



Irish High Court on Responses to Unauthorized Downloading

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The decision of the High Court of Ireland (which is a trial level court and not an appellate court) in *EMI Records (Ireland) et al v UPC Communications* ([full text of the decision available here](#)) is a fascinating (if long) read. The plaintiffs sought an injunction against an internet service provider to "prevent the theft of their copyright by third parties illegally downloading it over the internet". Peculiarly, according to the decision, "the form of injunction is left to the discretion of the court". Analyses of the decision which are well-worth reading are offered by Barry Sookman and James Gannon. In any event, in light of his finding that "the business of the record companies is being devastated by internet piracy", it is clear from the tenor of the decision that Mr. Justice Charleton of the High Court really, really wanted to grant an injunction - but found that the High Court lacked the jurisdiction to do so. The High Court's conclusion:

Solutions are available to the problem of internet copyright piracy. It is not surprising that the legislative response laid down in our country in the Copyright and Related Rights Act 2000, at a time when this problem was not perceived to be as threatening to the creative and retail economy as it has become in 2010, has made no proper provision for the blocking, diverting or interrupting of internet communications intent on breaching copyright. In failing to provide legislative provisions for blocking, diverting and interrupting internet copyright theft, Ireland is not yet fully in compliance with its obligations under European law. Instead, the only relevant power that the courts are given is to require an internet hosting service to remove copyright material. Respecting, as it does, the doctrine of separation of powers and the rule of law, the Court cannot move to grant injunctive relief to the recording companies against internet piracy, even though that relief is merited on the facts.

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