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## 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)

**Australian News Channel Pty Ltd v Isentia Pty Limited (FCA)** - media monitoring for government clients does not breach copyright as it is “for the services of the Commonwealth or State” within the meaning of s183(1) of the *Copyright Act 1968* (Cth)

## HABEAS CANEM

### Country smile



# Benchmark

## Summaries With Link (Five Minute Read)

### **Australian News Channel Pty Ltd v Isentia Pty Limited [2024] FCA 363**

Federal Court of Australia

Burley J

Copyright - ACN provides Sky News television and online content - Isentia provides media monitoring services to government customers, which involves searching for and extracting parts of news and other media items, and the wholesale copying of published articles and broadcast content - s183(1) of the *Copyright Act 1968* (Cth) provides that acts that would otherwise infringe copyright do not do so if the Commonwealth or a State has authorised those acts, and they are done for the services of the Commonwealth or State - ACN sought a declaration that Isentia's media monitoring was not "for the services of the Commonwealth or State" within the meaning of s183(1) and that Isentia was therefore not entitled to the protection of s183(1) - held: there was no dispute that ACN was the owner of the copyright in the Sky content, that Isentia was authorised by the relevant government entities to perform the media monitoring, or that the media monitoring would, but for s183(1), infringe copyright in the Sky content - s 183(1) should be given a broad and facilitative purpose, as Part VII of the Act reflects a legislative intention to recompense copyright owners for use by the Crown of their works by the imposition of an ex post facto scheme for payment which obviates the need for the Crown to seek permission to use the works - this was also supported by the text of s183(1) - in normal parlance, "services", when understood in the context of governmental services, will include the supply of articles or services by the Commonwealth (or a State), which would encompass the broad sweep of activities in which government may engage - acts done "for" the supply of such services will include steps taken in connection with the work of the government entity concerned - the phrase "acts done for the services of the Commonwealth or State" provides no intrinsic connotation limiting the relevant acts to those done for the outward facing or end-use services provided by the Commonwealth or State - an otherwise infringing act is done for the services of the Commonwealth or State when the object or purpose of the act is to benefit the Government entity by assisting its employees or officers in the performance of their functions - the language of s183(1) did not support the notion that there must be a "direct" connection between the act comprised in the copyright and the provision of a governmental service to citizens - none of the cases ACN relied on as being in similar terms to s183(1) provided support for the limitations ACN proposed - s183(1) protected Isentia's media monitoring activities - application dismissed.

<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2024/2024fca0363>

[From Benchmark Wednesday, 24 April 2024]

# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**Kirkorov v Lithuania** (Eur Ct HR) - Decision of Lithuania to deny entry to Russian entertainer on national security grounds did not amount to a violation of Article 10 (freedom of expression) of the *European Convention on Human Rights*

### Summaries With Link (Five Minute Read)

#### **Kirkorov v Lithuania, ECHR 096 (2024)**

European Court of Human Rights

Bårdsen P, Ilievski, Kuris, Yüksel, Schembri Orland, Krenc, & Derencinovic JJ

Kirkorov was a popular singer from Russia who had been found by the Lithuanian Migration Department to have publicly supported Vladimir Putin and supported Russia's actions in Crimea. The government of Lithuania placed Kirkorov on a list of aliens barred from entering the country. Kirkorov unsuccessfully challenged this decision in the Lithuanian courts. Kirkorov then brought proceedings before the European Court of Human Rights alleging that the actions of Lithuania violated his right to freedom of expression guaranteed by Article 10 of the *European Convention of Human Rights*. Article 10 provides that everyone has the right to freedom of expression without interference by public authority and regardless of frontiers. However, these rights may be subject to such restrictions as are prescribed by law "and are necessary in a democratic society, in the interests of national security' or public safety. The European Court found that, while the right of a foreigner to remain in a country is not a Convention right, 'immigration controls must be exercised consistently with Convention obligations'. The Court ruled that the ban on entry was materially related to the right of expression because, under Article 10, no distinction can be drawn between nationals and foreigners. As entry to Lithuania was denied on the basis of Kirkorov's past statements, the Court found that there had been an interference with his Article 10 rights. The issue came down to whether Lithuania's actions were permissible as being prescribed by law and necessary in the interests of national security. The Court found that Lithuania's actions were prescribed by law that purported to be based on national security. Nevertheless, it was for the courts to determine whether the invocation of national security had a reasonable basis or was contrary to common sense. The Court concluded that there had not been a violation of Article 10 in light of the careful scrutiny by the Lithuanian courts to the claim that Kirkorov represented a threat to national security. Further, the European Court held that the measures taken by Lithuania were not disproportionate and that the national courts had properly weighed the interests of national security against the measures taken against Kirkorov.

