



Friday, 12 July 2024

Weekly Intellectual Property Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Intellectual Property Law

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Executive Summary (One Minute Read)

Skildum-Reid v University of Queensland (FCA) - preliminary discovery refused to person who claimed the University was using slides she had created in its course materials

HABEAS CANEM

The scent on the breeze



Summaries With Link (Five Minute Read)

Skildum-Reid v University of Queensland [2024] FCA 733

Federal Court of Australia

Derrington J

Preliminary discovery in breach of copyright cases - the applicant was a corporate sponsorship consultant, advisor, speaker and author who claimed that, over many years (at least since 2006), she has presented at various workshops, at which she produced "slides" or "slide decks" - she claimed that, following an internet search, she identified the use by others of the slides, and, in particular, in course materials produced by the University of Queensland regarding two courses: "Event Sponsorship & Fundraising" and "Event Marketing, Sponsorship & Fundraising" - she sought orders for preliminary discovery against the University pursuant to r7.22 and r7.23 of the *Federal Court Rules 2011* (Cth) to enable her to identify prospective respondents (r7.22) and to decide whether to commence proceedings (r7.23) - held: regarding r7.22, the applicant already knew the identity of the University and the current course coordinator - although she may have a claim for breach of moral right against persons such as the previous course coordinator who had provided the current course coordinator with the material, those claims would be statute barred under s10 of the *Limitation of Actions Act 1974* (Qld (picked up by s79(1) of the *Judiciary Act 1903* (Cth))), as there was a long line of authority that an infringement of statutory intellectual property rights is tortious in nature - had it been necessary to exercise discretion, the applicant's statements that she intended to use any material produced for purposes outside the prospective proceedings (such as reporting the matter to the Australian Federal Police) showed a lack of understanding on the part of her legal representatives of their obligations and would have weighed significantly against ordering preliminary discovery - regarding r7.23, the prospective applicant had given no evidence that she had any belief about her right to obtain relief, or about the veracity of any anticipated claims, or why that uncertainty might exist - these were fatal omissions - there was also no evidence that the applicant did not have sufficient information to decide whether to start proceedings or that reasonable inquiries were made for that information - it was also not apparent how the documents sought would assist the applicant in deciding whether to commence proceedings - application dismissed.

[Skildum-Reid](#)

[From Benchmark Friday, 12 July 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Moody v Netchoice (SCOTUS) - Lower court decisions upholding State statutes prohibiting social media companies from moderating content posted by third parties were reversed for failure to conduct proper First Amendment analysis

Summaries With Link (Five Minute Read)

Moody v Netchoice 603 US ____ (2024)

Supreme Court of the United States

The States of Florida and Texas enacted legislation that prohibited internet platforms from moderating third-party content based on content. The Supreme Court found serious First Amendment implications that the lower courts failed to properly consider. The cases were remanded to the courts below. The Court cited to *Miami Herald Publishing Co v Tornillo*, 418 US 241 (1974), where it was held that a Florida statute requiring newspapers to offer a right of reply violated the First Amendment because it consisted of compelled speech. Compelled speech can violate the First Amendment as much as suppression of speech. The Court said that government cannot meddle in speech by claiming that it is improving the marketplace of ideas. Here, the Court concluded that states were not likely to succeed in prohibiting the platforms from enforcing the platforms' own content moderation rules. The Court said that the States' attempt to better balance the mix of viewpoints on the internet by restricting content moderation amounted to an interference with speech decisions made by the private platforms. The Court added that a State cannot prohibit speech to rebalance the speech market. Inasmuch as the content moderation practices amounted to speech decisions by the platforms, the government was not free to enact laws that infringed those private speech rights.

[Moody](#)



Poem for Friday

Iceland

By Jonas Hallgrímsson (1807-1845)

Charming and fair is the land,
and snow-white the peaks of the jokuls [glaciers],
Cloudless and blue is the sky,
the ocean is shimmering bright,
But high on the lave fields, where
still Osar river is flowing
Down into Almannagorge,
Althing no longer is held,
Now Snorri's booth serves as a sheepfold,
the ling upon Logberg the sacred
Is blue with berries every year,
for children's and ravens' delight.
Oh, ye juvenile host
and full-grown manhood of Iceland!
Thus is our forefathers' fame
forgotten and dormant withal.

Jonas Hallgrímsson was born in Iceland on 16 November, 1807. He is a revered figure in Icelandic literature, writing in the Romantic style. His love of the Icelandic people and country side and pride in the national identity comes through his poetry. He was a promoter of the Icelandic Independence Movement. He was employed for a time by the sheriff of Reykjavik as a clerk. He studied law at the University of Copenhagen. He also worked as a defence lawyer. He founded the Icelandic periodical Fjölfnir first published in 1835. He died on 26 May 1845, after slipping on stairs and breaking his leg, the previous day. He died of blood poisoning aged 37 years. His birthday each year is recognised as the Day of the Icelandic Language.

Ég bið að heilsa, words by Jónas Hallgrímsson, composition by Ingi T. Lárusson
<https://www.youtube.com/watch?v=6OqbfGSJDUc>

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