HELSINKI DISTRICT COURT   JUDGMENT
        07/4535
4/10 Dept.
                        Case #:
25 May 2007   R 07/1004

Chairman   Timo Jääskeläinen, District Justice

Lay members   Marianne Lindberg, Ulf Ljung, Auli Rantanen

Prosecutor   District Prosecutor Kukka-Maaria Kankaala

Defendants   X
                        RAUHALA MIKKO JOHANNES

Matter   MISDEMEANOUR OF VIOLATING A TECHNOLOGICAL
MEASURE

Proceedings initiated   5 February 2007

DESCRIPTION OF THE MATTER

Prosecutor's demand for penalty

1. MISDEMEANOUR OF VIOLATING A TECHNOLOGICAL MEASURE
(6070/R/0135203/06)
Copyright Act, Sections 50a, 50b and 56e
Penal Code, Chapter 5, Section 3

1 January 2006 to 7 January 2006   HELSINKI

Rauhala and X have jointly and intentionally violated the ban on making or
distributing means for circumventing technological measures in that X, against
compensation of EUR 0.05 offered by Rauhala, has authored a computer
program in the Haskell language using which technological protection
safeguarding a protected work or other material, in other words CSS protection
used on DVD discs, the purpose of which protection includes the prevention of
directly copying material from a DVD disc, can be circumvented or disactivated
or, at least this can substantially facilitate the circumvention or disactivation of
such protection. After this, the defendants have used a data network to distribute
the program in question to the public by sending it to a site named
"organisoitukeskustelu" (*organised-discussion)* maintained by Rauhala and
published in the Internet. The purpose of the site has been to offer in an
organised manner services for circumventing and/or disactivating technological
measures, among other things.

Other claims by the prosecutor

Compensation for costs of evidence regarding charge #1
The defendants shall be ordered to compensate the State for the costs of
evidence.
Criminal Procedure Act, Chapter 9, Section 1

RESPONSE BY X AND RAUHALA

Both X and Rauhala have denied the charge and demanded its dismissal. They
have also demanded that the State be obliged to compensate for their legal costs
including interest. The defendants have in fact admitted that they have committed
the acts specified in the charge. However, the CSS protection mentioned in the
charge was not an effective technological measure as referred to in Section
50a(2) of the Copyright Act, and as consequence, the defendants' conduct could
not fulfil the constituent elements of the offence of which they were prosecuted.
The defendants have stated that they used a computer running the Linux
operating system. Viewing a legally obtained DVD disc on such a computer
required that CSS protection be circumvented. Almost all other operating
systems included a built-in CSS protection decoding or viewing program. As
early as 1999, a Norwegian computer hacker was able to produce a code for
disactivating the protection, using which he had made a DVD disc viewable on
his computer running the Linux operating system. After this, the program was
rapidly spread to the world through the Internet, and now there are dozens or
hundreds of similar Web sites hosting programs suitable for circumventing the
protection and discussion over the matter.

EVIDENCE

Written evidence

Prosecutor
1. Appendix 1, Program authored by X in the Haskell language
2. Appendix 2: Huttunen's report

Witnesses

Prosecutor

1. witness Lari Sampo Juhani Huttunen

Defendants

2. defendant X heard for probationary purposes
3. defendant Mikko Johannes Rauhala heard for probationary purposes
4. witness Kai Rainer Puolamäki

JUDGMENT OF THE DISTRICT COURT

Attribution

The District Court dismisses the charge for both defendants.

Reasons for judgment

According to Section 56e of the Copyright Act, anyone who intentionally or through gross negligence violates

1) the ban on circumventing a technological measure referred to in Section 50a; or

2) the ban on producing or distributing means for circumventing a technological measure referred to in Section 50b, shall be sentenced to a fine.

The object of the crime is an efficient technological measure protecting a work protected under the Copyright Act, which refers to a technology, equipment or component that, in its normal purpose, is designed to prevent or restrict acts directed towards such works without the authorisation of the author or other holder of rights, and is able to achieve the protection objective.

By virtue of the testimonies of Lari Huttunen and Kai Puolamäki, who have been heard as witnesses and who can be considered information technology experts, it has been reliably determined that once a Norwegian computer hacker succeeded in breaking the CSS protection for DVD discs in 1999, the situation from an end user's viewpoint has changed so that similar circumvention software is available from the Internet in dozens, even free of charge. Some computer operating systems even have such a program pre-installed.

From the viewpoint of copyright holders, X's and Rauhala's conduct described in the charge cannot be considered to have caused any slightest "gap" in CSS protection compared to the circumstances already existing. CSS protection can no longer be considered an effective technological measure referred to in the law. A consequence of this is that the constituent elements of a misdemeanour of violating a technological measure are not fulfilled. Therefore the charge must be dismissed.

Statement of judgment

The District Court has decided on the case as indicated in the statement of judgment.

APPEAL

Any party dissatisfied with the judgment may appeal to the Helsinki Court of Appeal. A declaration of the intent to appeal shall be filed with the District Court no later than on **Friday 1 June 2007.**

District Justice
Timo Jääskeläinen