

DÁIL ÉIREANN

AN ROGHCHOISTE UM GHNÓ, FIONTAIR AGUS NUÁLAÍOCHT

SELECT COMMITTEE ON BUSINESS, ENTERPRISE AND INNOVATION

Dé Céadaoin, 13 Meitheamh 2018

Wednesday, 13 June 2018

Tháinig an Roghchoiste le chéile ag 4.40 p.m.

The Select Committee met at 4.40 p.m.

Comhaltaí a bhí i láthair/Members present:

Teachtaí Dála/Deputies	
John Halligan (<i>Minister of State at the Department of Business, Enterprise and Innovation</i>),	
Billy Kelleher,	
James Lawless,	
Tom Neville,	
Maurice Quinlivan.	

Teachta/Deputy Mary Butler sa Chathaoir/in the Chair.

Copyright and Other Intellectual Property Law Provisions Bill 2018: Committee Stage

Chairman: The purpose of this meeting is to consider the Copyright and Other Intellectual Property Law Provisions Bill 2018, which was referred to the committee by order of the Dáil on 8 April 2018.

I welcome the Minister of State at the Department of Business, Enterprise and Innovation, Deputy Halligan, and his officials. Three amendments have been tabled. It is intended to conclude Committee Stage today. Is that agreed? Agreed. I refer members to the list of amendments groupings for debate, which has been circulated. We will proceed to consideration of the Bill.

Sections 1 to 26, inclusive, agreed to.

SECTION 27

Deputy James Lawless: I move amendment No. 1:

In page 21, line 41, to delete “thereof.”.” and substitute the following:

“thereof).

(4B) (a) It is not an infringement of the rights conferred by this Act if a Board or authority to which this section applies reproduces any work that is made available in the State through the internet.

(b) Where any work has been made available in the State through the internet without a restriction as to its access or use, then it is not an infringement of the rights conferred by this Act if a Board or authority to which this section applies reproduces that work and makes it available through the internet without a restriction as to its access or use, whether or not that work continues to be available elsewhere through the internet.

(c) For the purposes of this subsection, a work shall have been made available in the State through the internet where—

(i) it is made available to the public either from a website with a domain name which relates to the State or to a place within the State, or by similar or related means, or

(ii) it is made available to the public either by a person any of whose activities relating to the creation or the publication of the digital publication takes place within the State, or by a person with similar or related connections to the State.”.”.

I will outline the intention behind the amendment. The Bill is welcome and we support it in the main. The purpose of this amendment is to address a lacuna. Certain web content may not have been available to preserve a historical registry of the .ie domain name content. A web archive is like any other kind of archive such as a library or copyright. We took advice from people like Professor Eoin O’Dell in Trinity, who is the foremost expert in this area, a constitutional expert and an intellectual property expert. His advice is that this measure is needed to strengthen the

provisions. Essentially, the idea is to ensure that Internet content is treated in the same way as any other content for copyright purposes, such as content in a library or any other schedule.

That is the intention. It is put forward in good faith and comes from academic authority. I am interested in hearing the views of the Minister of State. I am always interested in hearing different views. If there are concerns about it, I am open to hearing them. Deputy Quinlivan may also wish to comment.

Deputy Maurice Quinlivan: That is fine.

Chairman: Is Deputy Quinlivan happy with that?

Deputy Maurice Quinlivan: Deputy Lawless has covered it.

Minister of State at the Department of Business, Enterprise and Innovation (Deputy John Halligan): I am pleased to bring the Copyright and Other Intellectual Property Law Provisions Bill 2018 before the committee and I thank it for the opportunity to do so. I have brought a number of Bills through the Houses but this is the most technical and detailed legislation with which I have had to deal. It is necessary to update and modernise the copyright regime in Ireland. I thank the representatives of all parties who were constructive and who, in general, support the Bill.

