

A Da Vinci Code break that led to court

When the Lawyer leaked the bestseller's copyright ruling it soon found itself facing potential contempt of court charges

Joanne Neenan

Monday May 22, 2006

The Guardian

As code crackers, copyright lawyers and religious orders awaited the delivery of the Da Vinci Code copyright judgment last month, the Lawyer magazine received a red-hot tip off. At around 12.30 - 90 minutes before the official judgment was due - the magazine revealed on its website that Dan Brown had been victorious. The chain of events unleashed by this leak holds significance for English law, beyond the niche realm of intellectual property.

The scoop was removed an hour later, following another call - this time from the clerk to the trial judge, Mr Justice Smith. On May 3, the Lawyer found itself in court 61, facing potential contempt of court proceedings for breaching an embargo on the publication of draft judgments.

The rule on draft judgments is contained in Practice Direction (CPR PD 40E) (Reserved judgments) 2005, published in October last year. This new, relaxed rule allows lawyers to discuss draft judgments with their clients and other appropriate people in advance on condition that they agree to keep the draft confidential until it is formalised. The direction makes clear that any breach of those terms could be a contempt of court. The prior (and unsatisfactory) position was that parties were not allowed to see a judgment in draft until an hour before it was due to be handed down and no discussions between lawyers and their clients as to its contents were permitted.

In a twist, apt for a Da Vinci Code spin-off hearing, Mr Justice Smith was a member of the working party that drafted the rule which helped put Dan Brown out of his misery and the Lawyer in a spot of bother. At the hearing before Mr Justice Smith, counsel for the Lawyer explained that its journalists had not appreciated that reporting of the outcome of the case was embargoed. They were also unaware of the recently issued practice direction and, hence, the obligation of confidence. Accordingly, it was argued, they did not possess the requisite "intention to interfere with the interests of justice"; a necessary element for a finding of contempt of court in such circumstances.

In response, Mr Justice Smith said: "I acknowledge that journalists have a legitimate interest in publishing matters and a legitimate interest in publishing a scoop if they have it. These two legitimate interests should not collide with clear legal principles". Ultimately, however, he accepted the Lawyer's arguments, finding that it was not in contempt of court. The magazine agreed to publish a front page apology.

The significance of the judgment lies in the warning shot issued to the media by the judge, who laid down important guidance. His judgment effectively aims to put journalists on notice that, unless a specific order is made, no draft judgment can be published until the official ruling is handed down. According to a forceful section of the judge's ruling, the next publication which is too quick off the mark may not have such a lucky escape; it will be in contempt of court. The arguable implication of the judgment is that if journalists do not understand the rule or are not aware of it, hard luck; they should be. Furthermore, the judge warned, the consequences of any breach might be "severe".

ONE BRICK COURT 1BC

Given this judgment, it will be harder for the media to protest ignorance. To be safe, journalists should check the status of any judgment or ruling with the court office prior to publication.

It was not all bad news for journalists, though. Mr Justice Smith also ruled that as no damage had been caused by the disclosure, it was not necessary in the interests of justice to order the Lawyer to reveal the source of its exclusive.

Joanne Neenan is a barrister at the media chambers, One Brick Court. The Lawyer was represented by two other barristers from the same chambers.

<http://www.guardian.co.uk>

To view the Da Vinci Code Copyright Judgment please click the link below

Bailii.org