

Article for *Copyright World*

Anti-circumvention case; Collecting Societies Code of Practice; Retransmission licence

Virginia Morrison, Australian Copyright Council, 8 October 2001

New anti-circumvention laws to be tested

In the first test of Australia's new anti-circumvention laws, Sony has brought an action in relation to computer games designed for use with its PlayStation computer console. The new laws, introduced into the Copyright Act in March this year, give copyright owners the right to prevent the sale, manufacture and importation of devices for circumvention of "technological protection measures".

Sony alleges that computer programs within its PlayStation games are protected by an access code which is designed to inhibit infringement, and that the code is a technological protection measure within the meaning of the legislation. Sony further alleges that the defendant has sold devices which have no purpose or use, or only a limited purpose or use, other than the circumvention of its protection measures.

In an interesting development, the Australian Competition and Consumer Commission (the national competition and consumer watch-dog) has been granted leave to appear as *amicus curiae* in the case. The ACCC argued that it wished to make submissions on important questions of construction that arise concerning the anti-circumvention provisions. It also submitted that it could assist the Court to understand the nature of the device that Sony alleges is being circumvented. Sony objected to the ACCC's application. One reason advanced for its objection was that an *amicus curiae* should not be appointed on the express instructions of a party to the proceedings and, in this case, the ACCC made its application following a written request for assistance by the defendant. In granting the ACCC leave to appear, the Court said that the anti-circumvention provisions involve difficult questions of construction that have not been the subject of detailed consideration in Australia and these questions may prove to be of general public significance. The Court went on to say that the "ACCC is therefore likely to provide substantial assistance to the Court, of a kind that otherwise might not be available, on legal issues potentially of general importance".

The judgment in the ACCC's application (*Kabushiki Kaisha Sony Computer Entertainment v Stevens* [2001] FCA 1379) is available at <http://scaleplus.law.gov.au/html/feddec/0/20013/0/FD004490.htm>

Collecting Societies Code of Conduct

In conjunction with the Federal Government, Australian copyright collecting societies are working on a code of conduct covering matters including:

- distribution of remuneration and licence fees;
- collecting society expenses;
- governance and accountability;

- staff training; and
- complaints and disputes.

The development of a code was a recommendation of the House of Representatives Standing Committee on Legal and Constitutional Affairs in its 1998 report on music licensing.

Copies of the draft code are available from some of the collecting societies' websites, including: <http://www.apra.com.au>, <http://www.copyright.com.au> <http://www.screen.org>

Collecting society appointed to administer retransmission licence

The Federal Government has appointed Screenrights, the audio visual copyright collecting society, to administer the new statutory licence for the retransmission of free-to-air broadcasts. The Copyright Act was amended in March this year to provide for the payment of royalties to owners of copyright in material included in broadcast programs when those programs are retransmitted on pay TV. Prior to this amendment, pay TV operators could retransmit programs for free.

Screenrights will enter into negotiations with pay TV operators regarding the royalties payable and will appoint an independent expert to oversee consultations regarding the allocation of royalties among the various rightsholders.

For more information, see Screenrights' web site (www.screen.org).