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ADDITIONAL DEVELOPMENTS—DIGITAL MILLENNIUM COPYRIGHT ACT

STORAGE TECHNOLOGY CORP. V. CUSTOM HARDWARE ENGINEERING & CONSULTING, INC.

421 F.3d 1307 (Fed. Cir. 2005)

The Federal Circuit interpreted the scope of the Digital Millennium Copyright Act's (DMCA) anti-circumvention provision, concluding that when a statutory exception—in this case 17 U.S.C. § 117(c)—precludes a finding of copyright infringement, no anti-circumvention claim can stand.

Storage Technology Corp. ("StorageTek") manufactures a tape library system that stores and manipulates computer tape cartridges to store large amounts of data. The system consists of several tape storage "silos" and one management system, which are linked together via a network. Custom Hardware Engineering and Consulting, Inc. ("CHE")—a separate business that repairs StorageTek tape library systems—obtained access to fault symptom codes sent over the network from silos to the management system. In some instances it did so by rebooting the silos and management system and attaching devices of its own to the tape library networks. StorageTek claimed that rebooting the systems caused its software to be copied into memory, in violation of its copyrights, and that the device that CHE attached to the network violated the anti-circumvention provisions of the DMCA. The District Court granted StorageTek a preliminary injunction which was ultimately vacated by the Federal Circuit.

As to the copyright claim, the Federal Circuit found that § 117(c) protected CHE's activities. Section 117(c) permits the owner of a machine to copy a lawfully obtained copy of a computer program as part of repair or maintenance, as long as (1) the copy "is used in no other manner and is destroyed immediately after the maintenance or repair is completed," and (2) programs and parts of programs that are not "necessary for the machine to be activated" are not accessed or used except to make a copy "by virtue of the activation of the machine." StorageTek claimed that new copies were not destroyed upon completion of maintenance or repair because the machines were left on for a period of time following reboot. The court disagreed, holding that "maintenance" could extend over a substantial amount of time—as during the monitoring of a system for problems.

StorageTek claimed its software comprised two distinct types of code—functional code and maintenance code. It argued that only func-

tional code was necessary for machine activation, that the maintenance code permitted access to fault symptom codes, and that CHE accessed the code by obtaining those symptom codes. The court, however, found no clean division between the two code types, and reasoned that loading functional code was therefore necessary for the machine to be activated. As such, CHE satisfied the requirements of § 117(c)(2).

StorageTek further claimed that the CHE network attachment violated the DMCA because it accessed its copyrighted work. Section 1201(a)(1) of the DMCA bars circumventing technological protections that prevent access to copyrighted works. The court held that because CHE did not infringe the software copyright, StorageTek could not maintain its anti-circumvention claim. Moreover, the court found the network device did not facilitate infringement because, when the StorageTek systems were rebooted, their software was copied into RAM regardless of the presence of the device. Although the device permitted access to the fault symptom codes, StorageTek was unable to establish a nexus between access and infringement of its copyright.