[IE] "Power CDs"

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In a recent case the Irish High Court decided that a "Power CD" is a record for the purposes of copyright. A "Power CD" is a compact disc which in addition to sound tracks (as in the usual type of compact disc), also contains text, graphics and visual images for playing on a multi-media computer.

Although a new Copyright Bill is due to be published at the end of October 1998, this area of law is still largely governed by the Copyright Act 1963. Section 2 of the Act essentially defines a "record" as any device in which sounds are embodied so as to be capable of being automatically reproduced from such a device. Section 13 (1) of the Act allows a person to make a record of a musical work without infringing the copyright inter alia the person must notify the copyright owner of in that work, provided certain conditions are fulfilled (his intention to make such a record and must pay him a fair royalty). Section 13(4) of the Act provides that where a record comprises sung or spoken words together with music, any copyright in such words is not infringed by the making of the record, again provided the same conditions regarding notice and the payment of a fair royalty are fulfilled.

The plaintiffs manufacture "Power CDs" in Ireland for the Spanish market. They sought a declaration from the court that "Power CDs" are records for the purpose of the Act. The defendants, who are a copyright collection society acting for music publishers in Ireland, argued that since a "Power CD" contains extra information, it could not be a record for the purposes of the Act. However, the judge decided that the definition of "record" in the Act did not exclude the extra visual dimension contained in the "Power CD" and that this broad interpretation was in accordance with the wording of Section 13. The decision thus grants record manufacturers a much greater degree of protection against actions for breach of copyright in respect of both music and words.

The judge also pointed out that the outcome of the case was important because legal proceedings are at present being taken in Spain against the Irish manufacturers by the relevant copyright collection society in that jurisdiction.

Mandarim Records Limited v Mechanical Copyright Production Society (Ireland) Limited. High Court, 5 October 1998.

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