

Welcome to the first issue of *Computers & Law* for 2003. The subject matter of the articles in this issue range from employer's IT intellectual property ownership; copyright and software protection in China and patent law issues to an interesting take on the convergence of legal services and technology.

Stuart Gibson and Virginia Wallin, partner and solicitor respectively at Middletons Lawyers, have written "Employers Beware – IT Intellectual Property Ownership, Employees and Contractors". This important article discusses the critical need for businesses to be aware of the principles of intellectual property ownership when developing their information technology and information systems. The authors note that information technology and information systems often become very valuable assets of a business but that it is often (mistakenly) assumed that with commissioning and payment comes automatic ownership of the intellectual property rights. Stuart and Virginia, using the intellectual property rights protected by the Copyright Act, the Patents Act and the Designs Act as examples, examine the position of work done by employees as against contractors, and also discuss methods of ensuring that intellectual property rights are retained by a business.

Laura Seeto, solicitor in Freehills' Corporate Group, comments on the case *Toys "R" Us Inc v Step Two SA*, in which Toys "R" Us alleged that Step Two, a Spanish company, had used their websites to engage in trademark infringement. The US Court of Appeals ruled that a court cannot exercise personal jurisdiction over a website operator outside its jurisdiction unless the website operator has purposefully availed itself of conducting activity in the forum state, reaffirming existing law relating to personal injury.

Vincent Liu, a solicitor in Freehills' Sydney Litigation group, has provided an article entitled "Copyright and software protection: is it working in China?". Vincent notes that the protection of intellectual property rights has been a live issue in the People's Republic of China for a

considerable period of time, beginning with the gradual dismantling of the socialist command economy (under which such individual property rights were meaningless) under the leadership of Deng Xiaoping.

Vincent outlines the history of China's efforts to provide greater protection to domestic and foreign intellectual property rights, noting that for much of the past two decades these efforts have often been motivated by the threat of external (mainly US) coercion via trade sanctions and were not always followed through on the ground. However, Vincent discusses a more recent shift in Chinese attitudes, tied up with China's accession to the WTO. Vincent argues that with that accession (and the economic policy shifts associated with it), it is becoming increasingly in China's own self-interest to put in place enhanced protection and enforcement regimes. Using this as a background, Vincent then assesses China's compliance with its intellectual property treaty obligations in the areas of copyright and software protection. Vincent argues that substantial compliance on paper has been achieved, and that enforcement efforts, while still subject to a number of difficulties, are becoming increasingly noticeable and effective. The article concludes that China's progress in the protection of intellectual property rights should continue to encourage its ongoing economic development.

Mark Webbink, Senior Vice President and General Counsel of Red Hat, Inc, provides a highly informative and comprehensive overview of open source software. Webbink identifies the different types of open source licences and discusses how open source licences compare to other software licences on the basis of the rights in copyright extended to the licensee. He provides a detailed analysis of the GNU General Public Licence, the broadest licence of open source software, and examines how the copyright concept of a "derivative work" applies to open source software. The article concludes by debunking existing myths about open source software and suggests some best practices for software.

Glen Sauer, solicitor at Blake Dawson Waldron, considers the decision in British Telecom's patent infringement action against Prodigy Communications Corp, further to our coverage of this case in the June, September and December 2002 issues of *Computers & Law*. In addition, the article highlights the pitfalls of pursuing patent claims, particularly where the patent owner has an overly optimistic view regarding the scope of their patent.

Brett Farrell, a law student who has worked in the legal and information technology fields for many years, has written an interesting article, "ROAR Louder Please", examining the convergence of legal services and information technology. Brett looks at the paradigm shifts that have already occurred in bringing the two fields together and discusses the concept of the "The Grid", developed by the commentator Richard Susskind. Brett explains how The Grid assists in understanding the difference between using information technology within a legal organisation and developing it for external use. Brett discusses how, while many legal service providers have gone some way along the first path, there is considerable resistance to moving along the second. Brett explains some of the reasons for this resistance, noting views that a fundamental shift from service/advisory to product supplier requires careful thought and planning. Brett concludes that with the greater use of technology, if lawyers can be persuaded that it is a beneficial tool, there are rewards to reap.

We hope that you enjoy this issue of *Computers & Law* and we look forward to the year ahead.