

Intellectual Property & Technology Unit

TERMS AND CONDITIONS MAY PROTECT WEBSITES FROM INFRINGING SCREEN SCRAPERS: RYANAIR V BILLIGFLUEGE.DE

Website owners must often contend with the activities of third party screen scrapers. The website owners are now in a stronger position due to a recent decision by Mr. Justice Michael Hanna in the Irish High Court in the case of **Ryanair Limited v Billigfluege.de GmbH** delivered on 26 February 2010. The case is currently under appeal to the Supreme Court.

This Ryanair case establishes a useful precedent in the area of jurisdiction over websites generally. In particular, it establishes the jurisdiction of the Irish Court in relation to the Terms of Use on Ryanair's website, including the prohibitions contained in those Terms of Use against screen scraping.

It reinforces the need for robust Terms of Use.

Ryanair Limited .v. Billigfluege

The Ryanair case concerns a claim by Ryanair that the service offered by the Billigfluege website breaches the Terms of Use and trade mark, copyright and database rights of Ryanair's website. Billigfluege operates a price comparison website that allows users of their website to compare prices for flights. In order to provide this service, Billigfluege takes information from Ryanair's website (without Ryanair's consent), an activity known as "screen scraping", and provides that information to its users for a fee.

Mr. Justice Hanna's decision relates only to a preliminary issue as to whether the case should be heard in Ireland or Germany. It is not a full decision on the allegation of screen scraping or the other issues which are before the Court.

Preliminary Jurisdictional Issue

In any dispute there is an initial issue that must always be determined: where should a defendant be sued? Billigfluege, a German based company argued that it was not appropriate that proceedings be brought in Ireland and that proceedings should be brought in Germany. They relied on Article 2 of the Brussels Regulation (the set of rules regulating which courts have jurisdiction in legal disputes of a civil or commercial nature between individuals/companies resident in different member states of the European Union). Article 2 provides that a defendant should be sued in its own domicile. However, Ryanair argued that while that may be the general rule, a number of exemptions to that general rule exist, most notably that the parties can contract that the courts and the law of a particular jurisdiction can apply to disputes under that contract.

Ryanair claimed that by Billigfluege entering the Ryanair website and extracting content from that website that it agreed to be bound by Ryanair's Terms of Use which contained a provision that Irish courts had exclusive jurisdiction over all disputes. Billigfluege denied that there was any contract in existence between it and Ryanair. The Court had to decide the issue.

Contract Between the Parties

The Court noted that it was a well established general principle of law that parties to a contract cannot be bound by terms which they have not had the opportunity of reading prior to making the contract. The Court stated that *that is not to say that a party will not be bound because they have not read the terms.*

In the Ryanair case, the exclusive jurisdiction clause of Ireland was contained in the Terms of Use on Ryanair's website, highlighted by way of a hyperlink. The Court found in such circumstances that the Terms of Use on Ryanair's website were *fairly*

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brought to the attention of the other party. The Court noted that the Terms of Use were not hidden in any awkward part of the screen or in any way concealed or difficult to find and found in favour of Ryanair, the exclusive jurisdiction clause was binding on Billigfluege.

The Issues of “Use”

Billigfluege also argued that regardless of the validity of the Terms of Use that Billigfluege did not use Ryanair’s website, Billigfluege’s customer did. The Court held that Billigfluege is a commercial entity which engaged with the Ryanair website for the purposes of gleaning or scraping information from it for onward transmission to their own customers. The Court stated that *to claim that activity is not ‘use’ of the Plaintiff’s website by the Defendant is an exercise in semantics and an unconvincing argument.*

The Irish Court will now hear the full case and determine whether Billigfluege infringed Ryanair’s intellectual property rights and/or breached its Terms of Use as a result of the alleged screen scraping activity.

Recommendations

The main point to take from this decision is that if you are a website owner and you wish to prevent your content being misappropriated by third parties, whether you are an airline operator, a job recruitment website or operating any other form of online sales activity, it is imperative that your Terms of Use be comprehensive and up to date to ensure that you are appropriately protected. The Terms of Use must be *fairly brought to the attention of the other party* meaning that the terms must be brought to the customer’s attention in such a manner that the terms are incorporated into the contract with the customer. Basic principles will always apply: offer, acceptance, consideration and intention to create legal relations. We recommend that (i) your Terms of Use be reviewed periodically; and (ii) the manner in which your Terms of Use are displayed on your website be reviewed; to ensure that you and your business is protected.

Further Information



For further information, please contact:

Áine Matthews
amatthews@lkshields.ie

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LK SHIELDS SOLICITORS

39/40 Upper Mount Street, Dublin 2, Ireland

T +353 1 661 0866 | F +353 1 661 0883 | E info@lkshields.ie | W www.lkshields.ie