

Welcome to the March issue, our first edition for the year 2001.

The Federal Government's Privacy Amendment (Private Sector) Act 2000 was passed on 7 December 2000 and accordingly, in this issue we focus on privacy. In addition, to coincide with the commencement of the Copyright (Digital Agenda) Amendment Act 2000 and the Moral Rights Act 2000, we also have a special feature article contributed by Rod Evenden.

But before we continue, we would like to make an apology. Last issue, (Dec 2000, *Number 42*), law student Megan Drury contributed a interesting and thought provoking article entitled "*Naming Games: Cultural Imperialism on the Internet*". We mistakenly credited another contributor as author instead of Megan. We apologise for this error.

Also, we would like to welcome Nicole Wellington as our new co-editor. Nicole is a solicitor who works as part of the Corporate and Technology Group at Freehills, Sydney. No doubt her input to the journal will be invaluable.

Now, back to this issue.

With the rapid expansion in internet usage and advances in new technology, privacy has taken on a new importance in today's society. Privacy is now a key issue for consumers, businesses and legislators alike.

In response to wide ranging concerns about how personal information is handled in the private sector, legislators across the globe including Australia, Canada and the United States have, or are attempting to, introduce new laws designed to regulate the handling of private information by the private sector.

In this issue Tim Dixon, solicitor at Baker & McKenzie, examines the tension between the strong impetus on businesses to collect and use personal information and increasing public concern over losing control of personal information once it is entered onto the internet.

Tim also discusses the global context of privacy laws. Recognising that the United States' regulatory environment

is particularly influential for e-commerce practices, he focuses on important, if somewhat delayed, moves to protect privacy in the United States.

Finally, Tim looks at the history of specific legal and industry measures to protect privacy in Australia. Arriving at the current position in Australia, he provides a detailed discussion on the operation of the *Privacy Amendment (Private Sector) Act 2000* and what it will mean for business, urging business to embrace privacy as a strategic challenge and opportunity, not just a technical issue of legal compliance.

Peter Mantas, a lawyer with the Canadian firm Heenan Blaikie, discusses the forces which lead to the introduction of the *Personal Information Protection and Electronic Documents Act*, which came into effect in Canada on 1 January 2001. Peter provides a review of the new law which underpins the protection of personal information in Canada arguing that whilst the Act is broad and powerful in its quest to protect individual's rights in personal information, the effect of the Act's strong enforcement mechanisms may in fact jeopardise an organisation's expectation of privacy from government intrusion.

Kaman Tsoi, a lawyer with Freehills, describes how increasingly popular internet monitoring devices known as "web bugs" and "cookies" are utilised to track information about internet users in internet advertising campaigns. Recognising the privacy implications of such practices, Kaman considers the impact of the recent amendments to the Privacy Act 1988 on these practices, in particular, whether the use of "web bugs" may constitute "personal information" under the amendments. Kaman also discusses the need for organisations to consider the impact of National Privacy Principles where any personal information is disclosed to network advertisers via web bugs or cookies.

In addition, Kaman provides a comparative analysis of the United States and Australian responses to the issue of regulation of internet advertising. He argues that some

legislative tools have not been utilised to protect privacy to date in Australia such as provisions relating to "misleading and deceptive conduct" the Trade Practices Act 1974.

In his article, Kimberley Heitman, (Chairman, Electronic Frontiers Australia Inc and in-house legal counsel for iiNet Limited), argues that the flood of secret data mining technologies employed on the internet, which offer unparalleled access to personal details, leave internet users "naked in cyberspace" - virtually unprotected from intrusions into privacy by commercial interests seeking new revenue streams. He states that the misuse of personal data has emerged as the most pressing need for firm privacy regulation and discusses the inadequacy of current legislative and regulatory measures in Australia as a means of protecting the privacy of internet users.

Rod Evenden, a lawyer with Cornwall Stodart, has contributed our special feature article entitled "*Copyright Protection Of Computer Programs In Australia*". In the first part of his article Rod provides a detailed review of the High Court's decision in *Data Access Corporation v Powerflex Services Pty Ltd*. The ramifications of that decision and how it compares with the US cases are then discussed followed by consideration of the protection of pseudo-code and screen displays.

Rod proceeds to discuss the recent amendments affecting computer programs introduced by the Computer Programs Act 1999, Digital Agenda Act 2000 (which commenced on 4 March 2001) and the Moral Rights Act 2000 (the substantive part of which commenced on 21 December 2000). In conclusion he compares the protection available to computer programs under copyright and patent law.

We hope you will enjoy this issue.