Society News

▷ WA Society

President's Report

At a meeting held on 6 October, 1982 it was agreed that a Western Australian Society for Computer and the Law would be formed. An organising committee was elected to prepare a constitution for a formation meeting. On 24 November, 1982 the Society was formed and a constitution adopted. Since the foundation meeting the Society has been very active, its primary emphasis being on the educative role.

On 26 January, 1983 a meeting was held on Electronic mail. Speakers were Johanna Plant from Telecom who gave the principal talk, Bob Till from A.C.I.C.S. who gave a practical demonstration and John Farrell of Systems Research Institute of Australia provided comments on his experiences with this technological addition to the office of today.

On 28 March a meeting was held on "The Legal Office of the Future". Speakers were George Bradbury, State Manager of Computer Power, Chuck Marshall, the Asia-Pacific Area Marketing Manager for Wang Laboratories and Peter Johnson, a solicitor who spoke of his experiences in the United States on data retrieval.

On 27 April, 1983 a meeting was held on the Justice Information System in Western Australia. The speaker was K.R. Smith, the Director of Justice Information Systems Support Centre. Mr Smith subsequently presented a paper on this topic to the 53rd Anzacs Congress in May 1983.

On 25 May, 1983 a meeting was held on computer-related contracts, at which papers were given on "Hardware Contracts from the Purchaser's Point of View" - Geoffrey Vickridge, Barrister & Solicitor; "Software Contracts from the Licensor's Point of View" - Anthony Parker, Solicitor; and "Service and Maintenance Agreements" - John Gladstone, Solicitor. The talks highlighted the deficiencies and traps for the computer contractually uninitiated.

On 2 July, 1983 a first Annual Workshop was held at the Western Australian College Churchlands Campus. See the detailed report of this event elsewhere in this newsletter.

On 30 September, 1983, in co-operation with the Australian Law Librarians Group, a half day seminar on the Computerised Legal Information Retrieval System was held. The topics were "CLIRS Developments in Victoria and New South Wales" presented by Mr Roger Allan, Managing Director, Computer Power, and "Problems of Access - Hurdles for an Australia Wide CLIR System" presented by Dr. Roger Brown, Lecturer in Law, New South Wales Institute of Technology.

On 28 September, 1983 in conjunction with the University Extension Service, a seminar was held on Computer Crime. "Computer Crime - The Law in Western Australia" was presented by Roger Brown, New South Wales Institute of Technology; "Computer Crime Studies" featuring selected Western Australian cases was presented by Associate Professor Francis Auburn; and "Computer Crime - A Criminologist's Viewpoint" was presented by Mr Phillip Stenning from the University of Toronto.

As at 30 June 1983 our membership was 32 individuals and 4 corporate members.

Our current committee is President John Gladstone 272 1388, Vice President Mervin Cooper 386 5568, Secretary Francis Auburn 380 2952, Treasurer Antony Sutherland 322 7055, Colin Ash 387 9412, Gail Howlett 325 0291, Bruce Bott 325 9433 and Paul Genonni 380 2351.

General correspondence should be forwarded to Associate Professor F.M. Auburn, Secretary, W.A. Society for Computers and the Law, Law School, University of Western Australia Crawley Q.A. 6009.

Correspondence concerning the newsletter should be forwarded to Gail Howlett C/- Jackson McDonald & Co., 6 Sherwood Court, Perth W.A. 6000.

▶ John Gladstone, President

WASCL Workshop

Colin Ash of the WASCL committee reports that the first workshop to be held by his society attracted 70 adults and 25 children. The workshop was held in the School of Business, WA College (Churchlands) on 2 July 1983. It provided first hand experience in the use of a wide range of computing equipment and systems. Mini computers were available using games/simulations, editing, data retrieval, business graphics and the use of "dial up" terminals. Business micro computers using IBM, Tandy and Sirius systems were available to demonstrate word processing, time accounting and legal office software. In addition home computers for children using games/simulations and schools (W.A. Educational Department) education software were demonstrated.

