[IE] Pirate Bay Blocked and Three-Strikes Protocol Continues

IRIS 2013-10:1/29

Damien McCallig
School of Law, National University of Ireland, Galway

On 12 June 2013 the Irish High Court granted an injunction requiring six Internet service providers (UPC, Vodafone, Imagine, Digiweb, Hutchinson 3G and Telefonica) to block the website known as The Pirate Bay. This is the first time an injunction has been granted under the controversial copyright injunction law that was introduced in February 2012 (see IRIS 2012-4/31).

The Pirate Bay is already blocked by another Internet service provider (ISP), Eircom, without a court order. Four music companies (EMI, Sony, Warner and Universal), sought the order from the court. The ISPs did not oppose the application and indicated their willingness to submit to any appropriate order. The blocking order and related protocol is drafted in terms that do not require a new application to the court if The Pirate Bay changes domain names, IP addresses or URLs.

The court also ordered that the cost of implementing the blocking is to be borne by the ISPs. With respect to the costs of the proceedings themselves the court ordered that the ISPs should bear their own costs. However, one of the ISPs (Vodafone), who had a significant input into the preparation of the protocol related to the order, was awarded its costs up to the point when that protocol was agreed with the music companies.

At an earlier stage in the proceedings Digital Rights Ireland Limited (DRI), an organisation established to defend civil, human and legal rights in the digital age, sought to intervene in the case as an amicus curiae (see IRIS 2013-3/19). DRI, claimed that as a neutral party they could bring expertise to the court with respect to human rights and the public interest, that otherwise might not be raised by the parties to the case, who primarily will protect their own discreet interests.

The record companies opposed the application by DRI to join the case, and on 3 May 2013 the Irish High Court refused the application. The court held that DRI could not be regarded as a neutral party, in light of a campaign and blog postings that were undertaken by DRI's Chairman and solicitors, and related to the introduction of the injunction law. Also the court did not believe that, at this stage in proceedings, DRI had demonstrated circumstances that would warrant

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appointment as amicus curiae.

In separate proceedings, the Irish Supreme Court on 3 July 2013 upheld the earlier High Court decision (see IRIS 2012-8/29) that found that an enforcement notice, issued by the Data Protection Commissioner, directing ISP, Eircom, to cease the implementation of the three-strikes protocol on the grounds that it breached data protection and privacy law, was invalid.

The appeal focused on the technical legal issues of whether the music companies were entitled to judicially review the enforcement notice and whether the notice was invalid for failure to give adequate reasons. The Supreme Court decision means that Eircom can continue to implement the graduated response, known as the three-strikes protocol, which provides that the connections of persistent copyright infringers are eventually terminated (see IRIS 2005-10/28, IRIS 2006-4/26 and IRIS 2010-6/34).

EMI Records Ireland Ltd & ors v. UPC Communications Ireland Limited & ors [2013] IEHC 274

http://www.courts.ie/__80256F2B00356A6B.nsf/0/EA0A2BBF9271B20380257B9B003B45BD?Open&Highlight=0,emi,~language_en~

EMI Records Ireland Ltd & ors v. UPC Communications Ireland Limited & ors [2013] IEHC 204

http://www.courts.ie/__80256F2B00356A6B.nsf/0/352FD12D66FA458B80257B7500497FE1?Open&Highlight=0,emi,~language_en~

EMI Records Ireland Ltd & ors v. Data Protection Commissioner [2013] IESC 34

http://www.courts.ie/Judgments.nsf/f69fbd31c73dda2580256cd400020877/c9861b9cda79509b80257b9d004e9a7a?OpenDocument

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