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## A Step on the Way: toward a more consistent ICT contract across all Australian governments

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It is hoped that the Framework and the level of co-operation between States, Territories, the Australian Government and the ICT industry will

continue and grow as the project moves forward.

**Note.** The Australian Construction and Procurement Council represents the

Ministers for Procurement for each the States, Territories and the Australian Government.

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# Legal Controversies Surrounding Wikipedia

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For many individuals, Wikipedia<sup>1</sup> has become the first place to look when confronted with an unfamiliar term or historical event, or to get up-to-date with the latest development in a current story. It is an online, free to use, encyclopedia that provides a wealth of information on a diverse number of topics including culture, history, medicine, and sports. Wikipedia describes itself as the "encyclopedia that anyone can edit"<sup>2</sup> and any individual can theoretically make changes to any entry, or even create a new entry for an event, category or term not yet included. However, with the growth in both the content and success of Wikipedia, there has been a concurrent increase in the legal controversies surrounding this collaborative encyclopedia.

It is the aim of this article to address these legal controversies, before briefly discussing in each example whether these particular issues are any different to those experienced by websites and other online forums since the explosion of cyberspace. This article will first provide a brief overview of the growth of Wikipedia and then consider four interrelated Wikipedia legal controversies: factual inaccuracies, controversial contributors, defamation and copyright infringement.

### Introduction to Wikipedia

Wikipedia began in early 2001, following the collaboration of Jimmy Wales and Larry Sanger on Nupedia, which was created with the aim of producing an open, free encyclopedia. According to the "Wikipedia:About" page on Wikipedia, Sanger convinced

Wales to create a new encyclopedia based on the collaborative "wiki" format.<sup>3</sup> Wikipedia was launched on 15 January 2001, which is now sometimes referred to as "Wikipedia Day."<sup>4</sup>

Since the creation of Wikipedia, Jimmy Wales has arguably become the public face of this open encyclopedia.<sup>5</sup> Wales has been described as becoming to the Internet "what Bob Geldof was to famine relief: an almost saintly guru, a visionary who has pooled the talents of many for the greater good."<sup>6</sup> Indeed, when Wales visited Australia for a week of seminars in April 2007, he became part of television history when he was subjected to *The Chaser's War on Everything's* "Ten Questions", indicating that both Wales and Wikipedia have permeated the pop culture psyche both in Australia and internationally.<sup>7</sup>

The attractiveness of Wikipedia is two-fold: for individuals searching for information, it can be used as a research tool, while others eager to disseminate information on a specific topic can edit the relevant Wikipedia page. There are also non-English Wikipedias, with many introduced only a few months after the launch of the English-language Wikipedia.<sup>8</sup>

Unlike traditional print-based encyclopedias, Wikipedia is continually updated "within minutes or hours" of an incident or even occurring.<sup>9</sup> No topic is too small or too large for Wikipedia; for example, it provides a collective resource for many popular television shows, with detailed episode and character

descriptions. At the same time, Wikipedia also features medical, biographical, historical and scientific pages that are also commonly found in traditional encyclopedias.

Wikipedia has grown significantly in both success and content since its creation. As of 4 June 2007:

"There are more than 75,000 active contributors working on some 5,300,000 articles in more than 100 languages. As of today there are 1,815,828 articles in English; every day hundreds of thousands of visitors from around the world make tens of thousands of edits and create thousands of new articles to enhance the knowledge held by the Wikipedia encyclopedia."<sup>10</sup>

There is also evidence of Wikipedia's success as both a website and encyclopedia. As it was noted in *The Sydney Morning Herald*, in February 2007, Wikipedia received over 192 million individual visits after a survey conducted by United States rating agency comScore World Metrix.<sup>11</sup> This result made Wikipedia "the world's 6<sup>th</sup> most visited website-behind those run by giants such as Microsoft, Google and Yahoo."<sup>12</sup> In terms of the most popular Wikipedia content, a 2007 study by Anselm Spoerri revealed that, perhaps not surprisingly, entertainment and sexuality-based pages tend to receive the most visits.<sup>13</sup>

Like many Internet-based success stories, however, Wikipedia has not been able to escape the legal controversies that often accompany popularity. Whether the attention given to each of these controversies is

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justified is another question. It is arguable that the continual growth and success of Wikipedia has made it an easy target. In the four following legal controversies – factual inaccuracies, controversial contributors, defamation and copyright infringement – Wikipedia was given substantial negative attention in the press. In some cases, this may have been justified, while in other cases, perhaps not.

Details will be given for each of the controversies, although it is not the aim of this paper to enter into any substantial legal analysis.