During the afternoon two presentations were given: A "Family Law" package using Wang office systems was demonstrated in the College's Administration word processing section. This provided an interesting challenge for lawyers to computerise their legal practice. The use of on line data base retrieval systems using "DIALOG". Jo Roberts demonstrated the cost benefits in using today's communication technology. The simplicity of accessing national and international data bases, via the telephone, generated much interest and discussion. It costs approximately $20 for an international literature search on the subject of "Electronic Mail", using off line printing from Sydney.

Legal Eagles Barred

Les Heinrich, then a committee member of both the WASCL and the Western Australian branch of the Australian Computer Society, wrote the following somewhat flippant account of proceedings at the WASCL seminar on "Computer Related Contracts". It has already appeared in the July 1983 newsletter of the WAACS, "Off-line".

"As I drove up Milligan St., past the Old Melbourne Hotel about 5.15p.m. on the 25th May, I noticed an unusually large group of clean cut gentlemen in suits (and the occasional lady) loitering outside. Ah, I thought, lawyers attending the West Australian Society for Computers and the Law meeting on "Computer Related Contracts". For that was where I was headed myself, once I'd found a parking spot.

As I walked back, I pondered the sight I'd seen. I couldn't help think ing with a chuckle that they looked out of place in this erstwhile "pop riot scene" - it's a long way from Allendale Square! Are they just catching a breach of fresh air before entering, or are they waiting for our meeting room to become free - perhaps double-booked with a mud-wrestling match?

LEGAL EAGLES BARRED (continued):

On arrival I noticed a few computer types amongst those assembled, including several members of the A.C.S. executive. I made a mental note to try to avoid making assumptions from appearances. In any case, we were outnumbered by the lawyers, despite the importance of the topic to every computer professional who would sign (or advise someone to sign) a contract with a computer supplier. No doubt sartorial snobbery isn't the only way in which lawyers are smarter than computer practitioners.

In all there were 25 to 30 of us milling about there. And the reason? The hotel was closed. At 5.30p.m. on a Wednesday? Well, yes, it appears that some damned lawyer and slapped a writ on the place - or whatever it is they slap on places to close them. A dispute between the Owner and the Lessee.

You'd think one of the lawyers would have tipped off his mates to save the embarrassment, but evidently it doesn't work like that in the legal profession. And being out of office hours there was no question of an injunction, or whatever it is that opens doors that have been unreasonably closed.
At last an alternative was found, the boardroom of Jackson, McDonald & Co. So we all treked across there and settled down, after firmly barring the boardroom bar, not against the uncivilised computerists but against the old drunk who followed us back, assuming we'd discovered a better watering hole than the Old M.

Unfortunately the time lost by these events detracted from the meeting by curtailing the discussion time. But the quality of the three talks was undiminished. Geoffrey Vickridge spoke on "Hardware Contracts from the Purchaser's Point of View", Anthony Parker on "Software Contracts from the Licensor's Point of View" and John Gladstone on "Service and Maintenance Agreements". The talks were all based on a wide selection of standard contracts in current use, without mentioning names.

I won't try to paraphrase the talks themselves for fear of showing my ignorance. One of them, Geoffrey Vickridge's paper, will be serialised in Off-line.

The main point to come out of the discussion was that while suppliers' standard contracts gave them the rights of a barbarian tyrant, they only exercised them to the extent of a medieval lord.

In some cases multinational head offices insisted on the retention of severe clauses, while local managers bent over backwards (under competitive pressure) to fulfil the spirit of what should have been the agreement. However this was no ground for complacency, and many contracts are signed in ignorance of their real meaning.

Some real interaction between the computing and legal professions got going in this discussion. The only shame was that so few of the computing fraternity attended. Perhaps they know it all already, or feel, nothing can be done to buck the system. Perhaps they had a premonition of the fate of the Old Melbourne and decided to save themselves a hassle. Perhaps they are just slack.

▶ Les Heinrich

▷ Victorian Society
President's Report

Mr. Julian Burnside, President of the Victorian Society for Computers and the Law (VSCL), reports that the Society was formed in April, 1980. For the first two years of its operation, it met on a monthly basis, and received a large number of papers on a variety of subjects relating to computers and the law. Having covered a significant amount of ground in that way, it recently resolved to change to a format of presenting three major seminars per year, at which subjects of interest are dealt with in depth by a number of speakers.

