we are concerned that every request for a photocopy will result in a tedious search to establish whether the material requested is covered by a licence with a licensing body. Even listing of agencies in the register of licensing bodies is, we understand, to be voluntary.

****** UPDATE**

At present the only licensing agency in Ireland recognised by the International Federation of Reproduction Rights Organisations (IFRRO) is the Irish Copyright Licensing Agency (ICLA). ICLA was founded in 1992 in response, as stated in their submission to the Joint Oireachtas Committee on Enterprise and Small Business, to the perceived widespread bulk copying in educational establishments. This supports our contention that ‘bulk copying’ is the main problem for copyright holders, not the limited flexibility in the exemptions which librarians

are seeking. As detailed on their website (<http://www.ifrro.org/members/icla.html> - 15/12/1999) the classes of rightsholders which ICLA currently serves are publishers (92) and writers (1000). Educational institutions (c. 4,500) are the only class of users mentioned on the website as being served by them. To what extent will they try to serve other categories and how quickly? What provision can the Minister make for any libraries or organisations which find themselves not provided for in the interim between the Act becoming law and the provision of an adequate licensing system.

While the main interest of the ICLA is educational establishments which do bulk copying, nevertheless it made some points in its submission to the Joint Oireachtas Committee which would have worrying implications for a much wider group. Among the views expressed were:

- a wish that any establishment which makes a photocopier available should have to obtain a licence to copy from licensing bodies;
- a wish that the exemption for judicial proceedings should be allowed only insofar as necessary for judicial proceedings and only if done by staff of the Courts Service for that purpose (this overlooked the need to prepare in advance materials for a case which might or might not be settled before the actual hearing, the provision of material to counsel, and the fact that this copying is not done by Courts Service staff etc.);
- there was also resistance to the change from “private research and private study” back to “research and private study”.

The fact that the ICLA offers licences to copy works of authors who have not specifically mandated them to do so (and later approaches the writers if payments are made) was also confirmed.

(10) Government copyright

Special provisions have been made for copyright in Government materials, enactments and materials of the Houses of the Oireachtas. Ownership of copyright is not inconsistent with the Government announcement in March 1997 that it was “making copying and reproduction of all Acts of the Oireachtas and also statutory instruments copyright free” (i.e., copyright may still be owned, but a blanket licence is given to everyone to copy certain

classes of publication without further permission). Nevertheless, the assertion of copyright in the Bill might be seen as contrary to the spirit of that statement. At the very least, clarification, or a restatement of the government's position, is desirable,

especially in the light of publication of these materials on the Internet and on CD-ROM, and use of these materials from their electronic format?

(Continued on page 22)

Government and Oireachtas Copyright

General Note on Duration

Duration of Government Copyright is 125 years, OR 50 years from being made available to the public if made available within 75 years of being made - s.180 (4). Note: this is not as bad as people have generally thought - people often say that Government copyright is 125 years, but it seems that only applies to material which is not made publicly available within 75 years.

Duration of Oireachtas copyright (other than a Bill) is 50 years - s.182 (3).

In relation to Bills the situation in the Bill as passed by the Seanad is a little complex. Copyright belongs to the Oireachtas, but provisions of Government Copyright are applied to government Bills; nevertheless copyright seems to cease when the Bill is signed by the President or when the Bill fails (see below under Bills).

Government Copyright

S.180 states that where work is made by officers or employees of the Government or State in the course of their duties, the Government shall be the first owner of the copyright. (Government copyright - 125 years, or 50 years from being made available to the public if made available within 75 years of being made).

Oireachtas Copyright

S. 182 states that where a work is made by or under the direction or control of either or both of the Houses of the Oireachtas, the House or Houses of the Oireachtas shall be the first owner of the copyright. (Oireachtas copyright - 50 years).

Acts and Statutory Instruments

S.181. Following an amendment (proposed by Senator Brendan Ryan), s.181 provides that copyright in any enactment (defined as an Act or an instrument made thereunder) vests in the Houses of the Oireachtas. Previously, s. 181 (1) had stated that copyright in any enactment (i.e., an Act or SI, but not a Bill) vested in the Government.

DURATION of copyright in Acts & S.I.s is 50 years - s.181 (2). Senator Ryan had sought to change this to 1 year.

Bills

S.183. (1) Likewise, following an amendment (by Senator Brendan Ryan) copyright in government Bills will now belong not to the Government but to the Houses of the Oireachtas. The Oireachtas also owns copyright in Private Member's Bills - s.183 (2).

DURATION for Bills. The effect of s.183 (4) and s.183 (5) confuses the matter slightly. They seem to say that the provisions relating to Government copyright will apply to government Bills, and that the provisions relating to Oireachtas copyright will apply to Private Member's Bills. At first glance, this might suggest that the period of copyright which applies to Government copyright would apply to government Bills and the period of Oireachtas copyright to Private Member's Bills. However, the duration of copyright in all Bills seems instead to be governed by s.183 (3), which says that Copyright in the Bill subsists until it is signed by the President, or, if not signed, until the Bill is withdrawn or rejected or the session of the House ends. This gives a very short period of copyright in a Bill.

Although the legal significance of a Bill changes when it is signed by the President and is published as an Act (or when it fails to be passed), the actual document called a Bill continues to exist. We wonder whether it then ceases to be the subject of copyright. S.183 (6) confirms that, apart from a lapsed Bill which is reintroduced at a later session, no other copyright subsists in a Bill. Presumably the formula of words in the Bill "as passed" is protected since those words now enjoy protection as an Act. However, do earlier, different versions of a Bill, and Bills which lapse, simply cease to enjoy copyright protection?

Section 183 of the Bill as passed by the Seanad had just been amended. As a result, it has some tautological wording. Subsections 1 and 2 deal separately with government Bills and Private Member's Bills respectively, but have the same effect on both, yet the two categories of Bills are still treated differently in subsections 4 and 5, which apply Government copyright to one and Oireachtas copyright to the other. It is possible that it may be amended before the Bill is passed into law.

(Continued from page 21)

**** UPDATE

Permission to copy Bills, Acts and SIs

The situation on government copyright in the Bill as passed by the Seanad is quite complex (Sections 180-183). The net effect which most affects librarians is that, regardless of the duration of the copyright, it is clear that it will now be the Houses of the Oireachtas, and not the Government, which will own copyright in Bills, Acts and Statutory In-

struments. This would mean that the government statement of March 1996 (and there may have been an earlier statement in the 1980s) giving permission to copy Acts and SIs would no longer be valid and we would have to approach the Oireachtas for a restatement of the position (the permission to copy and publish Bills, Acts, and SIs could be provided by a statement of the relevant copyright owners, and does not have to be enshrined in this Bill). It would also be worthwhile enquiring whether the Oireachtas is as well-disposed as the Government has been to date to continue, for example, to make

There are various other bodies which are taking an interest in the development of the legislation on copyright and related areas, including the European and International Affairs Panel of the Library Association of Ireland (Web site: <http://www.iol.ie/~lai/Pol7.htm>) and groups which represent the viewpoints of universities in general. The Society of Archivists' (Irish Region) is concerned with the provisions which are relevant to archivists (Contact: Donal Moore, Waterford City Archives)



If you've got this far you deserve a Happy Christmas !

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