[IE] Copyright Injunctions Law Introduced

IRIS 2012-4:1/31

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On 29 February 2012 the Minister for Jobs, Innovation and Enterprise signed into law the European Union (Copyright and Related Rights) Regulations 2012. The statutory instrument amends s.40 and s.205 of the Copyright and Related Rights Act 2000 by inserting provisions that permit the owner of the copyright or a related right in a work to apply to the High Court for an injunction against an intermediary whose services are used by a third party to infringe a copyright or related right in respect of that work.

The statutory instrument describes an intermediary, against whom an application for an injunction can be made, as one to whom Article 8(3) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society applies. No further guidance is provided in the statutory instrument as to the specific remedies which may be applied by the courts.

The amendment follows from the High Court decision of 11 October 2010 in EMI v. UPC [2010] IEHC 377, a case taken by five record companies (EMI, Sony, Universal, Warner and WEA) against the Internet service provider UPC, where the judge held that there was no provision in Irish law for the blocking, diverting or interrupting of transient Internet communications (see IRIS 2011-1/38). The court further advised that in not providing such remedies Ireland was not yet fully in compliance with its obligations under European law and that legislative intervention was required.

The background to the introduction of the statutory instrument is also informed by a series of cases taken by the 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). These cases led to an agreement between one Internet service provider, Eircom, and the record companies to introduce a graduated response known as the three-strikes system to terminate the connections of persistent copyright infringers.

On 5 December 2011 the Irish Data Protection Commissioner issued an enforcement notice directing Eircom to stop implementing the three-strikes system as it breaches data protection law. Subsequently, on 28 February 2012, four record companies (EMI, Sony, Universal and Warner) issued proceedings

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challenging the Data Protection Commissioner's decision to issue an enforcement notice against Eircom. These proceedings are pending.

Following the EMI v. UPC judgment, the Department of Jobs, Innovation and Enterprise indicated that they would restate the law to expressly provide for rightsholders to make applications for injunctions against intermediaries. The Department sought submissions on a proposed wording for the statutory instrument, through a public consultation process, in July 2011.

Following the initial consultation process the Department had indicated that they would introduce the statutory instrument early in 2012. However on 10 January 2012 five record companies (EMI, Sony, Universal, Warner and WEA) issued proceedings against that state for the alleged failure to implement aspects of EU copyright law. A revised wording for the statutory instrument was then published on 26 January 2012. The revisions from the initial wording were confined to limiting the scope of those against whom injunctions could be sought, namely to intermediaries as defined in the Article 8(3) of Directive 2001/29/EC. This was followed by a short period of intense media scrutiny and prompted an emergency Dáil debate (lower house of Irish Parliament) but no further amendments or changes to the proposed statutory instrument were accepted.

Department for Enterprise, Jobs and Innovation, "Copyright S.I. signed and consultation process launched on copyright and innovation - Minister Sherlock", 29 February 2012

http://www.djei.ie/press/2012/20120229c.htm

European Union (Copyright and Related Rights) Regulations 2012 (S.I. no. 59 of 2012)

http://www.irishstatutebook.ie/2012/en/si/0059.html

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