Seminars: The most recent seminar was "Software and the Law", held on 25 October, 1983. Four papers were presented, as follows: An Overview of the Australian Software Industry; Protection of Software by Use of Interlocutory Injunctions; Software and Taxes; Software, Negligence and Product Liability.

In 1984, the seminars to be conducted are as follows: Computers and Crime (April, 1984); Computers and Banking (August, 1984); Legal Office Automation (November, 1984).

Papers: In addition, during 1984, the VSCL plans to run a papers competition. Papers will be invited on any subject relating to computers and law, and prizes totalling $1,000.00 will be awarded for the four best papers received. Details will be provided in the next Bulletin of the VSCL

Bibliography: The VSCL has just commenced the task of compiling a bibliography of published material concerning computers and law. The bibliography will be publi\ed and made available generally and will be supplemented from time to time as circumstances require. There already exists a bibliography in the area, compiled in Queensland. It is hoped that the two bibliographies can be merged so as to provide a substantial and comprehensive coverage of the field.

Membership: 1983/1984 membership rates are $50 for corporate membership, $25 for individual membership and $10 for attendant membership. Inquiries concerning membership should be forwarded to the Treasurer, Victorian Society for Computers and the Law, 205 William Street, Melbourne, Victoria, 3000.

Inquiries concerning publications and meetings should be directed to the President, Victorian Society for Computers and the Law, Owen Dixon Chambers, 205 William Street, Melbourne, Victoria, 3000.

▷ ACT Society

The society in the Australian Capital Territory is still in its formative stages. Mr. Peter Harris is the convener. He may be contacted through P.O. Box 33, Rivett, A.C.T. 2611 or by telephone during office hours on Canberra 719067. The first meeting of the society was scheduled for 24 November 1983 in the Law Lecture Theatre at the Australian National University when it was hoped that Professor Whalan would be the key note speaker.

⬦Queensland Society

President, John de Groot, advises that the Society was formed on the 24th May, 1983 and at the foundation meeting a constitution was adopted. Membership may be in one of three categories: individual, corporate or student. Individual membership costs $20. Corporate membership costs $40. Student membership costs $5. To date the Society has commitments for membership from approximately 35 people though actual subscriptions received are around 20. Mr. de Groot expects that there will be approximately 50 members by Christmas, 1983.

The Queensland Law Society, the Bar Association and the Queensland Branch of the Australian Computer Society are entitled to representation on the Society's committee and the Society expects to maintain a close relationship with all three in the development of its activities.

A major project which has now been embarked upon is a proposed publication in the area of computer contracts. A seminar is to be held in this area on the 13th March, 1984. It is hoped that the publication will be available in mid to late 1984. The people involved have professional experience in the areas in which they will be contributing chapters.

The Society supported the Law and Technology seminar held at the Bardon Professional Centre, Brisbane on the 24th and 25th August, 1983. A number of those who were actively involved in the planning of the seminar also are active members of the Society. In conjunction with the seminar, the Queensland Society for Computers and the Law held a dinner, which was in effect the public launch of the Society. The dinner was addressed by Mr. Justice Connolly of the Queensland Supreme Court, a Judge who has been interested and active in the use of computer technology within the Court system of Queensland. Over 100 people attended the dinner which was considered a great success.

⬦NSW Society
President's Report

The New South Wales Society for Computers & the Law (NSWSCL) has completed a most successful year since its inauguration in November 1982. Our membership has grown to over 250, comprising (we must admit) a narrow majority of lawyers of various types, but with a substantial minority representing the computing and information systems industries, librarians, academics, accountants and others. As a consequence of this rapid growth we enter 1984 on a sound financial footing, and it is unlikely that any increase in subscriptions will be necessary.

