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## **Improper Instructions to Jury Dooms Sentence**

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By TIM HULL

(CN) - The 9th Circuit tossed a California man's conviction and four-year prison sentence for criminal copyright infringement on Tuesday because the trial judge improperly instructed the jury to apply a civil liability standard.

Julius Liu was arrested in 2003 for allegedly making illegal copies of music, software and films through his Hayward, Calif., company Super DVD, which closed in 2001. Federal prosecutors claimed that Liu made thousands of copies CD and DVD copies of Beatles, rap and Latin music, Norton Antivirus software and the film Crouching Tiger, Hidden Dragon without permission from the copyright holders.

Liu admitted at trial that he had made the copies, but claimed that he had no idea that the clients who hired him to do so did not hold the copyrights. Nonetheless, A federal jury convicted him in San Francisco District Court for criminal copyright infringement and trafficking in counterfeit labels. He was sentenced to four years in prison and three years of supervised release.

The 9th Circuit vacated the conviction and the sentences on Tuesday based on a confused jury instruction that failed to require the jurors to find that Liu had acted "willfully."

"Under the relevant criminal statutes, Liu's guilt turns on whether he acted 'willfully' and 'knowingly,'" wrote Judge Jacqueline Nguyen for the unanimous three-judge panel. "We hold that the term 'willfully' requires the government to prove that a defendant knew he was acting illegally rather than simply that he knew he was making copies."

Instead, the court defined 'willfully infringed' "without any requirement that the defendant knew he was committing copyright infringement." In doing so it "instructed the jury to apply a civil liability standard," the panel found.

Federal prosecutors in San Francisco did not immediately respond to a request for comment on Tuesday, but if they decide to retry Liu, they can't charge him again for the alleged illegal copying of Crouching Tiger, Hidden Dragon.

The panel found Liu's attorney had failed to recognize that the statute of limitations on that charge had run. The panel dismissed the charge accordingly.

"We agree with Liu that he had no notice whatsoever that he should prepare to be prosecuted for willfully infringing a motion picture work until the second superseding indictment," Nguyen wrote. "He was alleged to have infringed it between 2001 and 2003, but the second superseding indictment was not returned until 2010. The delay in bringing this charge is longer than the law permits."

The judge added that, "we can think of no legitimate reason for Liu's trial counsel not to have raised the obvious statute-of-limitations defense, and Liu was unquestionably prejudiced by the result-he was convicted."

Jason Campbell, one of Liu's San Francisco-based attorneys, said he doesn't know whether the government will retry his client.

"I don't believe the evidence is sufficient to retry him; the United States Attorney's office may feel differently," he told Courthouse News on Tuesday. "Had he had stronger, more observant trial counsel, I don't think he would have been convicted."

Campbell added that the ruling could raise the standard for all criminal copyright convictions.

"This also changes the terrain of all criminal copyright infringement cases," he said. "The court is saying that the intermediary has to know that what he is doing is illegal; you have to know that you are violating a copyright."

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