



HIGH COURT OF AUSTRALIA

Public Information Officer

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EDDY STEVENS v KABUSHIKI KAISHA SONY COMPUTER ENTERTAINMENT, SONY
COMPUTER ENTERTAINMENT EUROPE LIMITED AND SONY COMPUTER
ENTERTAINMENT AUSTRALIA PTY LIMITED

The High Court of Australia today allowed an appeal against a finding that Mr Stevens's modifications to Sony PlayStation consoles to allow unauthorised copies of games to be played were illegal.

With effect from 4 March 2001, the *Copyright Amendment (Digital Agenda) Act* introduced provisions relating to "circumvention devices" into the *Copyright Act*. The appeal concerned the meaning of that term.

The Sony companies manufactured and distributed both PlayStation consoles for playing computer games on television sets and the computer games on CD-ROMs. Sony owned the copyright in both the hardware and the software. Each CD contains an access code and the circuit boards of the PlayStation consoles contain a chip described as a boot ROM. An unauthorised copy of a PlayStation CD does not replicate the access code so the boot ROM of the console denies it access so that the game cannot be played. Sony claimed that the access code and boot ROM, either separately or together, constituted a "technological protection measure", as defined in section 10(1) of the *Copyright Act*. Section 116A of the *Copyright Act* gives an owner of copyright in an item protected by a "technological protection measure" a right of action against someone who makes or sells "circumvention devices", devices capable of overcoming the protection measure.

On two occasions in 2001, after the Amendment Act took effect, Mr Stevens sold unauthorised copies of the PlayStation games *Croc 2*, *Medi Evil*, *Motor Races World Tour* and *Porsche 2000*. On three occasions he also sold "mod chips" and installed them in PlayStation consoles to bypass the boot ROM anti-infringement device and allow the copies to be played. These mod chips would constitute "circumvention devices" – and Sony would have a right of action against Mr Stevens – only if Sony's device was found to be a "technological protection measure".

In the Federal Court, Justice Ronald Sackville held that they were not such measures, because in order to be a "technological protection measure" a device must be designed to prevent or inhibit copying in breach of copyright. The Full Court of the Federal Court unanimously allowed an appeal by Sony, holding that its device inhibiting infringement by making unauthorised copies unusable was sufficient. A majority of the Full Court did agree with Justice Sackville that when a game is played computer programs are not reproduced in a material form in the Random Access Memory of the console, and a copy of the game fulfilling the definition of "cinematograph film" is not made in RAM. The Court granted Sony a declaration, an injunction and costs and ordered that the question of damages be remitted to Justice Sackville. Mr Stevens appealed to the High Court.

The Court unanimously allowed the appeal. It accepted Justice Sackville's construction of a "technological protection measure" as a device which denies access to a copyright work or which limits capacity to make copies of a work and thereby prevents or inhibits the undertaking of acts which would infringe copyright. The Court upheld the finding by Justice Sackville and the Full Court majority that computer programs are not reproduced in a material form in RAM and copies of cinematograph films are not made in RAM when games are played.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*