

**THE HIGH COURT
2006 No. 3785P**

Between

DIGITAL RIGHTS IRELAND LIMITED

Plaintiff

And

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

Defendants

STATEMENT OF CLAIM

Delivered this 14th day of September 2006
by McGarr Solicitors of 12 City Gate, Lower Bridge St. Dublin
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1. The Plaintiff is a limited liability company, limited by guarantee, incorporated under the Companies Acts 1963-2003 having its registered office at 1 Caiseal na Rí, Cashel, Co. Tipperary. It has as one of its objects, in its Memorandum of Association, the purpose of defending civil and human rights particularly those arising in the context of modern communication technologies.
2. The First Named Defendant is a Minister of Government and a corporation sole and has his principal offices at 29/31 Adelaide Road in the City of Dublin.
3. The Second Named Defendant is a Minister of Government and a corporation sole and has his principal offices at St. Stephen's Green in the City of Dublin.
4. The Third Named Defendant is the person charged with responsibility for the Garda Siochana and has his principal offices at Garda HQ Phoenix Park in the City of Dublin. He is entrusted with a purported power under Section 63 (1) of the Criminal Justice (Terrorist Offences) Act 2005 to issue a Direction or Directions to, inter alia, certain telecommunications services providers whose names will be determined on the furnishing of discovery by the Defendants to the Plaintiff.
5. The Fourth Named Defendant is Ireland.

6. The Fifth Named Defendant is the law officer of the State designated by the Constitution of Ireland and is sued in his representative capacity in respect of the challenge sounding in national law and also for the purposes of effecting service on the Fourth named Defendant. He is further sued in his representative capacity in respect of the relief claimed in reliance on the European Convention on Human Rights including a declaration of incompatibility.

THE MINISTER'S DIRECTION

7. In or about the 25th day of April 2002 the Minister for Public Enterprise as the predecessor of the First Named Defendant, purported to issue a direction (under Section 110 (1) of the Postal and Telecommunications Services Act 1983 (as amended by the Interception of Postal Packets and Telecommunication Messages (Regulations) Act 1993)) to certain telecommunications services providers whose names will be determined on the furnishing of discovery by the Defendants to the Plaintiff, to retain data as in the said purported Direction was contained.
8. The telecommunications services providers were directed to treat the contents of the Direction as secret or confidential.
9. On or after the 25th day of April 2002 the First Named Defendant, consequent upon the said Direction referred to at paragraph 7 above, wrongfully, knowingly so, came into, and had and exercised control of data, under colour of law, relating to the Plaintiff, its members and other users of mobile phones.

THE DATA PROTECTION COMMISSIONER'S WARNING

10. By letter dated 19th day of December 2002 the Data Protection Commissioner advised the Department of Communications, Marine and Natural Resources (and thereby the other Defendants) that the Direction referred to at paragraph 7 above was ultra vires, constitutionally invalid and was in breach of the Data Protection Acts 1988 and 2003 and Statutory Instrument 192 of 2002. The Data Protection Commissioner advised the Defendants of his intention to issue Judicial Review proceedings against the Minister for Communications, Marine and Natural Resources to challenge the validity of the Directions issued by the said Minister for Public Enterprise to the telecommunications services providers.

THE CRIMINAL JUSTICE (TERRORIST OFFENCES) ACT 2005

11. The Oireachtas enacted part 7 of the Criminal Justice (Terrorist Offences) Act 2005 with the intent of addressing some or all of the matters raised in the letter of the Data Protection Commissioner of 19th December 2002. The Plaintiff asserts as more particularly hereinafter pleaded that Section 63 (1) of the Act is unconstitutional, invalid under the law of the European Union and is in breach of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

12. On a date or dates unknown to the Plaintiff, following the coming into force of the Criminal Justice (Terrorist Offences) Act 2005, the Third Named Defendant, under colour of law, purported to issue a direction under the provisions thereof to the telecommunications services providers, to retain data as in the said purported Direction was contained.
13. On 24th October 1995 Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and the free movement of such data was adopted.
14. On 12th June 2002 Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) was adopted
15. On a date or dates unknown to the Plaintiff the Third Named Defendant, consequent upon the said Direction referred to at paragraph 10 above, wrongfully, knowingly so, came into, and had control and the disposal of data, under colour of law, relating to the Plaintiff, its members and other users of mobile phones.