The emphasis in 1983 has been on the establishment of regular monthly meetings for members. Meetings have alternated between lunch and evening and have attracted an average attendance of over 70, sometimes going as high as 130. The high quality of speakers and wide range of "computer law" topics covered is outlined in a separate article in this newsletter. Meetings were initially held at the NSW Law Society's premises in Phillip Street, Sydney but renovations there forced us to move to the Masonic Centre in Liverpool Street where, despite its excellent facilities, the new location caused a drop in attendance. January will see us back at the refurbished Law Society building.

Due to our healthy financial state, we have been able to make all meetings free of cost to members (other than the December smorgasbord). Avoidance of lunch or dinner meetings enables us to concentrate on the papers delivered, rather than the catering, and also allows us to bring speakers to the widest possible audience. We consider that these meetings have been the most valuable benefit of Society membership.

1984 will see the continuation of monthly meetings of an equivalent quality and the addition of regular print communications with members as well. This first issue of what it is hoped will be a quarterly newsletter is the first step, and will shortly be followed by the first volume of the Society's Proceedings. The N.S.W. Society took the initiative to establish the newsletter, but on the basis that it should be developed on behalf of all the State societies as a national newsletter.

The Society sees its function as providing its members with information on computers and law developments and issues, and also as providing forums in which members and others can express their opinions on contentious issues. In stimulating informed public discussion the Society can perform a valuable function even if it does not adopt a corporate position on contentious issues.

We have been very fortunate to have a hard working committee of eighteen members, most of whom regularly attend our monthly committee meetings. Detailed recognition of their individual and collective contributions will have to wait until the annual report, but suffice it to say that the Society's administration is very much a team effort.

The N.S.W. branch of the Australian Computer Society assisted with the costs of our inaugural meeting, and the NSW Law Society has provided premises for meetings at very reasonable costs. Otherwise, we have been financially and constitutionally independent. However, we owe a considerable debt to the generous assistance of a number of legal firms, particularly Freehill Hollingdale & Page, but also Stephen Jaques Stone James, Allen Allen & Hemsley, Cox & Wiseman, and MacPherson Greenleaf & Associates.

▶ Graham Greenleaf, President

NSWSCL Seminars

During its first year the NSWSCC has held 10 public meetings at which speakers and commentators have analysed many of the issues of current concern to its members. The usual format of these meetings was a speech on an advertised topic by a person with a particular interest in it, followed by a commentary by one or more other people expert in the same area. Different members chaired each meeting, mediating where necessary and commenting themselves,where competent. After such panel discussions lively questions and comments from the floor were directed to the keynote speaker and or the commentators through the chair.

The Society proposes to publish these and future proceedings in annual volumes. To this end committee member Brigitte Pers has been collecting the written papers after each meeting and editing them where necessary. The Society anticipates that the first volume of its proceedings will be published late in 1984. Inquiries concerning the purchase of the first volume of the NSW Society's proceedings should be directed to The Secretary, NSW Society for Computers and the Law, Level 30, MLC Centre, Martin Place Sydney 2000.◣

NSWSCL Seminars(continued):

After each meeting Pamela Norman, the media officer for the Society, wrote and distributed a press release which summarised the event and publicised the next scheduled meeting. By this means the Society achieved quite extensive coverage in the Sydney Morning Herald particularly during Information Technology Week in August 1983. What appears below is a summary of the various topics covered at the NSW Society's public meetings, taken in large part from Pamela Norman's press releases.

Inaugural meeting

The Hon. Mr. Justice M.D. Kirby, Chairman of the Australian Law Reform Commission (ALRC) addressed the first meeting of the NSWSCL on 12 November 1982.

His Honour outlined projects of the ALRC which are responding to particular aspects of the impact of new information technology on the Australian legal system. He also detailed some of the areas of the law that the Society must deal with, drawing on his recent address to the Committee on Information, Computers & Communications Policy of the OECD.

Also present was Mr. Julian Burnside, Chairman of the Victorian SCL. Mr. Burnside gave a 'pre-natal pep talk' outlining the experience, successes and frustrations of the VSCL. He stressed the lack of effective communication between lawyers and computerists, which the Society should aim to overcome.

Sales tax on software: when is a door not a door?

