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Determining an Employer's Liability for Employee's Copyright Infringement - Court Finds Employer Vicariously Liable for Use of Unauthorised Software

Introduction

As businesses rely increasingly on technology, technology risk management has become a vital part of operations. It is critical that IT security and governance is properly addressed in company policies and procedures, including the use of copyrighted software and managing the use of and access to office IT equipment.

These issues arose in the Singapore High Court case of *Siemens Industry Software Inc v Inzign Pte Ltd* [2023] SGHC 50. An employee of the defendant employer had installed an unauthorised version of a commercial software onto a laptop which he found at his workplace. The Court had to determine whether the employer was liable for the employee's copyright infringement.

The Court ultimately found the employer to be vicariously liable for the employee's actions. In reaching its decision, the Court considered a number of key issues, including the novel question of whether the doctrine of vicarious liability in tort extends to cases involving copyright infringement. The Court's decision also provides guidance on issues of employment law, including the adequacy of administrative controls over office IT equipment, the supervision and management of employees, and internal policies relating to technology, training and anti-software piracy.

This Update provides a summary of the Court's decision and highlights the key takeaways for employers on the measures that should be implemented to prevent the use of unauthorised software.

Brief Facts

The software in question was the NX Software, which was distributed by the Plaintiff. The NX Software allows for computer-aided design, manufacturing and engineering. Users would typically purchase licences for the specific modules of the NX Software which were required for their businesses.

The Defendant was a Singapore company primarily engaged in the business of medical supplies, and owned licences for three modules of the NX Software. One Mr Win was employed by the Defendant as a machinist.



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Mr Win sought to download and install an unauthorised copy of the NX Software on one of the Defendant's computers to familiarise himself with the software, but was unable to bypass the administrative controls. Mr Win then obtained an unused laptop (the "**Laptop**") from the toolroom where he worked and, discovering that there were no administrative controls on it, downloaded and installed the infringing NX Software on it. He proceeded to use this software on multiple occasions.

The Plaintiff discovered the unauthorised use of the NX Software and initiated the present action against the Defendant, seeking to hold the Defendant liable for Mr Win's acts of copyright infringement. The Court thus had to determine whether the Defendant was liable for the infringement, whether primarily or vicariously.

Holding of the High Court

The Court found that the Defendant was not primarily liable for Mr Win's infringement, but was vicariously liable for the same. The Court awarded damages of S\$30,574 to the Plaintiff.

Primary liability

On the issue of primary liability, section 31(1) of the Copyright Act 1987 (2006 Rev Ed) states that the copyright in a work is infringed if a person, who neither owns nor licenses the copyright, does or authorises the doing of any act comprised in the copyright. In this case, the Court found that the Defendant neither did nor authorised the infringing acts.

The Defendant did not itself perform the infringing acts as Mr Win's actions were not sanctioned by the Defendant or committed as an agent of the Defendant. Mr Win's acts also could not be said to fall within the scope of any authority conferred upon him by the Defendant.

The Court further found that the Defendant did not authorise the infringing acts.

- The Court observed that the Defendant may have been negligent in the implementation of its anti-software piracy policy and in the conduct of its operations. The Court noted the Defendant's weak anti-software piracy policy, its poor communication of this policy to Mr Win, its recklessness in managing the Laptop, and the free access to premises granted to Mr Win.
- However, the Court nevertheless held that the Defendant did not sanction, approve, or countenance Mr Win's infringing acts because it did not know that the infringing acts had occurred and had little practical control over Mr Win's actions on the Laptop.
- Moreover, the very existence of the anti-software piracy policy (which Mr Win had signed) and the measures taken in furtherance of this policy supported the conclusion that the Defendant had not granted Mr Win the right to commit the infringing acts.

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Vicarious liability

The doctrine of vicarious liability holds a defendant liable for the wrongful acts of another even if the defendant has not been negligent. Here, the Court first considered whether the doctrine of vicarious liability in tort extends to cases involving copyright infringement.

Despite the lack of local case law on this point, the Court held that the doctrine of vicarious liability does extend to copyright infringement. The Court noted that copyright infringement constitutes a statutory tort and should not be excluded from the applicability of the doctrine of vicarious liability. Further, this position would be consistent with the position taken in other leading common law jurisdictions.

