

Welcome to the first edition of *Computers & Law* for 2004. In this edition we address some legal issues that have been in the news of late including the introduction of anti-spam legislation and copyright protection against peer-to-peer file sharing. We also look at the protection of open-source software, consequential loss in an IT context and the potentially wide reach of a subpoena for computer-based records.

In our first article, Nicholas Blackmore examines peer-to-peer filesharing and presents some of the solutions to the issue of copyright infringement over peer-to-peer filesharing networks. Nicholas describes peer-to-peer filesharing networks generally and provides a useful overview of the significant features of next generation peer-to-peer filesharing networks such as Fast Track and Gnutella. Nicholas looks at the liability of both users and distributors of that technology. This is particularly interesting in light of the recent raids in Australia on Sharman Networks by the Music Industry Piracy Investigations unit and suggestions in the United States that the Californian Attorney General will focus more attention on the risks of peer-to-peer software. In addition, Nicholas considers some of the other technological and regulatory solutions for copyright infringement over next-generation technology such as copyright levies and digital rights management.

In our next article, Grant Follett looks at the perennial issue of consequential loss in the IT context and considers how courts have interpreted clauses excluding consequential loss. In particular, he discusses the decisions in *GEC Marconi v BHP-IT* [2003] FCA 50 *The Salvage Association v CAP Financial Services Ltd* [1995] FSR 564 and *Hotel Services Ltd v Hilton International Hotels (UK) Ltd* [2000] 1 All ER (Comm) 750 and examines whether loss of profits should be specifically excluded.

The issue of spam is currently attracting considerable attention worldwide. On 2 February 2004, the OECD called for governments to work harder against spam by improving cross-border co-operation on network

security and law enforcement. The European Commission has also announced a series of law enforcement and awareness actions that are needed to make a "ban of spam" reality. Of course, Australia's *Spam Act* 2003 commences on 10 April 2004. Burt Hill and Kaman Tsoi provide us with an overview of the new legislation including its general restrictions, exceptions, defences and penalties. Their article also considers the implications of the legislation for employers. We wait with interest to see what impact the Australian legislation will have on the receipt of unsolicited emails and other electronic messages.

The protection of open-source software has been the subject of continued legal debate and was quite prominent in the media last year with the action taken by the SCO Group in relation to its version of Unix known as AIX. In his article, "Open-Source Software: What is it and how does it work?", Dr Ben Kremer considers the legal nature of open-source software. Ben discusses the nature of software generally and provides an overview of the "closed-source" and "open-source" model. Ben also addresses the legal protection available for open-source software creators noting in particular the importance of licence conditions in ensuring that modified open-source code remains "free" to the public.

Finally, Max Duthie discusses the potential for a subpoena to capture records stored electronically. He highlights some of the difficulties associated with producing computer stored records and considers the guidance provided by Justice Heery in *Jacomb v Australian Municipal Administrative Clerical and Services Union* [2003] FCA 1143. The article illustrates that there is still some uncertainty surrounding the application of a subpoena to electronic records.

Thank you to our contributors for this edition. We are pleased to kick-off 2004 with a range of interesting and topical material and look forward to further submissions from our readers throughout the year. We would be happy to suggest topics or comment on adapting presentations and other material. Please contact the editors in this regard.

Our thanks as always to the *Computers & Law* editorial team, Melissa Lessi, Lisa Ritchie and Adela Strzalek and to our editorial assistant, and Margot Hunt. This edition we also say farewell to our co-editor Nicole Wellington and welcome Claire Elix as new co-editor of *Computers & Law*. Thank you to Nicole for all her hard work and dedication in preparing *Computers & Law* over the past two years.

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