

Case No: HC05C0235

Neutral Citation Number: [2005] EWHC 3191 (Ch)
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Monday, 28th November 2005

BEFORE:

THE HONOURABLE MR JUSTICE LAWRENCE COLLINS

BETWEEN:

	POLYDOR LIMITED AND OTHERS	Claimant
	- and -	
	BROWN AND OTHERS	Defendant

Tape Transcript of Smith Bernal Wordwave Limited
Greencoat House, 183 Clarence Street,
Kingston-upon-Thames, Surrey, KT1 1QT
Tel No: 020 8974 7305 Fax No: 020 8974
(Official Shorthand Writers to the Court)

MR VAN HEGAN appeared on behalf of the Claimant
DEFENDANT NOT IN ATTENDANCE

Judgment

MR JUSTICE LAWRENCE COLLINS:

This is an application for summary judgment against the second defendant, Mr Bowles, for copyright infringement under the Copyright Designs and Patents Act 1988. Each of the claimants is a record company, of whom six are members of the BPI.

2. Mr Bowles' identity was obtained following a Norwich Pharmacal order made by David Richards J, on 11th March 2005, against various Internet service providers whose Internet facilities had been used by the defendant as a whole for what the claimant says, is the unlawful purpose of copyright infringement

in sound recordings by the use of peer-to-peer software -- P2P software as it is called.

3. The evidence is that the shared directory of a computer connected to the Internet by means of an account in Mr Bowles's name with NTL and running Lineware software, was making available more than 400 audio files to all other users of the Nutella P2P network.
4. A sample of files was downloaded by the BPI from the computer, and after Mr Bowles was identified, the claimants' solicitors wrote and sent him a letter before action. Mr Bowles admitted that he had used P2P software, but was unaware that by doing so, he said, he was distributing music, and he said that he had had the software on his computer for about a year, and that his children had used it for downloading music.
5. He then filed two documents with the court: a defence, and some form of admission.
6. I am satisfied that on the evidence before me there has been an infringement, for these reasons: by s.16(1)(d) and 20 of the 1988 Act the copyright owner has the exclusive right to communicate the work, including sound recordings to the public, where such acts include the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.
7. Connecting a computer to the Internet, where the computer is running P2P software, and in which music files containing copies of the claimant's copyright works are placed in a shared directory, falls within the infringing act.
8. This is a primary act of copyright infringement, and it does not matter whether the person knows, or has reason to believe, that what they are doing is an infringement, because innocence or ignorance is no defence. The mere fact that the files were present and were made available is sufficient for the infringement under s.20 to have been committed.
9. Mr Bowles was an infringer by making the recording available to the public, and authorising the performance of the infringement. Mr Bowles had the Internet account; he admitted using the P2P software and he had control over the computer, and he has never denied that he installed the software on to the computer.
10. Mr Bowles did put forward a defence that he did not know that he was doing anything wrong or illegal, and only let his children download music for themselves. And he no longer had any music download sites on the computer, and as soon as he learned it was illegal he got rid of it, and he has not made anything in monetary terms from downloading the music. These are not

defences, because ignorance is not a defence and he has accepted that he himself was a user -- distinct from any acts committed by his children -- which gives rise to direct liability. It is not necessary for me on the facts of this case to consider what his liability might be in relation to the use by his children of the computer.

11. In those circumstances there is no defence in the sense of no realistic prospect of success, and I therefore grant summary judgment against Mr Bowles.

12. Costs

I will order that no action be taken to enforce payment for two months, and that Mr Bowles have permission that -- if he cannot agree with the claimants' schedule for payment by instalments -- he can apply to the court. But I will express the wish that you do take serious account of his personal circumstances and do not simply use him as an example to the rest.
