

- 8 General Television Corporation Pty Ltd v DPP [2008] VSCA 49 at [64].
- 9 Ibid. at [35] per curiam.
- 10 Silvester J 'Moran Murderer Revealed as Two-Time Killer' The Sydney Morning Herald, 30 May 2008.
- 11 X v General Television Corporation Pty Ltd [2008] VSC 344 at [48].
- 12 [2008] VSCA 49.
- 13 Gibbs S 'TV Drama That's Been Blue Murder' The Sydney Morning Herald, 29 January 2000 ; Gibbs S 'ABC Can Finally Get Away with Blue Murder' The Sydney Morning Herald, 13 July 2001; Ackland R 2001 'How the ABC Got Away with Blue Murder' The Sydney Morning Herald, 3 August 2001.
- 14 Goodsir D 'Almost All the Chilling Truth' The Sydney Morning Herald, 2 August 2001.
- 15 Gibbs S 'ABC To Get Away with Blue Murder Next Week' The Sydney Morning Herald, 26 July 2001; Ackland R 'Public Held in Contempt' The Sydney Morning Herald, 6 February 1998.
- 16 Rogerson R 'It's Bang on Target – Roger Rogerson Gives Underbelly Debut Four Stars' The Daily Telegraph, 14 February 2008.
- 17 Idato M 'Downloads Expose TV's Underbelly' The Sydney Morning Herald, 18 February 2008.
- 18 Dowsley A 'Black Market Hit Gives Nine a Bellyache' Herald-Sun, 22 February 2008; Idato above n 17; Moses A 'Web Pirates Sail around TV Ban' The Sydney Morning Herald, 13 February 2008; Singer J 'Hitting Jurors under the Belly' Herald-Sun, 31 March 2008.
- 19 Cummings L and Fenech S 'Mob of Bootleggers – Illegal Underbelly Downloads in Hot Demand' The Daily Telegraph, 16 February 2008; Rout M and Meade A 'Vics Trawl Web to Catch Banned Show' The Australian, 15 February 2008.
- 20 Cummings and Fenech above n 18; Miller N 'Internet May Render Censorship Futile' The Age, 13 February 2008; Moses above n 18; Rout and Meade above n 19.
- 21 Roberts B 'Nine Kicked in Belly Again' Herald-Sun, 17 March 2008.
- 22 (1999) A Def R 53-035.
- 23 [2008] VSC 344.
- 24 [2008] VSC 526.
- 25 See Dow Jones & Co. Inc. v Gutnick (2002) 210 CLR 575 at 600-01, 605-06 per Gleeson CJ, McHugh, Gummow and Hayne JJ.
- 26 Witham v Holloway (1995) 183 CLR 525 at 538 per McHugh J.
- 27 Ackland R 'Blindfolding Jurors an Idea Whose Time has Gone' The Sydney Morning Herald, 15 February 2008; Idato above n 17; Singer above n 18.
- 28 See, for example Spigelman J 'The Internet and a Right to a Fair Trial' The Judicial Review vol 7 pp 403-422; Bell V 'How To Preserve the Integrity of Jury Trials in a Mass Media Age' The Judicial Review vol 7 pp 311-328; Whealy A 'Contempt: Some Contemporary Thoughts' The Judicial Review vol 8 pp 441-471.
- 29 Mokbel v DPP (Vic) and Others [2008] VSC 433.
- 30 Bachelard M and Fyfe M 'Human Rights or a get-out-of-jail-free Card?' The Age, 11 May 2008.
- 31 (1989) 11 EHRR 439. This decision has been confirmed and applied in numerous other cases, including, most recently, the interesting House of Lords decision of EM v Secretary of State for the Home Department (House of Lords, 22 October 2008).
- 32 (2004) 41 EHRR 567 cf 7Vc` dk`VcY`Di] Zghk`7ZÅ ħ b `VcY`Di] Zgh11 BHRC 435 (European Court of Human Rights, 2001).
- 33 [2007] 3 WLR 33.
- 34 Mamatkulov and Askarov v Turkey (Judgment of the European Court of Human Rights, 4 February 2005); Ismoilov and Others v Russia (Judgment of the European Court of Human Rights, 24 April 2008).
- 35 Bader and Others v Sweden (Judgment of the European Court of Human Rights, 8 November 2005) cf Mamatkulov and Askarov v Turkey (Judgment of the European Court of Human Rights, 4 February 2005).
- 36 Loucaides L 'Questions of Fair Trial under the European Convention on Human Rights' Human Rights Law Review vol 3 no 1 pp 27-51 at 39.
- 37 Perhaps the closest the Court came to such a conclusion was in T and V v United Kingdom (Judgment of the European Court of Human Rights, 16 December 1999), which concerned the two ten-year-old boys who were convicted for the abduction and murder of two-year-old Jamie Bulger in the UK. In those cases, the Court found that the boys, who were tried in an adult court, were denied the right to a fair hearing as the way in which the trial was conducted was intimidating and prevented the defendants from participating effectively in the conduct of their defence. One of the factors which the Court took into account was the overwhelming pre-trial publicity and media attention, noting that 'in respect of a young child charged with a grave offence attracting high levels of media and public interest, it would be necessary to conduct the hearing in such a way as to reduce as far as possible his or her feelings of intimidation and inhibition' (at [87]), which had not occurred in this case. However, this decision stops short of finding that the pre-trial publicity in itself gave rise to a violation of the right to a fair trial.
- 38 (Judgment of the European Court of Human Rights, 4 February 2005).
- 39 In making these comments, we do not seek to suggest that this is an undesirable development. Indeed, the harmonisation of global human rights standards which may result, and which seems to be contemplated by s 32(2) of the Charter of Human Rights and Responsibilities Act 2006 (Vic), for example, would be extremely positive. In this article, we simply note the challenges which these developments create for the administration of justice in individual jurisdictions.
- 40 Mokbel v DPP (Vic) and Others [2008] VSC 433.
- 41 See, for example, Nudd v Australian Federal Police [2008] QCA 60.
- 42 Mokbel v DPP (Vic) and Others [2008] VSC 433 at [54].

