

[IE] copyright in cinematographic films

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In common with other jurisdictions, video piracy is a major problem in Ireland. Although a major review of the legislation is underway - in particular, the Copyright (Amendment) Bill 1998 provides for an increase in the penalties allowable for copyright piracy from £1000 to £100,000 or five years in prison - this area is still governed in Ireland by the Copyright Act 1963. A recent Irish High Court case examined the question of whether a videotape is a cinematographic film for the purposes of copyright. The judgement goes some way towards improving the copyright protection which subsists in cinematographic films, by extending the application of the wording in the 1963 Act to technology which would not have been envisaged at the time of the passing of the Act.

Section 18(10) of the Copyright Act 1963 essentially defines "cinematographic film" as any sequence of visual images recorded on material of any description, capable of being shown as a moving picture or of being recorded on other material by the use of which it can be shown. The defendant in the recent High Court case had offered for sale and for hire unauthorised videotape copies of videotapes of films in which the plaintiffs (who were all members of the Motion Pictures Export Association of America Incorporated) owned copyright. The parties sought the ruling of the High Court as to whether a videotape constituted a cinematographic film for the purposes of the relevant section of the Act, or, if not, whether a videotape could be a copy of a cinematographic film as defined in the Act.

The Court's view was that a videotape constituted a cinematographic film as it fulfilled the basic requirements of the definition in the Act. There was no requirement in the definition that the tape itself should be capable of reproducing the sequence of visual images without the intervention of other technology (such as a video cassette recorder and television screen), nor was there any requirement that the sequence of visual images should be observable on the material.

Although it was not strictly necessary to do so, the Court went on to comment on the alternative submission, and said that if a videotape did not constitute a "cinematographic film" as defined in the Act, then a videotape would not constitute a copy of a cinematographic film.

Universal City Studios Incorporated, Walt Disney Productions Incorporated, 20th-Century Fox Film Corporation and Warner Brothers Incorporated vs. Gerard Mulligan. [1998] 1 ILRM 438. High Court.

