

Philip Argy – another pioneer

By Dr Pamela N. Gray

Following is the second in an occasional series of profiles of persons who have played a significant role in the life of the New South Wales Society for Computers and the Law since the organisation was founded in 1982

Philip N. Argy B.Com (Accounting, Finance and Systems) (UNSW), LL.B (UNSW) was a co-founder of the New South Wales Society for Computers and the Law in 1982, and became its first Vice President. After Graham Greenleaf, he was the second President of the Society from 1984-6. In 2001 he became the Vice President of the Australian Computer Society, holding that position for three terms before being elected President for 2006-2007. Then in 2008, he became a founder and Director of the Technology Dispute Centre, a science, technology and intellectual property specialist dispute resolution organisation, which has its offices at 155 King Street in the Sydney CBD.

While he was a student at University of New South Wales, in 1976, Argy joined the Sydney legal firm, Stephen Jaques & Stephen, as part of the Law School's Clinical Legal Experience programme. Having studied computer technology, he quickly gained a reputation for such expertise and was soon appointed to take charge of the firm's "office automation" activities which in those days, according to the firm's then Managing Partner, encompassed everything that plugged into a power point. The firm expanded swiftly with the greater productivity afforded by new technology. In 1977, following an amendment to the Trade Practices Act, Argy developed his first in house legal expert system, PNA-001, to advise his colleagues on the amendment and to provide to his IT group his own expertise in trade practices law most efficiently. This is the first known in house legal expert system (Gray, 1997, pp.34-5). PNA-001 was further developed, using the programming language, BASIC, up to PNA-003.

The College of Law opened in 1976 and Argy took their course of study to fast-track his admission to legal practice. He remained with Stephen Jaques & Stephen and ultimately, shortly after he became a partner in 1984, spear-headed their new Trade Practices and Technology group which, novel for the time, brought together a hybrid group encompassing both commercial and contentious matters involving science, technology and intellectual property.

Stephen Jaques opened an office in New York in 1979 and Argy worked there for almost a year in 1982. In New York he observed a specialisation in computer law in legal practice, and Argy brought this custom back to Sydney. In 1987, Stephen Jaques merged with the leading smaller Melbourne firm, Mallesons, to become

the international firm of Mallesons Stephen Jaques. In 1996-7 Argy was also the firm's Executive Director of Technology and Information; he chaired the firm's Technology & Information Committee for more than 20 years.

Following judicial rejection of copyright protection for computer programs, Argy (1983) debated with Gary Cohen (1982), in the Journal of Law and Information Science, the wisdom of Justice Brian Beaumont's decision in *Apple v Computer Edge* (1984) 53 ALR 225 (Full Federal Court). He suggested that source code was no less a literary work entitled to copyright protection than was a kitchen recipe and, moreover, then argued that object code had to be protected as an adaptation of source code. In 1986, the Copyright Act was amended to expressly include a computer program, broadly defined, within the definition of a literary work. Argy had also shown, in 1981, his expertise in technology matters while briefly involved in representing Leszek Rajski in his protracted case in the NSW Supreme Court (on appeal: *Leszek Rajski v RJ Bainton* [1991] NSWCA 231). Stephen Jaques & Stephen ceased to act for Mr Rajski before the long running case had progressed very far and it continued for many years, during which time it is believed that Mr Rajski studied and obtained a law degree. This case in an early stage, involved the use of file access logs under the RSTS operating system of a VAX machine to prove that a witness had lied and fabricated evidence. Thus began Argy's interest in electronic evidence and forensics.

As an office bearer in both the NSW Society for Computers & Law as well as the Australian Computer Society, Argy was influential in the development of technology law and policy, and often lobbied for reform. He appeared as an expert witness before Australian Senate Standing Committees in relation to inquiries into On-line Content Regulation, Cybercrime, and Spam; See for example Argy's submission on cybercrime in 2001 to the Senate Legal and Constitutional Legislation Committee Inquiry into the Provisions of the Cybercrime Bill 2001: http://www.aph.gov.au/senate/committee/scrutiny/inquiries/submissions/entry_search/sub04.pdf. Regulation of Internet content and cybercrime were his main areas of expert assistance to Parliamentary Committees over many years. He could readily see where the lack of political and judicial understanding of the technology, might produce inappropriate rules. As a

lawyer, he understood how well founded principles of law could readily be extended to accommodate the new technology. Frequently he expressed the view that the law was enduring and robust but that a misunderstanding of the facts might lead to the wrong outcome no matter how sound the legal principles. Cases like *Autodesk Inc v Dyason (No. 1)* (1992)173 CLR 330 (the AutoCAD case) and *Data Access Corporation v Powerflex Services Pty Ltd & Ors* (1999) 45 IPR 353 in the High Court, *Nine Network Australia Pty Limited v IceTV* in the Federal Court and, more recently, the *AFACT v iiNet* dispute (see: http://www.computerworld.com.au/article/336253/afact_v_iinet_appeal_decision_known_for_night) show that the courts need to understand technology very well to apply the existing legal principles.

