

What Effect Will Electronic Cadastral Survey Plans in Australia Have on Surveyor's Intellectual Property?

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SUMMARY

In the 2008 case *Copyright Agency Ltd. v State of New South Wales* [2008] HCA 35 (CAL case), the Australian High Court determined that surveyors retained intellectual property in plans drawn as part of the process of creating and identifying interests in land. At the time of the decision, all jurisdictions in Australia required cadastral plans to be submitted in a hard copy form. Changes in technology, and in other types of land dealings, has led to the consensus that economic benefits for the State and private surveyors will flow if boundary and cadastral data are submitted in an electronic form. This paper asks if there are risks to the value of surveyor's intellectual property from these proposed changes.

The paper introduces the proposed new format for the depiction of cadastral data and examines it in the light of Australia's existing intellectual property regime. It examines the nature of artistic and literary works and the concepts of material form and authorship in the context of cadastral survey data. The paper concludes that the new form should allow surveyors the same copyright protection for the data file as they do now for hard copy cadastral plans. However, it highlights potential risks to that intellectual property income stream from the creation of derivative works that may replace the current demand for paper based cadastral plans.

Australia is a signatory to the World Intellectual Property Organization (WIPO) Copyright Treaty so, while each international jurisdiction will have its own intellectual property regime, sufficient similarity exists for the discussion to be relevant to other jurisdictions considering change to cadastral surveying standards.

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