

Welcome to the September 2003 edition of *Computers & Law*. This issue looks at a range of issues concerning the manner in which different legal and regulatory regimes are reacting, or should react, to different aspects of technological change. We feature a piece on the evolving technology transfer regime in the People's Republic of China. We also publish articles on possible new approaches to cybersquatting and online copyright protection, casenotes on two recent Federal Court decisions concerning electronic pre-trial discovery and "mod-chipping", and discussion of recent computer-specific criminal legislation introduced in New Zealand, proposed anti-"spam" legislation in Australia and the federal government's review of the *Copyright Amendment (Digital Agenda) Act 2000* (Cth).

Much has been written on the impediments to, and sensitivities of, exploring the commercial opportunities in the Asia Pacific region, and Liron London Rabinowitz continues this important analysis in the first part of his article *A snapshot of technology transfer in China: A review of the legal regime and its context*. London examines what he calls the 'paradoxical' regime of technology transfer into China, the legal context in which it operates and its commercial implications. London turns first to the traditional difficulties that China has faced in facilitating the transfer of technology from abroad, and internally, noting among other problems past deficiencies in research and development, entry barriers, and concerns expressed over intellectual property rights protection. London also assesses the commercial and policy imperatives that underpin reform of technology transfer policies, examining the "races" to trade, to feed, to provide energy, to build international relations and regional security and to meet consumer demand. London then turns to the legal manifestations of a "system thirsting technology", looking at the implications of China's WTO accession, direct regulation and government procurement policy on technology transfer. Part 2 of London's article will continue in the December 2003 edition of *Computers & Law*.

Abhishek Singh contributes two articles to this edition. The first, *Domain Names, the UDRP and Cybersquatting – A short note on shortcomings of the UDRP and a suggested remedy to deter Cybersquatters*, discusses the role of ICANN's Uniform Domain Name Dispute Resolution Policy (UDRP) in resolving cybersquatting disputes. It examines the critiques levelled at the UDRP, including bias in favour of trade mark owners and resulting restrictions on open discussion and criticism. It also looks at the incentives to cybersquatting that remain. The article suggests that an architectural change in the software and hardware of systems enabling domain name registrations might be a more effective, preventative method of curbing cybersquatting.

Abhishek Singh's second article, *Copyright Online: A short note on the proliferation of content distribution technologies online, its implications for the law and suggestions for the future*, discusses the application of copyright to cyberspace. The article argues that legislative changes embodied in the *Digital Millennium Copyright Act 1998* in the US and the *Copyright Amendment (Digital Agenda) Act 2001* (Cth) in Australia have expanded the rights of copyright owners to an unjustified degree. The article suggests a redesign of copyright to restore the balance between allowing fair dealing and encouraging creativity.

Also in the area of copyright law reform, Michael Argy discusses the federal government's review into the *Copyright Amendment (Digital Agenda) Act 2000* (Cth), legislation that was designed to update Australian copyright law for the digital age.

Dr Adrian McCullagh and Professor William Caelli provide an extended case note and commentary on the recent Federal Court decision in *Sony Music Entertainment (Australia) Limited & others v. University of Tasmania & others*, an interlocutory application concerning electronic pre-trial discovery. The authors explain the technological and commercial background to the matter, in which Sony sought preliminary discovery, using Encase technology, to determine

whether evidence existed within universities' computer networks that would enable Sony to take copyright infringement action against students. The article then considers key arguments advanced for Sony and the Universities and discusses the outcome which arguably allowed Sony to conduct a fishing expedition.

Peter Taylor submits an article, *The New Zealand Crimes Amendment Act: A legal white elephant?*, discussing the passage of the recent *New Zealand Crimes Amendment Act 2003* which introduced a range of specific computer-based offence provisions. Peter provides examples of the manner in which the previous, non-computer specific, criminal law regime addressed computer-based crime. Peter then highlights some of the main provisions of the new legislation in the course of an assessment of the key criticisms that have made against it. He argues that although in isolation some new provisions may still leave gaps, in context and in conjunction with general criminal and contractual law the legislation will go a long way towards filling cracks that previously existed.

Sue Gilchrist and Sarah Strasser provide a case note on another recent Federal Court decision, *Kabushiki Kaisha Sony Computer Entertainment v Stevens*, commonly known as the Sony PlayStation "mod chipping" case. Sue and Sarah discuss the Full Court's ruling that "mod chipping", a process allowing PlayStation game consoles to play unauthorised copies, constitutes an infringement of copyright law.

Tony O'Malley and Alicia Campos have submitted an article, *New anti-"spam" initiatives*, on the federal government's announced intention to introduce legislation aimed at addressing the problem of spam email. They outline current regulation in the area, summarise key aspects of the proposed reforms and provide links for further information.

Our thanks to the *Computers & Law* editorial team Melissa Lessi, Lisa Ritchie and Rhys Grainger and to our editorial assistant Danet Khuth.

We hope you enjoy this issue of *Computers & Law*.