

# Respect the code or the dog gets it!

Copyright law and technological measures. Dr Matthew Rimmer, lecturer, Faculty of Law, the Australian National University

The new digital copyright laws introduced in the United States and Australia have made it illegal to break or circumvent any technological measures in respect of copyrighted works — such as encryption, access codes, and copy control protection.

There have been a number of recent cases dealing with the protection of technological measures and the ban on anti-circumvention devices. A number of United States motion pictures sued *2600 Magazine* for hyper-linking their site to others where the DeCSS code (which is designed to decrypt DVD files) is stored. [*Universal City Studios v Reimerdes*, 111 F. Supp. 2d 294 at 305, 2000 U.S. Dist. LEXIS 11696 (S D N Y 2000).] Ed Felton, a professor of Computing Science in Princeton, sought a declaration from the courts that he could legally publish an academic paper on how to circumvent the Secure Digital Music Initiative Code. [See the archives on the Electronic Frontier Foundation website: [http://www.eff.org/Legal/Cases/Felton\\_v\\_RIAA/](http://www.eff.org/Legal/Cases/Felton_v_RIAA/)] The Russian programmer Dimitri Sklyarov was arrested by the FBI for breaching the law regarding anti-circumvention devices in respect of adobe e-books. [L Lessig, 'Jail time in the digital age', *The New York Times*, 30 July 2001, [http://www.eff.org/IP/DMCA/S\\_v\\_Sklyarov/](http://www.eff.org/IP/DMCA/S_v_Sklyarov/); and <http://www.freesklyarov.org/>] And, the *New York Times* has recently reported that Sony has sought to rely upon technological measures in relation to litigation over its robotic dog, Aibo. [A Harmon, 'Sony tightens leash on its robotic dog', *The New York Times*, 5 November 2001.]

## Aibo the disco dog

The Aibo robotic dog is an autonomous robot that acts in response to external stimulation and its own judgement. It provides all the joys of puppy ownership without the need for a pooper scooper. Sony developed it as a robot capable of interacting and co-existing with people as a new form of robotic entertainment. Sony has sold about 100 000 Aibos since 1999 at prices ranging from \$800 to \$30 000. It also sells software for about \$150 that adds personality quirks too the dog.

A programmer known online as AiboPet has been creating and distributing free software to enhance the capabilities of the Aibo robot dogs.

On 24 October 2001, Sony sent a letter to AiboPet charging that several files on his website, <http://www.Aibohack.com>, infringed the company's copyright. First, Sony alleged that the contents of the site contained Sony copyrighted software which the website owner was copying and distributing in violation of Sony's rights. Second, Sony said that the programmer violated the provisions relating to technological measures under the *Digital Copyright Mil-*

*lennium Act 1998 (US)*. It alleged that the site provides the means to circumvent the copy protection protocol of Sony's Aibo™ Memory Stick™ to allow access to Sony Aibo-ware software. Third, Sony argued that the site promotes the distribution of original software such as 'Disco Aibo', 'Aibo Scope', 'Bender Aibo', which appear to have been created by copying and decrypting Sony's software.

The programmer sought to placate Sony with a number of arguments. He mentioned that he merely provided backup copies of Aibo-ware for the convenience of users. The suggestion was that his conduct could be protected under the defence of fair dealing. The programmer acknowledged that he had needed to break Sony's encryption to be able to create the software. However, he stressed that he had constructed the programs so that users would not break Sony's copy protection. Thus an Aibo Life Memory Stick acquired through Sony was needed to run AiboLife Plus.

In response, Sony requested that the programmer remove several programs from the site: 'Sony appreciates your enthusiasm for Aibo. Further, Sony is excited about the proliferation of value added software for Aibo owners, but only when such software does not infringe Sony's rights. Sony would like to see your site continue its interest in Aibo; however in order to enforce Sony's intellectual property rights, we are requesting the removal of the following files from your site...'. The programmer complied with this demand, and removed the offending files.

