



PRESS RELEASE

GENERAL MONITORING OBLIGATION INCOMPATIBLE WITH E-COMMERCE DIRECTIVE AND FUNDAMENTAL RIGHTS

EU LAW PRECLUDES THE IMPOSITION OF AN INJUNCTION MADE AGAINST AN INTERNET SERVICE PROVIDER REQUIRING IT TO INSTALL A SYSTEM FOR FILTERING ALL ELECTRONIC COMMUNICATIONS PASSING VIA ITS SERVICES WHICH APPLIES INDISCRIMINATELY TO ALL ITS CUSTOMERS, AS A PREVENTIVE MEASURE, EXCLUSIVELY AT ITS EXPENSE, AND FOR AN UNLIMITED PERIOD.

The Court of Justice of the European Union ruled today in the long-awaited Scarlet SABAM case, holding that a general obligation for an ISP to monitor communications on its network is incompatible with the Directive on Electronic Commerce and with fundamental rights.

In 2004, SABAM, a Belgian music copyright group, was granted an injunction against ISP Scarlet, ordering it to make it impossible for its customers to send or receive electronic files containing musical works in SABAM's repertoire. The Belgian Court of Appeals, on appeal from Scarlet, referred this case to the CJEU, whose ruling today presents a positive outcome for ISPs across Europe.

This outcome is of particular importance for us since the Department of Jobs, Enterprise and Innovation in June tabled wording for a Statutory Instrument which would purportedly bring Ireland into line with its European obligations under the Copyright and E-Commerce Directives. The injunctions regime provided for in the broad wording of the proposal, however, could potentially encompass not only blocking but mass filtering obligations and furthermore, the eventual introduction of a graduated response system is not inconceivable in these conditions. Today's ruling will certainly set limits on this.

The CJEU has stated that the imposition of such an injunction would result in a serious infringement of Scarlet's freedom to conduct its business as it would require the installation of costly and complicated measures exclusively at its own expense. ISPai has always condemned the improper use of our members' networks to illicitly obtain copyrighted works, and has continually advocated the development of new business models exploiting the Internet to the benefit of musicians and artists.

If measures were to be imposed on our members, they should never interfere with their freedom to conduct legitimate business or force them to expend unreasonable costs. Today's ruling sets an extremely important precedent for ISPs and will undoubtedly be seen as a landmark judgment for the digital age.

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