
"Digital Agenda" provisions fail to protect PlayStation from anti-counterfeiting device

protection measures in the PS2 system are:

- the prevention of playing of CD-ROMS with other regional coding;
- the prevention of playing of pirated copies; and
- the prevention of playing of back-up copies.

Each of these raise different policy considerations. The challenge is to have laws that allow each to be separately addressed. The inability of the law to differentiate between different purposes has led to the rather

unfortunate spectacle of the ACCC appearing in legal proceedings and successfully advocating arguments in support of a counterfeiter.

The decision highlights many flaws in the drafting of the Copyright Act with respect to the protection of computer programs which are long overdue for correction.

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- 1 (1992) 173 CLR 1; 22 IPR 163; (1993) 25 IPR 33.
 - 2 [2002] FCA 906 (26 July 2002).
 - 3 Ibid.
 - 4 (1989) 24 FCR 147.
 - 5 (2000) 49 IPR 573.
 - 6 (2001) 53 IPR 242.

- 7 [2001] FCA 1636.
- 8 (1986) 161 CLR 171; 6 IPR 1 (26 November 2000).
- 9 [2002] FCA 906 (26 July 2002) para 147.
- 10 Ibid para 150.
- 11 [2002] EWHC 45 (CH).
- 12 US Second Circuit Court of Appeals, *Universal v Reimerdes* (NY2600/DeCSS Case) Nov 28, 2001, at 15.
- 13 Section 1201(a)(3)(B) of the DMCA.
- 14 Section 1201(b)(2)(B).
- 15 Article 18 of the WPPT "Obligations Concerning Technological Measures (<http://www.wipo.org/eng/diplconf/distrib/95dc.htm>) and Article 11 of the WCT in identical terms (<http://www.wipo.org/eng/diplconf/distrib/94dc.htm>).

The Copyright Directive - UK Implementation - What does it do?

The Directive on Copyright in the Information Society (2001/29/EC) (the 'Directive') was adopted on 22 May 2001 and is to be implemented in the UK and other Member States by 22 December 2002. The Directive harmonises rights in certain fundamental areas, mainly to address the challenges of the Internet and e-commerce, and digital technology more generally. It also grants certain exceptions to these rights and legal protection for technological aspects of rights management systems. The highlights of the Directive include the exclusive right of production for authors and other right holders, a general exclusive right of communication to the public for authors, including what is known as the Internet 'making available' right, development of an exclusive right of distribution, establishing a mandatory exception to liability for certain temporary acts of reproduction, legal obligations to protect against circumvention of technological protection measures and other provisions that deal with sanctions and remedies.

The Patent Office has published a consultation document on the implementation of the Directive in the UK which can be found on their website (www.patent.gov.uk). The consultation sets out the ways in which the Directive will amend existing legislation, and in particular the Copyright, Designs and Patents Act 1988, as amended by the Broadcasting Acts of 1990 and 1996 and by secondary legislation implementing earlier EC Directives in the copyright and related rights field. The law in the UK currently forms a strong basis for dealing with the new technological challenges. Consequently, the Patent Office is suggesting that amendments to the UK legislation are generally technical in nature. The Patent Office therefore consider that the significant amendments necessary to comply with the Directive are:

- introduction of performers' exclusive rights (as opposed to the current remuneration rights) to control "on-demand"

transmissions of recordings of their performances;

- amendments to comply with the regime of compulsory and permitted exceptions;
- amendments to cater for the more comprehensive legal protection for technological systems;
- introduction of new provisions for the protection of electronic rights;
- management information set out in Article 7; and
- improvements to sanctions and remedies.

The paper on the Patent Office website contains a number of more detailed amendments which can be reviewed online.

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