

Welcome to the December 2003 edition of *Computers & Law*, the last edition for this year! This edition looks at various legal issues relating to the use of the Internet including liability of ISPs in the context of music piracy, the balance between privacy and law enforcement in the context of the role of ISPs and misleading websites. We also continue to explore business, technological and legal issues which arise when conducting business in the Asian region.

Turning to the articles in detail, Graham Jefferson analyses the complex technological and commercial issues which arise when doing business in the Asian region in his article "Regulation of outsourcing in the financial services sector in the Asia Pacific". Graham analyses recent outsourcing trends in the financial services industry such as 'offshoring' and business process outsourcing, and the unique challenge that this trend presents to businesses and financial services regulators. He further discusses the regulatory environment in which outsourcing occurs, the risks involved for financial institutions and the complications that arise from the diversity of approaches among countries in the region.

Paul Armarego and Richard Morrison discuss the recent decision in *GEC Marconi Systems Pty Limited v BHP Information Technology Pty Limited* [2003] FCA 50. The authors outline the background to the case and the implications it has for technology projects with "relational" or "evolutionary" aspects involving long-term contracts, particularly in regard to the various ways in which parties can lose the ability to enforce strict contractual rights through inappropriate project and contract management.

Natalie Ceola has submitted a note on what may be a world first, the Federal Court music piracy proceedings launched by the Australian Recording Industry Association against parties that include an ISP. Natalie makes the point that ISPs have traditionally argued that they have no liability in piracy cases as they are not responsible for and cannot control what their subscribers do. She makes the point

that, if successful, the case could send ripples across the globe, increase service costs and have privacy implications for subscribers.

In an article entitled "Misleading foreign websites not tolerated by Australian courts", Samantha Brown reviews the Federal Court case *ACCC v Chen* in which the court granted the ACCC declaratory relief and an injunction against a foreigner who registered and operated misleading websites outside Australia. The websites concerned imitated the Sydney Opera House website. The need to protect the public from cross-border consumer fraud was a key factor in the decision to grant relief.

The recent US test for discovery cost-shifting, established in *Laura Zubulake v UBS Warburg* and *Zubulake v UBS Warburg*, attempts to alleviate the significant costs which can be incurred due to discovery of electronic records. Brett Farrell's article entitled "So much for cheap technology" discusses this test and how it could be used by an Australian party to US litigation, as well as the benefits that could be gained from using a similar test in Australia.

As you will recall, Part 1 of Lirun Rabinowitz's article "A snapshot of technology transfer in China: A review of the legal context" was published in the September 2003 edition of *Computers and Law*. Lirun continues his illuminating analysis in this edition, as he considers actions that stakeholders may individually undertake to enhance their trading in technology transfer, as well as key cultural, geopolitical and technical issues which arise in establishing the future of China's technology transfer regime.

Andrew Stone provides an interesting article on a very topical subject – the balance between privacy and law enforcement – in the context of the role of ISPs. Andrew discusses the competing interests and develops the theme that they are best balanced through rigorous evaluation by independent adjudicators. In doing so he considers a number of specific examples where, he argues, differing degrees of success at putting in place

an appropriate balance have been achieved. These include the processes allowing interception warrants to be issued to ISPs under the *Telecommunications (Interception) Act 1979* (Cth) legislation, decryption requirements, and disclosure of communications under the *Telecommunications Act 1997* (Cth).

Our thanks to the *Computers & Law* editorial team Melissa Lessi, Lisa Ritchie and Rhys Grainger and to our editorial assistant, Margot Hunt.

We hope you have enjoyed reading the journal throughout 2003. We hope you all have a safe and restful Christmas and a prosperous New Year!