I will comment on the amendment put forward by Deputy Lawless and Deputy Quinlivan. I have listened to the rationale. I will explain why I do not propose to accept it. I spoke to the Chairman about the matter earlier. The amendment proposes the inclusion of a section that will permit a deposit institution, in other words, a board or authority, to reproduce any work made available in the State through the Internet - if the website is not paywall-protected or password-protected - without infringing the copyright of that work. Essentially, the amendment is to provide for a full digital deposit system that would facilitate the recording and making available of websites with Irish domain names, the *.ie* domain, that are not currently archived. Such action has been referred to as capturing or preserving the web.

In the first instance, the problem we have is that this is a matter for the Department of Culture, Heritage and the Gaeltacht, which is responsible for policy in this area. That makes matters a little difficult for my Department. The Department of Culture, Heritage and the Gaeltacht is currently undertaking a detailed and extensive examination and analysis of the proposal, after which it may then be presented to Government to seek approval to pursue this policy change. Such a change would include all necessary legislative amendments and seek Exchequer funding for the purpose proposed.

The Department and I understand the desire of the Deputies to capture the web for preservation purposes. However, it is essential that sufficient time is allocated to conduct the appropriate level of analysis and consider the potential impact such a proposal may have on the rights of right-holders.

I will cut to the chase. The difficulty we have is that if we were to go back and include this amendment and go through all the details of including the amendment, it would possibly set back the Bill. It could delay the 11 October deadline and delay all 28 member states from ratifying the treaty. Sections 24 and 26 include several changes in this regard. I could go through a great deal on the matter but basically this will go back to the Department of Culture, Heritage and the Gaeltacht, which is responsible for policy in this area. It is out of my remit and the remit

of my Department. It was considered by my Department as part of Professor O'Dell's report in 2013. That is where we stand in terms of the amendment.

I could easily say to the Deputies that I am not accepting the amendment but I do not want to go down that road. I hope the Deputies will not call for a vote on it. We should let it go to the Department of Culture, Heritage and the Gaeltacht, which is responsible for policy in this area and see where it lies. If we include the substantive provision, we would have to go through a legal process. We would have a great deal to do and that would set us back months. That is the position of the Department.

Deputy Maurice Quinlivan: If the amendment is withdrawn, will the matter be referred back to the Department of Culture, Heritage and the Gaeltacht? Will the amendment come back before the House on Report Stage?

Deputy John Halligan: If the amendment is withdrawn, we can get further clarification on the matter. Is that reasonable?

Deputy Maurice Quinlivan: We could also submit the amendment - or a version of it - again on Report Stage. Is that the case?

Deputy John Halligan: I do not know the technicalities of the matter. I think the Deputy can probably do it in the Dáil.

Chairman: He can. As the matter has now been flagged under section 27, the amendment can be retabled on Report Stage. The Deputy can raise it, but the amendment does not have to be accepted on Report Stage.

Deputy Maurice Quinlivan: We can definitely resubmit it however.

Chairman: The Deputy can do so because he has raised the matter under the section.

Deputy Maurice Quinlivan: Has the Chairman anticipated roughly when Report Stage might be taken? I will not hold her to it.

Chairman: According to what I have been told, Report Stage may be ordered at short notice. It is, therefore, recommended that amendments be submitted to the Bills Office as soon as possible. It is hoped to get the Bill through before the recess.

Deputy Maurice Quinlivan: Obviously, the amendment will be scrutinised to make sure it will go through.

Chairman: As the matter has now been addressed under section 27, the amendment can be retabled on Report Stage and debated on the floor of the Dáil.

Deputy John Halligan: The Department of Culture, Heritage and the Gaeltacht is actively working on the proposal and my Department is working with it. We are open to a technical Bill being brought forward in the autumn, which is a reasonable suggestion. I have examined the amendment in detail and there are elements which are reasonable proposals. If the Deputy has further specific queries in respect of it, we can provide a briefing in advance of Report Stage, if desired. That is very reasonable. Is the Deputy be okay with that?

Deputy Maurice Quinlivan: Yes.

