



LITIGATION AND DISPUTE RESOLUTION

ISPs Face the Cost of Implementing a Graduated Response System to Deal with Copyright Infringers

by **Ciarán Markey, James Byrne**

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UPC Communications ordered to pay 80% of the capital cost to set up a three strikes system.

UPC Communications, an internet service provider (ISP), has been ordered by the Irish Commercial Court to implement a graduated response system (GRS) to deal with its subscribers, or customers, who have been found to be infringing the copyright of Sony, Universal or Warner (the Plaintiffs) through its service.

The Court accepted that it will cost UPC between €800,000 and €940,000 to set up the GRS and that there will be additional operation costs of between €125,000 and €150,000.

It seems that this is the world's first court-ordered GRS. It's possible that similar cases might now be taken against ISPs throughout the EU as the Order was made under the Copyright and Related Rights Act 2000, the Irish legislation that gives effect to the EU Copyright Directive 2001/29/EC.

Details of the graduated response system ordered by the Court

- Business users are excluded.
- UPC will be required to set up a system within twelve to fifteen months to implement the GRS. UPC is to pay 80% of the capital costs estimated at between €800,000 and €940,000. Sony, Universal and Warner are to pay the remaining 20%.
- Up to 2,500 infringement notifications per month, containing identified copyright infringing IP addresses, may be sent by the Plaintiffs to UPC. These IP addresses are typically gathered by an agent, e.g. Mark Monitor (previously trading as DtecNet).
- UPC will then internally identify the relevant subscriber and, on the first two occasions when a subscriber is identified, issue a cease and desist letter to the subscriber.
- When a subscriber has been identified a third time, UPC will inform the Plaintiffs of the relevant IP addresses, dates and time stamps for those three identified infringements. The Plaintiffs may then make an application to the Court seeking an order against UPC to release the identity of the subscriber through a streamlined process, avoiding a full court application, known as a Norwich Pharmacal Order.
- Using this information, the Plaintiffs may also seek an order for the termination of the subscriber's internet broadband service and/or such relief as they may wish to seek against the subscriber directly.

Sony Music Entertainment [Ireland] Ltd & Ors v UPC Communications Ireland Limited No. 1 [2015] IEHC 317, No. 2 [2015] IEHC 386 and No. 3 [2015] IEHC 388.

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