

## Workplace

July, 08

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### **Employee vs Contractor - Who Owns Your Intellectual Property?**

Many employers are aware that the decision about whether to hire workers as employees or independent contractors will have consequences in terms of the worker's entitlements. A recent decision of the Federal Court has highlighted that the choice of working relationship will also affect ownership of intellectual property, including copyright material.

The case concerned a debate over the ownership of copyright in a computer program. The program was initially written by an IT consultant while he was employed by a company which was later placed into administration and wound up. The consultant then established his own IT consultancy business and engaged another computer programmer to upgrade the software. After a large proportion of the work was done, a dispute arose as to who owned copyright in the computer program and whether the IT consultancy business was permitted to access and use the underlying source code.

In ruling that the worker concerned was an independent contractor and not an employee, the Federal Court held that the company did not own any copyright in the source code. As a result, the worker was under no obligation to provide the source code to the company which had engaged him to undertake the upgrade. In reaching this decision, the Court was unsympathetic that the company's loss of the intellectual property was likely to have a catastrophic effect on its working relationship with its customer because it would effectively be precluded from undertaking any work on the computer program in the future.

This case is a timely reminder for businesses to review the terms on which workers are engaged, in particular by ensuring that:

- they have an exclusive right to use, adapt and exploit intellectual property generated by workers free of charge
- workers guarantee that the work they perform does not infringe the intellectual property rights of other persons
- workers are obliged to provide copies of all intellectual property they have created on cessation of their engagement for any reason.

This Alert is intended as an alert only. It does not purport to be a comprehensive advice. Readers should seek professional advice before acting in relation to these matters.

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*Centrestage Management Pty Ltd v Reidle* [2008] VID 706 of 2007  
(unreported, Sundberg J, 20 June 2008)

### **Contacts:**

For further information or advice, please contact:

Grant Archer  
Partner  
grant.archer@finlaysons.com.au  
+618 8235 7851

Clare Raimondo  
Registered Agent  
clare.raimondo@finlaysons.com.au  
+618 8235 7709