

e-commerce update

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GOOGLE adds another search tool

Google has introduced a search within a search feature which has some brand owners up in arms.

The search feature allows users searching on Google to stay on Google to find pages relevant to particular sites. For example, when entering a web address or company name into Google search, a number of results will appear containing a link to the home page of the web site in question. Certain results will also contain another search box, offering users the chance to let Google search for certain things within that site.

The second search or site search feature will arise when Google detects a high probability that a user wants more refined search results within a specific site. The sites that display the site search box are chosen algorithmically based on metrics that measure how useful the search box is to users.

The purpose for the second search feature is to enhance user experience and the likelihood of finding the exact page a user is looking for.

Unfortunately for brand owners however, when users enter a term into the site search box, Google will not only display ads for that site, but also for competing sites. This means that by using the second search feature the consumer may be put off the brand because of the subsequent results, while simultaneously being turned on to competitors.

Google has said it will continue to honour requests from companies to remove the site search tool, however once turned off the company may not reverse the decision.

Copyright in computer programs expanded

The recent decision in *Dais Studio Pty Limited v Bullet Creative Pty Limited* has shed some interesting light on the issue of what constitutes a computer program for the purposes of use under the Copyright Act (Act). In this case, the court indicated that a single file that only comprises a part of a functioning product may be computer program.

The Applicant alleged that Mr Petro (formerly an employee of the Applicant) had, amongst other claims, infringed copyright in one of its computer programs. Mr Petro while in the employ of the Applicant was involved to some extent in the production of a Content Management System (CMS). A CMS is a set of computer files stored on a server that allows a person who may not have substantial IT knowledge to edit a website and install additional content or amend existing content

without needing to make use of a scripting language such as HTML.

Mr Petro had left the employ of the Applicant and developed websites for other companies. In the course of this activity he accessed certain websites of his former employer and downloaded certain files that were part of the CMS developed by the Applicant, but he could not remember which of the sites he downloaded them from.

The Applicant alleged that the two files were downloaded from a site upon which was the HR Advantage CMS. Mr Petro was able to download the files by guessing the URLs. They were not password protected but were not readily accessible to the public without some inside knowledge and/or some luck.

The Applicant made a number of arguments in relation to the copyright, including that each file copied was a computer program in its own right.

Under the Copyright Act a computer program is defined as “a set of statements or instructions that can be used directly or indirectly in a computer in order to bring about a certain result”. The court found that each file was a set of instructions, with the result that each was a work capable of copyright protection.

Ultimately, in spite of the conclusion that individual files can be regarded as computer programs for the purposes of copyright protection, the court found that there was not in fact a breach of copyright, as the Applicant was unable to prove

that any of the websites it owned contained the exact same code used by Mr Petro.

However, what this case does highlight is that works which may previously have been considered too “insignificant” for copyright protection, may in fact be capable of attracting protection under the Act.

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