

Responsiveness

ARTHUR COX

E X P E C T E X C E L L E N C E

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Media Group Briefing

Irish Government Publishes Draft Online Anti-Piracy Regulations

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Following the High Court decision in *EMI and Others v. UPC* in October of 2010 and a consultation process which began in the summer of 2011, the Irish government have published draft legislation, which, if passed, will give rights holders the ability to take legal action against internet service providers and other intermediaries whose networks and services are being used by copyright infringers.

The draft regulations update both *Section 40 (Rights of Copyright Owner – making available right)* and *Section 205 (Performance Rights – making available to public copies of recordings of qualifying performances)* of the *Copyright and Related Rights Act, 2000* (the “Act”) by providing that the owner of a copyright work or the rights owner of any performing right or performer’s moral rights may apply to the Irish High Court for an injunction against an intermediary whose services are being used by a third party to infringe a copyright or related right.

The draft legislation does not prescribe the requirements for obtaining an injunction but provide that the courts must have due regard to the rights of any person likely to be affected by virtue of the grant of any such injunction and further, that the court may grant and give such directions as it considers appropriate in all circumstances.

The passing of the proposed legislation will represent a significant step in Ireland in the fight against online copyright piracy. The draft regulations stem from a decision of Justice Charleton in a judgement given on 11 October 2010 in *EMI and Others v. UPC*. In the judgement, Justice Charleton was direct in his criticism of UPC’s attitude towards the illegal file sharing of copyright material and made it clear that the evidence presented established that there was a substantial problem on the UPC network in relation to copyright piracy.

The Judge was inclined to grant the applicants an injunction, however, was constrained by a defect in existing copyright legislation from granting the injunctions requested. The Judge made it clear that legislative intervention would be required, if the Oireachtas saw fit, to protect constitutional rights to copyright and to foster the national resource of creativity. He also made it clear in his conclusions that, in failing to provide legislative provisions for blocking, diverting and interrupting internet copyright theft, Ireland was not fully in compliance with its obligations under European law, specifically the *Copyright Directive and the Enforcement Directive*, as they are commonly known.

It remains to be seen if and when the regulations will be passed into law in Ireland, what, if any, amendments are incorporated and, more importantly, how the Irish courts will choose to interpret and implement the regulations.

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

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