

Welcome to the September 2007 edition of *Computers & Law*. Thank you to all who submitted articles for inclusion in this edition of the journal.

In recent editions, *Computers & Law* has focused on analysing the scope and impact of the amendments made to the *Copyright Act 1968* (Cth) by the *Copyright Amendment Act 2006* (Cth).

Whilst a number of different policy objectives have driven copyright reform in Australia over the last decade, it is arguable that the number one driver has been to address rapid advances in technological development. The oft-quoted "balancing" required between the interests of copyright owners and copyright users has been at the forefront of debate on this issue as an appropriate balance is sought in a digital context.

In this edition, our first article by Pam Foo considers the view that this balance has now swung too far towards the interests of copyright owners in response to the perceived threat of mass infringement via digital copying and communication mechanisms, including the internet. The idea that the ease of use of and widespread access to the internet and digital devices represents a threat to copyright owners' control over their work, requiring a readjustment of the copyright balance in favour of copyright owners, is challenged on a number of levels by what is commonly referred to as the "copyleft" movement. Many proponents of the copyleft movement argue that the balance has now been disproportionately adjusted in favour of copyright owners, resulting in unreasonable restrictions being placed on copyright users' ability to access and use information, which in turn has the potential to actually discourage creativity by restricting the free flow of information.

Pam's article considers some of the more commonly used licensing mechanisms of the copyleft movement, namely the GNU General Public Licence and the suite of Creative Commons Licences. These

"open content" style licences aim to encourage dissemination of material, whilst ensuring a consistent and appropriate approach to licensing in order to provide both owners and users with increased certainty around permitted uses. In her article, Pam considers how these licensing arrangements seek to achieve such certainty, and asks the question – which approach comes closest to achieving it?

Our next article, by Anna Honig, is a consideration of the recent Federal Court decision in *Nine Network Australia Pty Ltd v IceTV Pty Ltd* [2007] FCA 1172. The issue of copyright protection for factual compilations in the form of databases has long been an uneasy one for Australian copyright law. Therefore, any judicial consideration and clarification of this issue always generates great interest.

In her article, Anna summarises the law to date in this area in Australia and considers the key issues on which the decision in *Nine v IceTV* turned. In particular, Anna focuses on the difficulties faced in this case with proving infringement of copyright and the potential impact of such difficulties on a copyright owner's ability to protect factual compilations in the form of databases..

Our third article this month, is by Fiona Stuart. In our March edition, we considered the issue of the potential trade practices consequences of the failure of online proprietors to appropriately draw customers' attention to relevant terms and conditions. (Please see Ryan Grant's case note on *eBay International AG v Creative Festival Entertainment Pty Limited* [2006] FCA 1768.)

In this edition of *Computers & Law*, Fiona Stuart considers another recent case dealing with online contracting, in this instance the recent decision in *Smythe v Thomas* [2007] NSWSC 844. This case considered the enforceability of terms in the context of online auctions. In her article, Fiona considers Acting Justice Rein's decision and the impact this may have

on encouraging increased levels of consumer confidence in online transactions.

As promised in our last edition of the journal, our final article this time is a follow up on the June 2007 article written by Mike Pym and Sarah Mann. That article, entitled *The New Australian Government Standard Contract for ICT Procurement, Source IT: The New Benchmark*, analysed the new SourceIT contracts with a focus on the key "boiler plate" terms and conditions. In this edition's follow up, Mike Pym and Jacinta Bayard dig further into the Source IT suite of standard contracts, this time focusing on the issues and provisions specific to the products and services in question in each case.