[Kirkorov](#)

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## Poem for Friday

### The Song of a Comet

**By:** Clark Ashton Smith (1893-1961)

A plummet of the changing universe,  
Far-cast, I flare  
Through gulfs the sun's uncharted orbits bind,  
And spaces bare  
That intermediate darks immerse  
By road of sun nor world confined.  
Upon my star-undominated gyre  
I mark the systems vanish one by one;  
Among the swarming worlds I lunge,  
And sudden plunge  
Close to the zones of solar fire;  
Or 'mid the mighty wrack of stars undone,  
Flash, and with momentary rays  
Compel the dark to yield  
Their aimless forms, whose once far-potent blaze  
In ashes chill is now inurned.



A space revealed,  
I see their planets turned,  
Where holders of the heritage of breath  
Exultant rose, and sank to barren death  
Beneath the stars' unheeding eyes.  
A down contiguous skies  
I pass the thickening brume  
Of systems yet unshaped, that hang immense[67]  
Along mysterious shores of gloom;  
Or see—unimplicated in their doom—  
The final and disastrous gyre  
Of blinded suns that meet,  
And from their mingled heat,  
And battle-clouds intense,  
O'erspread the deep with fire.  
  
Through stellar labyrinths I thrid  
Mine orbit placed amid  
The multiple and irised stars, or hid,  
Unsolved and intricate,  
In many a planet-swinging sun's estate.



# Benchmark

Ofttimes I steal in solitary flight  
Along the rim of the exterior night  
That grips the universe;  
And then return,  
Past outer footholds of sidereal light,  
To where the systems gather and disperse;  
And dip again into the web of things,  
To watch it shift and burn,  
Hearted with stars. On peaceless wings  
I pierce, where deep-outstripping all surmise,  
The nether heavens drop unsunned,  
By stars and planets shunned.  
And then I rise  
Through vaulting gloom, to watch the dark  
Snatch at the flame of failing suns;  
Or mark  
The heavy-dusked and silent skies,[68]  
Strewn thick with wrecked and broken stars,  
Where many a fated orbit runs.  
An arrow sped from some eternal bow,  
Through change of firmaments and systems sent,





And finding bourn nor bars,

I flee, nor know

For what eternal mark my flight is meant.

**Clark Ashton Smith** was born on 13 January, 1893, in Long Valley, Placer County, California. Largely self-taught, he began writing at a very young age, acquiring an exceptionally large vocabulary by reading the dictionary from cover to cover. A protégé of the San Francisco poet George Sterling, Smith achieved recognition at the age of 19 for his collection of poems *The Star Treader* (1912), influenced by Baudelaire, Poe and Sterling. Smith always considered himself a poet first and foremost, however, following the Great Depression, he later turned to writing short stories for pulp magazines such as *Weird Tales* as this was a more lucrative source of income to support himself and his aging parents. He wrote more than 100 short stories between 1929 and 1934, and it is this, along with his friendship with fellow *Weird Tales* contributor H. P. Lovecraft, for which he is remembered today. Smith lived most of his life in Auburn, California, and passed away in his sleep on 14 August 1961, at the age of 68. In addition to his literary activities, he created a large number of drawings, paintings and sculptures which reflected the otherworldly atmosphere of his tales.

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