Welcome to *Computers and Law* for September 2005. Since our last issue, there have been a number of developments in copyright law in particular, as it relates to peer-to-peer distribution systems, and we are very pleased to present an update on these key developments in this issue. In addition, we have a range of interesting articles that provide useful insight into and analysis of ICT governance, domain names and the UN Convention on Contracts of the International Sale of Goods.

In our first article, "ICT Governance – new buzz, same issues", Bill Leonida and Peter Mulligan take a look at information and communications technology (**ICT**) governance and the recent increased focus on it. They provide a useful overview of the statutory and ASX corporate governance obligations and some key lessons and best practice tools for directors in supervising the management of ICT.

In our second article, the Hon Neil Brown QC discusses the Federal Court decision in *Capital Networks Pty Ltd v auDomain Administration Limited.* This was an interesting case, involving a dispute between Capital Networks, a domain name registrar, and auDA, the administrator of the Australian country code top level domains (**ccTLDs**). The main issue was the extent to which a ccTLD administrator may control individual registrars. Significantly, the Court found that a ccTLD administrator was entitled to obtain information from a domain name registrar on how the registrar administered generic top level domains outside the Australian domain space, and on any other matter of a commercial nature. In Brown's view, the decision strengthens the authority of ccTLD administrators.

Over the past few months, a number of decisions have been handed down on the issue of P2P copyright infringement both in Australia and in the US. Our next articles provide a useful update on two of these decisions – the US Supreme Court's decision in *MGM v Grokster* and the decision of the Australian Federal Court in *Universal Music Australia Pty Limited v Cooper.*

Phillip Roberts provides an overview of the US Supreme Court's judgment in *MGM v Grokster.* He also takes a look at the progress of the case through the US court system. Roberts discusses the implications of the Supreme Court's judgment for US copyright law and the broader effects on the technology industry. He also discusses the potential impacts of the decision in Australia.

Alan Arnott considers the Federal Court's decision in *Universal Music Australia Pty Limited v Cooper*, which addressed copyright infringement in relation to the MP3s4free website. Arnott provides a useful overview of the Federal Court's judgment as well as an analysis of the implications of the decision.

As we go to print, a decision is expected to be delivered in the *Kazaa* litigation and we look forward to updating our readers on this case and its implications for Australian copyright law in our next issue.

Ken Shiu considers the relevance and application of the United Nations Convention on Contracts for the International Sale of Goods (**CISG**) in technology contracts. Shiu observes that the CISG is often completely overlooked in cross-border commercial supply contracts, despite the fact that the CISG has been imported into Australian law. The article identifies a number of differences between the CISG and Australian common law and contracting practice in the technology industries, including the investigation of a party's subjective intent when determining that party's conduct, termination for fundamental breach and recovery of loss of profit damages. Shiu concludes by recommending that exporters and purchasers of technology consider, on a case by case basis, the potential benefits of the CISG.

Trudie Sarks Helth provides an analysis of gripe websites and whether the operation of such websites without a pejorative term such as "sucks" constitutes a legitimate interest under the Uniform Domain Name Dispute Resolution Policy. Sarks Helth examines the prevailing trends in panel decisions regarding gripe websites of this kind. Broadly, these panel decisions may be separated into cases involving US parties or panellists where there is no indicia of bad faith, cases where no US parties or panellists are involved and there is no indicia of bad faith and cases where indicia of bad faith are present. In Sarks Helth's view, there is a lack of uniformity in the panel decisions to date, and Sarks Helth calls on panellists to consider the law of the relevant jurisdiction in order to achieve greater certainty.

Scott Smalley provides an overview of *Woolworths Ltd v Olson.* This case raised interesting confidentiality and copyright issues. In particular, in relation to copyright, the Court found that the sending of an email constituted 'reproduction' of confidential information. Therefore, copyright was infringed, even though the emails in question were never opened.

In our last article, Steven Walker discusses the English High Court decision in *Clearsprings Management Ltd v Businesslinx Ltd and Hargreaves*, in which the court considered the implication of terms in the context of a software development contract. Walker provides a useful summary of the decision, which arose when the contract between the parties failed to adequately deal with copyright ownership. According to Walker, the principle that is reinforced in the *Clearsprings* decision is that unless there are unique circumstances, it is not usually necessary to imply in favour of a customer an assignment of copyright, or exclusivity, in software. In order to avoid disputes concerning copyright ownership, Walker suggests that parties consider copyright ownership and licensing at the outset, and clearly document the position that is agreed.

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