

## COPYRIGHT

2 significant Court decisions in 2007.

▪ *Alliance Entertainment Singapore Pte Ltd vs Sin Kay Teck* [2007] SGAC 42

The Plaintiffs (Alliance) was a distributor of films and television in the form of VCDs and DVDs. Alliance claimed to hold an exclusive licence for various movies derived through intermediate licensors from the copyright owners. The Defendant (Sim) operated a video distribution business in Singapore.

Sim applied to strike out Alliance's Suit on the basis that Alliance was not an exclusive licensee. Under sections 123 and 124 of the Copyright Act only an exclusive licensee has the same right of action as a copyright owner who is not required to join the copyright owner when taking out enforcement proceedings.

The Judge reviewed the various commentaries and precedents on the meaning of an "exclusive licensee" and held that:

- an exclusive licensee under the Copyright Act (i.e. a statutory exclusive licensee) is one who takes his rights to the exclusion of all others including the copyright owner.
- when an exclusive licensee grants a sub-licence he does so on his own behalf and not on the copyright owner's behalf.
- a statutory exclusive licensee cannot itself grant another statutory licence by way of a sub-licence.

The Judge held that Alliance was a sub-licensee and not a statutory exclusive licensee. As such Alliance had no right to sue for infringement of copyright as the action should have been brought by the copyright owner. The action was dismissed.

~~~~~

next

- 2 -

- *Odex Pte Ltd vs Pacific Internet Ltd*

Odex was a distributor of anime in Singapore. Odex wanted to enforce the owner's copyright against members of the public who downloaded unauthorized copies of anime off the Internet. In pursuance of that Odex applied to the District Courts for pre-action discovery against various Internet service providers to reveal the downloaders identities. Pacific Internet (PacNet) was a service provider in Singapore against whom Odex applied for pre-action discovery.

To support its application Odex produced letters of authorization from various sources permitting Odex to enforce copyright on their behalf. In respect of the film "Mobile Suit Gundam Seed" Odex admitted it was a sub-licensee and so in line with the *Alliance* case decision (referred above) the Court refused Odex's application.

In respect of the various letters of authorization for Odex to take legal action, the District Court held that they did not amount to grant of a statutory exclusive licence and refused pre-action discovery as Odex had no locus standi to make the application. Odex appealed.

Odex claimed that the District Judge had misunderstood the letters of authorization to be licences. In fact the letters of authorization had the effect of appointing Odex as authorized agents and not a sub-licensee. Odex had made the pre-action discovery on behalf of the copyright owners in their capacity as agents. The High Court whilst accepting that Odex did not make the application as a sub-licensee nevertheless raised the issue whether, in Singapore, an agent of a copyright owner could apply in the agent's own names for pre-action discovery. Prima facie an agent could not. Also, the Copyright Act and its regulations do not provide for this. As an authorized agent Odex did not have the locus standi to make the application in its own name. The truth of the matter is that the various Japanese copyright owners were reluctant to be named as Plaintiffs. Odex's appeal was dismissed.

~~~~~