



## HIGH COURT OF AUSTRALIA

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**IN THE HIGH COURT OF AUSTRALIA  
MELBOURNE REGISTRY**

**No. M105 of 2025**

**BETWEEN:**

**FARM TRANSPARENCY INTERNATIONAL LIMITED**  
Appellant

**AND:**

**THE GAME MEATS COMPANY OF AUSTRALIA PTY LTD**  
Respondent

10 **OUTLINE OF ORAL SUBMISSIONS OF HUMAN RIGHTS LAW CENTRE AND  
ALLIANCE FOR JOURNALISTS' FREEDOM AS *AMICI CURIAE***

**I CERTIFICATION**

This submission is in a form suitable for publication on the internet.

**II OUTLINE OF ARGUMENT**

1. Constructive trust: A constructive trust ought not to be imposed if there are other orders capable of doing full justice: *John Alexander's Clubs Pty Ltd v White City Tennis Club Ltd* (2010) 241 CLR 1 at [128]; ACS [10].
2. The imposition or declaration of a constructive trust over copyright created in connexion with a trespass, with consequential orders for assignment of that copyright, has the effect of conferring on the assignee the statutory rights. The right of reproduction (or the right to make  
20 a copy) and the right to communicate the work to the public (with the two limbs of making available online and electronic transmission) are of particular significance in today's world in the distribution and dissemination of news and information to the public.
3. Once assigned, those statutory rights can be asserted not only against the original trespasser but against third parties.
4. It is fundamental that copyright works or other subject-matter be identified with precision. Generally expressed admissions of subsistence and ownership of copyright may cause the formulation of the issues presented to a court to go awry: *IceTV Pty Ltd v Nine Network Australia Pty Ltd* (2009) 239 CLR 458 at [109]. This has significance for both subsistence and infringement.
- 30 5. *Subsistence*: Mere generation of text, images or footage may not, of itself, result in copyright because of the requirements for authorship and making: ACS [4]. Taking films as the

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for Journalists' Freedom

example, copyright in a cinematograph film exists where the “maker” is a “qualified person” for the whole or a substantial part of the period during which the film was made, or if it was made or first published in Australia: s 90, *Copyright Act*. “Making” is the doing of things necessary for the production of the first copy of the film: s 22(4). A copy of a film, as with the definition of cinematograph film, means any article or thing in which the visual images comprising the film are embodied: s 10.

6. What may appear as a “film” (by its collection of moving images and sounds) may not constitute a cinematograph film owing to a lack of embodiment: *Commissioner of Taxation v Seven Network Ltd* (2016) 118 IPR 211 in which a live digital signal transmitting bits of data was held not to be a cinematograph film.

7. If a constructive trust is in contemplation, then the copyright material, as in an infringement action, should be identified with precision. Misapprehension or misdescription of the copyright material may be apt to capture more than the law of copyright would recognise as material in which copyright subsists and in respect of which the exclusive rights may be exercised or asserted.

8. *Infringement*: Copyright material may be incorporated into further works or material in which copyright subsists: ACS [5]. Mere incorporation does not bespeak infringement. The statutory requirement in s 14 that there be a taking of a substantial part assumes there may be a some measure of legitimate appropriation: *IceTV* at [157] (leaving aside questions of licence, the application of s 15 or defences, such as fair dealing for the purpose of reporting news).

9. It may be doubted whether a still image taken from a cinematograph film would be the taking of a substantial part of the copyright material being the film: see, e.g., *Network Ten Pty Ltd v TCN Channel Nine Pty Ltd* (2004) 281 CLR 273.

10. The continued assertion of rights in respect of subsequent works which use, to varying degrees, original copyright material may call into question whether what is being sought to be protected is not the form of expression (a primary concern of copyright) but the facts or information contained within it.

11. Recognising the potential clash of ideas (and interests) that may be promoted or hindered by the dissemination of copyright material does not require the denial of (or compulsory assignment of) copyright: ACS [5].

12. The use of copyright material in later works has the potential to spark further controversies (e.g., on whether the part taken was substantial, qualitatively or quantitatively).

13. Injunction: A plaintiff ordinarily does not obtain an injunction for actionable wrongs for which damages are the proper remedy: *Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia* (1998) 195 CLR 1 at [33]; *Smethurst v Commissioner of the Australian Federal Police* (2020) 272 CLR 177 at [177]; [149], [156]; ACS [2].

14. Where injunctive relief is in contemplation, the Court should take into account the public interest in the publication of the information contained in the material (irrespective of copyright). This accords with the new statutory cause of action in tort for serious invasions of privacy: ACS [8]; *Privacy Act 1988* (Cth), Sch 2, cl 9(2). The development of the law or principle of equity should be consistent with the constitutional guarantee of political communication: see, e.g., *Farm Transparency International Ltd v New South Wales* (2022) 277 CLR 537 at [90].

**Dated:** 5 May 2026

A handwritten signature in black ink, appearing to read 'H P T Bevan', enclosed within a circular scribble.

**H P T Bevan**