

Welcome to the final edition of the Computers and Law Journal for 2005. We are pleased to continue our coverage of recent developments in Australian copyright law, and this edition includes articles considering both the Kazaa and the *Stevens v Kabushiki Kaisha Sony Computer Entertainment* [2005] HCA 58 decisions. We also look at the decision in *Australian Securities and Investments Commission v Online Traders Advantage Incorporated* [2005] QSC 324, as well as spam and privacy issues.

In our first article "*Search. Download. Share. But don't authorise infringement*", Matthew McMillan provides a detailed discussion of the recent Federal Court decision in *Universal Music Australia Pty Limited & Ors v Sharman Holdings & Ors* [2005] FCA 1242 - the Kazaa case. The Kazaa case follows a number of recent decisions both in Australia and the US that address copyright infringement. McMillan provides a useful overview of the Kazaa system and the Court's discussion on the law of authorisation in the context of that system. In particular, he explains how someone who facilitates copyright infringement can be taken to authorise that infringement under the *Copyright Act 1968 (Cth) (Copyright Act)*. McMillan also sets out the Court's decision on the liability of Sharman's joint venture partner and the individuals involved in the operation of the Kazaa system and discusses the future of P2P in Australia. McMillan notes that the Court held Sharman could continue to operate Kazaa if it introduced appropriate filtering mechanisms that satisfied the record companies and the Court. Since this article was written, Sharman has blocked Australian users from file-sharing using the Kazaa system.

Our second article is an analysis by Sarah E Strasser of the High Court decision in the long running dispute between Sony and Eddy Stevens in relation to Mr Stevens' modchipping of PlayStation consoles. In Strasser's view, this decision is significant for a number of reasons. Firstly, it was the first High Court decision on the anti-circumvention provision of the

Copyright Act. The Court interpreted both the anti-circumvention provision and the access restrictions in copyright law narrowly, on the basis that these provisions are a compromise between copyright owners and users. Secondly, the Court indicated that modifying PlayStation consoles is permitted for the use of games purchased legitimately, whether intended for domestic or overseas markets. Finally, the decision suggests that it may be legal to mod-chip DVD players to play DVDs purchased overseas, which has significant implications for the film and music industry.

In our third article, Carl Henschke provides a useful discussion of the recent Supreme Court of Queensland decision in *Australian Securities and Investments Commission v Online Traders Advantage Incorporated*. This was an interesting case in which the Court considered whether a website could be a financial services product or financial services advice for the purposes of the *Corporations Act 2001 (Cth)*.

In our next article, Anne Trimmer considers whether biometric technology could be used more widely to enhance security in Australia given its adoption for passport security. In particular, Trimmer looks at the potential application of biometric technology to combat identity theft and "phishing" in online banking and to regulate money laundering in Australia. Trimmer explains that biometric data is capable of enhancing security in a number of ways but it has particular application in assisting in authentication and non-repudiation requirements. Trimmer also provides a detailed consideration of the impact that using biometric data can have on a person's privacy. She looks at whether biometric data would be considered personal information for the purposes of the *Privacy Act 1988 (Cth)* and its potential as both privacy enhancing technology and privacy invasive technology.

In "*Does the Spam Act "CAN-SPAM"?*", Matthew Leung compares the Australian *Spam Act 2003 (Cth)* and the United States *Controlling the Assault on Non-Solicited Pornography*

*and Marketing Act 2003 (CAN-SPAM Act)*. In particular, Leung looks at the way that the two acts define spam and the obligations the Acts place on spammers to obtain the recipient's consent to receive spam. Leung concludes that valuable lessons can be learned from the CAN-SPAM Act and incorporated in the Spam Act to improve its effectiveness.

In our final article "*Please Give me a Privacy Card*", Andrew Perry considers the Federal Government's recent initiatives to develop a national identity framework. Perry provides a useful overview of, and commentary on, the various pilot projects proposed by the Government including the document verification service pilot and the pilot to test the accuracy of Australian Government databases. Perry also discusses the yet to be released bill on anti-money laundering, which is likely to increase the scope of businesses required to perform identity checks, and looks at the impact that this could have on small businesses. In light of this discussion, Perry considers that a national Privacy Card may be an option to standardise and improve the efficiency of identity checks while still protecting an individual's privacy.

Thank you to our editorial team, Pam Lines and Danet Khuth. This is Danet's last edition of the Journal, and we would like to say a big thank you to Danet for all her hard work as part of the editorial team over the last few years. We wish Danet all the best.

We hope you all have a safe and happy holiday season. See you in 2006.