[IE] No Basis for Three Strike Copyright Rule

IRIS 2011-1:1/38

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The Irish High Court on 11 October 2010 ruled that remedies to block or disable access to Internet sites, to interrupt a transmission over a network or to cut off Internet access are not permitted by Irish law. This case was the latest of several taken by record companies against Internet service providers seeking to address the issue of copyright infringement over the Internet (see: IRIS 2005-10/28, IRIS 2006-4/26 and IRIS 2010-6/34).

The record companies (EMI, Sony, Universal, Warner and WEA) sought relief against Internet service provider UPC, requiring it to stop unauthorised copying and file-sharing from taking place over its network. Two separate reliefs were sought under the Copyright and Related Rights Act 2000.

The first was an injunction restraining UPC from making available copyright material to the public over its Internet service. No specific form of relief was sought and various technical solutions were put forward in argument before the court; however, the recording companies' preference was for a three strike solution similar to that agreed with another Internet service provider, Eircom (see IRIS 2010-6/34). The second relief sought was an order requiring UPC to block or disable access to thePirateBay.org and related domain names, IP addresses and URLs. Access to the Pirate Bay website had been blocked through Eircom's Internet service by a court order in 2009.

While the judge was critical of the attitude of UPC towards copyright infringement, he accepted it was not UPC that was making available the copyright material; UPC was a mere conduit. The crucial issue for the court was whether Irish law allowed it to interfere with the transit through the UPC network of unauthorised copyright material. Following a review of the wording of s.40 of the Copyright and Related Rights Act 2000, the judge concluded that the only relevant power available to him was to require the removal of copyright material by an Internet hosting service. There is no provision for the blocking, diverting or interrupting of transient communications in Irish law.

The judge also confirmed that, while the Electronic Commerce Directive 2000/31/EC provides for relief for the infringement of copyright through injunctions and the Copyright Directive 2001/29/EC allows copyright holders to apply for such injunctions against Internet service providers, it is left to the

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national law of member states to set out the conditions and modalities of such injunctions. The judge contrasted the limited remedies available in Irish law dating from the year 2000 with those currently available in the United Kingdom, France and the United States, and those proposed in legislation in Belgium and New Zealand. He concluded that by failing to provide similar remedies, the reliefs sought by the record companies could not be granted in this case and that Ireland is not yet fully in compliance with its obligations under European law.

The judge also considered two of his own previous judgments. A similar action was taken by record companies against Eircom (see IRIS 2010-6/34). The parties settled by way of a three strikes policy for infringing subscribers. The court was later asked to assess the compatibility of the settlement with the Data Protection Acts 1998-2003 and found that the settlement was lawful and could be implemented. That judgment remains unaffected by the UPC one. However, the judge found that his earlier judgment blocking the Pirate Bay website through Eircom (arrived at without hearing any evidence from Eircom because of the terms of a settlement between the parties) was wrong. The legislative basis to block a website does not exist in Irish law. It is open to the parties to that case, therefore, to reapply to the court if they wish.

EMI Records (Ireland) Ltd & Others. v. UPC Communications Ireland Ltd [2010] IEHC 377, judgment of 11 October 2010

http://www.courts.ie/Judgments.nsf/Webpages/HomePage

Blocking of Pirate Bay Case EMI Records (Ireland) Ltd & Others v. Eircom Ltd [2009] IEHC 411, judgment of 24 July 2009

http://www.bailii.org/ie/cases/IEHC/2009/H411.html

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