The Irish Copyright Licensing Agency (“ICLA”) welcomes the opportunity to comment on the consultation in relation to the extension of legal deposit.

**INTRODUCTION**

ICLA is a collective management organisation, “CMO”, which acts on behalf of authors, artists and publishers in licensing the copying of extracts from publications by photocopying and other reprographic means such as scanning. It was founded in 1992 by the Irish Writers’ Union (IWU) and the Publishers’ Association (Publishing Ireland) on behalf of authors and publishers of books, journals, magazines and other periodicals published in Ireland. It is a not for profit company, limited by guarantee and is a licensing body on the Register of Copyright Licensing Bodies maintained by the Controller of Patents\(^1\). Artistic works such as photographs, illustrations and drawing appearing within those works are covered by virtue of an agency agreement between ICLA and the Irish Visual Artists’ Rights Organisation (IVARO). A network of repertoire exchange agreements with similar organisations throughout the world means that ICLA’s collective licences also cover a wide number of overseas publications.

ICLA plays an important role in the publishing industry acting on behalf of authors, artists and publishers in licensing the copying of extracts from publications by photocopying and other reprographic means such as scanning. ICLA’s licences provide an effective solution for users who need to obtain lawful access to content at a reasonable price whilst ensuring a fair return to the creators and producers of that content.

We refer you to previous consultations held by the Department of Enterprise, Jobs & Innovation as part of a wide ranging Copyright Review process between 2011 and 2013.\(^2\)

**COPYRIGHT EXCEPTIONS**

The EU Copyright Directive (Directive 2001/29/C on the harmonisation of certain aspects of copyright and related rights in the information society) provides a finite list of exceptions which Member States may apply. It makes them all subject to the application of what is known as the


\(^2\) [https://www.djei.ie/en/Publications/Copyright-Review.html](https://www.djei.ie/en/Publications/Copyright-Review.html)
Berne Three Step Test outlined in the Berne Convention through Article 5(5) and apply to the exceptions and limitations set out in Articles 5.3 and 5.3. The Article states that exceptions and limitations “shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the right holder”.

Providing wide exceptions that could be interpreted as meaning that a collective licence is not required would therefore conflict with the “normal exploitation of the work”.

The requirements of the Berne Convention are reinforced in Article 9 of the TRIPS Agreement which requires its members to comply with Articles 1 to 21 (excluding Article 6bis on moral rights).

RESPONSE TO CONSULTATION

We would limit our response to the practical aspects of a positive response to question 1 of the consultation.

Should the policy of collecting, preserving and making available the published output of the nation for the benefit of the public be extended to include all contemporary publication formats of Irish interest including online digital formats e.g., .ie websites?

We have already recommended in earlier consultations that the extension of the current legal deposit scheme to digital material should be a provision designed through consultation with the National Library of Ireland, Trinity College Library and rightsholders to create a workable solution to the preservation of our national heritage.

We refer to the restrictions on use of non-print deposit materials in the UK legislation and recommend that the same are introduced into Irish law. We particularly refer to the guidelines for user access to deposited electronic publishers published by the British Library and recommend that similar regulations would be appropriate to ensure that any provision on making available of material would observe the limits of Article 5.3(n) EUCD.

We also recommend that such a broad extension of legal deposit of digital material would be subject to the confinement of these provisions to specific designated libraries, the National Library of Ireland and Trinity College Library, only.

We would also recommend the establishment of a Joint Committee or Advisory Group made up of both library and archives and rightsholders to facilitate a dispute resolution process regarding unreasonable prejudice to the interests of persons who publish works covered by such regulations.

Relevant considerations would be the scope of locations in which the deposited material may be used and the relevant security arrangements governing such uses.

We cannot support any policy which recommends that digital legal deposit material be accessible on the internet and feel that this cannot be facilitated by the current international treaty obligations.