

**HIGH COURT  
COMMERCIAL**

**Record No. 2019/5278P**

**BETWEEN**

**THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED**

**PLAINTIFF**

**AND**

**EIRCOM LIMITED TRADING AS EIR  
SKY IRELAND LIMITED  
SKY SUBSCRIBERS SERVICES LIMITED  
VIRGIN MEDIA IRELAND LIMITED  
VODAFONE IRELAND LIMITED**

**DEFENDANTS**

**Ex tempore Judgment of Mr. Justice David Barniville delivered on 15 June 2020**

1. This is an application by the Plaintiff, The Football Association Premier League Limited, for various orders which are sought in a notice of motion dated 10th June 2020. The Plaintiff seeks to extend the Order of Haughton J. (dated 15th July 2019) (the "2019 Order"), in which the High Court granted relief as against the Defendants in the form of a 'live blocking' injunction against internet service providers pursuant to section 40(5A) of the Copyright and Related Rights Act 2000 (the "2000 Act").
2. The position of the Defendants in response to the application, as set out in correspondence and confirmed to the Court today, may be fairly summarised as follows:
  - (a) Eircom Limited – it is neutral in respect of the application;
  - (b) Sky Ireland Limited and Sky Subscribers Services Limited – they support the application and do not oppose it;
  - (c) Virgin Media Ireland Limited – it adopts a neutral stance in respect of the application; and
  - (d) Vodafone Ireland Limited – it does not oppose the application.
3. The application is to extend the operation of the 2019 Order for the remainder of the 2019/2020 season and the 2020/2021 season. The judgment of Haughton J in *The Football Association Premier League Limited v Eircom Limited & Ors* [2019] IEHC 615 was the first 'live blocking' injunction in Ireland and followed earlier blocking injunctions obtained by music and film corporations and similar injunctions in the United Kingdom.
4. At paragraph 15 of his judgment, Haughton J. referred to test set out by Hogan J in *Sony Music Entertainment (Ireland) v UPC Communications Ireland Ltd* [2016] IECA 231 and said:

*"At paragraph 65 of his judgment, Hogan J set out the relevant test for blocking injunctions. Whilst this test was set out in a somewhat different context concerning*

*music rights, it is relevant. Hogan J stated for an injunction to be established, it must be:*

- (i) necessary;*
- (ii) that the costs involved were not excessive or disproportionate and that the order itself should not be unduly complicated;*
- (iii) that the cost sharing proposals were fair and reasonable;*
- (iv) that the order respected the fundamental rights of the parties affected, including internet users and*
- (v) that the duration of the proposed injunction and the provisions for review were reasonable.”*

5. At paragraph 16 of his judgment Haughton J. explained the basis on which he was granting the 2019 Order.
6. It is evident from that judgment that an extension of the 2019 Order must involve a review of the effectiveness of the Order and also a consideration as to whether an extension is appropriate. Effectiveness does not require 100% success so long as the remedy has a significant persuasive effect. The Plaintiff has provided evidence on affidavit which demonstrates to my satisfaction the effectiveness of the 2019 Order and that there has been no “over-blocking”, which is a potential concern on applications such as this. I have considered the evidence from the 2019 application before Haughton J and the following additional evidence which I find convincing: the second Affidavit of Kevin Mark Plumb sworn on 9th June 2020, the affidavit of George Demetriades sworn on 8th June 2020 and the affidavit of Jiajun Chen sworn on 9th June 2020.
7. The evidence regarding effectiveness is set out in the affidavits of Mr. Plumb, Mr. Demetriades and Mr. Chen. This evidence clearly demonstrates that the 2019 Order has been effective and should, therefore, in my view, be extended both for the balance of the 2019/2020 season and for the 2020/2021 season. I refer to the evidence, including confidential matters put before the court, without objection from the Defendants, in this regard which demonstrates the following:
  - (a) Increased compliance rate (that is the proportion of unauthorised live streams which have been disrupted or removed within 60 minutes of detection);
  - (b) According to consumer research carried out by Populus Limited, a decline in the percentage of football pirates who use an ISD ( that is, an illegal streaming device) to access pirated football content; and
  - (c) That there is no evidence of “over-blocking”.

8. It is unnecessary for me to go back over the relevant law in any detailed way as this was very fully set out by Haughton J. in his judgment with which I am in full agreement. I am satisfied on the evidence that the 2019 Order should be extended on the same basis and for the same reasons as were outlined by Haughton J. in his judgment. I accept that the extension of the 2019 Order on the terms sought is necessary to protect the Plaintiff's copyright. The evidence shows that there is a low risk of "over-blocking" and that any legitimate rights of internet users are fully respected. I also accept that the extension of the 2019 Order sought is consistent with the judgment of the Court of Justice of the European Union in *Spiegel Online GmbH v Beck* (C-516/17) in that the Order strikes a "fair balance" between the Plaintiff and internet users.
9. Paragraph 10 of the 2019 Order should be continued with the extension of the Order i.e. the notification requirement on the part of the Defendants to publish a statement to its customers regarding blocked internet servers will be continued.
10. I also note and commend the reasonable and cost-effective position adopted by the Defendants in responding to this application.
11. Paragraph 1(b) of the Draft Order should be amended from "*All reference to Confidential Exhibit JNF6 in the 2019/2020 Order is substituted Confidential Exhibit GD3 of this Order...*" to "*All reference to Confidential Exhibit JNF6 in the 2019/2020 Order are substituted by references to Confidential Exhibit GD3 of this Order...*".
12. I also grant liberty to apply, if necessary, to the Plaintiff specifically to update Schedule 1 of the Order when the fixture list for the 2020/2021 season is announced if it believes this is necessary. I am not directing the Plaintiff to do this i.e. the liberty to apply is granted in permissive rather than mandatory terms.
13. There will be no order as to costs.

David Barniville