"Going Digital: Legal Issues for Electronic Commerce, Multimedia and the Internet"

Book Review*

[Anne Fitzgerald, Brian Fitzgerald, Peter Cook and Christina Cifuentes. (eds), "Going Digital: Legal Issues for Electronic Commerce, Multimedia and the Internet", Prospect Media Pty Ltd, 1998, pp viii + 188. RRP $145.00 (ISBN 1 86316 134 1)]

The constant reference to the Internet and the legal entanglement participants are finding themselves in is a debate in which many can proffer an idle opinion. What the legal debate has lacked until now is a lucid presentation of the range of legal issues unto which legal professionals and users of Internet technologies alike need to be aware of. It is the answers to these conundrums that *Going Digital* aims to comment upon and examine, in an effective and dynamic manner.

Going Digital is a collection of papers that were presented at a series of seminars of the same name throughout 1998. The theme of the seminars and consequently the published book covered a range of issues including copyright, patents and trade marks, e-commerce and privacy. In light of the technological advancements that have given rise to the 'digital age' the contributions tendered by leading academics and practitioners are of unprecedented importance within Australia and provide more than a perfunctory analysis of the emerging legal infrastructure required. The book enlightens the reader as to the range of legal issues that have emerged as a result of the digital revolution. The authors have succeeded in delivering more than the typical exposé that many texts furnish, in fact they have supplied readers with thought provoking solutions to the problems identified in what are sometimes inconclusive fields.

Perhaps Peter Cook gave the most simplistic synopsis of the book in his introductory chapter when he wrote that "The analyses contained in these papers come back repeatedly to the practical steps and heuristics which users (individuals and organisations) need to bear in mind as they become further enmeshed in the digital world." It is not only the users who need to be aware of the developments in the digital era but also students, academics and practitioners and it is to all of those people that this book is aimed.

Andrew Christie contributed a chapter on copyright protection for web sites. Christie goes further than identifying the issues related to copyright protection but highlights the current difficulties of copyright law. He identifies that many actions of users will be influenced by whether the potential user is risk averse, or by how commercially motivated they are given the lack of any authoritative case law or legislation.

Anne Fitzgerald and Cristina Cifuentes, both editors of this exciting book, provide an examination of the copyright protection for digital multimedia works. The authors spoke of the legislative challenge to create technology specific legislation in multimedia works and how some legislation could be interpreted to give protection to some multimedia works. This is achieved through analysis of the Commonwealth Copyright Law Review Committee (CLRC) recommendations and the monumental decision in *Galaxy v Sega*.

Brian Fitzgerald did not ignore the international development of copyright in his contribution to *Going Digital*. Fitzgerald's continued interest in International Law is demonstrated in the third chapter in *Going Digital*. Fitzgerald begins with a brief overview of international legal systems before engaging in discussion of current international copyright law. He does this through a discussion of the Berne Convention realising that there are problems with using the convention as it does not provide effective compliance mechanisms. This is followed by a discussion about the TRIPS (Trade Related Aspects of Intellectual Property) Agreement and the possibility of countries incurring trade sanctions for a breach of the requirements. This threat may well induce many countries to enact legislation that will protect copyright in the digital environment. Fitzgerald concludes his contribution with a thorough discussion of the *Copyright Treaty* (1996) and recent Australian attempts to remedy the problems.

Michael Lean highlights the importance of speedier rights clearances in copyright. Lean guides the reader on how to gain clearance rights in an efficient and effective manner for works to be used in multimedia productions. His final warning to those contemplating using possible copyrighted material is that you should make sure you have permission before beginning a project because "(i)f you don't have permission, you don't have permission". This chapter is of particular use to the multimedia worker rather than the academic as it provides

practical solutions and guidance, though academics will no doubt benefit from the inclusion.

Part Two of the book discusses Patents and Trade Marks and the current status of the intellectual property regime that surrounds these issues. This begins with John Swinson's paper on "Patents in Cyberspace: Electronic Commerce Patents." A patent can provide protection for a new technological software development and the investment made in developing such a technology. Swinson applies these principles to the protection of e-commerce technology despite the fact that world patents are not currently available. The discussion of the protection of intellectual property is continued in David Webber's paper "Intellectual Property in Internet Software." Many people overlook the fact that computer code is intellectual property and therefore protectable, as are other forms of software. As Webber's article acts as an introduction to the concept of intellectual property it would have perhaps been more beneficial for the reader and in doing justice to the author's if Webber's article preceded Swinson's discussion of patents.