Mr. Gerry Sumner, from the Sales Tax Section of the Australian Taxation Office, outlined the provisions of the nine Sales Tax Acts, and the associated machinery provisions in the Sales Tax Assessment Acts. He then discussed the categories into which the Tax Commissioner divides software and the problems which arise with definitions such as "goods", "manufac turing" and "sale price". He suggested, without prejudice, that while the transfer of software in electronic form via satellite or land-line was not 'manufacturing', the subsequent writing of the same information from the recipient's CPU onto disk or into printed format could possibly be regarded as such. Mr. Patrick Fallon from Sydney accountants, Arthur Andersen & Co., discussed in more detail the three main classes of software and the liability arising on each and warned that the Commissioner may soon seek to collect sales tax on standard packaged software and that retrospective adjustment for sales tax on taxable goods, where the tax has not been paid may soon be sought. Meeting chairman, Mr. Philip Argy, Sydney solicitor and computerist, warned that such action by the Commissioner could cause severe disruption in the software industry.

CLIRS and Computer Power

Mr. Maarten Koster, senior consultant to Computer Power Group, addressed the March meeting short] · after it had become known that the NSW had give its conditional approval to that company to set up a computerised retrieval system for NSW. Mr. Koster outlined the material proposed to be incorporated, stated that STATUS was the software to be used, and gave a brief explanation of JURIS and EUROLEX. Mr. Justice Mahoney a member of the NSW Government Committee intended to mould the format of the new system expressed fears about the effect the system might have on the thinking processes of researching lawyers.

Protecting software: copyright, patent and breach of confidence

Mr. Gary Cohen, Sydney solicitor argued that under existing law the only real basis for protecting software was the law of breach of confidence. Mr. Philip Argy, taking a different view, argued that programs might be protected **under existing copyright law as well as the law of breach of confidence or even under patent law.**

Computer related crime in Australia

Dr Roger Brown, Lecturer in Computers and Law at the N.S.W. Institute of Technology and practising barrister, addressed the May meeting of the Society and examined the application of various existing crimes to the particular facts of computer crimes. He then discussed the adequacy of the new crimes proposed to be created by the draft NSW Crimes (Computer Abuse) Act.

Computer Contracts

Three speakers addressed the June meeting of the Society. Ms Jane Levine, senior lecturer in law at the University of NSW, examined the various requirements for a good computer contract. Mr. Justice Rogers of the NSW Supreme Court considered the relevant provisions of the NSW Sale of Goods Act 1923 and the Commonwealth Trade Practices Act 1974. Mr. Tony Smithies, principal information systems consultant for W. D. Scott & Co., spoke on the problems of negotiating satisfactory contracts.

Computer evidence

Mr. Tim Smith, Commissioner responsible for the Evidence Reference of the Australian Law Reform Commission, spoke to the July meeting concerning the admissibility of various types of computer generated information as evidence in courts of law. Mr Barry Z. deFerranti, computer consultant, discussed the problems of reliability of computers in this field and of the distrust of computers sometimes expressed by non-experts.

Computerisation of land registries

Professor Andrew Lang of Macquarie University delivered a comprehensive paper on progress towards computerisation of land registries throughout Australia and the western world. Mr. Kevin Nettle, deputy director of the NSW Land Titles Office, gave a detailed description of the Torrens Register Automation Project (TRAP) imminent in the NSW registry.

Law and information technology – the future

In a special seminar to mark Information Technology Week in August 1983, Mr. John Miller, senior lecturer in law at the Victoria University of Wellington, New Zealand and ANZAC travelling fellow, spoke. Drawing on his experiences from fellowship travels in Canada, the U.K., Europe and the Third International Congress of Judicial Informatics in Rome, Mr. Miller gave an outline of CLIRS developments in these countries and predicted fifth generation developments in the near future.