# From Chalk and Talk to an Online World of Digital Resources

The January 2009 edition of the *Communications Law Bulletin* included an article by Alex Farrar on amendments made to the Copyright Act affecting the use of multimedia in classrooms. Further to that piece, Simon Lake discusses the activities of Screenrights and available statutory licences for educational copying and communication of broadcast materials.

Screenrights (initially known as the Audio-Visual Copyright Society) was established almost two decades ago to deal with what was then a new copyright challenge – the use of the video recorder in education. For the first time, teachers and academics could record programs to keep in the library as a resource and to use in education. The problem was a practical one. The law at the time required educators to obtain prior permission from each of the copyright owners, a task that was so difficult, teachers either didn't copy off air, or did so illegally.

After lobbying from educators and the film industry, the Copyright Act 1968 (Cth) (**Copyright Act**) was amended in 1990 to include Part VA, a statutory licence that allowed educational institutions to copy from television and radio, provided they agreed to pay equitable remuneration. Screenrights was declared the society to administer these provisions.

The rationale behind this licence was two-fold: to ensure access to the resources provided by television and radio, and to provide payment to

## *the Copyright Act was amended in 1990 to include Part VA, a statutory licence that allowed educational institutions to copy from television and radio*

the people who make and invest in this work so that they will continue to produce programs for our students and teachers.

Since then, the film industry, the education sector, and the copyright landscape has changed dramatically. Video recorders are well and truly outmoded technology – they are large machines gathering dust in the corner. We have digital television, internet streaming, PVRs, retransmission of programs on pay television and mobile phones, electronic whiteboards and online resource centres providing television programs to our educators.