DIRECT EFFECT

16. 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, 97/66/EC and Directive 2002/58/EC under the doctrine of direct effect.

DIRECTIVE 2006/24/EC

17. On 6th May 2006 Directive 2006/24/EC was published. It is directed to purposes of amendment of current European Community data protection law. Directive 2006/24/EC has been asserted to be invalid by the Second Named Defendant, the Minister for Justice, Equality and Law Reform as having been adopted by the European Union without a valid legal basis.
18. The Plaintiff itself pleads that Directive 2006/24/EC is in breach of and in conflict with Article 6 (1) and (2) of the EU Treaty. The Fourth Named Defendant is obliged to transpose Directive 2006/24/EC into national law until such time as it is determined to be invalid.

OBLIGATIONS OF THE FIRST NAMED DEFENDANT

19. Section 2 (1) of the Data Protection Act 1988 as substituted by the Data Protection (Amendment) Act 2003 empowered the First Named Defendant as data controller fairly to obtain and fairly to process, data and to obtain data for legitimate purposes relating to, inter alia, this Plaintiff, its members and other users of mobile phones.

20. Section 2A of the Data Protection Act 1988 as inserted by the Data Protection (Amendment) Act 2003 obliged the First Named Defendant as data controller to comply with the provisions of the Data Protection Acts 1988 and 2003 when processing data relating to, inter alia, this Plaintiff, its members and other users of mobile phones.
21. The First Named Defendant was obliged to ensure the confidentiality of the data of the Plaintiff, its members and other users of mobile phones in accordance with Article 5 of Directive 97/66/EC.
22. The First Named Defendant was obliged to respect the right of the Plaintiff, its members and other users of mobile phones, to privacy, in accordance with the Constitution of Ireland.
23. The First Named Defendant was obliged to respect the constitutional rights of citizens. These include the right of the Plaintiff, its members and other users of mobile phones, to communicate, in accordance with the Constitution of Ireland.
24. The First Named Defendant was obliged to respect the constitutional rights of citizens. These include the right to travel and attendant rights such as the right to confidentiality in relation to travel; the right to privacy and the right to communicate.

DEFAULTS OF THE FIRST NAMED DEFENDANT IN RELATION TO THE DIRECTION OF 25TH APRIL 2002

25. The First Named Defendant's predecessor contravened Section 2 (1) of the Data Protection Act 1988 as substituted by the Data Protection (Amendment) Act 2003 and Article 6 (1) (a) and (b) of Directive 95/46/EC by obtaining unfairly and processing unfairly, data relating to, inter alia, this Plaintiff, its members and other users of mobile phones, and obtaining said data for illegitimate purposes.
26. The First Named Defendant's predecessor 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, this 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.
27. The First Named Defendant's predecessor kept the data of the Plaintiff, its members and other users of mobile phones and the information constituting same for unspecified and unlawful purposes including the purposes of disclosing same to other parties and having same unlawfully processed in breach of Section 2 (1) (c) (i) of the Data Protection Acts 1988 and 2003 and Articles 6 (1) (a); 7 (a); 17 (3); and 18 (1) of Directive 95/46EC.
28. The First Named Defendant's predecessor failed to secure adequately or at all the data of the Plaintiff, its members and other users of mobile phones

from unauthorised disclosure of same in breach of Section 2 (1) (d) of the Data Protection Acts 1988 and 2003 and Article 17 (1) of Directive 95/46/EC.

