

Welcome to the September edition of *Computers & Law*. This edition has an excellent range of articles to read - seven articles makes it our biggest edition for quite some time.

We have been lucky enough to have two contributions from Mike Pym for this edition, both relating to the ICT contracting regime, one of the areas that he specialises in. His first article starting on page 1, is on the new ICT Liability Policy - an exciting move to change the liability regime for suppliers of ICT entering into agreements with Federal Government agencies. The policy proves that we are moving forward with government contracting to a liability regime that allows suppliers to cap their liability. Obviously, this has a number of benefits for suppliers, but it also has benefits to the Federal Government - the Federal Government saves time in negotiating liability regimes and also obtains the benefit of having a broader market of suppliers to choose from. Many suppliers were previously not prepared to enter into agreements that had the risk of uncapped liability - now, risk can be managed by inserting relevant caps to certain types of loss that addresses the risk of both parties.

Our next article by Jonathan Swil discusses a recent NSW Supreme Court decision concerning various "wrongful dealings" with an internet company's domain name. Claims were brought on behalf of the internet business "Dragon Net" for passing off, misleading and deceptive conduct and conversion (amongst other things) after an arrangement to sell parts of the business to some of the defendants collapsed. The article highlights how important domain names are as business assets. Interestingly, the court's decision assumes that domain names are property - Jonathan's article concludes that domain names are *not* currently considered to be property and I agree - you might be interested in reading more about this in a recent article I co-authored with a colleague of mine, Kathryn Gregson - Kylie Howard and Kathryn Gregson, "Are domain names property? An analysis of *Kremen and Online Classifieds Inc v Cohen and Networks Solutions* and its application to Australian law." *Internet Law Bulletin*, 9(1) *Internet Law Bulletin*, page 1. The article

looks at a US case of the Court of Appeal of the 9th Circuit which held that a domain name is intangible property. Kathryn and I analysed that decision and looked at the reasons why, in Australia, domain names are not and cannot be considered as a form of property. Jonathan's article also considers the need for further Australian judicial treatment of this topic to establish the proprietary status of .au domain names.

In her article, Catherine Bond examines a recent United Kingdom decision involving two high-profile companies - the Beatles and Apple Computer. The Beatles music company, Apple Corps, and Apple Computer, both have apple trade marks and in 1991 the pair entered into a Trade Mark Agreement to ensure each company could exclusively use their mark within certain "fields of use." Corps took Computer to court alleging that Computer's use of its mark on the iTunes software and iTunes Music Store constituted a breach of this agreement. Ultimately, the decision came down to a judicial interpretation of the terms of the agreement, but this may be one of the few cases where '70s disco hits are downloaded before the court and commercials featuring Eminem, U2 and Coldplay were tendered as evidence.

Our next article has been written by Workplace and Employee Relations specialists, Andrew Gray and Ben Urry of Mallesons. The topic is an interesting one - computer surveillance at work. Have you ever wondered if an employer has the right to delve into your computer? This article will give you your answer - it is titled, "Is your Employer Watching You - Computer surveillance in the workplace". The article explains and analyses the Workplace Surveillance Act, 2005 (NSW) which has the purpose of restricting the ability of employers from monitoring computer usage. Interestingly, many employers are still not compliant with the legislation despite contraventions being classified as criminal. Senior managers and directors may also be personally liable where they knowingly contravene the Act. There are also a number of tips for

employers in the concluding remarks on how they can become compliant.

Part 2 of Mike Pym's article published in the June 2006 edition of *Computers & Law* provides us with an analysis of the key commercial and legal issues that are associated with the standard Queensland GITC v5 contract with some suggested strategies of how those risks can be mitigated. Part 1 of the article explained the accreditation process for ICT Suppliers and the ins and outs of selling ICT products and services to the Queensland Government. Part 2 is a great follow on as it focuses on the key risks in contracting and gives some excellent tips for new players. On an exciting note, Mike has set up his own company - Pym's Technology Lawyers. The two articles in this edition written by Mike therefore come as a debut from Mike's new company. We wish him all the best and hope that he still has time to contribute to our journal!

With the arrival of the *Do Not Call Register Act 2006* (Cth) ("Act"), the hot topic for authors in this edition is the Do Not Call Register. The Act requires the introduction of a Register based on an opt-out model which will prohibit the making of certain unsolicited telemarketing calls to individuals' telephone numbers listed on the Register - finally, we can expect some peace and quiet over dinner. But don't expect peace and quiet at work - the Register will not contain business telephone numbers, so telemarketing calls to businesses will not be affected by the prohibition under the Act. Both Kent Davey and Stuart Loh have written great articles about the Do Not Call Register - Kent Davey's focus is on explaining the way that it works, and Stuart's piece explores some specific issues raised by the Act, such as the notion of "consent", the implications of outsourcing telemarketing activities and how telemarketers obtain access to the Register. It also touches upon the different Do Not Call Register regimes in other jurisdictions. All in all, we have an excellent coverage of the Do Not Call Register in this edition.

And that's it from me, enjoy!