

Company Held Vicariously Liable for Employee's Unauthorised Use of Infringing Software

Singapore High Court decision of Siemens Industry Software Inc v Inzign Pte Ltd [2023] SGHC 50

To what extent would an employer be liable for the acts of copyright infringement committed by its employees and does the doctrine of vicarious liability in torts extend to cases of copyright infringement? These questions were considered by the Singapore High Court in the recent decision of *Siemens Industry Software Inc v Inzign Pte Ltd* [2023] SGHC 50.

Background

Siemens Industry Software Inc (the “**Plaintiff**”) was the owner of the copyright in the NX™ software (“**NX Software**”) which was used for computer-aided design, manufacturing and engineering. Inzign Pte Ltd (the “**Defendant**”), a Singapore company engaged in the business of manufacturing medical supplies, owned licences to three modules of the NX Software. The Defendant had employed a machinist (the “**Employee**”), whose role required him to use the NX Software.

In 2020, as the Employee wanted to practise using the NX Software, he installed an infringing copy of the software onto an unused and unsecured laptop he found in the Defendant's unsupervised toolroom. Through an automatic reporting function built into the software, the Plaintiff detected this installation and traced the infringement to the Defendant. After the Defendant was made aware of this infringement, the Defendant carried out internal investigations and uninstalled the NX Software from the laptop.

The Plaintiff subsequently initiated the present suit against the Defendant for copyright infringement. As it was not disputed that the Employee had infringed the Plaintiff's copyright in the NX Software, the two main issues in this case were:

- (1) whether the Defendant was primarily liable for the Employee's actions; and
- (2) whether the Defendant was vicariously liable for the Employee's actions.

Primary Liability

On primary liability, section 31(1) of the Copyright Act 1987 (the “**Copyright Act**”) states that copyright in a work is infringed if a person who neither owns nor licenses the copyright either (a) does or (b) authorises the doing of, any act comprised in the copyright.

With regard to whether the Defendant had carried out the infringing act, the Court found that this depended on whether the Employee was acting in the course of his duties as an agent of the Defendant. In this regard, the Court found no evidence indicating that the Employee's actions were sanctioned by the Defendant's constitution, director, or shareholders, nor were the Employee's actions done as an agent of the Defendant. This was evidenced by the Employee's signed acknowledgement of the Defendant's anti-software piracy policy which prohibited the installation,

downloading or use of any unauthorised software on the Defendant's computers. The Defendant had also licensed the necessary modules of the NX Software required for its business and there was no reason for it to have instructed or allowed its employees to download unauthorised software. On this basis, the Court held that the Employee's infringing acts could not be attributed to the Defendant.

Turning to whether the Defendant had "authorised" the Employee's infringing acts, the Court held that while the Defendant was careless in its management of the laptop used by the Employee and negligent in the implementation of its anti-software piracy policy, the Defendant did not sanction, approve or countenance the Employee's infringing acts. The Court found that the Defendant did not have knowledge of the occurrence of the infringing acts and had little control over the Employee's actions. Furthermore, the existence of the anti-software piracy policy supported the conclusion that the Defendant would not have granted the Employee the right to commit the infringing acts.

For these reasons, the Defendant was not primarily liable for copyright infringement.

Vicarious Liability

In determining whether the Defendant was vicariously liable for the Employee's acts of infringement, the Court referred to supporting case law from the United Kingdom and Australia and concluded that in the absence of express restrictions in the Copyright Act, the doctrine of vicarious liability may be extended to copyright infringement.

The Court proceeded to apply a "two-step" test to determine whether vicarious liability should be imposed, namely:

- (a) There must be a special relationship between the Employee and the Defendant; and
- (b) There must be a sufficient connection between the Defendant and the Employee on the one hand, and the commission of the infringing acts on the other.

The parties to the action were in agreement that the contractual employment relationship between the Employee and the Defendant satisfied the first requirement.

Turning to the second requirement, a "sufficient connection" would exist if the Defendant had in some way created or significantly enhanced, by virtue of the employment relationship, the risk of copyright infringement. The Court found that the circumstances in which the Employee was allowed to operate in the course of his work, including the Defendant's lax supervision of the Employee, had given him the opportunity to commit the acts of copyright infringement. The Defendant's mismanagement of the laptop had also created and enhanced the risk that the Employee could commit the infringing acts. Further, the Employee had not installed the software for his personal use. He wanted to practise using it to improve his skills and performance at work. The infringing acts had therefore been committed in the course of the Employee's employment for the Defendant's benefit. For these reasons, the Court held that there was a sufficient connection between the relationship of employment and the Employee's infringing acts.

The Court therefore concluded that the imposition of vicarious liability on the Defendant was justifiable in the circumstances.

In further support of its finding, the Court noted two relevant policy considerations. Firstly, the imposition of vicarious liability on the Defendant would ensure the effective compensation of the Plaintiff as the Defendant was the person best placed to provide such compensation. Secondly, a finding of vicarious liability would incentivise employers to take further steps in reducing the incidence of copyright infringement by their employees.

Key Takeaways

The decision of *Siemens Industry Software Inc v Insign Pte Ltd* has established that the doctrine of vicarious liability in torts extends to cases of copyright infringement. This is significant because an employer can now be held legally responsible for the infringing acts of their employees, even if it did not authorise or know about these acts, if it had created or enhanced the risks of such infringement.

To mitigate and manage such risks, employers should impose and implement adequate measures, policies and safeguards to discourage and prevent their employees from committing acts of copyright infringement, especially when doing so in the context of their employment and when using the employer's electronic equipment and devices. This includes: (1) putting in place appropriate company policies to guard against copyright infringement and improper use of office computers, laptops and equipment; (2) regular communication and training of employees on these policies; and (3) implementing effective checks and controls to monitor and enforce employees' compliance of such policies.

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