



**Australian Libraries' Copyright Committee**

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## **HIGH COURT ACKNOWLEDGES IMPORTANCE OF FAIR COPYRIGHT AND BROADER PUBLIC INTEREST**

The ADA & ALCC yesterday welcomed the much anticipated decision in the case of *Stevens v Sony*, which was handed down by the High Court of Australia in Canberra.

Whilst this case is identified as one concerned with playstations & the personal liability of Mr Stevens for copying play station games and selling them for use with Playstation consoles; these were not the issues before the High Court. The case before the Court was concerned with more than just the copying of copyrighted material. It was concerned with a very technical part of the Copyright Act, namely the use of technical "locks" to restrict access to information products, that has broad implications for education, access to information, consumer rights and competition.

"The High Court has sent a clear message that attempts to lock up information are on a short leash. Use them to protect your copyright, by all means. But don't expect these new laws to protect you when technical locks are used to extend the copyright monopoly and squash legitimate user rights. In this case, the Court makes it very clear that users have every right to expect that a game bought in the US should still work when they stick it in their Australian Playstation." said Jamie Wodetzki, Chair of the ADA.

ALCC Chair Tom Cochrane said "This decision represents an important indicator that the law of copyright really is about balance. It comes at a critical time in considering Australia's implementation of changes to its law relating to technological protections measures in compliance with the Australia-U.S. free trade agreement".

Those broader public interest grounds were the primary motivators for an application to seek leave by the ADA & ALCC to intervene as friends of the Court. Specifically, Sony's interpretation of the Copyright Act (and in particular, what constitutes a 'technological protection measure' or 'TPM') would have had deleterious consequences on the ability of libraries, educational & cultural institutions, & consumers, to access information for legitimate non-infringing purposes, and to make use of personal property legitimately acquired.

The High Court by this decision recognised that an interpretation of 'TPM', or for that matter any other part of the Copyright Act, that ousts such fundamental 'user' rights which have specifically been incorporated in law in order to serve copyright's purpose, that is, to promote creativity & innovation, should not be readily accepted.

Indeed the Court went further, indicating that any legislation which purports to do this, risks being unconstitutional.

These comments of course are very timely. Australia is in the process of implementing its obligations pursuant to the Free Trade Agreement with the U.S., and the terms of that agreement may require Australia to implement legislation purporting to do exactly what the Court in this case ruled it should not: To enact new copyright laws that affect the fundamental balance that copyright by nature requires.

This could present a challenge for the Government in finding a way to implement the Australia-U.S. free trade agreement in a manner consistent with this decision.

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