

Supreme Court of the Kingdom of Thailand

S.C. 6592/2011

Public Prosecutor v. Sicom Amusement Company Limited

Court : Supreme Court

Case : Criminal

Date of Judgment : August 2, 2011

Plaintiff : Public Prosecutor

Defendant : Sicom Amusement Company Limited

Concept : Copyright Infringement

Statue : The Copyright Act B.E.2537 (1994) sections 32, 35

Panel of Justices

Aram Yamsa-ard, Aram Senamontri, Somkuan Wichienwan

Case Background

Sega Corporation Company Limited, the injured person, is the copyright owner of computer game software “Ghost Squad SD.” On October 4, 2005, the defendant bought a Ghost Squad SD arcade game from Pop Game Company Limited. The defendant produced a cassette disc containing game instructions derived from the bought arcade game in order to submit to the Ministry of Culture as a procedure of obtaining a permission to operate the arcade game. The plaintiff alleged that the act of the defendant constituted copyright infringement on the injured person’s audiovisual work.

Procedural History

The Central Intellectual Property and International Trade Court dismissed the case.

The plaintiff appealed to the Supreme Court

The Intellectual Property and International Trade Division of the Supreme Court upheld the lower court's judgment.

Issue

Is the production of the cassette disc in dispute deemed to be a reproduction of the computer game software "Ghost Squad SD" without consent of the injured person, and therefore is considered as copyright infringement?

Rationale

The defendant produced only one cassette disc to submit to the Ministry of Culture in order to obtain a permission to operate the Ghost Squad SD arcade game for commercial benefits. The cassette disc production was in compliance with the Control on Tape and Television Materials Affair Act B.E. 2530 (1987), which was for the Ministry's consideration, not for commercial purpose. As the act of the defendant did not conflict with a normal exploitation of the copyright work by the injured person, nor did it unreasonably prejudice the injured person's legitimate right, it cannot be deemed as copyright infringement under section 32 paragraph one and section 35(6) of the Copyright Act B.E. 2537.

The plaintiff further appealed that the act of the defendant that sought for a permission to operate the arcade game for commercial benefits had already conflicted with the injured person's normal exploitation of the copyright work and unreasonably prejudiced its

legitimate right. However, that was merely the plaintiff's prediction and such situation has not yet occurred. As a conclusion, the cassette disc production did not constitute a criminal offense.

The lower court judgment is therefore upheld.

Keywords copyright infringement, commercial purpose

Summarized and Translated by Akedanai Techajongjintana

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