

'Towards an Innovation Exception? Creating New Rules for an Innovation Society'

Dilan Thampapillai

Australian copyright law does not have a safeguard akin to the US 'safe harbour' principle. In the case of *Sony Corporation v Universal*, the US Supreme Court created a rule that provided that where a device or product is capable of substantial non-infringing uses secondary liability for copyright infringement will not be imposed. What is remarkable is that 25 years after the *Sony* decision, Australian copyright law has nothing within its statute that resembles that rule. Furthermore, after the AUSFTA the Australian Copyright Act took on many aspects of the US Copyright Act. Australia even went further than the United States in its protection of owner's rights. But in this crucial aspect, where innovation is concerned, the two jurisdictions diverge.

In this article I want to make an argument for an innovation exception to be included into the Australian Copyright Act. What I am concerned with is creating the legal space for technology innovators, those who create products that may enable copyright infringement, but which also have legitimate uses, to operate and to avoid liability.