

Copyright: From 'The Da Vinci Code' to YouTube

Brisbane

Friday, 16 February 2007

Program

9.00-9.30	Registration Level 22, Waterfront Place, 1 Eagle Street, Brisbane
9.30-10.45	Session 1 Opening Address The Hon Philip Ruddock MP, Attorney-General Sarah Waladan: <i>A New Era of Copyright: Fair Dealing, Flexible Dealing, and other New Exceptions</i> Carolyn Dalton: <i>Educating the Educators - Implementing the 2006 Copyright Amendments</i>
10.45-11.15	<i>Morning Tea</i>
11.15-12.15	Session 2 Emily Hudson: <i>Little Orphan Author</i> Helen Daniels: <i>The Government's Copyright Law Reform Agenda</i>
12.15-1.30	<i>Lunch</i> Brisbane Polo Club Naldham House, Cnr Eagle & Felix Streets, Waterfront Place, Brisbane
1.30-2.30	Session 3 Kimberlee Weatherall: <i>To Protect or Block: Technological Protection Measures and the Open Source Community</i> Dr David Brennan: <i>Waving the Flag in the Digital Jungle</i>
2.30-3.00	<i>Afternoon Tea</i>
3.00-4.00	Session 4 Sharon Givoni: <i>Copyright: Holy Grail or Media Circus? ('The Da Vinci Code')</i> Dr Matthew Rimmer: <i>YouTube: Copyright Law and Internet Video</i>
4.00	Close and drinks
7.00	Conference Dinner Gianni Restaurant 12 Edward St, Brisbane

The Speakers

Session 1

Sarah Waladan

A New Era of Copyright: Fair Dealing, Flexible Dealing, and other New Exceptions

Following various law reform processes and amongst a host of amendments to the *Copyright Act 1968*, the Australian Government in December last year introduced into law a number of new copyright exceptions for the benefit of libraries, educational and cultural institutions, and consumers. This paper will begin by giving an overview of the new copyright exceptions. It will then explore the scope of the new 'flexible dealing' provision and how this provision might be interpreted - is it 'fair dealing', 'fair use', or something in between? What are the implications of incorporation of the three-step test in our domestic legislation, and to what degree might international legal precedents impact on the interpretation of Australian copyright law? Finally, this paper will consider whether and how the new exceptions are equipped to deal with constantly evolving technologies, and briefly, how they are expected to impact upon day to day practices within institutions

Sarah Waladan currently acts as in-house lawyer at the Australian Film Commission in Canberra. Previously, Sarah represented the Australian Digital Alliance (ADA) and Australian Libraries' Copyright Committee (ALCC), whose members include libraries, educational, research and cultural institutions and consumers. Sarah was involved in various recent copyright law reform processes including in relation to the *Copyright Amendment Bill 2006*, and appeared before the Senate Legal and Constitutional Affairs Committee for that Bill.

Carolyn Dalton

Educating the Educators - Implementing the 2006 Copyright Amendments

The Australian Government's 2006 copyright amendments contained many significant changes for the education sector. The changes enable new uses of copyright material for teaching purposes, simplify the operation of the educational statutory licences in the digital environment and enable the adoption of some new technologies for teaching purposes. However, the precise scope of these changes is unclear. Exactly what new uses of copyright material will be permitted, and which new technologies are covered?

This session will give a brief overview of the key copyright changes for educational institutions and explore the practical impacts of these provisions on some of the emerging technologies and electronic teaching methods used in Australian educational institutions.

Carolyn Dalton provides legal, policy and strategy advice on all aspects of copyright, media and internet law, and telecommunications policy and regulation. She assists clients in developing strategies to respond to Government reviews and positively influence regulatory outcomes. Carolyn also runs training seminars for clients on copyright issues confronting their organisations. Carolyn advises the Australian schools and TAFE sectors on educational copyright issues.



Carolyn returned to Minter Ellison in 2005 from her role as Public Policy Manager for Telstra Regulatory, and Manager of Government Relations for Telstra's international businesses.

She previously worked as a Principal Legal Officer in the Copyright Branch of the Commonwealth Attorney-General's Department, where she played a key role in developing the *Digital Agenda Act*, and was the legal adviser to the Ergas review of Australian intellectual property legislation. In 2001 she was awarded an Australia Day Award for her work on the *Digital Agenda Act*.

Carolyn speaks regularly on copyright issues, and has taught intellectual property at The University of New South Wales, and contracting and tendering for intellectual property at the Australian Defence Force Academy.

She is a member of the Management Committee of the Copyright Society of Australia.