Applying the test for vicarious liability, the Court found that there was a special relationship between the Defendant and Mr Win by virtue of their relationship of employment, and that there was a sufficient connection between the employment relationship of the Defendant and Mr Win and the commission of the copyright infringement.

- The circumstances in which Mr Win was allowed to operate in the course of his work afforded him the opportunity to commit the infringing acts. In this regard, the Defendant's lax supervision of Mr Win afforded him the latitude and opportunity to commit the infringing acts. Further, the Defendant had mismanaged the Laptop by failing to ensure that it was repaired according to procedure and that it was properly secured.
- The infringing acts were committed in the context of Mr Win's employment and for the Defendant's benefit, as the ultimate objective behind Mr Win's acts was to improve his performance at work.

The Court found that this conclusion was supported by policy considerations as well. In particular, a finding of vicarious liability would incentivise employers to take further steps in reducing the incidence of copyright infringement by their employees. The Court noted that employers are generally placed in the best position to manage the conduct of their employees, especially for cases such as the present, which involve copyright infringement through the unauthorised downloading and installation of software. In these cases, it may be difficult, if not impossible, for the copyright owners to detect instances of infringement and to trace these instances to the wrongdoers.

Key Takeaways

This decision highlights the importance of having adequate policies and procedures to safeguard against the unauthorised use of software, as well as the proper implementation of such policies and procedures. As demonstrated, employers may be found liable for the infringing acts of their employees, even if such acts were not authorised by or even known to the employer.

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Employers should thus take note of the following key points:

- **Anti-software piracy policy** – Employers should ensure that they have a comprehensive anti-software piracy policy in place. It is important to note that the existence of such a policy may not be sufficient; the policy must also be adequately implemented.
 - The policy should be adequately communicated to employees. As in this case, this can be achieved by making reference to the policy as part of the employment contract.
 - Employers should regularly remind their employees of the policy, whether by training or by notification. In this case, the Court noted that the employer had failed to bring the policy to the employee's attention for over five years.
- **Management of equipment** – Employers should ensure that all computers, laptops and other IT equipment are adequately managed. In this case, the Laptop had been repaired and placed in an unlocked drawer by Mr Win's supervisor, who did not obtain approval for the repair, did not bring the existence of the Laptop to the employer's attention, and did not properly secure the Laptop.
 - Policies and procedures should be implemented to set out restrictions on access to such IT equipment and the administrative controls to be installed.
 - Only computers and laptops issued by the employer should be allowed to be used in the workplace. These computers and laptops should be subject to regular audits to check if any unauthorised software has been downloaded and used.
 - All computers and laptops should have the requisite administrative controls installed to prevent unauthorised downloading and installation of software.
 - All computers and laptops should be physically secured to prevent unauthorised access and use.
- **Management of employees** – Employers should ensure that employees are subject to policies and procedures regarding their access to IT equipment and the use of software.
 - Employers should conduct regular training for their employees to educate and emphasise the importance of respect for copyright, the installation and use of unauthorised software, and the protection of confidential information. It is important that the relevant policies should be adequately and regularly communicated. In this case, the Court noted that the Defendant's anti-software piracy policy had been brought to Mr Win's attention more than five years before the infringing acts took place, and that there was no indication of subsequent reminders to Mr Win regarding the policy save

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for a lone inconspicuous A4-sized poster comprising three sentences, which was placed in the toolroom alongside an assortment of numerous other notices.

- Access to computers and laptops, as well as to the general premises where such IT equipment may be accessed, should be restricted according to the scope of work of the employee.
- Employees should be adequately supervised to ensure understanding of and compliance with policies and procedures. In this case, the Court pointed out that Mr Win had not been adequately supervised in the course of his work, as his supervisor only visited the toolroom once in several months.

The Court's observations in this decision highlight the importance of having adequate policies and procedures over the relevant areas discussed above, as well as the proper implementation of such policies and procedures. Employers may wish to consider assessing their current policies and procedures to ensure that they are adequate for risk management purposes, and to evaluate whether further training is necessary for the implementation of the policies.

Should you wish to submit queries or procure services regarding hygiene checks and risk assessments of your existing policies and procedures, or on conducting training for your staff, please feel free to contact our team below.

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