Deputy James Lawless: I accept the Minister of State's rationale and bona fides, but I have

a couple of observations to make. The fact that something might impact on EU directives or regulations is not really a sufficient or good reason for us not to do it because our job, as legislators, is to scrutinise, challenge and produce the best case possible. Sometimes we can lead the European Union and do not have to accept its lead. The Minister of State has said there is work under way within his Department and others to analyse the position and perhaps come back with a better way of doing things. I am absolutely open to that approach and look forward to hearing the response. I am a little confused about the timelines because I have heard two dates being mentioned - October and before the recess. The Minister of State has mentioned that this has to be done by late October, but we are also hearing that there is a rush to get the legislation through before the recess. Perhaps the position might be clarified. It is an important objective and the amendment would do something important which we still need to do. However, if there is another way to do it, on which either the Minister of State's Department or another Department could come back to us, I look forward to engaging on it. I ask the Minister of State's Department or the relevant Department to engage with me and Deputy Maurice Quinlivan, perhaps even offline, and we can work something out.

Deputy John Halligan: Absolutely.

Deputy James Lawless: On that basis. I am prepared to withdraw the amendment, while reserving the right to reintroduce it on Report Stage.

Deputy John Halligan: That is appreciated. I know that the Deputy is very reasonable on all issues. What I should have said is there are legal, governance, regulatory and financial issues relevant to the proposal which, again, really set it back by months. Members of my Department will be absolutely delighted to sit down with the Deputy to see where we can push forward on the amendment.

Deputy James Lawless: The proposal came from Dr. Eoin O'Dell of Trinity College Dublin. As somebody who came of age in the digital age, I remember being in Trinity College Dublin in the late 1990s when the web was a shadow of what it is now. It was a couple of blue screens and Linux logins, from which it is now worlds apart. It is important that we do not lose sight of that in the debate.

Deputy John Halligan: I thank the Deputies.

Chairman: Is Deputy Maurice Quinlivan also prepared to withdraw the amendment?

Deputy Maurice Quinlivan: We will withdraw it while reserving the right to reintroduce in on Report Stage.

Deputy John Halligan: Absolutely. That is accepted.

Deputy Maurice Quinlivan: We will do so based on what the Minister of State has said. I thank him for his co-operation.

Amendment, by leave, withdrawn.

Section 27 agreed to.

Sections 28 to 39, inclusive, agreed to.

SECTION 40

Chairman: Amendments Nos. 2 and 3 are related and may be discussed together.

Deputy John Halligan: I move amendment No. 2:

In page 30, to delete lines 11 and 12 and substitute the following:

“(d) in section 127—

(i) in subsection (1), by the insertion of “and shall, subject to section 127A, also be capable of being treated as an application for a patent under Part II” after “European patent designating the State”,

(ii) in subsection (5), by the insertion of “designates the European Patent Office and” after “which”, and

(iii) in subsection (6), by the insertion of “designates the European Patent Office and” after “which”,

and”.

As these two technical amendments to the Patents Act 1992 are interlinked, I welcome the opportunity to address them together. Amendment No. 3 inserts a revised version of section 127A into the Patents Act. The purpose of section 127A is to open the national route for patent co-operation treaty, PCT, applications by allowing current patent applicants to choose to convert an international patent application into a national patent application. Applicants may choose to do so for a number of reasons. During the international applications process, which usually takes approximately 31 months to complete, applicants may discover that an international patent is not suitable. This may be due to the high costs involved, the patent not being commercially viable, protection in international markets no longer being necessary or the results of the search report and written opinion precluding the patent from being granted in certain countries. Section 127A facilitates the opening up of the national route for PCT applications which will provide an additional choice for applicants which has not been available up to now.

The differences between the revised section 127A and the version included in the Bill, as published, are a new section 127A(1) and a revised section 127A(2)(d). The new section 127A(1) allows the controller to assign the all-important patent filing date where an international PCT application has been refused a filing date owing to an error or omission by the international patenting organisation. The national patent application can then be accepted and processed in the normal way on the basis of this filing date.

