[IE] Irish Request for ECJ Preliminary Ruling on Related Rights

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The commercial division of the High Court decided on 23 March 2010 that a preliminary ruling should be sought from the European Court of Justice on the interpretation of Articles 8 and 10 of Directive 92/100/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property, as codified by Directive 2006/115/EC. The case was taken by PPI, a licensing body which acts on behalf of phonogram producers who hold rights in sound recordings. The central issue is whether section 97 of the Irish Copyright Act 2000 is contrary to Ireland's obligations pursuant to the Directive, as it allows sound recordings to be heard in hotel and guesthouse bedrooms without payment, though not in areas such as nightclubs or concert areas where a discrete charge is made for admission. The judge found, inter alia, that under s.97 if a "like use" were made by hospitals, nursing homes, residential care facilities, prisons and other institutions, no payment (equitable remuneration) would be payable to the phonogram producers.

Having examined the relevant Articles of the Directives, related case law of the ECJ and the arguments of the parties to the case, the judge decided that it was necessary to seek the preliminary ruling of the ECJ on five questions, which she set out in her judgment. These concern: whether a hotel operator is a "user" making a "communication to the public" for the purposes of Article 8(2) of Codified Directive 2006/115/EC; if so, does Article 8(2) oblige Member States to provide a right to payment of equitable remuneration from the hotel proprietor in addition to equitable remuneration from the broadcaster for the playing of the phonogram; or does Article 10 permit member states to exempt hotel operators from the obligation to pay "a single equitable remuneration" on the grounds of "private use"; is a hotel operator who provides in a guest bedroom apparatus (other than a television or radio) and phonograms in physical or digital form which may be played on or heard from such apparatus a "user" making a "communication to the public" for the purposes of Article 8(2); and, if so, does Article 10 permit member states to exempt hotel operators from the obligation to pay "a single equitable remuneration" on the grounds of "private use".

Phonographic Performance [Ireland] Ltd v Ireland & Anor, High Court (Commercial), [2010] IEHC 79, judgment of 23 March 2010

http://www.bailii.org/ie/cases/IEHC/2010/H79.html

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