

Welcome to the December 2001 Issue

Welcome to the December issue, our fourth and final edition for the year 2001.

This edition covers a wide range of issues that result from the rapid technological changes which have a marked impact upon the way in which people interact and conduct business. We start by discussing the threat of computer fraud to business and the preventive measures that can be implemented by companies to avoid unauthorised access to their computer systems. We then go on to address the issue of verification and formation of electronic contracts. In addition we provide a concise evaluation of the Hague Convention on Jurisdiction and Foreign Judgements in Civil and Commercial Matters. We conclude this edition with a discussion of the duty of care of schools to their students when they choose to implement teaching via the means of cyberspace.

In their article, "*Under lock and keyboard – Prevention of unauthorised use of corporate computer systems*", Leif Gamertsfelder, Andrew Handelsmann and Praveena Sivanesarajah of Deacons, explore the threat of unauthorised use of a company's computer systems. They submit that in the vast majority of cases, it is a company's own employees, not some "external menace", who are unlawfully accessing the company's computer systems.

The authors consider current Australian legislative activity in the area of computer crime, on both the federal and state level, and examine relevant case law, particularly those cases relating to employee conduct. They also discuss areas of legal risk to which companies may be exposed as a result of computer crime undertaken by the company's employees.

In light of the potential exposure to companies, the protection of data within a company's computer system is an important consideration for management. The authors suggest that one way in which companies may minimise employee computer crime is by implementing security policies, appropriate to the security needs of the particular organisation, that include both procedural and technological safeguards targeted at prevention, ongoing monitoring and recovery strategies in the case of breach.

Paul Barnett, partner at Chapman Tripp Sheffield Young, considers, in his article "*The write stuff? Recent developments in electronic signatures*", recent legal developments in relation to electronic and digital signatures in Australia and New Zealand. He discusses the history of signatures and the legal function of signatures in society. Paul explains how electronic signatures, in particular, digital signatures, are made. He concludes with an overview of the advantages and disadvantages of using electronic signatures to conduct business.

In their article, "*The effective formation of contracts by electronic means*", Philip Argy and Nicholas Martin of Mallesons Stephen Jaques, discuss the concept of e-commerce and its effect on contract formation. They consider the shift towards electronic contracts that are now being executed by email or over the internet between parties with no previous relationship. They assert that the enormous growth of the internet as a facility for effecting electronic transactions has introduced concerns and challenges for businesses, consumers and lawyers alike. The authors go on to discuss the issue from both a technical and legal perspective, and contend that the major challenge is in applying the traditional

contract law framework to a relatively new, paperless process of contracting that reaches across borders and different jurisdictions. They conclude by stating that the solution to the challenges lie in the lawyers who comprehend the technology so that established legal principles can be appropriately applied in the resolution of legal disputes.

In their article, "*E-commerce and enforcement of foreign judgements – a solution or a nightmare*", Denise McBurnie & Samantha Jager of Freehills discussed the aims of the recently considered Hague Convention on Jurisdiction and Foreign Judgements in Civil and Commercial Matters. They argue that the concept behind the Convention is simple in theory but the question is whether the Convention can be successfully enforced and whether it creates more problems than the issue it was convened to resolve.

Graham Bassett, in his article "*A school's duty of care to its students in cyberspace*", provides an interesting discussion of legal issues in relation to education as we move from education being conducted in the "atom world", or the physical world, towards education being conducted in cyberspace. He examines the decision of *Ford and Net Grammar School Pty Ltd v Board of Studies* where the clash between "atom-world" definitions of a school "steeped in notions of physicality" and schooling in cyberspace "which is interactive and promotes the exchange of ideas beyond the walls of the school" came to the fore.

We hope that you enjoy this last issue for the year and have a safe and enjoyable holiday season. We look forward to your continued support for the new year ahead.

Also in this issue:

Case note on confidentiality over the internet: *EPP v Levy, Nicole Underhill, Freehills*
Defamation on the internet - *Gutnick v Dow Jones, Danet Khuth and Melissa Lessi*
RACV wins IT case against Unisys, *Irene Zeitler, Freehills*

p 29
p 31
p 32