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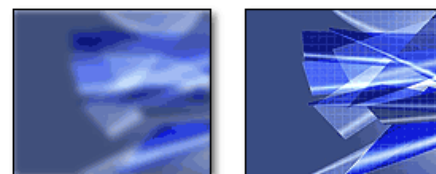
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UK Supreme Court Holds that U.S. Copyright Claims Are Justiciable in English Courts



Okt 4, 2011
 Désirée Fields

An English court could exercise jurisdiction in a claim against persons domiciled in England for copyright infringement committed outside the EU in breach of the copyright law of that foreign country.

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The UK Supreme Court has held that Star Wars Stormtrooper helmets are not sculptures due to their utilitarian nature and consequently do not constitute artistic works under the Copyright, Designs and Patents Act 1988 (CDPA). The Supreme Court has also ruled that an English court could exercise jurisdiction in a claim against persons domiciled in England for copyright infringement committed outside the EU in breach of the copyright law of that foreign country. *Lucasfilm Limited and others v. Ainsworth and another* [2011] UKSC 39 (UK Supr. Ct., July 27, 2011).

In 1976, Lucasfilm commissioned Andrew Ainsworth to make helmets and armor to be worn by the Stormtrooper characters in the first Star Wars film. Lucasfilm provided Ainsworth with two drawings and a clay model of a prototype helmet from which Ainsworth made molds of the helmet. In 2004, Ainsworth set up a website selling helmets and armor made from those molds and made U.S. sales totaling between \$8,000 and \$30,000.

In 2006, Lucasfilm obtained default judgment in California against Ainsworth for \$20 million; \$10 million of which represented triple damages. The judgment was unsatisfied, however. Lucasfilm subsequently commenced proceedings in the English High Court for copyright infringement, enforcement of the compensatory element of the U.S. judgment and, to the extent that the High Court refused to enforce that judgment, determination of its claims under U.S. copyright law.

Ainsworth contended that although the drawings were copyright works, the clay model was not a copyright work, as it was not a "sculpture." Further, section 51 CDPA provides that making an article to a design does not amount to infringement of the copyright in the design documents or models embodying that design if that article is not an artistic work. Ainsworth's case was that the helmets were not artistic works as they were not "sculptures."

The High Court agreed with the defendant. In the court's view, the helmet was not a sculpture: its primary function was utilitarian, lacking "the necessary quality of artistic creation" and accordingly, the

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defendant had a valid defense. It also held that the U.S. judgment was unenforceable for want of personal jurisdiction, but that Lucasfilm's U.S. copyright claims were justiciable in England and that Ainsworth had infringed those rights.

The Court of Appeal agreed on the copyright issue and that the U.S. judgment was unenforceable, but overturned the ruling on justiciability, holding that the English court has no jurisdiction to entertain such an action.

Dismissing Lucasfilm's appeal on copyright, the Supreme Court agreed that the helmet was not a sculpture. The court said that although imagination went into the concept of the soldiers dressed in white armor, "it was the Star Wars film that was the work of art. ... The helmet was utilitarian in the sense that it was an element in the process of production of the film."

However, the Supreme Court overturned the Court of Appeal's decision regarding the jurisdiction of the English court on the basis that it was satisfied that in this type of case the English court has jurisdiction, provided there is a basis for in personam jurisdiction over the defendant. The Supreme Court concluded by expressing the modern trend in favor of the enforcement of foreign intellectual property rights: "There are no issues of policy which militate against the enforcement of foreign copyright. States have an interest in the international recognition and enforcement of their copyrights, as the Berne Convention on the International Union for the Protection of Literary and Artistic Works shows."

Practice Note: The case could have significant implications insofar as the Supreme Court found that English courts have jurisdiction to decide allegations of foreign copyright infringement claims, provided that the defendant is based in the UK. Accordingly, the holding may have opened the door to allegations of worldwide infringement claims against UK businesses for unregistered intellectual property rights in English courts, whereas previously intellectual property rights holders would have had to bring separate claims in each jurisdiction where their rights had been infringed.

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