Phillip Hourigan, a reputable commentator on domain name and trade mark laws, outlines the difficulties in pairing the concepts of domain names and trade marks within the current legislative framework. He also discusses current registration requirements and the proposed changes to the domain name structure. Hourigan also introduces us to what is to many an unknown concept, that is the concept of cybermarks. Perhaps a more definitive elucidation of the future prospects for domain names may now be given as a result of the finalisation of the WIPO (World Intellectual Property Organisation) Internet Domain Name Report as until now the procedures, as Hourigan himself admitted, "are far from settled."

Part Three covers the importance of electronic commerce and the chapter begins with Andrea Beatty's paper on Internet banking, digital cash and stored value smart cards. The finance industry and businesses are taking full advantage of the possibilities that the digital era is offering with a wealth of new technologies being developed to achieve better customer service and cost efficiencies within commercial sectors. Beatty discusses in detail the concepts involved in Internet banking, digital cash and stored value smart cards. The possibility of being governed by codes of conduct within each of the various

different mediums is broached, though this can be supplemented by fair trading and contract legislation. The issues of privacy, data protection, taxes and the question of admissibility of electronic data as evidence in a court of law are also explored. The chapter concludes with an overview of the Australian legislative position and response to increased technologies.

Adrian McCullagh's area of expertise is electronic commerce and this is evident in his paper "Legal Aspects of Electronic Contracts and Digital Signatures." McCullagh defines e-commerce simplistically, as it has become over complicated in an attempt to signify the concept as something larger than it really is. McCullagh returns us to the basics of contract law, which reminds us that the intrinsic principles of contract law can and still do apply to digital contracts. This is followed by an examination of the legal issues surrounding e-commerce particularly digital signature and public key cryptography legislation.

The concept of e-commerce is continued by Steve White in his contribution on "Web Site Development Agreements." White's paper outline's the issues that face the web site developer and what the customer must consider in regard to contractual obligations and liability. This is an important contribution to the text of *Going Digital* as it explains legal issues that affect web workers and users of the technology in an often unthought of situation.

Part Four covers the topics of Liability and Privacy Issues in the digital medium. On-line liability is one such topic that presents itself as an important issue in the revolution of *Going Digital*. Alistair Payne continues the discussion on intellectual property in regard to copyright liability according to principles developed in the US and how these principles may be applied in the Australian context.

Defamation in cyberspace is a topic that one may both fear and at other times relish. People fear the day when they wake up and find that damaging material has been posted on the Internet, many a person has contemplated the far reaching consequences that such an action may have but question what recourse they possess. Patrick Quirk details when such unfathomable material will be deemed defamatory and what defences may be used in response to such allegations. The topic addresses issues of Internet Service Provider (ISP)

Liability in the context of defamation and the possible defences that may be actioned. It seems only natural that a more comprehensive examination of ISP Liability then follows in what is Fitzgerald's second contribution to the collection. Fitzgerald iterates the urgent need for reform of the ISP legislative regime after analysis of the current Australian and US case law and the issues that are intrinsic to the liability of an ISP. The importance of this concept may stem from the fact that the topic affects commercial interests and arouses people's sensibilities and interests.

Patrick Gunning's paper touches on an issue all Internet users must at some stage contemplate, that being the "Legal Aspects of Privacy and the Internet." He furthers the discussion of ISP liability in relation to privacy obligations as a result of being acknowledged as a "carriage service provider." Gunning also looks at interception of communications under the *Telecommunications Act* 1997 (Cth), especially in regard to unauthorised e-mail access. Gunning discusses regulation of encryption software and Australian export controls, cookies and computer trespass and the prospect of self-regulation or other prospective regulation.

The authors have presented a thorough discussion on the legal issues that emanate from the digital environment in which we undoubtedly now live. It is an exciting time for those witnessing the effects digital technologies are having on legal institutions worldwide. However the uncertainty that surrounds this ever-changing legal playground and the prospects that await the legislative frameworks surrounding the digital environment have quelled this excitement. Nevertheless the authors have contributed a thorough analysis of the legal issues which will become somewhat of a guide to lawyers, academics, students and inevitably legislators in the future development of these legal concepts.

The ease with which the book can be read demonstrates the skill of the authors in providing informative and enlightening material without encasing it within the usual technical jargon of both legal and computer terminology. Although at a price of $145 the book is rather expensive and may deter some potential purchasers, though the cost is entirely justified given that there are so few quality books on these topics. The inclusion of *Going Digital* in any library or personal collection is highly recommended as such a collection of essays provides

us with an invaluable resource into the legal issues for e-commerce, multimedia and the Internet.

Look out for the second edition of *Going Digital 2000* due out late 1999, which has been updated and features many new contributions and looks to be equally, if not better than this first edition.

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*Emma Sheehan

B Business/ LLB Student, Southern Cross University.

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