Aibo owners have posted sympathy notes on the internet and several have called for the boycott of Sony. The owner of <http://www.dogsbodynet.com> wrote: 'Now looking at my Aibos I only see pathetic greed on the part of Sony'. However, Sony was unrepentant. A spokesperson Mack Araki reiterated: 'We need to carefully balance appreciating enthusiasts and protecting our copyright'.

Sony has also been at the forefront of litigation over technological measures in Australia. In *Kabushiki Kaisha Sony Computer Entertainment v Stevens*, the Sony Companies brought an action against Eddie Stephens for breaking the access code in relation to a Sony playstation. [*Kabushiki Kaisha Sony Computer Entertainment v Stevens* [2001] FCA 1379.] It alleged that the respondent infringed trade mark law and copyright law — including the anti-circumvention provisions. The Australian Competition and Consumer Commission sought to be heard as an amicus curiae. The Federal Court granted this application. It is possible that the case will become an important test case of the meaning of technological measures in Australia. ■



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• **Feb 2002 Pathways to CPD.** *Library & information services strategic development Libraries in 2003. Part 2* — strategically positioning your library for 2003 — Robert McEntyre & Associates. DPI Auditorium. Contact: Sue Rigney, [sue\\_rigney@justice.qld.gov.au](mailto:sue_rigney@justice.qld.gov.au)

• **Early Feb 2002 Quorum.** *Successful lobbying workshop.* Venue, time and date to be advised. Contact: Kathryn Harding, [kharding@start.com.au](mailto:kharding@start.com.au)

• **12/2/2002 Qld Library Technicians.** *Storytelling for all ages.* Venue and time: to be advised. Contact: Marian Moyle, ph 07 3244 6446, [marian.moyle@detir.qld.gov.au](mailto:marian.moyle@detir.qld.gov.au)

• **End of Feb 2002. Pathways to CPD.** *2001 Goodwill Games: From go to whoa: the information lifecycle in action.* Guest speaker: Jenny Hale, information manager. Brisbane City Council Theatre, 5:30pm, \$5.50. Contact: Helen Laurelin, ph 07 3848 3908.

• **13/4/2002 Qld Library Technicians.** *Mystery Bus Tour.* Venue and time: to be advised. Contact: Marian Moyle, ph 07 3244 6446, [marian.moyle@detir.qld.gov.au](mailto:marian.moyle@detir.qld.gov.au)

## SA

• **12/12 ALIA SA.** *General meeting.* Research Room, Bob Hawke Prime Ministerial Library, City West Campus, University of South Australia, 5:30 for 5:45pm or unless otherwise indicated. Contact: Marion Fielke, ph 08 8384 0772, [marfie@onkapinga.sa.gov.au](mailto:marfie@onkapinga.sa.gov.au)

## TAS

• **10/12 ALIA Tasmania.** *Christmas dinner cruise on the Regent Star,* 6–8:30pm. Cost \$26.00 per person, including 4-course dinner, wine and soft drinks. Contact: Jane Jeppson, ph 03 6231 9511, [alia@education.tas.gov.au](mailto:alia@education.tas.gov.au)

• **1/3/2002 ALIA Tasmania.** *Statewide conference: Knowledge management: buzz word or reality?* Keynote speaker: Dr Gray Southon, Honorary Research Associate, University of Technology, Sydney. The Grange, Campbell Town, 10–4pm. Cost: to be advised. Contact: Jane Jeppson, ph 03 6231 9511, [alia@education.tas.gov.au](mailto:alia@education.tas.gov.au)

## VIC

**3/12 Kinetica web.** *Hands-on learn how to search the Kinetica database and add holdings using the web interface.* 9:30–1pm. CAVAL Collaborative Solutions, 4 Park Drive, Bundoora. Cost: \$93.50 CAVAL/ALIA CPD members, \$115.50 non-members. Contact: Eve Cornish, [evcc@caval.edu.au](mailto:evcc@caval.edu.au)

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