

## Digital Rights Ireland Ltd v. The Minister for Communication, Marine and Natural Resource, The Minister for Justice, Equality and Law Reform, The Commissioner of An Garda Siochana, Ireland and the Attorney General

### The Dispute

The Plaintiff, a non governmental non profit body, alleged that the Defendants had wrongfully exercised control over personal data and argued that the processing and storing of such data relating to the Plaintiff, its members, and other mobile phone users is contrary to: (i) statute, (ii) EC law (iii) the Constitution and (iv) the European Convention on Human Rights (**ECHR**). These allegations also involved a claim that s.63(1) of the Criminal Justice (Terrorist Offences) Act 2005, which allows for the retention of data for a period of three years, is invalid on the above grounds and further that Directive 2006/24/EC (the **Directive**) is contrary to the Charter of Fundamental Rights (**CFR**) and the ECHR. The purpose of the Directive is to clarify the right of Member States to legislate obligations of disclosure upon communications service providers in relation to traffic and location data, and to harmonise the minimum and maximum periods of retention of the specified data, namely six months and two years respectively (Article 6).

### Judgment

The application concerned three matters, the most significant of which was the Plaintiff's application for a reference to be made to the European Court of Justice (**ECJ**) on the validity of the Directive. The Court granted the Plaintiff's motion for a reference to the ECJ and it rejected the Defendants' contention that such an application was premature. It stated that the case raised important constitutional questions and was a matter of fundamental public importance and that it would be an effective way to bring the action as individual owners of mobile phones would be unlikely to litigate the matter due to the heavy costs associated with such an action. The Court noted that due to the rapid advance of current technology, it has become very important to define the legitimate legal limits of modern surveillance techniques used by governments, in particular with regard to telecommunications data retention. It noted that without sufficient legal safeguards in place there was the potential for abuse and unwarranted invasion of privacy. The parties were invited to submit questions to be framed to the ECJ. The framing of the questions is to be agreed shortly before the Court.

The other two matters related to whether the Plaintiff has a legal standing before the Court to bring the application and a motion by the Defendant for security for its costs. The Judge ruled that the Plaintiff had legal standing to bring the case and refused the application for security for costs.

**18 May 2010**