

Originating
Summons

PLENARY

THE HIGH COURT

2006 NO. 3785 P

BETWEEN:

DIGITAL RIGHTS IRELAND LIMITED

Plaintiff

Form No 1
Order 1 Rule 2

-AND

THE MINISTER FOR COMMUNICATIONS, MARINE
AND NATURAL RESOURCES, THE MINISTER FOR
JUSTICE, EQUALITY AND LAW REFORM, THE
COMMISSIONER OF THE GARDA SIOCHANA,
IRELAND AND THE ATTORNEY GENERAL

Defendants

To the Defendants:

The Minister For Communications, Marine and Natural
Resources, The Minister for Justice, Equality and Law
Reform, The Commissioner of the Garda Siochana,
Ireland and The Attorney General



having their principal offices

Of Leeson Lane, Dublin 2, St. Stephen's Green, Dublin 2,
Garda HQ Phoenix Park, Dublin 7 and New Government
Buildings Upper Mount St. Dublin 2 respectively

This Plenary Summons is to require that within eight days after the
service thereof upon you (exclusive of the day of such service) you in
person, or by Solicitor do enter an appearance in the Central Office,
Four Courts, Dublin, in the above action; AND TAKE NOTICE that in
default of your so doing the Plaintiff may proceed therein and Judgment
may be given in your absence.

BY ORDER - The Honourable John L. Murray

Chief Justice of Ireland the *11* day of *AUGUST*
Thousand and Six ~~July~~



N.B. This Summons is to be served within ~~twelve~~ *twelve* Calendar
Months from the date thereof, or if renewed, within Six
Calendar Months from the date of the last renewal, including
the day of such date, and not afterwards.

The Defendant may appear hereto by entering an appearance
either personally or by Solicitor, at the Central Office, Four
Courts, Dublin 7.



GENERAL ENDORSEMENT OF CLAIM

The Plaintiffs Claim is for:

- A. A Declaration that the First Named Defendant acted in contravention of Section 2 (1) of the Data Protection Act 1988 as substituted by the Data Protection (Amendment) Act 2003 by obtaining unfairly and processing unfairly, data relating to, inter alia, the Plaintiff, its members and other users of mobile phones, and obtaining said data for illegitimate purposes.
- B. A Declaration that the First Named Defendant acted in contravention of Section 2A of the Data Protection Act 1988 as inserted by the Data Protection (Amendment) Act 2003 by processing data relating to, inter alia, the Plaintiff, its members and other users of mobile phones, unfairly and without their consent and without complying with the provisions of the Data Protection Acts 1988 and 2003.
- C. A Declaration that the First Named Defendant acted in contravention of Article 6 (1) and (2) of the EU Treaty, (as read under the rubric of Articles 7, 8 11, and 41 of the Charter of Fundamental Rights), Articles 10 and 18 of the EC Treaty, Directive 2002/58/EC (Article 6 thereof), Article 5 of Directive 97/66/EC and Directive 95/46EC.
- D. A Declaration that the Third Named Defendant acted in contravention of Section 2 (1) of the Data Protection Act 1988 as substituted by the Data Protection (Amendment) Act 2003 by obtaining unfairly and processing unfairly, data relating to, inter alia, the Plaintiff, its members and other users of mobile phones, and obtaining said data for illegitimate purposes.
- E. A Declaration that the Third Named Defendant contravened Section 2A of the Data Protection Act 1988 as inserted by the Data Protection (Amendment) Act 2003 by processing data relating to, inter alia, the Plaintiff, its members and other users of mobile phones, unfairly and without their consent and without complying with the provisions of the Data Protection Acts 1988 and 2003.
- F. A Declaration that the Third Named Defendant contravened Article 6 (1) and (2) of the EU Treaty, (as read under the rubric of Articles 7, 8 11, and 41 of the Charter of Fundamental Rights), Articles 10 and 18 of the EC Treaty, Directive 2002/58/EC (Article 6 thereof), Article 5 of Directive 97/66/EC and Directive 95/46EC.
- G. A Declaration that Section 63 (1) of the Criminal Justice (Terrorist Offences) Act 2005 is null and void and has no force or effect in so far as the same is contrary to European Union law, and specifically Article 6 (1) and (2) of the EU Treaty, (as read under the rubric of Articles 7, 8 11, and 41 of the Charter of Fundamental Rights), Articles 10 and 18 of the EC Treaty, Directive 2002/58/EC (Article 6 thereof), Article 5 of Directive 97/66/EC and Directive 95/46EC.
- H. A Declaration that the State has failed in its obligation to give effect to the provisions of European Union law, and specifically Article 6 (1) and (2) of the EU Treaty, Articles 10 and 18 of the EC Treaty, Directive 95/46EC, Article 5 of Directive 97/66/EC, Directive 2002/58/EC (Article 6 thereof) as read under the rubric of Article 6 (1) and (2) of the EU Treaty and Articles 7, 8 11, and 41 of the

Charter of Fundamental Rights.

