Welcome to the first edition of *Computers and Law* for 2005. This issue has a strong copyright focus, with articles discussing the Australia – United States Free Trade Agreement (**FTA**) and Australian and international copyright cases. On the e-commerce side, we also look at the regulation of interactive gambling. Following on from previous editions, we continue the discussion of spam prevention – this time looking at United States legislation which regulates spam.

Leaellyn Rich discusses the effect of the FTA on those areas of Australia's intellectual property regime which apply to Carriage Service Providers (**CSPs**). The FTA has resulted in a regime that attempts to balance the interests of CSPs and copyright owners by protecting CSPs from liability for the authorisation of copyright infringements occurring on their systems, while allowing copyright owners to obtain injunctive relief against such infringements. However, it is argued that the regime suffers from a number of problems, such as burdensome compliance requirements on CSPs; an approach that is too technology specific to move with the times; and a potential to skew the balance in favour of copyright owners. Without case law to test the extent to which CSPs would actually be held liable for authorisation of copyright infringement, it is not be possible to assess whether the changes are sufficient.

In our second article, Peter Knight discusses the Canadian decision in *Society of Composers, Authors and Music Publishers of Canada v Canadian Association of Internet Providers and ors* 2004 SCC 45. In this case, the Canadian Supreme Court considered the issue of whether internet service providers (**ISPs**) should be liable to copyright owners because they communicate material protected by copyright over the internet. Knight provides a useful summary of the decision, and compares the Australian and Canadian positions relating to "communication". The article concludes by looking at ISP liability under the proposed FTA changes to the Copyright Act.

Paul Golding's casenote on *Navitaire Inc v Easyjet Airline Company and Bulletproof Technologies Inc* [2004] EWHC 1725 (Ch) provides further input into the software copyright debate. Golding explains that the case reinforces limitations on the scope of copyright protection in this area, particularly the reluctance of United Kingdom courts to protect the 'look and feel' of computer programs.

In his second article in this edition, Peter Knight discusses copyright infringement of computer programs in his analysis of *Telephonic Communicators International Pty Limited v Motor Solutions Australia Pty Limited and others* [2004] FCA 942. He questions the notion that something "essential" must be copied in order to constitute copyright infringement of a computer program. Knight also concludes that the case is a warning to assure ownership of intellectual property in writing.

Also concerning copyright, Rob Bhalla reviews William W Fisher's book on digital content availability, *Promises to Keep: technology, law and the future of entertainment.* Fisher envisages a world where consumers have free access to digital content and actively modify and redistribute works. Overseeing this system would be a government body responsible for remunerating artists. The book is an interesting addition to the current debate and litigation surrounding peer-to-peer file sharing networks.

On a different issue, Liong Lim analyses attempts to regulate new gaming and betting technologies in the United Kingdom. After a thorough discussion of the UK Gambling Bill, Lim compares the United Kingdom's commercial strategy of regulating interacting gambling, with the more policy-based, Australian approach, of prohibiting it. How the United Kingdom legislation works in practice will provide valuable lessons for Australian lawyers and regulators.

In our sixth article, Dr. John P. Geary and Dr. Dinesh S. Davy provide a commentary on the United States CAN-SPAM Act and recent litigation filed under it. As the Internet is increasingly being used as a medium to transmit commercial advertising messages, the volume of these messages, the majority of which are unsolicited, is proving to be overwhelming to recipients and ISPs alike. The United States Congress responded to this serious problem by passing the CAN-SPAM Act of 2003, which came into effect on January 1, 2004. The main thrust of this legislation is to prevent fraud, require disclosure of certain information about the sender and provide an "opt out" mechanism for consumers to avail themselves of. However, there is some doubt about the efficiency of the legislation since "spam" continues to expand at an ever rapid rate. International cooperation will almost certainly be required if fraud and unwanted emails are to be reduced on the Web.

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