

Welcome to the June issue, our second edition for the year 2001.

In this edition, we take a look at various business and legal issues arising from the use of technology. In particular we consider the risks associated with, and the legality of, certain types of conduct associated with the internet such as online securities trading, "spamming" and "screen scraping". We also take a look at the recently introduced *Crimes Amendment (Computer Offences) Bill 2001, NSW*. In addition, we address various intellectual property issues associated with information technology.

Although the Internet offers many benefits to investors Anita Pollard of Gilbert and Tobin argues in her article "*Online Securities Trading And Investor Protection - Trading With Confidence Or At Your Own Risk?*" that it has also given rise to a number of possible traps for the unwary investor, calling into question the adequacy of existing regulatory controls. She asserts the response by ASIC so far has been a "soft" regulatory approach with an emphasis on disclosure and investor education. She explores the particular hazards associated with online trading in the secondary securities market, and considers Internet discussion sites. Anita also offers a comparison between the approach adopted by ASIC and US regulators to online trading.

Sophie Dawson of Blake Dawson Waldron discusses the topic of "spam", or unsolicited bulk email, in her article "*Green Eggs And Spam: Regulation of Unsolicited Email in Australia*". Spam has been associated with misleading and even criminal conduct and has been the subject of litigation in both the US and Australia. Sophie states that spam is now recognised by many as being a problem requiring government supervision. However, she also points out that not all bulk email is

bad and provides a thought provoking discussion of both the advantages and disadvantages of spam. Sophie also provides a thorough evaluation of the current regulatory controls in place and proposed future measures, in particular, the Draft National Privacy Principle Guidelines released by the Federal Privacy Commissioner for public comment, 7 May 2001.

In their article, "*When is a Computer not a Computer?*" Scott Standen and Tanya Fryc of Arnold Bloch Leibler Lawyers and Advisers, consider the recently introduced *Crimes Amendment (Computer Offences) Bill 2001 NSW* and recent debates concerning computer crime. They consider the ambit of existing and proposed legislation dealing with computer crime in Australia and in particular, consider the question of whether such existing or proposed legislation prohibits offences involving handheld devices, or other data storage devices such as "smart cards".

Trevor Jeffords of Freehills in his article, "*What is "screen scraping" and is it lawful in Australia?*" considers the screen scraping phenomenon and considers its legality. He discusses whether this activity contravenes any state laws, such as the *Crimes Acts* (NSW and VIC), the law of trespass or copyright. On the basis of these three areas of law he concludes that screen scrapers should obtain the consent of the web site owner prior to "scraping" a site.

In his article "*Copyright Protection of Data and Databases*", Rod Evenden of Cornwall Stodart Lawyers, reviews the legal basis for the protection of data as a literary work and considers the effect of the amendments in the *Copyright (Digital Agenda) Amendment Act 2000 Cth* on those heads of protection. He then turns to the topic of protection of databases as a compilation and evaluates the law relating to originality. Rod also gives us a review of proposals for the legal

protection of databases and the practical issues which impact on such protection. Finally, Rod considers the provisions of the *Copyright (Digital Agenda) Amendment Act 2000 Cth* regarding technology.

Megan Macgregor of Corrs Chambers Westgarth, in "*Managing Intellectual Property Issues in the Software Development Process*" discusses a number of intellectual property issues which are prevalent in the software development process. She considers the issues of copyright, moral rights, patents, confidential information and trade marks and how these can be used to protect investment in computer software.

In their article "*Pre-contractual Negotiations - Warranties and Exclusion Clauses*" Brett McGuire and Tony Grasso of Coudert Brothers, assert that any good business relationship is usually the product of successful pre-contractual negotiations, particularly when negotiating IT contracts. They emphasize that getting matters right at the start of negotiations will enhance the relationship between the parties and will avoid future problems. The authors identify what they believe to be the crucial elements required for successful pre-contractual negotiations of IT contracts and proceed to outline the general principles of contract law relating to warranties, exclusion clauses and indemnity clauses. They also consider the provisions and implications of the *Trade Practices Act (Cth) 1974* upon the negotiation and terms of IT contracts.

In his article, "*Discovery of Electronic Documents*", Steve White, principal of White SW Computer Law, highlights the issues and problems concerning electronic documents and the discovery process that do not arise as commonly with traditional paper documents.

We hope that you enjoy this issue.

Also in this issue:

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