Argy received awards and accolades as follows:

From 1996, for four years, Euromoney's *Best of the Best* repeatedly nominated Argy as one of the top 20 technology lawyers in the world; also in 1996, he was nominated by Information Age as one of the 50 most influential people in Australia in the information technology field; in 1997, Argy was appointed a *ComputerWorld Fellow* for services to the Information Technology industry; further, in 2009, he was named *Professional of the Year* by the Australian Council of Professions.

Further, Argy became a Director of the International Computer Law Association (formerly Computer Law Association) and Chairman of the Information Technology Committee, and of the eCommerce Committee, Business Law Section of the Law Council of Australia, as well as a Member of the Trade Practices Committee, Business Law Section. In 1993 and 2001 Argy was also Chairman of the Pacific Rim Computer Law Conferences in Sydney.

Also, Argy became editor of the Australian edition of *Computers For Lawyers*, first published in 1986 by Longmans; this publication deals with the use of computers in a law office. In addition, Argy authored the auDRP .au Dispute Resolution Policy (auDRP) and the Web Dispute Resolution Policy (WDRP).

As a member of WIPO's Arbitration and Mediation Panel of Neutrals, Argy is an experienced arbitrator and negotiator (see: <http://www.wipo.int/amc/en/domains/panel/profiles/argy-philipn.pdf>); the World Intellectual Property Organization is a United Nations Agency, established in 1967 by the WIPO Convention. He is a Fellow of the Institute of Arbitrators & Mediators of Australia (FIAMA), an Advanced Mediator of LEADR (Leaders Engaged in Alternative Dispute Resolution) and a Member of the Australian Institute of Company Directors (MAICD).

Argy has been a Panelist in LEADR training seminars, and involved in professional training in mediation through extensive WIPO, LEADR and ACDC (Australian Commercial Disputes Centre) training courses. He has produced numerous articles, commentaries and editorials involving intellectual property, technology law and antitrust issues (for example: <http://www3.austlii.edu.au/au/journals/UNSWLJ/2000/23.html#fnB3>)

In alternative dispute resolution, Argy specializes in dispute resolution strategies; he practises ADRoIT Principles. There are seven ADRoIT principles, each with a set of best practices, that can be applied at the transactional stages of pre-engagement, contract formation, contract administration, dispute resolution, as well as in conventional mediation and arbitration: (http://www.elliotts.com.au/adroitwiki/index.php?title=ADRoIT_Principles). These principles of conflict avoidance now influence the organisation of businesses,

CONTRIBUTIONS TO THE JOURNAL

Do you have something to say about law and computers, information technology, the internet or telecommunications? Have you read any interesting cases or books about computers and the law lately? Is there an issue you think would interest your fellow members of the Australian and New Zealand Societies for Computers and the Law?

The Editors encourage all readers to contribute to the Journal. The Editors welcome contributions of any length (from a short case note or book review, to an in-depth article) on any topic relevant to computers and the law.

If you have an article you wish to contribute, or even an idea for an article you would like to discuss, please contact the Computers and Law Journal Editors at editors@nswscl.org.au.

By way of example, following are some topics that could form the basis of an article:

- the Australian Government's review of e-commerce legislation (*Electronic Transactions Act 1999* (Cth) and its state and territory equivalents) and whether Australia should accede to the UN Convention on the Use of Electronic Communications in International Contracts 2005;
- the Australian Government's review into the Government's e-security policy, programs and capabilities;
- the detection of fraudulent emails; and
- reforms to the existing telecommunications regulatory regime.

as well as the practice of law.

Other positions held by Argy include: Deputy Chairman of the ACS Foundation (<http://www.acsfoundation.com.au>), Director of One Laptop Per Child Australia Limited (<http://www.laptop.org.au>) and Member of the Australian Attorney-General's Electronic Commerce Expert Group. Argy has been involved in the developing law surrounding the Internet, electronic commerce and Public Key Infrastructure (including digital signatures and certificates). He has acted as counsel for numerous clients in the resolution of domain name disputes and, since 2000, he has been a member of the WIPO Panel for UDRP and auDRP disputes and a member of LEADR and IAMA panels for auDRP, involving him in arbitrations in these jurisdictions.

Argy takes the view that government must be constrained in imposing costly duties on the private sector to enforce misconceived regulation. He cites his favourite quote of John Perry Barlow as being as appropriate today as it was 15 years ago: We have to fight against "government by the clueless, over a place they've never been, using means they don't possess"! (see: <http://www.rancher.com.au/rancher-articles/1995/7/28/battle-stations-in-cyberspace/>; also: <http://www.youtube.com/watch?v=EoKutC7qvVw>)

By the end of 2007, after more than 30 years of specialist legal practice, Argy wanted to pursue his interest in alternative dispute resolution in science, technology and intellectual property disputes. These areas of expert practice, just like building disputes, require a specialised forum. So he retired from Mallesons Stephen Jaques and established ArgyStar.com (<http://www.argystar.com>) as a boutique firm offering technology mediation, arbitration, negotiation, expertise and strategic consulting services for dispute resolution. He subsequently co-founded the Technology Dispute Centre as a purpose-built venue for hearing these kinds of disputes, with sophisticated technology facilities such as video conferencing, wireless broadband, and multi screen 50 inch plasma monitors to display evidence and facilitate proceedings.

References

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