

his employment, or where a work is made "for hire", or created jointly by several authors. See eg *Redrock Holdings Pty Ltd v Hinkley* (2001) 50 IPR 565.

⁵ In the context of computer programs, adaptation will likely include re-expressing the work in any other type of code: *Data Access Corporation v Powerflex Services Pty Ltd* (1999) 202 CLR 1 at 39 [108]. Compiling source code probably produces an adaptation of that code, rather than reproducing it: see eg "Copyright and Computer Programs: *Data Access v Powerflex* Before the High Court" (1997)

20 *Sydney Law Review* 296, available online at <http://www.law.usyd.edu.au/~slr/v20/n2/bhc_kremer.html>.

⁶ See eg *Federal Commissioner of Taxation v United Aircraft Corporation* (1943) 68 CLR 525 at 533: "A licence provides an excuse for an act which would otherwise be unlawful as, for example, an entry upon a person's land, or the infringement of a patent or copyright. It is an authority to do something which would otherwise be wrongful or illegal or inoperative".

⁷ *Scott v Davis* (2000) 204 CLR 333 at 384 [154].

⁸ See section 196 of the *Copyright Act* 1968 (Cth).

⁹ Accessible at <<http://www.gnu.org/licenses/gpl.html>>. The use of the term GNU in the definition of its own acronym is recursionary, and is a pun playing on the fact that much computer software utilises the process of recursion (where a routine calls itself).

EU: The Bodil Lindqvist Case

On 6 November, the European Court of Justice ("ECJ") made a ruling on the scope of the Data Protection Directive (95/46/EC) on the Internet (Case C-101/01, *Bodil Lindqvist*). Of principal interest is that the ECJ ruled that placing of information on a website located in EU is not transfer of data abroad.

Mrs Lindqvist had set up Internet pages on her personal computer, containing information on herself and her colleagues, including their names, a description of work performed by the colleagues as well as their hobbies in mildly humorous terms. She also mentioned that one of her colleagues had injured her foot and was working part-time on medical grounds.

Mrs Lindqvist was fined for processing personal data by automatic means without notifying the Swedish supervisory authority ("*Datainspektionen*"), for transferring data to third countries without authorisation and for processing sensitive personal data (information of a foot injury and part time work on medical grounds). She appealed to the Göta Court of Appeal, which asked the ECJ seven questions concerning the interpretation of the Directive

95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the "**Directive**").

The ECJ ruled that the act of referring, on an Internet page, to various persons and identifying them by name or by other means, constitutes a processing of personal data wholly or partly by automatic means within the meaning of the Article 3 (1) of the Directive. The ECJ also held that such processing of personal data is not covered by any of the exceptions in Article 3(2) of the Directive (relating to activities falling outside the scope of Community law and purely personal activities). The ECJ confirmed that the reference to the fact that an individual has injured her foot and is on half-time on medical grounds, constitutes personal data concerning health within the meaning of Article 8(1) of the Directive.

The ECJ's interpretation of Article 25 of the Directive, (laying down a prohibition on transfer of personal data to countries outside the EU), has come as a surprise to many. The ECJ held that there is no such transfer within the meaning of Article 25 where an

individual loads personal data onto an Internet page which is stored on an Internet site accessible to people outside the EU. The judgment clarifies that this conclusion only concerns such activities as carried out by Mrs Lindqvist and not those carried out by the hosting providers. The ECJ, however, did not elaborate on this and no definite conclusions can be drawn from the ruling in this respect. It remains to be seen how this judgment will be interpreted in practice.

The ECJ further held that the provisions of the Directive, in themselves, do not conflict with the principle of freedom of expression enshrined in *inter alia* Article 10 of the European Convention on Human Rights and that nothing prevents a Member State from extending the scope of its national legislation implementing the Directive provided that no other provision of Community law precludes it.

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