



Lights, camera, legal action . . . Keran Wicks outside one of her Network Video stores. She says the win was welcomed by the video-hire industry world-wide. Photo: Eamon Gallagher

## Victory for hire society leaves colossus in a spin

Ben Hills

The world's largest entertainment corporation has suffered a humiliating defeat in court after it threatened Australia's video-rental proprietors with prison if they did not go along with a new agreement which would have driven up the price of hiring a movie in the new DVD format.

"It was a real David and Goliath thing - they never thought for one moment that we would take them to court, let alone win," said Keran Wicks, director of Melbourne's Network Video chain and vice-president of the Australian Video Rental Association, which represents about 1000 stores.

The decision means that Warner Home Video - a subsidi-

ary of American media giant AOL Time Warner - may have to recall and destroy 100,000 specially labelled DVDs of such popular movies as *Proof of Life*, *Best in Show* and *Bait*, with a retail value of up to \$5 million.

The rental association's win came in the Australian Federal Court last month when Justice Arthur Emmett told Warner to cancel its new arrangements for rental DVDs and desist making "unjustifiable threats" of civil and criminal proceedings against video-rental shops.

The row blew up in May when Warner introduced a new "two-tier" system under which only DVDs with a special blue label, costing \$55 (double the wholesale price of those intended for sale in retail stores), would be

able to be bought and rented out by video-hire stores. "Normal" DVDs sold to the public would have silver labels with a "not for rental" warning and a do-b-in telephone hotline number.

Ms Wicks said this would have increased the cost of movie stock - which represents almost half video-hire stores' costs - by up to 120 per cent, threatening the viability of some stores.

"This would have inevitably led to higher prices, and fewer movies for rental in the stores," she said.

In a contract mailed to the stores by Warner's Australian managing director, Marc Gareton, the company said that any breach of the new rules "may result in the instigation of civil as well as criminal proceedings,

the latter being punishable by fines or imprisonment".

The threat led to turmoil in the industry. Some video-hire chains - including the two largest, the Malaysian-owned Video Ezy and the US-owned Blockbuster - went along with the new arrangement. The rental association refused to sign, and for the past six months its members have been unable to stock Warner's new movie titles on DVD.

Warner also alleged that some stores had got around the new two-tier system by buying DVDs at retail outlets such as K mart, and "illegally" renting them out to the public. The company later withdrew the claim.

The case was fought over three days and cost more than \$600,000, with Warner engaging

two QCs, flying in a team of US lawyers and taking evidence by video-link from an expert witness in the US. Warner was ordered to pay the court costs.

The company argued that it was entitled to charge more because, since a DVD - unlike a video-tape - is digitally recorded and is played on a machine containing a processor, it should be treated like a computer program and subject to copyright law.

Ms Wick said the ruling was welcomed by the movie-hire industry world-wide. "If Time Warner had succeeded in Australia, it would not have been long before other companies followed suit in Europe and the US," she said.

A spokeswoman for Warner refused to comment on the case.