Despite the complexity of this landscape, Screenrights sees the copyright challenge as largely unchanged. How do we ensure access to copyright work while making sure that rightsholders are paid when their work is used? In most cases, this has involved working with both the creators and consumers of content for legislative change that achieves these aims in this new environment.

In the education sector, the change has been particularly dramatic. Teachers and academics are now using new content management systems such as Clickview for their audiovisual collections. Systems such as these let them store, access and play recorded material, and provide digital copies of programs to other schools with the same system. They can show programs to students on electronic whiteboards, and they can also obtain podcasts and vodcasts of their favourite programs from the Internet. In some cases, they are no longer even recording programs themselves. They can go to innovative resources centres, such as RMIT Publishing's Informat, that are making recordings of programs available online to academics across the country.

The Part VA statutory licence has embraced these changes remarkably well. Amendments have allowed for the downloading of certain broadcast material, and for making copied programs available to staff

and students online. This has ensured that the licence continues to achieve its two key aims in this new environment: access to copyright users and payment to rightsholders.

Screenrights has also recognised the importance of embracing new technologies to reach the people who are using our members' work. We established EnhanceTV ([www.enhancetv.com.au](http://www.enhancetv.com.au)) to let educators know about what's on television and how to use it. Members can subscribe to an online television guide alerting them to upcoming programs relevant to their nominated curriculum areas. They can also download study guides and, now that the site has become a licensed resource centre under Part VA of the Copyright Act, they can obtain copies of programs they forgot to record, or simply ask EnhanceTV to make recordings on their behalf. The service reaches more than 12,000 subscribers on a weekly basis and has recently also become a site where filmmakers and educators can talk to each other, exchanging information and resources to help them teach with television.

### *The Part VA statutory licence has embraced technical changes remarkably well.*

These changes have not only ensured ready access to copyright material for teachers in a technological age, they are also providing a continued growth in copyright income for rightsholders. Last year, more than 45% of the programs copied were documentaries, with the income collected on behalf of these rightsholders helping to ensure that they continue to produce programs that educators want to use.

It's a challenging environment but it's an exciting one. There are not only more opportunities for audiences to enjoy the films and television our members produce, with effective copyright management, there is also a greater number of revenue streams for rightsholders.

**Simon Lake is the Chief Executive of Screenrights. More information about Screenrights is available at [www.screenrights.org](http://www.screenrights.org).**

# Radio Frequency Identification and Data Protection: Privacy and Related Issues

Valerie Perumalla discusses RFID technology and how it fits with regulatory frameworks established by privacy and surveillance legislation.

Location based technologies such as Radio Frequency Identification (RFID) are said to pose new threats to security and privacy.<sup>1</sup> Location-based technologies have the potential to enhance the functioning of a range of business operations but there is a growing concern amongst policy makers that certain uses of RFID increase privacy related risks.

A 2006 report issued by the OECD's Directorate for Science, Technology and Industry has called for further discussion amongst policy makers on the future of RFID:

The window of opportunity is now, for policy makers, industry and consumers to understand and discuss forward-looking public policy issues associated with radio frequency identification technology and applications, as well as to review existing and proposed associated legislation.<sup>2</sup>

Similarly, numerous academics have suggested that location technologies have far outstripped both public awareness and legal and policy attention.<sup>3</sup>

There is no Australian legislation that directly addresses RFID technology, but where 'personal information' is concerned the Privacy Act 1988 (Cth) (Privacy Act) comes into effect regardless of the specific technology used for collecting that information. Certain uses of the technology may also be incidentally regulated. The Surveillance Devices Act 2007 (NSW) was developed primarily to regulate law enforcement agencies, but may restrict commercial uses of RFID where the technology conforms to the definition of a 'tracking device'.

### Definition of RFID

RFID is used in a wide range of applications and the impact on personal privacy and data protection varies depending on the