

5 June 2009

Our ref: PDF: JW: JAMW001
Email: jason.watson@fal-lawyers.com.au

BY EMAIL: guthrie.brett@jamwareonline.com

Brett Guthrie
Marketing Director
Jamware Online Pty Ltd

Dear Brett

Privacy Act – Jamware Video Platform

I refer to your email and our discussion of 5 June 2009.

You have asked FAL Lawyers to provide advice as to whether the use of Jamware's Video Platform (JVP) gives rise to any privacy issues.

We outline our understanding of the situation and provide our advice below. Based upon our understanding, we advise that there should be no privacy issues associated with the capture and availability of game footage.

1. FAL Lawyers

FAL Lawyers work at the cutting edge of law in the areas of corporate, intellectual property and new technologies and are keenly attuned to the dynamic relationship between the law and public policy.

We routinely provide advice on privacy matters to a breadth of clients; including associations, corporate and government. FAL's expertise in this area has recently been affirmed by its reappointed to the Victorian Government Legal Services Panel.

2. Our Understanding

We understand that the JVP will broadly operate in the following manner:

1. Jamware will enter into arrangement with various Associations to install HD video cameras at their public basketball stadiums;
2. the cameras will film basketball games in the stadiums;
3. the footage will be automatically edited and uploaded to a secure website; and
4. players will be able to access and download footage of the game by purchasing credits and entering an identifier/password such as the team captain's mobile phone number.

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3. Privacy Legislation

The considered pieces of legislation in this area are the *Privacy Act 1988* (Commonwealth) and the *Surveillance Devices Act 1999* (Victoria).

Privacy Act

The *Privacy Act* controls the use of personal information “about an individual”, such as banking, tax and medical records. However, it does not control the use of public imagery of an individual and is therefore not applicable in this situation.

Surveillance Devices Act

The *Surveillance Devices Act* prohibits, without consent, the installation of surveillance devices to record private activities. A “private activity” is one carried on in circumstances that may reasonably be taken to indicate that the parties to it desire it to be observed only by themselves.

4. Our Advice

Our advice is that an individual has no right of privacy to his or her image in public places.

That is, individuals do not have a right to prevent photos and/or video footage of themselves being taken in public. Further, an individual has no right to control the use of these photos or video footage.

- *For example:* A parent or other person may film a child competing in a football match and make this footage broadly available to the public even without security restrictions, such as by posting the footage on YouTube.

This is distinct from private activities, such as in change rooms or an individual’s home, in which individual permission would be required before an individual’s image is captured.

Given that the JVP will operate in public basketball stadiums we advise that there are no legal implications regarding privacy and the use of game footage captured.

Of course from a practical and commercial perspective, players should be informed that footage of them may be captured and made available. This could occur through notification upon joining the Association and/or through signage in the stadium. However, no specific consent is required.

If you would like you any further queries in relation to this matter please contact Jason Watson, Special Counsel, FAL Lawyers on 9642 2252.

Yours faithfully



FRANCIS ABOURIZK LIGHTOWLERS