29. The First Named Defendant's predecessor failed to secure adequately or at all the data of the Plaintiff, its members and other users of mobile phones from unauthorised access to same in breach of Section 2 (2) of the Data Protection Acts 1988 and 2003 and Article 17 (1) of Directive 95/46/EC
30. The First Named Defendant's predecessor failed to ensure adequately or at all the confidentiality of the data of the Plaintiff, its members and other users of mobile phones in breach of Article 5 of Directive 97/66/EC.
31. The First Named Defendant's predecessor acted ultra vires and/or the Direction is invalid in that the Direction does not come under any of the heads of Section 110 (1) of the Postal and Telecommunications Services Act 1983, as amended, .
32. The First Named Defendant's predecessor acted unreasonably or irrationally in issuing the Direction of 25th April 2002.
33. The First Named Defendant's predecessor failed to respect the right to travel and confidentiality of travel; the right to privacy and the right to communicate, of the Plaintiff, its members and other users of mobile phones in accordance with the Constitution of Ireland.
34. The First Named Defendant's predecessor failed to invite or take cognisance of representations of affected persons such as the Plaintiff, its members and other users of mobile phones.
35. The First Named Defendant's predecessor purported to exercise her power to give a direction, without first ascertaining and being in possession of all relevant material in relation to the rights and interests of affected persons such as the Plaintiff, its members and other users of mobile phones:
36. The Direction of the First Named Defendant's predecessor was in breach of the constitutional rights of the Plaintiff, its members and other users of mobile phones, guaranteed under the Constitution of Ireland.
37. If (contrary to the Plaintiff's primary contention) the First Named Defendant's predecessor acted intra vires Section 110 (1) of the Postal and Telecommunications Services Act 1983, as amended, if necessary the Plaintiff will claim that Section 110 (1) of the Postal and Telecommunications Services Act 1983 (as amended by the Interception of Postal Packets and Telecommunication Messages (Regulations) Act 1993) is invalid having regard to the provisions of the Constitution of Ireland and in particular Article 40.3.1, Article 40.3.2 thereof. In addition if necessary the Plaintiff seeks a Declaration of incompatibility in respect of the said section pursuant to section 5 of the European Convention on Human Rights Act, 2003.

**PARTICULARS IN RELATION TO CONSTITUTIONALITY OF S. 110
OF POSTAL AND TELECOMMUNICATIONS SERVICES ACT 1983**

- a. The provisions of Section 110 (1) of the Postal and Telecommunications Services Act 1983 (as amended by the Interception of Postal Packets and Telecommunication Messages (Regulations) Act 1993) fail to protect the rights and interests of affected persons such as the Plaintiff, its members and other users of mobile phones:
 - b. The provisions of Section 110 (1) of the Postal and Telecommunications Services Act 1983 (as amended by the Interception of Postal Packets and Telecommunication Messages (Regulations) Act 1993) are an unjustifiable interference with the rights and interests of affected persons such as the Plaintiff, its members and other users of mobile phones;
 - c. The provisions of Section 110 (1) of the Postal and Telecommunications Services Act 1983 (as amended by the Interception of Postal Packets and Telecommunication Messages (Regulations) Act 1993) fail to protect the right to privacy of the Plaintiff, its members and other users of mobile phones as guaranteed by Article 40.3.2 of the Constitution of Ireland;
 - d. The provisions of Section 110 (1) of the Postal and Telecommunications Services Act 1983 (as amended by the Interception of Postal Packets and Telecommunication Messages (Regulations) Act 1993) fail to protect the right to communicate of the Plaintiff, its members and other users of mobile phones as guaranteed by Article 40.3.2 of the Constitution of Ireland;
 - e. The provisions of Section 110 (1) of the Postal and Telecommunications Services Act 1983 (as amended by the Interception of Postal Packets and Telecommunication Messages (Regulations) Act 1993) are incompatible with the State's obligations under Articles 6 (1), 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
38. The First Named Defendant failed to respect the right to privacy of the Plaintiff, its members and other users of mobile phones, in accordance with the Constitution of Ireland.
39. The First Named Defendant failed to respect the right to communicate of the Plaintiff, its members and other users of mobile phones, in accordance with the Constitution of Ireland.

OBLIGATIONS OF THE THIRD NAMED DEFENDANT

40. Section 2 (1) of the Data Protection Act 1988 as substituted by the Data Protection (Amendment) Act 2003 obliged the Third Named Defendant as data controller to only fairly obtain and fairly process data and only to obtain data for legitimate purposes relating to, inter alia, this Plaintiff, its members and other users of mobile phones.
41. Section 2A of the Data Protection Act 1988 as inserted by the Data Protection (Amendment) Act 2003 obliged the Third Named Defendant as data controller to comply with the provisions of the Data Protection Acts 1988 and 2003 when processing data relating to, inter alia, this Plaintiff, its members and other users of mobile phones.
42. The Third Named Defendant was obliged to ensure the confidentiality of the data of the Plaintiff, its members and other users of mobile phones in accordance with Article 5 of Directive 97/66/EC.
43. The Third Named Defendant was obliged to respect the right of the Plaintiff, its members and other users of mobile phones, to privacy, in accordance with the Constitution of Ireland.
44. The Third Named Defendant was obliged to respect the right of the Plaintiff, its members and other users of mobile phones, to communicate, in accordance with the Constitution of Ireland.

