From the Editors

Welcome to the June 2003 issue of *Computers & Law*. This issue has a particular focus on international law and, in particular, United States legal developments and the activities of US companies in the international arena. We feature a piece on the GATT and the Antidumping Agreement in the context of the US and global supercomputer industries as well as an article on "complaints site" trade mark issues which have featured in several recent United States cases. The issue of unifying Australian and US copyright law regarding ISP liability is also canvassed as are the similarities and differences between Australian rules relating to the enforcement of foreign judgements and the US cases referred to by the High Court in the Gutnik decision.

To the articles in detail, Sophie Dawson and Aaron Kloczko, in their article *Beyond Gutnick: Enforcement of foreign defamation judgments in Australia*, discuss the impact that the *Dow Jones v Gutnick* decision, and Australian law relating to the enforcement of foreign judgments, may have upon foreign investment in Australia. Sophie and Aaron analyse the current Australian position regarding foreign judgment enforcement, noting that there is a reluctance to set aside valid foreign judgments without the existence of significant differences in judicial approach to a particular legal issue. They compare this position to the US, where courts have shown a greater willingness to refuse to enforce foreign judgments on the basis of inter-jurisdictional differences in the law, and conclude that it is likely to be easier to enforce foreign defamation judgments in Australia than in the US. The 'defendant-friendly' approach of the US, the authors argue, protects internet publishers whose assets are in the US, which may discourage publishers from investing in Australian assets, and place Australia at a competitive disadvantage in attracting foreign investment in the media sector.

Sydney Birchall considers the potential consequences of increasing the consistency between Australian and US copyright legislation, particularly with regard to internet service provider (ISP) liability for on-line infringement of copyright. In his article *Copyright Crack Down*, Sydney compares the general indemnification of ISPs against claims arising from authorisation of infringement of copyright that exists in Australia with the conditional indemnification that persists in US law, where, in addition to other requirements, ISP protection is contingent upon certain ISP conduct. He discusses the ability of copyright holders to abuse content and subscriber privacy under the US legislation, which are the two major concerns regarding a greater harmonisation between Australian and US laws. Sydney concludes that while the US approach recognises that ISPs are better equipped to prevent copyright infringement than copyright holders and is therefore more practical than the Australian approach, the scope for abuse that exists in the US system detracts considerably from its attractiveness.

There has recently been a great deal of publicity about "complaints websites" where a disgruntled individual airs their grievances against a corporation's activities and invites others to do the same. In *Using the UDRP to target complaints websites: towards greater certainty?*, John Natal examines The effectiveness of the Uniform Dispute Resolution Policy (UDRP) in resolving trade mark disputes which arise from the operation of a complaints website from a domain name similar to the complaints website's target's trade marks. John notes that the complaints website decisions to date lack consistency, due largely to the fact that determinations are made in the absence of any requirement to follow precedents. John proposes that the provisions of the UDRP be amended to require greater formality and that a uniform interpretation of UDRP provisions be adopted. John provides a detailed discussion of the approach that should be utilised for each of the elements required to be shown in a domain name dispute involving trade marks, so as to improve certainty and strike a workable balance between a trade mark owner's right to have their trade mark protected, and an individual's right to voice their concerns.

London Rabinowitz has written a detailed case note on the Cray-NEC supercomputers dispute. London's note discusses the approach of the Court of International Trade in determining antidumping claims in the context of the IT industry, and the need for antidumping law to deal with factors unique to the IT industry. London provides a summary of antidumping law, and examines the interrelationship between the overarching rationale for antidumping law, the administrative issues the cause of dispute and domestic implementation of international agreements on antidumping. He also considers the practical considerations and implications of an antidumping dispute, and how antidumping obligations can be managed or circumvented. Issues which still need to be resolved in antidumping law and enforcement are identified.

To more specifically local issues: *When Regretted Decisions & Poor Contract Management Collide*, a case note by Irene Zeitler and Annette Quesado, traces the complex history and dispute between the Commonwealth, its IT contractor and a sub-contractor in relation to the development of communications network software. The dispute concerned a breach of a key provision common to both the head and sub-contract and disputed variations to the contracts. The case demonstrates the risks of multi-faceted IT contracts and of "sitting" on a breach of contract where there are delivery problems, and highlights that parties who intend to vary a contract must do so in the clearest terms.

Our thanks to the *Computers & Law* editorial team Laura Seeto, Melissa Lessi, Rhys Grainger and Lisa Ritchie and to our editorial assistant, Margot Wilson.

We hope that you enjoy this issue of *Computers & Law*.