### Factual Inaccuracies

The first legal controversy involves the issue of factual inaccuracies on Wikipedia. Given that Wikipedia has now grown to over 1,800,000 English language articles, with some written by experts and others by amateurs, it is not surprising that some inaccuracies have emerged. However, the fact that Wikipedia may and does contain some factual inaccuracies has been a continual source of complaint by critics. The “Criticism of Wikipedia” page that appears on Wikipedia highlights a number of complaints that fall under the category of “Factual Inaccuracies”, including complaints about the collaborative ‘wiki’ model, the usefulness of Wikipedia as a reference and its suitability as an encyclopedia.<sup>14</sup>

Factual inaccuracies can occur through a number of ways on Wikipedia. First, incorrect information may be added to a page for malicious reasons, or what is commonly referred to on Wikipedia as ‘vandalism’. On the “Criticism of Wikipedia” page, the experience of John Seigenthaler Sr. and his Wikipedia biography is discussed under the heading ‘Exposure to Vandals.’<sup>15</sup> The impact of that defamatory biography will be considered in the third legal controversy addressed in this paper. Second, an inaccuracy may occur because an individual contributor may be biased and edit a page according to their own beliefs, despite there being evidence supporting a different proposition that should be included on the page. Third, an inaccuracy can also occur where an individual

contributor innocently edits a page, according to his or her personal knowledge, but the content of that edit is in fact incorrect.

Although there have been a number of famous examples of factual inaccuracies appearing on Wikipedia, only two will be briefly discussed here. First, between July 2005 and March 2007, it was stated on the Wikipedia biography of Hillary Rodham Clinton,<sup>16</sup> the United States Presidential hopeful, that she was valedictorian of her 1969 graduating college class.<sup>17</sup> This was incorrect; Clinton did speak at the graduation ceremony for her Wellesley College class, but she was not valedictorian.<sup>18</sup> Between July 2005 and the discovery of this error by MSNBC.com in March 2007, approximately 4800 edits were made to the Hillary Rodham Clinton biography; however, none of those edits corrected this inaccuracy.<sup>19</sup>

Second, in March 2007, the Wikipedia biography for United States comedian Sinbad<sup>20</sup> was edited to state that Sinbad had died of a heart attack.<sup>21</sup> This news spread; however, the ‘hoax’ was discovered and the entry was edited. Following this incident, Wales stated that the inaccuracy was on Wikipedia “for less than 30 minutes” but there were a considerable number of news stories focusing on this hoax.<sup>22</sup>

Wikipedia editors and contributors are aware that this collaborative encyclopedia is a site for potential purposeful and ignorant inaccuracies. It is stated on the “Wikipedia: About” page that

“The *ideal* Wikipedia article is balanced, neutral and encyclopedia, containing notable, verifiable knowledge. An increasing number of articles reach this standard over time, and many already have. However, this is a process and can take months or years to be achieved, as each user adds their contribution in turn. Some articles contain statements and claims which have not yet been fully cited. Others will have entire new sections added. Some information will be considered by later contributors to be insufficiently founded, and may be removed or expounded.”<sup>23</sup> (emphasis in original)

Such a statement indicates that the powers behind Wikipedia recognise that entries will contain information that may be inaccurate, whether this is incorrect from the date it is uploaded to after a more prolonged period of time. However, it has also been suggested that the issue of inaccuracy on Wikipedia is not as significant as it first appears, at least where Wikipedia entries are considered against other encyclopaedias.

For example, a December 2005 study by *Nature* magazine compared entries from Wikipedia and *Encyclopedia Britannica* and found that, on Wikipedia, “high profile examples of (of factual inaccuracy) are the exception rather than the rule.”<sup>24</sup> Further, the study

“revealed numerous errors in both encyclopaedias, but among 42 entries tested, the difference in accuracy was not particularly great: the average science entry in Wikipedia contained around four inaccuracies; Britannica, about three.”<sup>25</sup>

Since the publication of the *Nature* study, it has been criticised by a number of parties, including *Encyclopedia Britannica*.<sup>26</sup>

Given that the success and content on Wikipedia continues to increase, it is arguable that, over time, the occurrence of factual inaccuracies will decrease. Until that time, however, the task will fall on other Wikipedia contributors and editors to watch individual pages for incorrect entries, regardless of whether such inaccuracies are caused by vandalism or ignorance.

### Controversial Contributors

The second controversy involves individual Wikipedia contributors who purport to be somebody else or have certain credentials. If an individual claims that he or she is an established scholar, until now Wikipedia has generally not checked such credentials. This is changing, due to the experience of Wikipedia with an online contributor who used the pseudonym “Essjay”.

