Copyright case goes to High Court  
Sarah Jones in Sydney  
The Australian  
SEPTEMBER 14, 2004  

A TEST case on DVD and computer games copyright laws to be heard in the High Court next year could have far reaching implications for Australian consumers and industry players, a law firm said. Last year Sony Computer Entertainment successfully sued a Sydney-based mod-chip trader Eddy Stevens, claiming he contravened the Copyright Act by selling and installing chips for Sony Playstation machines.

Mod chips allow users to overcome Playstation's security system so they can play pirated or copied games, legitimate game bought more cheaply outside Australia, or make personal back-up copies.

According to the law firm representing Mr Stevens, Gadens Lawyers, the case has far reaching implications for consumers and a wide range of industry players including video rental operators and computer games manufacturers such as the likes of Sony and Microsoft.

Managing partner and solicitor in the appeal case Michael Bradley said the decision to take the case to the High Court was important because the debate between the rights of copyright owners and consumers had been very much skewed in favour of copyright owners.

He said a key issue for consumers was whether it was permissible to make personal back-up copies of games or DVDs they had purchased, or use games or DVDs in Australia purchased legitimately overseas, without inadvertently breaching the Copyright Act.

"The case also has the potential to impact a range of industries, such as the video rental industry which... may see movie studios charge higher prices for rental movies which could be passed onto consumers," Mr Bradley said.

The case centres around the question of whether a copy is made of a computer game when it is played in the DVD drive of a computer or gameplayer such as a Playstation, because it is copied through the RAM of the player while it is being played.

A second key issue revolves around critical circumvention device provisions inserted into the Copyright Act under the Digital Agenda Amendments in 2000.

The provisions were designed to prohibit the making and selling of devices that get around technological protection measures that manufacturers have placed on their products to prevent unauthorised access and copying.

In the Sony versus Stevens case, Sony claimed that its games were protected by such a measure, and the mod chips installed by Mr Stevens were a circumvention device and were therefore illegal, Gadens said.

The Federal Court originally found that the security system on Playstation games were not a technological protection measure, because it did not prevent or deter copyright infringement.
However, the Full Court of the Federal Court later overturned the decision following an appeal in July 2003.
The case is expected to be heard in the High Court around March next year.
Mr Bradley is working with counsel John Nicholas SC and Christian Dimitriadis on the appeal.

AAP

This report appears on australianIT.com.au.