DEFAULTS OF THE THIRD NAMED DEFENDANT

45. The Third Named Defendant contravened Section 2 (1) of the Data Protection Act 1988 as substituted by the Data Protection (Amendment) Act 2003 and Article 6 (1) (a) and (b) of Directive 95/46/EC by obtaining unfairly and processing unfairly, data relating to, inter alia, this Plaintiff, its members and other users of mobile phones, and obtaining said data for illegitimate purposes.
46. 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, this 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.
47. The Third Named Defendant kept the data of the Plaintiff, its members and other users of mobile phones and the information constituting same for unspecified and unlawful purposes including the purposes of disclosing such data to other parties and having same unlawfully processed in breach of Section 2 (1) (c) (i) of the Data Protection Acts 1988 and 2003 and Articles 6 (1) (a); 7 (a); 17 (3); and 18 (1) of Directive 95/46EC.
48. The Third Named Defendant failed to secure adequately or at all the data of the Plaintiff, its members and other users of mobile phones from

unauthorised disclosure of same in breach of Section 2 (1) (d) of the Data Protection Acts 1988 and 2003 and Article 17 (1) of Directive 95/46/EC.

49. The Third Named Defendant failed to secure adequately or at all the data of the Plaintiff, its members and other users of mobile phones from unauthorised access in breach of Section 2 (2) of the Data Protection Acts 1988 and 2003 and Article 17 (1) of Directive 95/46/EC
50. The Third Named Defendant failed to secure adequately or at all the confidentiality of the data of the Plaintiff, its members and other users of mobile phones in breach of Article 5 of Directive 97/66/EC.
51. The First Named Defendant failed to respect the right to travel and confidentiality of travel; the right to privacy and the right to communicate, of the Plaintiff, its members and other users of mobile phones in accordance with the Constitution of Ireland.
52. The Third Named Defendant acted unreasonably, ultra vires his powers and in breach of the constitutional rights of the Plaintiff, its members and other users of mobile phones, guaranteed under the Constitution of Ireland.
53. The Third Named Defendant failed to respect the right of the Plaintiff, its members and other users of mobile phones, to privacy, in accordance with the Constitution of Ireland.
54. The Third Named Defendant failed to respect the right of the Plaintiff, its members and other users of mobile phones, to communicate, in accordance with the Constitution of Ireland.

CONSEQUENCES OF DEFAULTS OF THE FIRST NAMED DEFENDANT

55. The Plaintiff, its members and other users of mobile phones are entitled to compensation in accordance with Section 7 of the Data Protection Acts 1988 and 2003.

DIRECTION OF FIRST NAMED DEFENDANT NULL AND VOID

56. In relation to the purported Direction of the First Named Defendant of 25th day of April 2002, the Direction is null and void and has no force or effect. The making of the Direction, and the provisions and principles thereof were in breach of Sections 2 (1) and 2A of the of the Data Protection Act 1988 as substituted and inserted, respectively, by the Data Protection (Amendment) Act 2003. Further, the predecessor of the First Named Defendant acted unreasonably, ultra vires her powers and in breach of the constitutional rights of, inter alia, the Plaintiff, its members and other users of mobile phones, guaranteed under the Constitution of Ireland and further in breach of Article 15.2.1 of the Constitution of Ireland.

DIRECTION OF THIRD NAMED DEFENDANT NULL AND VOID

57. In relation to the purported Direction of the Third Named Defendant referred to at paragraph 12 above, the Direction is null and void and has no force or effect. The making of the Direction, and the provisions and principles thereof were in breach of Sections 2 (1) and 2A of the Data Protection Acts 1988 to 2003. Further, the Third Named Defendant acted unreasonably, ultra vires his powers and in breach of the constitutional rights of, inter alia, this Plaintiff, its members and other users of mobile phones, guaranteed under the Constitution of Ireland.
58. Furthermore and/or in the alternative and without prejudice to the foregoing if necessary the Plaintiff asserts 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; Article 40.3.2; Article 40.6.1.1 thereof.
59. In addition if necessary the Plaintiff seeks a Declaration of incompatibility in respect of the said section pursuant to section 5 of the European Convention on Human Rights Act, 2003.

