

CASE STUDY



HOW YOUR CONTENT MIGHT BE (LAWFULLY) USED BY UNRELATED THIRD PARTIES ON THE INTERNET

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CASE STUDY

Based on Hardingham v

RP Data Pty Ltd

[2019] FCA 2075

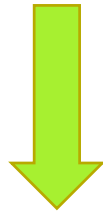
Photographer (Applicant; Copyright owner)

Unwritten licence - duration?



Photographer's clients – real estate agents “middle men”

*Photos uploaded by agent to “Big Real Estate” website
pursuant to the website’s standard licence terms*



Real estate industry online platform “Big Real Estate”

Licence



Third party property sales data website “Third Party Data” (Respondent)

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Standard terms of online platform



*Photos uploaded pursuant to
standard website licence terms*

- The content uploaded onto Big Real Estate by the agents was subject to a standard user (real estate agent's) licence, under which the agents granted Big Real Estate an irrevocable licence to use, and license to others, that content, for any purpose related to Big Real Estate's business.
- Big Real Estate's standard terms were published online and were freely accessible.
- The photographer "must have known" that his photographs were being uploaded by the agencies in accordance with Big Real Estate's standard terms
- It was not realistic, in a practical sense, for the agents to negotiate out of Big Real Estate's standard terms

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Unwritten licence term implied or inferred?



Unwritten licence - duration?

- Dispute over the duration of the unwritten copyright licences the photographer granted to the real estate agents
- Photographer argued: licence he granted the agents *ended* when the marketing campaign ended (ie, upon sale/lease of the property)
- Third Party Data argued: inferred or implied that licence the photographer granted the agents included publication of the works for historical information and research purposes *after* the marketing campaign had ended

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Implied licence: rights of "Big" online platform

- It was to be inferred, or alternatively implied, that the photographer had granted the agents (the "middle men") a licence which allowed the agents to authorise Big Real Estate to use and sub-licence use of his photographs – that was the objective intention of the (unwritten) copyright licence between the photographer and the agents.
- It followed that that the real estate agents had sufficient rights in the photos to enter into Big Real Estate's standard terms, and the photographer could not subsequently restrict Third Party Data's publication of his photographs.

CONCLUDING COMMENTS

It is important to:

- Document, in a written licence, who has what rights to content, particularly when one business commissions another create content.
- Understand the standard terms and conditions of online platforms using your business' content.



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