

Welcome to the March issue of the *Computers & Law Journal*, our first edition for the year 2002. This edition of the Journal focuses on domain name issues with articles on control of second level .au domains, protection of domain names in the People's Republic of China and an article on cybersquatting. A case note dealing with a challenge to domain name registration and a note on auDA's new policy regarding generic domain names are also included.

Other articles in this edition of the Journal deal with issues arising from the intersection of computers and other technology with the law. Discussions about public key infrastructure and privacy issues, software piracy and IT legal risks are included among these.

Contributions have come from lawyers and consultants based in Sydney, Perth, Melbourne, Canberra, Hong Kong, and Europe. We welcome these contributions and continue to encourage all our subscribers and others with an interest in the field to submit their articles, reviews and case notes for publication. Details for the submission of contributions can be found at the back of this edition.

In our first article "*Who controls .org.au? Where domain name policy and law collide*", Jeremy Malcolm discusses the administration of Australia's internet domain name space (ie all domain names ending in .au). Jeremy is a Perth lawyer and technology consultant who is also President of the Western Australian Society for Computers and the Law Inc. His topical article outlines developments subsequent to the transfer of control of the .au domain to the Australian Domain Name Authority Ltd from Mr Robert Elz, the previous administrator. Jeremy also explains the basis of the very public stoush that has ensued between Mr Elz as registrar of the two second level domains that he created (.org.au and .id.au) and Australian Domain Name Authority Ltd.

Kenny Wong and Lawrence Wong, lawyers with Johnson Stokes & Master, Hong Kong, discuss the Chinese Government's efforts in bringing the adjudication of domain

name disputes into line with international practice. They set out the key features of the recent *Opinion on Several Issues concerning the Adjudication of Civil Disputes involving Computer Network Domain Issues* issued by the Supreme People's Court of the People's Republic of China aimed at replacing and unifying existing rules. They discuss issues of jurisdiction, relevant causes of action, the tests that must be met by plaintiffs alleging violations of their rights and the relief available to plaintiffs. Kenny and Lawrence also discuss a series of cases determined by the Beijing Higher People's Court where domestic defendants had registered domain names similar to those of foreign companies. They argue that the opinion and the recent decisions provide useful guidelines for resolving domain name disputes and also illustrate the robust approach of the People's Court in applying international treaties to supplement domestic Chinese law.

Monica Chiu, a Law and Commerce graduate from the University of New South Wales, describes and critically evaluates the Uniform Domain Name Dispute Resolution Policy (UDRP) introduced by the Internet Corporation for Assigned Names and Numbers (ICANN) in 1999 which applies to domain name disputes involving certain generic and country code top level domains. Monica briefly sets out the procedures of the UDRP before assessing its effectiveness, fairness, the quality of its decisions and its relationship with the courts. She also proposes a number of solutions to problems and shortcomings identified in her article.

In our final domain name feature piece, Craig Smith, solicitor with Freehills, discusses a recent UDRP decision and in particular its expansive interpretation of what constitutes "bad faith" for the purposes of the UDRP. Craig discusses some of the implications of the decision (and others along similar lines) for businesses registering domain names in "*Domain names – use it or lose it?*".

We move then to our general feature articles. In "*Managing legal risks in IT projects*", Nicole Heller and Alison

Telfer from Mallesons Stephen Jaques discuss how lawyers can assist clients in managing the practical and legal risks that arise in IT projects. The authors consider how lawyers can be involved in pre-contractual negotiations, how to prepare and negotiate a contract (from both the supplier's and the customer's perspective) and the role for lawyers once the IT project is in progress.

Vincent Liu, a solicitor in Freehills' Canberra office has undertaken a detailed examination of the Guidelines issued by the Privacy Commissioner on 21 December 2001 entitled "*Privacy and Public Key Infrastructure: Guidelines for Agencies using PKI to Communicate or Transact with Individuals*". Vincent's article helpfully explains the workings of public key technology and public key infrastructure as well as providing some background on the regulation of dealings with personal information by the public sector. The article then discusses the liability of public sector agencies and government contracted service providers for interference with the privacy of an individual and provides an interesting comparative law perspective with its discussion of the New Zealand "Draft Interim Guidelines for the use of Public Key Technology in Government".

In his article, "*Effective IP enforcement: strategic approaches to countering software piracy*", Michael Williams of Gilbert + Tobin examines a range of approaches available to software owners to prevent the infringement of and to enforce their intellectual property rights. He considers a number of the challenges that software owners face today within Australia and abroad and the options available to those who are the target of copyright infringement. Michael discusses both the legal and non-legal avenues that are available and suggests that software owners be pro-active in preventing software piracy.

We hope that you enjoy this edition of the *Computers & Law Journal*.