Session 2

Emily Hudson

Little Orphan Author

The term 'orphan works' is used to describe material for which the copyright owner is impossible to identify or locate. Although they have always been an issue in copyright law, there appears to have been a surge of interest in orphan works in recent years, with many submissions to the Attorney-General's copyright exceptions review highlighting problems with orphan works, and a major inquiry conducted by the US Copyright Office. This presentation examines the nature of the orphan works problem, and options for responding to these issues.

Emily Hudson is a PhD student at The University of Melbourne. Prior to that, she was a Research Fellow at the Intellectual Property Research Institute of Australia (IPRIA) and the Centre for Media and Communications Law (CMCL). Emily has researched extensively in the area of law and cultural institutions, and is co-author (with Andrew T Kenyon) of *Copyright and Cultural Institutions: Guidelines for Digitisation*. This presentation draws from research performed when Emily was a Research Fellow at IPRIA.

Helen Daniels

The Government's Copyright Law Reform Agenda

The amendments to the *Copyright Act 1968* passed by the Australian Parliament on 5 December 2006 affect many areas of the Act. These include new enforcement measures, new exceptions to infringement, responses to the Digital Agenda review affecting institutional users, improved protection for encoded broadcasts and technological protection measures, and amendments affecting the operation and jurisdiction of the Copyright Tribunal. This presentation will outline the background to some of these reforms and the Government's policy objectives.

The presentation will also refer to the copyright policy agenda for 2007, including relevant international developments.



Helen Daniels is the Assistant Secretary of the Copyright Law Branch of the Australian Government Attorney-General's Department. Apart from a three year period working in the privacy and freedom of information law areas of the Department, she has worked in copyright law policy since 1985. Ms Daniels has been involved with a number of major legislative reforms to the *Copyright Act 1968*, including the digital agenda reforms, parallel importation reforms, moral rights for creators, the amendments to meet Australia's obligations under the Australia-United States Free Trade Agreement and the Government's wide-ranging reforms passed by Parliament in December 2006. Ms Daniels has represented the Australian Government at various international meetings and is a former member of the Copyright Law Review Committee and the Public Lending Right Committee. In 2006 she participated in the US International Visitor and Leadership Program.

Session 3

Kimberlee Weatherall

To Protect or Block: Technological Protection Measures and the Open Source Community

In January 2007 Australia's new anti-circumvention laws, mandated by the Australia-US Free Trade Agreement, came into effect. One of the more vocal opponents to such laws has been Australia's open source community. This presentation will explain, from the perspective of a legal academic who has worked extensively with representatives of the community, what all the fuss is about. Why have open source programmers been so vocal in their opposition? What are they afraid of? What effect will the new laws as finally passed in December 2006 have? And overall, is this a real issue, or an overstated concern?

Kimberlee Weatherall is a Senior Lecturer in the TC Beirne School of Law at The University of Queensland, and an Adjunct Research Fellow with the Australian Centre for Intellectual Property in Agriculture (ACIPA). Prior to joining the School of Law in 2007, Kimberlee was a Senior Lecturer at The University of Melbourne and Associate Director (Law) of the Intellectual Property Research Institute of Australia. She has also lectured at The University of Sydney, and worked as a solicitor at Mallesons Stephen Jaques in Sydney. She holds postgraduate degrees from Oxford and Yale University, and has published in the *Modern Law Review*, *Sydney Law Review*, the *Intellectual Property Quarterly* and other international and Australian journals. Her teaching and research interests span intellectual property law, with a particular interest in digital copyright, the relationship between international trade and intellectual property, and the systems for administration and enforcement of intellectual property rights. She has been a member of the Law Council of Australia IP Subcommittee since 2006.

Ms Weatherall's work on anti-circumvention law and the implications for Australian copyright law of legally reinforcing technological protection measures has been relied on by the High Court of Australia in the *Stevens v Sony* case, the Senate Standing Committee on the Free Trade Agreement with the United States, and by the House of Representatives Standing Committee on Legal and Constitutional Affairs. She has worked with the Australian Digital Alliance and Linux Australia on issues relating to anti-circumvention law, and was invited to speak on these issues at linux.conf.au, one of the major international open source technical conferences, in January 2007.

Dr David Brennan

Waving the Flag in the Digital Jungle

The broadcast flag is a light-handed technological copyright protection measure prescribed in the US by the Federal Communication Commission ('FCC') as an aspect of the digital terrestrial broadcasting standard. As such, the law sat on the notional boundary fence which divides broadcasting and copyright law. In 2005 a US court found the FCC broadcast flag regulation to be ultra vires. Subsequent to that decision, legislative reform has been under consideration in the US Congress to attempt to ensure full legislative authority is vested in the FCC to make lawful broadcast flag regulations.

This paper will critically analyse the policy arguments made against the broadcast flag, and will assess the future viability of open broadcast delivery models in the absence of technological protection measures.

