

## 9th Circuit overturns criminal copyright infringement conviction

After finding that a San Francisco federal judge gave the jury the wrong liability standard in a criminal copyright infringement case against the owner of a commercial DVD and CD replication business, an appellate panel has vacated his conviction and sentence.

### ***United States v. Liu, No. 10–10613, 2013 WL 5433753 (9th Cir. Oct. 1, 2013).***

Super DVD founder and CEO Julius C.L. Liu could be found liable for criminal infringement only if he knew that he was illegally copying protected material, a three-judge panel of the 9th U.S. Circuit Court of Appeals ruled Oct. 1.

U.S. District Judge James Ware of the Northern District of California, however, had instructed the jury that Liu could be criminally liable even without knowledge that he acted illegally.

“[T]he jury instructions, as delivered, resulted in a criminal conviction on what was basically a civil negligence or strict liability standard,” Liu’s attorney **Jason T. Campbell** at **Bay Area Criminal Lawyers** said in an email.

The San Francisco U.S. attorney’s office did not immediately respond to a request for comment.

Because the judge’s error was not harmless, the appellate panel vacated the conviction and sentence and remanded the case.

According to the appeals court’s opinion, Liu founded Super DVD in 2000. The DVD-manufacturing company operated four replication machines at a warehouse in Hayward, Calif., the opinion said.

Around 2003, Immigration and Customs Enforcement agents raided one of Super DVD’s customers, a computer software reseller in Coral Springs, Fla., where they found counterfeit copies of Symantec’s Norton Anti-Virus 2003, the opinion said. The same year, government agents obtained a warrant and searched Super DVD’s warehouse.

The agents found counterfeit copies of four music compilation CDs and DVDs of the film “Crouching Tiger, Hidden Dragon,” which Liu had no authorization to replicate, the opinion said.



“The jury instructions, as delivered, resulted in a criminal conviction on what was basically a civil negligence or strict liability standard,” said Jason Campbell of the Bay Area Criminal Lawyers.

The government charged Liu with criminal copyright infringement under 17 U.S.C. § 506(a)(1)(A) and 18 U.S.C. § 2319(b)(1), and trafficking in counterfeit software labels under 18 U.S.C. § 2318(a).

During the criminal prosecution, Liu denied any knowledge or involvement in replicating the unauthorized copies of the software or music compilations, the opinion said.

He admitted that Super DVD manufactured the “Crouching Tiger” DVDs, but said he or the business did not know at the time that they were counterfeit because the customer merely titled the work “Tiger,” the opinion said.

Once Super DVD’s client refused to pay for its order, Liu discovered that the customer did not have the rights to duplicate the movie. Super DVD then sued the customer for payment and alleged that the customer deceived it about owning the copyright, the opinion said.

Despite this evidence, Judge Ware instructed the jury that it only had to find that Liu knew that he was reproducing or distributing copyrighted works.

Specifically, he instructed the jury that the government “is not required to prove that the defendant knew that his act was unlawful,” the appellate opinion said.

After a three-day trial, the jury convicted Liu on all counts, and Judge Ware sentenced him to four years in prison and then three years of supervised release.

Liu appealed, saying the judge committed a harmful error when he failed to tell the jury that criminal infringement requires knowledge that the defendant committed an unlawful act.

The 9th Circuit panel agreed, vacating his conviction and sentence.

According to the docket, the U.S. attorney’s office requested an extension to petition the 9th Circuit for a rehearing *en banc*. It has until Nov. 14 to file its petition.

If the full appellate court refuses to rehear the case, Campbell said, “it remains to be seen whether the government will seek to try Liu again.”

Based on the appeals panel’s opinion, Campbell said, the government now “must demonstrate [Liu’s] personal awareness that the items he replicated infringed valid copyrights.” [WJ](#)

#### **Attorneys:**

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#### **Related Court Document:**

Opinion: 2013 WL 5433753

**See Document Section B (P. 28) for the opinion.**