Following publication of the Bill, users of the PCT route suggested an additional instance in which a PCT patent applicant might opt for a national as opposed to an international patent. The revised section 127A(2)(d) takes this on board. Under this provision, a PCT patent applicant may at any time within a 31 month period apply to the controller for that application to be treated as a national application, while the PCT application could be pursued separately. For example, the applicant may want a national patent for the purpose of securing an investment opportunity or to pursue infringement proceedings. Recognising the merit of the users’ proposal, I am happy to be able to facilitate the proposal by way of the amendment.

Section 127 of the Patents Act provides for the handling of international patent applications.

Amendment No. 2 contains three technical amendments to section 127 that are consequential on amendment No. 3. The amendments take into account that an international application designating the European Patent Office may also be treated as a national patent application under section 127A 2(d). I know that this all sounds exceptionally technical, but if the committee requires any further information or a breakdown of the detail, we can supply it to members of the committee.

Deputy James Lawless: I will take the Minister of State's word for it.

Deputy John Halligan: The Deputy need not worry; we will do so.

Deputy James Lawless: The Minister of State is okay.

Amendment agreed to.

Deputy John Halligan: I move amendment No. 3:

In page 30, to delete lines 14 to 42, and in page 31, to delete lines 1 to 13 and substitute the following:

“Circumstances in which international application for patent designating State shall be treated as application for patent under Part II

127A.(1) If an international application for a patent which designates the State is refused a filing date under the Treaty and following a request made in the prescribed manner and within the prescribed period, the Controller determines that the refusal was caused by an error or omission in an institution having functions under the Treaty, he may direct that the application shall be treated as an application under Part II, having such date of filing as he may direct.

(2) Subject to compliance with the prescribed conditions, an international application for a patent which designates the State shall be treated as an application under Part II if—

(a) the applicant withdraws the international application at any time prior to the expiration of 31 months from the filing date or the priority date of the application, whichever is the earlier, and the international processing procedures in the international phase are discontinued,

(b) the International Bureau determines, for any reason, that the international application or the designation of the State in it, is withdrawn or considered withdrawn,

(c) the international application is considered to be withdrawn on the ground that it has not, within the period prescribed by Article 20 (as that Article is construed in accordance with Rule 47 of the Treaty Regulations), 22(1) or 39(1) of the Treaty, been received by the European Patent Office, or

(d) the applicant decides, at any time prior to the expiration of 31 months from the filing date or the priority date of the international application designating the State, whichever is the earlier, to request the Controller to treat the international application as a patent application under Part II.

(3) Subject to compliance with the prescribed conditions, an international applica-

tion for a patent designating the State which has, under subsection (1) or (2), ceased to be deemed to be an application for a European patent designating the State shall, upon that cesser taking effect, be treated as an application under Part II.

(4) Subsection (5) applies to an international application for a patent designating the State which is treated as an application for a patent under Part II.

(5) An application for an international patent designating the State which has been published by the International Bureau in accordance with the Treaty in a language other than Irish or English shall be treated, for the purposes of sections 56 and 66(3), as published under section 28 when a translation into Irish or English of the claims of the application have been filed and published by the Office.

(6) Article 2 of the Treaty shall apply to the interpretation of this section as that Article applies to the interpretation of the Treaty.

(7) In this section, ‘Treaty Regulations’ means the Regulations under the Treaty as such Regulations are in force from 1 July 2016.”.”.

Amendment agreed to.

Section 40, as amended, agreed to.

Sections 41 to 105, inclusive, agreed to.

Schedules 1 to 4, inclusive, agreed to.

Title agreed to.

Bill reported with amendments.

Message to Dáil.

Chairman: In accordance with Standing Order 90, the following message will be sent to the Dáil:

The Select Committee on Business, Enterprise and Innovation has completed its consideration of the Copyright and Other Intellectual Property Law Provisions Bill 2018 and made amendments thereto.

The select committee adjourned at 5.15 p.m. until 4.45 p.m. on Wednesday, 20 June 2018.