

**From the editors...**

Lawyers practising in the IT sector are continually confronting legal issues generated by cloud computing offerings. In this issue, Mark Vincent and Nick Hart analyse some of the risks arising out of cloud computing. While cloud computing offers many benefits, customers will need to be aware of the legal risks when making decisions about such offerings.

As the use and popularity of social networking sites such as Twitter continues to grow, so do questions about how legal principles apply in respect of these new communication tools. David Martin, in his article "Tweet and Sour", raises the issue that, in the Twitterverse, brand owners have encountered both cyber-squatting and the use of Twitter usernames containing their registered trade marks. The author provides a brief summary of the legal and other options available to a trade mark owner who finds the integrity of their brand threatened by a third party on Twitter.

We are pleased to announce the winner of the 2010 Student Prize is Glenn Harwood, for the article "Copyright in the wake of Pirate Bay". Glenn, who is a Bachelor of Commerce (finance major) and a Bachelor of Law student at Bond University, analyses the implications of the litigation against *The Pirate Bay* in Sweden which resulted in four individuals being jailed following criminal convictions relating to copyright infringement.

There were a number of entries of a high standard in the 2010 Student Prize competition, and we thank all those who entered. A selection of entries will be published in future issues.

The Student Prize is being offered again in 2011. We encourage all those who are eligible to submit entries. Details of the competition are set out on page 7.

Finally, Pamela Gray continues her series of profiles of persons who have been significant to the life of the NSW Society of Computers and Law. In this issue, Pamela profiles the patron of the society, the Hon Michael Kirby.

**Martin Squires and Vinod Sharma**

---

*Continued from Page 1*

developments – such as advances in infrastructure with huge farms of computer servers (distributed in shipping container sized units) located all over the world, on which the biggest technology companies spend billions of dollars each year. Customers are able to store and access data and services online (in the cloud) thanks to the availability of increased internet bandwidth at reasonable prices and to the decreased costs of operating, powering and managing data centres – hence a resulting decrease in the cost of access to cloud offerings.

One of the key features of the cloud is what is called the "scalability" of service – which means the services and resources required can be scaled up or down depending on demand. This means that cloud users do not have to outlay capital expense on hardware or software based on their anticipated peak demands, rather they buy infrastructure on demand.

If you take as an example the Australian Taxation Office – its system load would peak for a few months of the year when online tax returns are due - and would be relatively quieter at other times. Equally, a company might run an online or television advertised competition – and it would not know the scale of the public response and therefore what processing, storage and bandwidth

capacity it needs in advance. Rather than having to cater for anticipated peak uses via multiple physical servers in data centres - a company could turn to the cloud to provide these services on an "as needs", "on demand", basis.

Compared to more traditional uses of technology, benefits of cloud computing include: access to services from anywhere; reduction in costs of hardware; "paying for what you use" for services/storage; savings on IT support; and efficiency.

Users and providers of IT services will have to weigh these advantages of the cloud against the risks or perceived risks – such as: regulatory compliance; security; performance; availability of service; and liabilities and remedies under the governing contracts.

When it comes to legal considerations, there are a number of constant issues with which corporate users of technology services will already be familiar. Most of these are contained in the contract (or terms and conditions of use) for cloud-based services – including: issues around the standard of the services being provided; the ownership of IP; service level agreements; liability regimes; warranties and indemnity provisions; confidentiality obligations; termination clauses and the like. In addition to the terms of the contract, there are various other requirements that are imposed by law –