[IE] Copyright

IRIS 1999-4:1/9

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In a recent case concerning copyright, the Irish Supreme Court examined the issues of "literary work" and "originality". The Court upheld the decision of the High Court that the recording of the plaintiff's voice on tape did not give rise to a literary work, and that the recitation by a child of a story told to her by a teacher was not original. The case concerned a tape recording, by a schoolteacher, of Bible stories recited by the plaintiff and other children when they were pupils in her religious education class many years earlier. The recording had recently been released by EMI Records, with the permission of the schoolteacher, and had become a commercial success.

The Copyright Act 1963 (which is still the principal Act governing this area, though a new Copyright Bill has been published) provides that copyright shall subsist in every original literary work, but does not define the term "original", nor does it provide a comprehensive definition of the term "literary work" (though the judiciary has provided explanations of the phrase in a number of cases). The Court decided that a recording of a literary work may be made by someone other than the author. However, it interpreted the 1963 Act to mean that a recording made on a magnetic tape would not be entitled to protection as a literary work, as such notation was not capable of being understood without assistance. Such a conclusion, the Court said, was not a breach of the provisions of the Berne Convention.

With regard to originality, the Court decided that where the materials were already in existence, it was necessary to show some new approach. Where, as here, the work was copied, it is necessary to show the skill, labour and judgment required to produce a new work. The Court said that the difference between a copy and an original lies in the treatment of the material: where a work is copied, the ultimate test is whether the author of the source material and the author of the new work could have their works published side by side without complaint. The Court also said that there could be no copyright in a well-known story or plot, since it lacks originality.

Creativity, not language, gives rise to copyright. In general, originality would relate to the story rather than the words. Here, the manner in which the schoolteacher explained the stories for the benefit of her pupils could be original, but the child's retelling of the story could not, as it did not change the original nature of the story or add anything which was original.

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Gormley v EMI Records (Ireland) Ltd. [1999] 1 ILRM 178.

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