Welcome to the September edition of the journal. Our feature article by Andrew McRobert and Michael Pendleton examines the complex issues arising from the implications of the internet on copyright and private international law. Through a detailed analysis of the relevant technology and the law in these areas, Andrew and Michael state that the emergence of new technologies and the extension of the existing copyright regime to encompass these developments is rendering the current approach unworkable. Then Andrew and Michael conclude that to seek to strike a fair balance between access and restricting rights to information using 17th century causes of action is doomed to failure.

In his article, Rob Nicholls examines the controls on the Australian importation and exportation of cryptographic technology. In part, Rob's examination covers the international controls on cryptography and their application in Australia and the US. Helpfully, Rob also explains the basics of cryptographic systems.

In his article, David Smith provides an overview of the relatively new business of Application Service Providers' "renting" applications to customers. David provides a checklist of some key legal issues to consider when establishing an agreement with an Application Service Provider. Graduate at Law, Patrick Ling examines Australia's legislative answer to cyber criminals and the viruses they create. Patrick also examines the adequacy of the current regime in dealing with viruses. Finally, Patrick looks at how the proposed model criminal code will deal with this issue.

John Selby, a solicitor with Mallesons Stephen Jaques, outlines the cyber stalking class action suit lodged against Yahoo! Inc in Dallas Texas. John examines the issues involved, the consequences of a successful action and gives his view as to whether the action will be successful. Guy Betar, in his article, gives us a practical guide to the legal issues arising out of e-commerce. Guy also gives us an overview of how to take your business online.

We hope you enjoy this issue.

FIRST INTERNET PATENT CASE (ITALY)

The interesting issue raised before the Court of Padova in *Netfraternity v Payland* was whether it is possible to patent an idea for a commercial system, in particular, whether offering money to cyber-navigators as consideration for viewing advertising banners was the exclusive right of whoever first registered the system or whether such a technique could be copied.

The parties were two Internet companies, Netfraternity (the claimant) is the owner of Italian patent no. 1296354 under which users joining Netfraternity install software which compels them to receive advertising messages on a video banner occupying 10 per cent of the screen. In consideration for receiving the advertising messages, Netfraternity awards the users ITL 1,200 (approximately 38p) per hour of navigation. Payland (the defendant) offered the same kind of service on the ground that reproduction of the idea was free if performed using a different technical solution.

The controversy began on 12 May when a court officer seized Payland's server, interrupting its service. However, on 24 May the Court of Padova rejected Netfraternity's claim and refused to grant a preliminary injunction against Payland. As a consequence Payland will be able to continue with its service paying ITL 2,000 (approximately 64p) per hour of navigation to whoever accepts the viewing of its advertising banners through its special software.

According to the Court, Payland's system does not interfere with the scope of the patent claims so there were no grounds for an infringement action.

The decision creates a precedent in Italy in the field of patents for technological products and the Internet. This issue is particularly topical in the context of the Internet in view of the ease with which it is possible to reproduce someone else's invention without "copying" its technical solution, which is the object of the patent. Sometimes the same result may be achieved in thousands of different ways.

[Article reproduced from Linklaters' Intellectual Property News, Issue 11, July 2000 courtesy of Linklaters & Alliance.]

Continued on page 37 ☞