PARTICULARS OF UNCONSTITUTIONALITY/INCOMPATIBILITY WITH ECHR

- a. The provision is an unjustifiable interference with the right to private life.
- b. The provision is an unjustifiable interference with the right to family life.
- c. The provision is a breach of the Plaintiff's right to privileged communication.
- d. The provision is a breach of the Plaintiff's right to the determination of its civil rights and obligations in a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
- e. The provision permits of surveillance without prior notice to the Plaintiff of the circumstances in which the Defendants may engage in same and generally are in breach of the principles of accessibility and foreseeability.
- f. The provision is disproportionate by reference to any legitimate end of policy to be attained.
- g. The provision is incompatible with/unnecessary in a democratic society.

- h. The provision is an interference with the Plaintiff's right to communicate.
 - i. The provision fails to respect the Plaintiff's rights under the Convention. The Plaintiff relies on Articles 6 (1), 8 and 10 of the Convention.
 - j. The provision is not objectively justified.
 - k. The provision offends the principle of proportionality.
60. The giving by the First Named Defendant of directions to certain telecommunications services providers pursuant to Section 110 (1) of the Postal and Telecommunications Services Act 1983, as amended, amount to an unjust attack on the private, family and personal rights of this Plaintiff, its members and other users of mobile phones and a failure by the State to respect the private, family and personal rights of this Plaintiff, its members and other users of mobile phones, as protected and recognised by Article 40.3 of the Constitution of Ireland.
61. The giving by the Third Named Defendant of directions to certain telecommunications services providers pursuant to Section 63 (1) of the Criminal Justice (Terrorist Offences) Act 2005 amount to an unjust attack on the private, family and personal rights of this Plaintiff, its members and other users of mobile phones and a failure by the State to respect the private, family and personal rights of this Plaintiff, its members and other users of mobile phones, as protected and recognised by Article 40.3 of the Constitution of Ireland.
62. Further and in the alternative, if necessary, the Plaintiff seeks a Declaration of incompatibility in respect of Section 63 (1) of the Criminal Justice (Terrorist Offences) Act 2005 pursuant to Section 5 of the European Convention on Human Rights Act, 2003, on the grounds that the said provisions are incompatible with the State's obligations under Articles 6 (1), 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
63. Further and in the alternative, the Plaintiff seeks 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, Articles 10 and 18 of the EC Treaty, Articles 7, 8 11, and 41 of the Charter of Fundamental Rights, Directive 2002/58/EC (Article 6 thereof), Article 5 of Directive 97/66/EC and Directive 95/46EC.
64. Further and in the alternative, the Plaintiff seeks 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 Articles 10 and 18 of the EC Treaty.

65.

- (a) These proceedings raise novel points of interpretation of European Union law as pleaded in the foregoing paragraph:
- (b) These points are not acte clair and it will be necessary to have the ruling of the European Court of Justice on them in order for the court to determine the issues that arise.
- (c) The issues to be adjudicated on are set forth in the Schedule hereto.
- (d) These points will require to be ruled on eventually and it is desirable to have a ruling thereon from the European Court of Justice in early course.

66. Furthermore unless restrained by this Honorable Court the First and Third Named Defendants will continue with their wrongful and unlawful conduct and activity and there will be a continuance of the breach of the rights and interests of the Plaintiff, its members and other users of mobile phones:

THE SECOND NAMED DEFENDANT'S ROLE

67. The Second Named Defendant is the Minister charged with the obligation of the Fourth Named Defendant to transpose the provisions of Directive 2006/24/EC into national law. While he has commenced proceedings in the European Court of Justice pursuant to Article 230 of the EU Treaty, he is free to abandon or discontinue such proceedings without reference to the Plaintiff and is the legitimus contradictor in relation to the issue of the transposition of the provisions of Directive 2006/24/EC into national law.

FURTHER PARTICULARS

68. The Plaintiff reserves the right to deliver further particulars following discovery up to and including the hearing of the action herein.

69. THE PLAINTIFF CLAIMS:

- A. A Declaration that the First Named Defendant has 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 has 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 has 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 has 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 has 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.
- F. A Declaration that the Third Named Defendant has 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.
- 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 base.
- 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 EC 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 SC

Mark J. Dunne

Fergal Crehan

THE HIGH COURT

Record No. 2006 No. 3785P

BETWEEN:

**Digital Rights Ireland Ltd.
PLAINTIFF**

-AND

**The Minister of
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**

STATEMENT OF CLAIM

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