- I. A Declaration that Directive 2006/24/ EC is null and void and has no force or effect in so far as it is contrary to European Union law, and specifically Article 6 (1) and (2) of the EU Treaty, as read under the rubric of Articles 7, 8 11, and 41 of the Charter of Fundamental Rights and/or was adopted in the absence of any or any proper legal basis.
- J. A Declaration that the Defendants and each of them, as “emanations of the State” are subject to Article 6 (1) and (2) of the EU Treaty, Articles 10 and 18 of the EC Treaty, Directives 95/46/EC and 97/66/EC under the doctrine of direct effect.
- K. A Declaration that Section 63 (1) of the Criminal Justice (Terrorist Offences) Act 2005 is invalid having regard to the provisions of the Constitution of Ireland and in particular Article 40.3.1 and Article 40.3.2. of the Constitution of Ireland.
- L. A Declaration that Section 63 (1) of the Criminal Justice (Terrorist Offences) Act 2005 is incompatible with the Fourth Named Defendant’s obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- M. A Declaration that the letter of the Minister for Public Enterprise dated 25th April 2002 was ultra vires, invalid and of no effect.
- N. An Injunction restraining the First Named Defendant from relying on or seeking to give effect to or enforce the letter of the Minister for Public enterprise dated 25th April 2002.
- O. If necessary a Declaration that Section 110 of the Postal and Telecommunications Services Act 1983 is repugnant to the Constitution.
- P. An Injunction restraining the Defendants, their servants or agents from obtaining unfairly and/or for an illegitimate purpose and/or processing unfairly data of the Plaintiff, its members and other users of mobile phones pursuant to Section 63 (1) of the Criminal Justice (Terrorist Offences) Act 2005.
- Q. An Injunction restraining the Defendants, their servants or agents from processing data relating to, inter alia, the Plaintiff, its members and other users of mobile phones, unfairly and without their consent and without complying with the provisions of the Data Protection Acts 1988 and 2003, pursuant to Section 63 (1) of the Criminal Justice (Terrorist Offences) Act 2005.
- R. An Injunction restraining the Defendants, their servants or agents from directing the certain telecommunications services providers whose names will be determined after the furnishing of discovery by the Defendants to the Plaintiff, to store/retain the data of the Plaintiff, its members and other users of mobile phones pursuant to Section 63 (1) of the Criminal Justice (Terrorist Offences) Act 2005.
- S. If appropriate an Injunction restraining the Defendants, their servants or agents and particularly the Second Named Defendant, from transposing or purporting to transpose the provisions of Directive 2006/24/EC into national law.
- T. An Order pursuant to Article 234 of the EU Treaty that:
 - a) The questions set forth in the Schedule hereto be referred to the

European Court of Justice for a preliminary ruling pursuant to Article 234 of the EC Treaty.

- b) These proceedings be stayed pending the ruling of the European Court of Justice on the questions referred.
- U. Such further or other Declaratory Orders as this Honourable Court deems meet and just.
- V. Such further or other Interlocutory Orders as this Honourable Court deems meet and just.
- W. Damages
- X. Further and other relief.
- Y. Costs

Schedule

1. Whether Directive 2006/24/EC is valid notwithstanding:
 - a. Article 6 (1) and (2) of the EU Treaty
 - b. Articles 10 and 18 of the EC Treaty;
 - c. Articles 7, 8, 11, and 41 of the Charter of Fundamental Rights;
 - d. Article 5 of the EC Treaty (the principle of proportionality)
2. Whether Directive 2006/24/EC regulating data protection is invalid insofar as it lacks a correct legal basis in EU law

Frank Callanan

Mark J. Dunne

Fergal Crehan

Signed



McGARR SOLICITORS

This Summons was issued by the Plaintiff who resides

at

and is

and whose address for service is

or

This Summons was issued by McGarr Solicitors

whose registered place of business is at 34/35 Wicklow St. Dublin 2

Solicitors for the Plaintiff whose registered office is at 1 Caiseal na Rí, Cashel, Co. Tipperary

and is a Limited Liability company

This Summons was served by me at

in the County of

on the Defendant

on the day of 2006

Indorsed the day of 2006

Signed

Address.....

.....

THE HIGH COURT

2006 No

**DIGITAL RIGHTS IRELAND
LIMITED**

Plaintiff

V

**THE MINISTER FOR
COMMUNICATIONS, MARINE
AND NATURAL RESOURCES,
THE MINISTER FOR JUSTICE,
EQUALITY AND LAW REFORM,
THE COMMISSIONER OF THE
GARDA SIOCHANA,
IRELAND and THE ATTORNEY
GENERAL**

Defendants

**Originating
Summons**

PLENARY

Order 1. Rule 2.

**McGarr
Solicitors
34/35 Wicklow St.
Dublin 2**