

Software Piracy - A Licence to Steal

Police v Cambridge

by Gavin Adlam

In August 1992, in the (New Zealand) District Court at Blenheim, the Director of the Marlborough Computer Services Company, Michael Cambridge, was found guilty of reproducing a computer program with intent to defraud. The decision attracted comment in the New Zealand Press and software industry by reason of the extraordinarily light fine imposed on the defendant, of \$2,000.

Cambridge pleaded guilty to a charge that between January 1991 and February 1992 he illegally copied and offered a WordPerfect word processing program free of charge to seventy companies and individuals who bought computers from him. At a cost of nearly \$700 per program, the Auckland based licence holder and distributor Number One Software Company would have been deprived of up to \$49,000 in revenue. In addition, the software company was forced to spend \$10,000 in detection costs. In sentencing however, Judge PJ McAloon said that he was not considering reparation but referred to the possibility of civil proceedings by the distributor.

The Business Software Alliance, which advocates tougher laws to protect intellectual property rights, stated that the sentence imposed on the Blenheim man was a 'licence to steal'. Alliance executive director, Phil Norman, said the New Zealand software industry loses \$50 million a year through piracy and that the BSA was concerned the issue was not being viewed seriously enough by politicians and the judiciary.

Norman stated that the fine was trivial for a 'white collar theft of \$48,000'. Further, it set a dangerous precedent because the sentence carried no deterrent and suggested that the cost is negligible if pirates are caught. BSA members advocated that a custodial sentence for such an offence would have been more appropriate.

The New Zealand court seems to perceive software piracy as a mere misdemeanour rather than outright theft, by contrast with a 1987 English case. A defendant was jailed for a year by Exeter Crown Court for illegally copying and distributing disks and manuals of personal computer software.

This case also sets an important precedent in that the Police undertook a criminal action to convict the defendant of the intellectual property theft offence. This will be relevant to software owners as it has the potential to save them the cost and time involved in bringing civil actions. The stigma attached to a criminal conviction should also potentially provide a useful deterrent.


However, separate civil actions must still be taken to obtain damages and pursue other civil remedies such as Anton Piller orders which may be obtained to enable a software owner to conduct a search of a pirate's premises and obtain evidence of the infringing acts. In this case, Number One Software Company managing director indicated that his company would pursue a civil action against Cambridge under the Copyright Act.¹

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INTERNATIONAL COMPUTER LAW/PACRIM CONFERENCE

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