
Kluwer Copyright Blog

Ireland's SOPA

Kluwer Copyright Blogger · Thursday, January 26th, 2012

by **Linda Scales, solicitor, Dublin**. A copyright controversy has been raging in Ireland this week. The SOPA/PIPA debate fuelled fears that an unpublished piece of secondary legislation would provide a regime similar to that proposed in the US. The Irish instrument was labelled “Ireland’s SOPA”, even though no one knew what the document contained.

In the background to this controversy is the “UPC case”, in which the Irish High Court determined that Article 8(3) of the Information Society Directive had not been adequately transposed into Irish law. In consequence, the court was unable to grant injunctions to the music industry plaintiffs to restrain the ISP from permitting its services to be used for infringing copyright in sound recordings, and to oblige it to block access to Pirate Bay and related sites. This [judgment](#) was handed down in October 2010. The Government was slow to move to fill the lacuna created by the decision. In July 2011 it published the proposed text of a Statutory Instrument which provided for minimal implementation of Article 8(3). But by early January, when the instrument had still not been signed, and when rumours were circulating that the text was undergoing review following the decision of the CJEU in the case of [Scarlett Extended v SABAM](#), the plaintiffs in the UPC case issued proceedings against the State citing failure to implement the Directive and seeking redress based on the [Frankovich](#) principle.

The rising temperature of the debate forced the Government to publish the new text of [the proposed SI](#) today, January 26.

Far from being “Ireland’s SOPA”, the instrument is a slight, vague and mild-mannered piece. Treading ever so carefully, it permits the copyright owner “to apply for an injunction against an intermediary to whom paragraph 3 of Article 8.... applies”. In considering the application, the court must have regard to the “rights of any person likely to be affected” and shall give “such directions ... as the court considers appropriate in all the circumstances”.

And that’s it!

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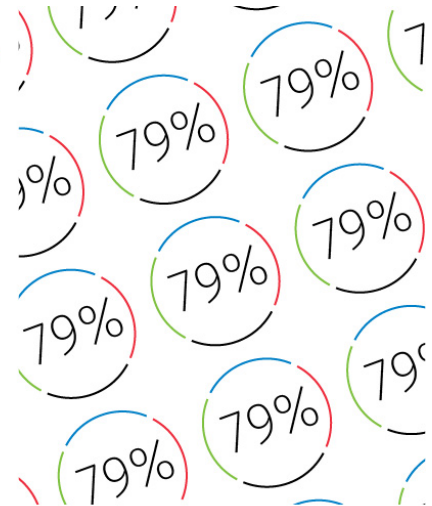
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