From the editors...

This issue of the Computers and Law Journal includes analysis of recent case law developments in the field of software licensing and copyright, the potential for liability in respect of the accuracy of information provided by a customer in technology outsourcing arrangements, and a book review considering the future of legal services.

Tim Golder, Jesse Gleeson and Brandon Van Slyke's article reviews the reasoning of Bennett J in the recent landmark decision of *CA, Inc. v ISI Pty Limited* in the Federal Court of Australia. Her Honour, having found that copyright can subsist in a macro, found that ISI infringed CA, Inc.'s copyright and also that ISI breached their confidence. Her Honour's finding that a macro is a 'computer program' for the purpose of *Copyright Act* will have implications on the protection of code 'objects' employed in other forms of software, which may be considered computer programs in their own right.

In her article, Grainne Marsden suggests that software developers should reconsider their software licensing arrangements to protect themselves from the implications of the European Union's Court of Justice decision in *UsedSoft GmbH v Oracle International Corp.* The Court found that the sale of used or existing software licenses does not infringe copyright if the license is perpetual, the license is sold as a whole and the first acquirer disables their own copy of the software upon resale. Marsden considers that the decision may only apply to software licenses that are perpetual, and that other licensing arrangements may not be affected by the decision.

Anne Petterd considers the recent Victorian Supreme Court of Appeal decision in *Ipex v Melbourne Water*, in which the position at trial was upheld. As with the trial decision, the judgment reminds us that the accuracy of information provided by a customer is a possible basis for liability for misrepresentation, or misleading and deceptive conduct, and also that tenderers relying on customer information must ensure that they either conduct their own due diligence to verify such information, or alternatively ensure that reliance on such representations are included in the contract (either within the scope, or through the inclusion of appropriate warranties).

The second part of Dr Pamela Gray's and Xenogene Gray's book review of Peter Hinssen's book, The New Normal, continues their analysis of the implications of a changing social and technological landscape for the legal profession and the future of legal services.

Isaac Lin and Daniel Thompson

achieved.[3] Datacom licensees were provided with five macros (**CA URT Macros**) that enabled their applications to interact with Datacom.

The names of the CA URT Macros and their parameters were created specifically for Datacom and were provided to licensees in source code so that their programmers could write programs to interact with Datacom. Without the CA URT Macros, a licensee would have to create the URTs required by its application program from scratch.

In the early to mid 1980s, IBM released a competing database product (**DB2**). DB2 uses an alternative method to store and retrieve data and was not compatible with Datacom. If an organisation wished to convert its database and the applications it uses with one product (e.g. Datacom) to a form compatible for use with an alternative brand (e.g. DB2), all data managed by the first product would need to be translated into a format compatible with the second product. In addition, all of the organisations applications would have to be rewritten. This process is time-consuming, costly and gives rise to the risk of error.

To avoid that process, the respondent, ISI, made an alternative software program called '2BDB2' designed to facilitate users of CA's Datacom database system to switch to IBM's DB2 system by enabling an organisation to migrate the data from Datacom to DB2 without modifying their applications that need to interact with the database.

In order to convert the Datacom information, DB2 needed to use new URTs to replace the CA URT Macros (**ISI Replacement Macros**). The ISI Replacement Macros prompted the generation of a new set of URTs, but only following completion of the data migration process. The copyright issues arose out of the interim period (the data migration process) where only URTs produced using the CA URT Macros could be used. The purpose of the ISI Replacement Macros was to generate new URTs to replace the original CA URT Macros once conversion from Datacom to DB2 had completed.

ISI produced four sets of ISI Replacement Macros over the years: 1999, 2004, 2009 and 2011.

The Copyright Claim

Section 10 of the *Copyright Act 1968* (Cth) (**the Act**) t defines a 'literary work' as including 'a computer program or compilation of computer programs.' A 'computer program' is defined as 'a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.'