

Nintendo Wins Important Court Ruling to Protect the Security in its Consoles

The decision from a specialised intellectual property court in Milan is the first time that a Member State court has applied the guidance of Europe's highest court

16 November 2015. Nintendo is delighted with the recent decision issued by the First Instance Tribunal of Milan against a local importer and seller of circumvention devices (PC Box s.r.l.).

The Tribunal had previously referred two questions to the Court of Justice of the European Union (“CJEU”) on the interpretation of those provisions of European copyright law that permit rights holders to deploy security measures to protect against piracy.

The preliminary ruling that followed from the CJEU provided national Courts in all the European Member States with a framework to assess whether such security measures are proportionate and therefore protected in law.

The Tribunal’s decision in this matter is therefore the first time that any Member State national Court has applied this guidance from the CJEU.

The Tribunal has ruled that the primary use of circumvention devices like game copiers and mod chip devices is to circumvent security measures to enable the playing of pirate games. It also ruled that Nintendo’s security measures are fully proportionate and therefore protected under Italian copyright law.

Nintendo is pleased that this ruling is consistent with a long line of judicial precedents established at national courts in a number of Member States including Belgium, France, Germany, Netherlands, Spain and the UK. This decision is also entirely in line with several decisions from the Italian Supreme Court (Criminal Division) against sellers of circumvention devices as well as a recent ruling from the criminal appeal courts in

Florence, which confirmed a first instance criminal decision, against the owners of PC Box.

It is unlawful to import and sell circumvention devices under Italian law and sellers could face criminal sentences and fines as well as hefty damages. Nintendo's advice to its fans is "don't fund piracy by purchasing these devices and stay out of the business of selling them".