David Brennan teaches intellectual property and contract law at The University of Melbourne. His primary fields of research are patent and copyright law, with a particular focus upon their interface with other private law regimes. He undertakes his research within economic and historical frameworks. Dr Brennan is a copyright consultant for Screenrights - The Audio Visual Copyright Society. In this capacity he has participated extensively in copyright law reform and in royalty-setting determinations. He is also a member of the Intellectual Property Committee of the Law Council of Australia.

Session 4

Sharon Givoni

Copyright: Holy Grail or Media Circus? ('The Da Vinci Code')

It is a fundamental principal of copyright law that it does not protect the idea of the work but rather, the material form in which an idea is depicted. Determining whether the expression or the idea has been copied is generally a question of fact. Over the years, the Australian courts have explored the issues in various contexts. In the notorious 'Da Vinci Code case' handed down in 2006, the English High Court considered the idea/expression divide and its fundamental role in the law of copyright.

The case involved allegations by Baigent and Leigh that the best selling novel 'The Da Vinci Code', by Dan Brown, infringed the copyright in their earlier work 'The Holy Blood and the Holy Grail', by copying the central theme from that work. In this session, copyright lawyer and editor of the *Intellectual Property Law Bulletin*, Sharon Givoni, will explore some of the principles that arose from the case and the implications for Australian copyright law.

Sharon Givoni has worked at top tier law firms throughout her legal career. Sharon started her own Melbourne-based boutique legal practice with a focus on intellectual property and commercial law five years ago. She has clients Australia-wide in a broad range of industries and has been invited to speak at over 25 conferences. Sharon is known for bringing the law alive in language that people can understand.

Sharon has written legal bylines for numerous industry magazines including *Marketing Magazine* and *B & T Weekly* and academic journals such as the *IP Forum* and has been the General Editor of the *Australian Intellectual Property Law Bulletin* and the *Internet Law Bulletin* published by Butterworths.

She is an active member of the IP and IT Committee of the Law Institute of Victoria and a member of the Intellectual Property Society of Australia and New Zealand.

Dr Matthew Rimmer

YouTube: Copyright Law and Internet Video

The popular internet video site YouTube has posed a conundrum for copyright regulators, as it contains both legitimate content and copyright-infringing material.

The website has enabled film-makers to share home videos, short films, and amateur content. YouTube also hosts the work of parodists, satirists, and mash-up artists. Notably, a spoof of the advertising campaign "Where the bloody hell are you?" attracted threats of legal action from unamused Australian tourism authorities. YouTube has entered into an agreement with the Warner Music Group to distribute the library of music videos from the record company, as well as behind-the-scenes footage, artist interviews, original programming, and other special content. Impressed by the popularity of the website, Google acquired YouTube for the princely sum of \$US1.65 billion. The search engine, though, has maintained a reserve of \$US200 million in escrow to ward off potential copyright litigation.

Recording companies, film studios, and television networks have expressed concerns that the site YouTube and other Internet video sites have facilitated the exchange of copyright-infringing media. Steve Ballmer of Microsoft has quipped that "YouTube is a copyright law problem waiting to happen". Universal Music Group has demanded compensation from YouTube for copyright infringement of music videos and other content involving Universal artists. The Recording Industry Association of America has sent cease-and-desist notices to YouTube users who have uploaded copyright-protected musical works and sound recordings. There has also been much concern about bootlegged material from live concerts - such as mobile phone recordings of the U2 performance in Sydney - being put up on YouTube.

Furthermore, Hollywood studios have expressed concern that clips from popular movies, such as the Harry Potter films, were available on YouTube without authorisation. United States television network, NBC Universal, demanded YouTube remove two skits from its Saturday Night Live show. Copyright owner Robert Tur has filed an action against YouTube in a Californian court, alleging copyright infringement in a number of famous videos, including the LA riots and the OJ Simpson police chase. YouTube has also removed nearly 30,000 copyrighted files after receiving complaints of copyright infringement from the Japan Society for Rights of Authors, Composers and Publishers.

Dr Matthew Rimmer is an Associate Director of the Australian Centre for Intellectual Property in Agriculture (ACIPA), and a Senior Lecturer at The Australian National University's College of Law. He holds a BA (Hons) and a University Medal in Literature, and a LLB (Hons) from The Australian National University, and a PhD in Law from The University of New South Wales. He is a member of the Copyright and Intellectual Property Advisory Group of the Australian Library and Information Association, and a Director of the Australian Digital Alliance. Rimmer has published widely on copyright law - addressing such topics as copyright term extension, fair use and time-shifting, iPods and TiVo, search engines like Google, peer to peer networks such as Napster and Kazaa, moral rights, and traditional knowledge. He also participated in policy debates over Film Directors' copyright, the Digital Agenda Act, the Australia-United States Free Trade Agreement, and the *Copyright Amendment Bill 2006* (Cth).