

Images from Counterfeit Games a Criminal Breach of Copyright

Individual images displayed on the screen of a computer games console are sufficient evidence of a breach of copyright for the purposes of a criminal conviction. So said the Court of Appeal, in a recent decision dealing with counterfeit games.

In September 2008, Christopher Gilham was convicted at Worcester Crown Court of offences under the Copyright, Designs and Patents Act 1988. Breaches of the Act normally lead to civil actions, although certain activities, such as providing or marketing a service or device designed to 'circumvent technological measures' that exist to protect a copyright work, may give rise to a criminal prosecution.

In this case, Mr Gilham sold devices known as 'modification chips' or 'modchips', which, once installed in a games console, allowed counterfeit games to be played. His products could be used to modify Microsoft Xbox, Nintendo GameCube and Sony PlayStation games consoles.

At issue was the question of whether or not the playing of a counterfeit CD or DVD involved copying a substantial part of a copyright work. The prosecution at the original court hearing argued that, even though only a relatively small proportion of the game was copied into the console memory and then onto the screen at any one time, simply displaying images from the game via the console memory onto the screen meant a 'substantial part' of the copyright work as defined by the Act had been copied.

The Appeal Court judges held that creating an individual image for a computer game involved sufficient skill on the part of the artist to warrant being protected. For instance, in the case of the game character Lara Croft, an artist had designed and developed the cartoon image and, as such, any copy of the original work would be protected, whether on paper or in a computer memory.

Mr Gilham argued that the display on a screen cannot be a substantial copy of a copyright work because it is seen for only an instant. However, the Appeal Court judges held that this argument was irrelevant given that the Act states that a transient copy is a copy: the appeal was therefore rejected.

"This case underlines the determination of the courts to protect copyright owners from software pirates and purveyors of devices intended to circumvent copyright,"
"If your intellectual property is under threat, we can help you to protect it and your business."

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