

Audio Transcripts

Listening 9

Lawyer 1: Hello, Chris. I only ever seem to bump into you in this area of London these days. Have you been to the Patents Court in Rolls Buildings again?

Lawyer 2: Hi, Jerry. Yes, my firm's doing a huge amount of IP work at the moment and I'm often in the Patents Court. I've just been to hear a judgment handed down by His Honour Judge Birse. The outcome potentially has a huge bearing on a case we're working on at the moment, so it was important to hear his reasoning on the decision.

Lawyer 1: Which case was this? There are quite a few high profile cases going on in IP at the moment.

Lawyer 2: It's the Stephen Slater case. It all revolves around a dispute as to the ownership of copyright in a short film. What it boils down to, is who owns the legal rights of ownership in a film, the cameraman who shot the film, or the client who pays for the cameraman to do the job. If they have an express written agreement between them of course, it clarifies the position, but these people didn't. This case was all about the factors a court will consider in the absence of a written agreement.

Lawyer 1: Hang on. I seem to remember the details of this case. Is one of the parties English and the other one Danish?

Lawyer 2: That's right. Although the dispute itself is over film shot in Nepal, the subject of the dispute is a short film featuring the defendant sky-diving over Mount Everest. The defendant was a gentleman named Per Wimmer. Apparently he's quite a celebrity in Denmark. He described himself in the court papers as an 'Adventurer', believe it or not, although he actually makes his money by running a corporate advisory company, Wimmer Financial LLP. In 2000 he set up a second company called Wimmer Space that specialises in space and adventure activities. The film in question was promotional material for that. The claimant is an English cameraman, Stephen Slater.

Lawyer 1: I see. So, Per Wimmer, adventurer, asks Stephen Slater, cameraman, to make a film for him. But there's no relationship of employment and no written agreement. Is that right?

Lawyer 2: That's exactly right. At a meeting in London, which took place on 8 September, 2010, the two men agreed that Mr Slater would do the job in return for the costs of the trip, plus reasonable expenses. So, on 20 September of that year, they flew from Heathrow to Delhi, arriving in Kathmandu on 21 September. Everyone books into The Yak and Yeti Hotel and gets ready to sky dive and there's not a written agreement in sight.

Lawyer 1: Amazing. And presumably they now hotly dispute what was said in that meeting in London?

Lawyer 2: Naturally. Per Wimmer gave evidence in court

that he explained in full to Mr Slater that he would own all IP rights in the film for no extra consideration. Stephen Slater denies that that conversation ever took place.

Lawyer 1: So, what happened to trigger off the dispute? Did one of them use footage without notifying the other one?

Lawyer 2: Yes. In August 2010 Stephen Slater became aware of a film called 'Wimmer over Everest', which was shown on Danish TV. Mr Slater obtained a copy and saw that it contained two and a quarter minutes of his footage. He immediately sent an invoice to Mr Wimmer for £3000. Mr Wimmer didn't pay, and the rest, as they say, is history. Mr Slater issued his claim in Northampton County Court but it was transferred to the London County Court on the ground that that's the court where the defendant lives. Stephen Slater's grounds for legal action were copyright infringement. Per Wimmer counter-claimed, also on the grounds of infringement.

Lawyer 1: I see. I feel a bit sorry for Stephen Slater. If I remember correctly, he's only 21. I suppose this is a hard lesson for him: to always get things in writing.

Lawyer 2: Oh, for sure. The judge made it clear that although a contract for services certainly existed in this case, it would have saved a lot of time and money to have had an agreement drawn up in advance, or for one of the parties to have agreed, as a compromise to the situation, to have had an assignment of copyright drawn up.

Lawyer 1: So, what was the outcome?

Lawyer 2: Well, the judge said that this was a far from straightforward case, not least because of issues of governing law and jurisdiction. The film was broadcast on Danish TV, which neither party had taken into account when assuming that English law would be applied. So, the judge said that although in this country the relevant statute was the Copyright, Designs and Patents Act, 1988, Danish law could also have been applied.

Lawyer 1: But surely the opportunity for the parties to do that has passed. And, as the dispute is over such a small amount of money, surely it's not worth involving Danish law at this stage?

Lawyer 2: The judge took exactly that position. He said that they were too late and that he had to bear in mind proportionality and cost. He referred therefore, only to the UK statute and to English case law. His conclusion was that the parties, in the absence of a written agreement, are the co-owners of all relevant copyrights and that they have both reproduced the footage without the consent of the other. He said, at the end of his summing up, that he would make further declarations accordingly and will hear the parties as to what further orders should be made.

Lawyer 1: Wow. Yet again, the lesson is always get it in writing. Well, good luck with your case Jerry. I hope it goes well for you.