

did anything with the information that he recovered, beyond calling it up on the screen for viewing. He was found guilty of improper use of the information.

The trial judge ruled that a person "used" personal data if he held it, in the sense of bringing it up on the screen of a computer, and it was this point that was considered by the Court of Appeal.

the decision

The Court of Appeal overturned the trial judge's decision. The Court held that "use" in s5(2)(b) of the UK *Data Protection Act* bore its ordinary meaning, and that to "use" data within the meaning of the section it was necessary to do something more than call it up on the computer screen in order to view it.

Laws J commented:

"in our judgement, it is one thing to access the computer and view what is contained within it and it is another thing then to use the information itself ... it is necessary to do something to the data, not merely to access it, before it is "used" within the statute. That would have arisen if the appellant, having accessed the information, then proceeded in the ordinary sense of the term, to make some use of it, so as for example in his own business affairs to deploy the information obtained against the interest of somebody else".

conclusion

The decision of the Court of Appeal, if followed in New South Wales, would mean that any party who wished to enforce privacy provisions such as those contained in the *Telecommunications Act* or the New South Wales *Privacy and Data Protection Bill* would be required to prove not only that information has been accessed, but also that the offending party has acted upon that information. As was discovered in *R -v- Brown*, proving that somebody has "used" information can be extremely difficult, if not impossible.

This result can be contrasted with the terms of the various State Acts dealing with computer crime. Section 109 of the *Crimes Act 1900 (NSW)*, for example, relates specifically to "accessing" of information, and could potentially extend to other conduct in *R -v- Brown*.

It will be interesting to see how the Acts dealing with "use" of information are found in practice to overlap with Acts dealing with "accessing" of information, and how the various State and Commonwealth pieces of legislation relevant to the security of electronically stored data are found to fit together in circumstances where their application gives different results.

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National radio services for, and by, Indigenous people

A new chapter in Australian broadcasting begins with the launch of the National Indigenous Radio Service.

The National Indigenous Radio Service ("NIRS") will create a new sound on the current wave of national radio services and is an historic step for Indigenous broadcasting. It was officially launched when the keynote address of the newly elected Chairperson of NIMAA (the National Indigenous Media Association of Australia), Eileen Torres, was broadcast nationally. (The full speech is available from the NIMAA Secretariat).

The commencement of the National Indigenous Radio Service is the first time that a dedicated Aboriginal and Torres Strait Islander owned and operated national radio service was broadcasted on Australian airwaves.

"The National Indigenous Radio Service will provide Aboriginal and Torres Strait communities with the opportunity to nationally broadcast news, information and views concerning local, regional and national issues and to quickly address in a co-ordinated manner matters raised in the mass media that create a distorted view of Indigenous society".

The NIRS will begin broadcasting on a full time basis as soon as an intensive technical appraisal of the NIRS capabilities has been conducted. Initially, the NIRS will receive programming from Aboriginal and Torres Strait Islander radio stations that can supply programming on a regular basis.

This will enable the NIRS to broadcast Indigenous produced and presented material from all States and Territories to over 80 Aboriginal and Torres Strait Islander communities across the country.

capabilities

The design of the NIRS will incorporate technology to enable the 83 Broadcasting for Remote Aboriginal Communities Scheme ("BRACS") communities to receive the NIRS and also to provide program material for the service.

NIMAA has received preliminary technical advice indicating that the NIRS has the capacity to carry a text or data stream on the existing satellite channel. If the channel can be split to carry a data service, the National Indigenous News

Service will piggy-back with the NIRS on the satellite channel.

This will create a dedicated Indigenous operated and produced satellite channel that provides an audio service to carry Indigenous news, views and information complemented with a data service that will deliver hard copy to accompany the NIRS audio material.

The technical appraisal of the NIRS will also disclose what technology is needed to enable a national Indigenous talk-back to operate on the NIRS.

The national talk-back program will create a forum where Aboriginal and Torres Strait Islander community leaders, elders and representatives can discuss news or issues, or respond to any publicity regarding their communities.

A national Aboriginal and Torres Strait Islander talk-back program would provide an economical and timely medium to respond to any issues of concern for Indigenous communities - especially in responding to biased, stereotypical and negative mass media coverage when it occurs.

value

The national Indigenous talk-back program - and the NIRS - will give Aboriginal and Torres Strait Islander communities the chance to re-establish song lines that have been broken since white occupation of Australia.

As soon as the technical appraisal is conducted, the infrastructure for the NIRS will be established and the service should be operating.

The National Indigenous Radio Service will provide Aboriginal and Torres Strait communities with the opportunity to nationally broadcast news, information and views concerning local, regional and national issues and to quickly address in a co-ordinated manner matters raised in the mass media that create a distorted view of Indigenous society.

Furthermore, the NIRS would provide a very effective medium for educating the wider society of the rich cultures and heritages of Aboriginal and Torres Strait Islander peoples.

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