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Case note: *Record TV Pte Ltd v MediaCorp TV Singapore Pte Ltd* [2010] SGCA 43

by Nurul Asyikin

In the recent Court of Appeal decision in *RecordTV Pte Ltd v MediaCorp TV Singapore Pte Ltd* [2010] SGCA 43, the Court held that unless the statutory words of the Copyright Act clearly reflect the legislative policy on the extent of the rights to be conferred on the copyright owner, such statutory words should not be interpreted expansively if doing so may stifle technological advances which are in the public's interest.

The pronouncement represents a significant and timely development in the copyright law of Singapore as it formalises the Court's approach towards the interpretation of the Copyright Act (Cap. 63) (the "Act") in relation to technological advancements which have "clear and legitimate and beneficial uses for the public", and which could not have been foreseen by Parliament at the time the Act was passed.

Facts of the Case

The Appellant, RecordTV Pte Ltd, had provided an online service which allowed registered users in Singapore to record the free-to-air broadcasts and films of MediaCorp TV Singapore Pte Ltd ("MediaCorp"), and to view the recordings online at a later date. In contrast to a traditional digital video recorder, all recordings made using RecordTV's online service ("iDVR") were stored at RecordTV's premises. Whenever a registered user asked to view a recording, the iDVR would stream the relevant file to the registered user's browser for viewing.

In response to the launch of the iDVR in July 2007, MediaCorp issued a "cease and desist" letter to RecordTV, in which MediaCorp alleged that the copyright subsisting in a number of its free-to-air broadcasts and films had been infringed by RecordTV. RecordTV responded by commencing an action against MediaCorp for, *inter alia*, making groundless threats to bring legal proceedings for copyright infringement. MediaCorp, on its part, filed a counterclaim seeking, *inter alia*, injunctive relief for copyright infringement.

The High Court held, *inter alia*, that RecordTV was liable for (a) authorizing its registered users to make copies of MediaCorp's free-to-air broadcasts and films without a licence from MediaCorp; and (b) communicating MediaCorp's free-to-air broadcasts and films without MediaCorp's licence.

The Court of Appeal Decision

The Court of Appeal overturned the High Court ruling on these two issues. The Court of Appeal held that RecordTV did not authorize its registered users to make copies of and/or communicate to the public MediaCorp's free-to-air broadcasts and films, as the evidence did not support this conclusion.

The Court of Appeal also overturned the High Court's ruling that RecordTV had infringed MediaCorp's copyright in the free-to-air broadcasts and films on a number of issues. Firstly, the Court of Appeal held that RecordTV's registered users did not constitute "the public", since any communications made by RecordTV were made privately and individually, pursuant to each registered user's request to record MediaCorp's free-to-air broadcasts and films. Secondly, the Court of Appeal held that "communicate" should be interpreted such that transmissions initiated by recipients (e.g. RecordTV's registered users) are considered as a form of communication protected under the Act, and that accordingly, it was RecordTV's registered users who had "communicated" MediaCorp's free-to-air broadcasts and films.

In light of the Court of Appeal's rulings on these two issues, MediaCorp was held liable for issuing groundless threats.

The Court of Appeal's decision in *RecordTV Pte Ltd v MediaCorp TV Singapore Pte Ltd* has undoubtedly reassured potential developers of new online services that the Courts here are prepared to strike a balance between a copyright owner's interests and the public interest in the use of new technologies. This decision has also provided valuable guidance in the interpretation of the Act, which has not been fully tested by the Courts thus far.

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