

Clifton House  
Fitzwilliam Street  
Dublin 2

25 May 2012

**Dr Eoin O'Dell**  
**Chairperson**  
**DJEI Copyright Review Committee**  
**Department of Jobs, Enterprise and Innovation**  
**23 Kildare Street**  
**Dublin 2**

Dear Dr. O'Dell and Committee Members,

**Review of Copyright and Related Rights Act 2000 – Consultation Response**

We are writing to welcome the important and newsworthy work of the Committee at a critical time in the nation's future.

ALTO represents Alternative Telecom Operators in the Irish market, many of whom are heavily engaged in the provision of robust consumer and enterprise Internet and communications services throughout Ireland and in most cases globally.

Many of ALTO's members attended the Committee's meetings earlier this and last year, and the feedback was very positive in terms of your work.

As you will have noticed at this stage, ALTO and the wider communications industry has certain concerns in relation to the Copyright debate, specifically protecting (innocent) intermediary service providers by means of the eCommerce Directive Defences (Hosting, Caching and *mere conduit*) outlined in Statutory Instrument 68 of 2003 and stemming from Directive 2000/31/EC, or the eCommerce Directive.

While we know that we have the benefit of those Defences at law, we believe that the Defences have come under significant strain due to an inability and failure of certain intellectual property rights holders to move with current market or indeed, move with the times. These strains and failures have led to many innocent ISPs and telecom providers being subject to protracted and expensive litigation that in many instances is baseless and misdirected.

Since we last wrote to the CRC in July 2011, we note that a number of cases have been decided upon by the Court of Justice of the European Union – CJEU, in particular we note that the *Scarlet Extended*,<sup>1</sup> *Sabam v Netlog*,<sup>2</sup> and *SAS Institute Inc. v World Programming Ltd.*<sup>3</sup> case were conclusively and clearly decided upon. All of the decisions of the CJEU clarify and influence the landscape relating to and liability of intermediaries when dealing with the question copyright. Additionally, the CJEU clearly upholds all of fundamental rights and freedoms associated with the Convention and Charter of Fundamental Human Rights.

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<sup>1</sup> Case C-70/10

<sup>2</sup> Case C-360/10

<sup>3</sup> Case C-406/10

ALTO is committed to and fundamentally believes in the protection of the rights of users to access and other human rights, as outlined in the Communications New Regulatory Framework Directive 2009/140/EC, Article 1 3a.

ALTO has struggled arrive at and to publically announce positions in relation to the various broad and complex concepts dealt with in the overall Consultation, as well as proposed future modifications to current Irish Copyright law and the treatment of same.

We are quite disappointed that the recently signed Government S.I. relating to Section 40 of the CRRA 2000, or Article 8 of the EU Copyright Directive, is not being dealt with in the course of the CRC Consultation. This represents a missed opportunity.

We call on the CRC to consider the scope of the S.I. and related issues,<sup>4</sup> as well as, consulting on the codification and potential extension of the intermediary defences outlined above into primary legislation, all of which can be found in S.I. 68 of 2003, transposing the ECommerce Directive into national law.

We remain at your disposal should you have any questions concerning the issues raised in this letter.

Yours Sincerely,

**Ronan Lupton**  
Chairman – ALTO  
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<sup>4</sup> It remains ALTOs view that the S.I. as drafted will not withstand rigorous legal challenge.