



TABS™ Update Technology And Brands

September 2008

Issue 37

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DVD Piracy

Companies and retail owners should be aware of the need to combat DVD piracy which is to the forefront this month following the recent launch by the Minister for Justice, Equality and Law Reform, Mr Dermot Ahern T.D. (“the Minister”) of an interdepartmental report on measures to combat DVD piracy (“the Report”). The Departments involved in the preparation of the Report include the Departments of Justice, Equality and Law Reform; Enterprise, Trade and Employment; and Social & Family Affairs as well as the Revenue Commissioners and An Garda Síochána.

In a press release, the Minister stated that there seems to be a casual assumption that the victims of this type of crime are faceless international corporations. This is not the case as ordinary employment and business livelihoods in Ireland are being threatened. Although the Gardai are proactive in combating DVD piracy, the underworld of organised criminals is resourceful. Accordingly a number of recommendations have been made to assist in the battle.

On the operational front, the Report has recommended that a regional co-ordination structure (namely an Enforcement Contact Group) be established which would include the Gardai, Revenue Commissioners and the Irish Film Censors Office. These parties should then work closely with industry enforcement groups (like INFACT and IRMA) to tackle the problem.

On the legislative front, the Report has recommended that the Gardai be given the power to detain and seize vehicles that are being used to facilitate the production, distribution or sale of pirated goods; that penalties for the sale of products without an IFCO certificate or without an IFCO licence to supply be increased; legislative measures to effectively penalise persons who permit their land or other property to be used in the sale or production of pirated material be explored; and that statutory provision permit the sharing of information gathered during investigations between Gardai and other State enforcement agencies to facilitate the investigation of Revenue and Social Welfare abuses.

Other recommendations include the necessity for industry to prioritise investment in security within production processes and also in the development of encryption methods to accompany the introduction of new distribution technologies. Furthermore, price competitive and marketing policies should form part of the industry’s response to combating piracy.

The Report also recommends that awareness rising and public education on the part of the industry be stepped up, with particular emphasis on raising awareness amongst young people. Furthermore, the scope of co-operation with other intellectual property based businesses such as the software industry should be explored.

Intellectual property rights are becoming increasingly important not only to the Irish but global economy. Therefore, it is important that these rights be vigorously protected within Ireland just as we would expect other countries to do the same for Irish intellectual property owners. Piracy and counterfeit products damage the economy, pose a threat to health and safety and funds organised crime and terrorism.

Therefore, the next time companies or consumers are tempted to buy or sell pirated DVDs think of the cost as well as the legal consequences that can arise from that sale. For further information on piracy and anti-counterfeiting, contact your legal advisor.



Harry Potter wins Copyright Battle

Companies and individuals that prepare reference guides to well known books should take note of the recent New York decision involving J K Rowling.

Stephen Vander Ark created The Harry Potter Lexicon (a website cataloguing the details of the fictional world of Harry Potter). However, when it became public that he intended to release a printed version of the Lexicon, this was challenged by J K Rowling and Warner Brothers (the producers of the Harry Potter films) claiming copyright infringement. Vander Ark and his publishers raised the defence of "fair use" which allows copyright protected work to be used in certain circumstances.

After examination of the facts, the New York District Court banned the publication on the grounds that it did not fall within the fair use exception. The fact that the Lexicon was a commercial product, designed to be profitable, weighed against a finding of fair use. While fair use depends not just on the amount of material copied but on the nature of the copying and use, the court was of the view that too much of JK Rowling's creative work had been copied. A permanent injunction, with damages of \$6,750, was awarded.

It is important to note that the above decision does not outlaw reference guides. However, it illustrates that the intellectual property rights of a creator will be infringed if a substantial part of their work is taken without their permission.

If companies and individuals want to use copyright protected material, the safest course of action is to seek permission before using the material. If you are in doubt as to whether you are lawfully using the material of a third party, immediately contact your legal advisor before a summons or writ is served!

The "Toll" rings for the National Roads Authority

The importance of complying with data protection legislation was highlighted earlier this month when the Data Protection Commissioner announced that it was in discussion with the National Roads Authority ("NRA") regarding the storage by the NRA of personal details of motorists using the new barrier-free tolling system on Dublin's M50 motorway.

The NRA's policy is to retain vehicle details of motorists using the motorway for six months in order to enforce payment of the toll where disputes arise. The NRA is co-operating with the Data Protection Commissioner on the issue of access to names, addresses and other personal information of motorists.

As all companies must comply with data protection legislation, it is essential that they review their operations to ensure that they are lawfully collecting, storing and using personal data. Act today before the Data Protection Commissioner comes knocking!

And Finally....

Maureen Daly, Partner and Head of the Technology & Intellectual Property Unit was one of the legal experts quoted in an article entitled "*Safeguarding your intellectual property*" in the July/August edition of Enterprise Ireland's publication, "Technology Ireland". The article examines the importance and benefits of intellectual property rights for businesses. If you have queries on the issues raised in the article, please contact Maureen Daly (m.daly@beauchamps.ie) or any member of the Technology & Intellectual Property Unit.

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