Data communications law

In September a panel discussion of Australian developments in this area featured Mr. Mark Armstrong of the Australian Broadcasting Tribunal, Mr. R. Freeman, Sydney city district Telecom Manager, Mr. Ian Tuckwell, development manager for Publishing and Broadcasting Ltd. and Mr. Andrew Macpherson, Sydney solicitor.➡

Mr. Armstrong discussed the inadequacy of the existing definition of "broadcast material" in the light of the new technologies available now to Telecom and private networks. Dr. Freeman compared attitudes to new electronic communication systems with the reaction of the British Post Office of the arrival of the telephone, and detailed Telecom's criteria for allowing the attachment of new systems to Telecom lines. Mr. Tuckwell and Mr. Macpherson each examined aspects of the existing and proposed legislation in the area.

Electronic funds transfers

At the October meeting a four person panel dealt with various aspects of automatic banking. The principal speaker was Dr. Alan Tyree, senior lecturer at the University of NSW, who gave a detailed comparison between the teething problems experienced with the introduction of the chequing system in the nineteenth century and those now being experienced with the introduction of autobanks.

Other speakers included Mr. Ron Cameron from the Australian Bankers Association who gave much quantitative information concerning the growth of EFT's in Australia and overseas, Mr. Brian Caldersmith of QUEST, a company which markets an electronic signature recognition system, and Dr. Roger Brown, lecturer at the NSW Institute of Technology.

The November meeting featured a panel of speakers. Associate Professor Robert Hayes, Commissioner responsible for the Australian Law Reform Commission's privacy reference was unable to enlighten us on the contents of the Commission's long awaited report, as it was still in the hands of the Attorney General, but gave a very entertaining talk on the hazards of being involved in law reform, and the potential for expanding existing legal remedies to deal with privacy problems. Bill Orme and Jocelyn McGirr, respectively the past and present Executive Members of the N.S.W. Privacy Committee, presented an interesting contrast, with Mr. Orme remaining convinced of the value of self-regulation in the privacy area but Ms. McGirr more sceptical and outlining the likely avenues for the Committee's new emphasis on legislation.

Roger Clarke, information systems consultant for XAMAX Pty. Ltd. and recently-appointed Reader in Information Systems at the A.N.U., was critical of some aspects of Professor Hayes paper as failing to distinguish between those privacy problems which were computer-related and those that arise from information systems per se.

Articles

Protection of Software
— International Developments

On the 17th of June, 1983 a report of the Committee of Experts on the Legal Protection of Computer Software was presented to the World Intellectual Property Organisation (WIPO). The Committee is convened by the Director of WIPO, who has forwarded the report to the Governments and Agencies whose delegates participated in the Committee.

Representation on the Committee is very broadly based. It includes delegates from 31 countries including Australia and 25 national or international organisations.

The Committee concluded unanimously that there should be effective international protection of computer software. It did not resolve, however, what form that protection should take. Indeed, there was a diversity of views about the extent to which software is protected under existing law. This is due principally to the fact that the details of domestic copyright law vary in different countries, notwithstanding that those countries are signatories to either the Berne Convention, the Universal Copyright Convention or both. (The thrust of those conventions is to require participating countries to provide certain minimum copyright protection for domestic and international works. This reciprocity gives a de facto international protection. Some jurisdictions, however, have enacted copyright laws which provide more than the minimum protection required, including the protection of software by copyright).

The position of software as a subject of copyright in each country was stated by most of the delegates participating in the Committee's deliberations.

Other Nations

In summary, the position overseas is as follows:

West Germany: Copyright protection is available to computer software and has been held to be so protected by recent Court decisions.
United States of America: Recent amendments to the Copyright Act made the protection of software quite clear, and Court decisions have confirmed this, extending to protection of software in solid state media.
Netherlands: Software appears to be protected by copyright laws, but the position is not certain.
Denmark: Copyright law is in general applicable in order to secure protection of computer software but some clarification might be required.
France: It is believed that copyright protects computer software.
Hungary: Recent court decisions confirm that copyright applies to computer software, and it is regarded as "reproduction" of a protected program to use the program in controlling a computer.
Morocco, Japan, Austria, Italy, United Kingdom and Japan: The position is uncertain.
Finland: Protection should be offered by express provisions. There was a trend in favour of a sui generis approach.
India: Protection was required and appeared not to be available on existing copyright law.

Australia