“Essjay” was a “prolific Wikipedia contributor” who claimed to be a professor of theology.<sup>27</sup> According to a report in *The Sydney Morning Herald*, “Essjay” made over 20,000 Wikipedia entries.<sup>28</sup> During this time

as a contributor "Essjay" was promoted to the coveted role of "arbitrator" and also hired to work for the for-profit company Wikia Inc.<sup>29</sup>

In 2006 the *New Yorker* featured an article about Wikipedia and interviewed "Essjay" as part of this research. The interview featured the long 'credentials' of "Essjay", which included a Ph.D. in Theology and a Doctorate in Canon Law.<sup>30</sup> However, in early 2007, the *New Yorker* included an editorial note that revealed "Essjay" was actually Ryan Jordan, a 24-year-old college dropout.<sup>31</sup> According to reports, Jordan contributed to a number of Wikipedia entries "based on information culled from books such as 'Catholicism for Dummies.'" <sup>32</sup> "Essjay" resigned from Wikia and from editing Wikipedia.

This example relates to the first legal controversy discussed in this article, factual inaccuracies. Despite suggestions by critics that individual users should be wary of relying on statements made on Wikipedia, it is arguable that many do. If Wikipedia entries are written by experts with suitable credentials or individuals with an expertise in a particular area, then this reliance is perhaps warranted. Indeed, the appeal of Wikipedia arguably lies in the fact that any individual with a keen interest in an area can edit a site.

The ramifications of changes by non-experts are arguably less serious where the contributions are about films, culture or sports. However, in other instances, expertise may be preferable to hinder any possible misinformation. What is disconcerting about the "Essjay" controversy is the fact that this individual purported to have credentials that he did not actually possess and his contributions were probably trusted on the basis of those credentials.

Following this controversy, there are reports that a new system will be adopted whereby individual contributors will be able to remain anonymous, but contributors who purport to have certain credentials will have these checked.<sup>33</sup>

### Defamation

One of the most famous Wikipedia legal controversies was caused by factual inaccuracies, although the inaccuracies in this case went much further than mere misinformation. The statements in what is dubbed on Wikipedia as the "Seigenthaler controversy" were potentially defamatory.<sup>34</sup> Indeed, it is arguably this event that brought the accuracy and reliability of Wikipedia to the foreground.

In November 2005, John Seigenthaler Sr. published an article in *USA Today*, describing his experience of having defamatory content about himself posted by an anonymous individual.<sup>35</sup> A friend, Victor S. Johnson Jr., contacted Seigenthaler in September 2005 regarding certain statements on Seigenthaler's Wikipedia biography.<sup>36</sup> One of these statements noted that Seigenthaler was previously an assistant to the then United States Attorney-General Robert Kennedy in the early 1960s. However, it was further stated that Seigenthaler was believed to have been involved in the assassination of both Robert Kennedy and former President John F. Kennedy, although "nothing was ever proven."<sup>37</sup>

While it is true that Seigenthaler was an assistant to Robert Kennedy, the second statement was not and, outraged by this potential defamation, Seigenthaler contacted friends and family members in an attempt to discover if these statements were available on any additional websites.<sup>38</sup> After investigation, Seigenthaler found out that the biography was also available on Reference.com and Answers.com.<sup>39</sup>

The biography was available on Wikipedia for 132 days and, Wikipedia editors had made minor spelling and grammatical edits to the Seigenthaler biography during this time.<sup>40</sup> However, no changes were made to the content of the statements, for, as Myers has noted, the editor "did not recognise the defamatory nature of the claim."<sup>41</sup> Seigenthaler contacted Jimmy Wales and began his pursuit of finding the anonymous individual who had made these comments. Wales removed the statements from Wikipedia on 5 October 2005, but it took three more

weeks for the comments to be removed by Answers.com and Reference.com.<sup>42</sup>

Unfortunately for Seigenthaler, all he could find was the Internet Protocol (IP) address of the anonymous individual and, after some legal discussion, was told by BellSouth, the company responsible for that IP address, that United States Federal law precluded the release of the identity of the individual.<sup>43</sup> If Seigenthaler was to unmask the maker of these allegedly defamatory comments, he would have to file a "John or Jane Doe" lawsuit. This was essentially the only legal avenue open to him, as section 230 of the 1996 *Communications Decency Act* precluded Seigenthaler from taking legal recourse against Wikipedia or Bell South, who under this provision are protected from being treated as the "publisher" or "speaker" of the defamatory communication.<sup>44</sup>

Following the appearance of Seigenthaler's piece in *USA Today*, Daniel Brandt, who had previously started the anti-Wikipedia site "Wikipedia Watch", tracked the IP address that Seigenthaler had listed in his article to a Nashville-based delivery company called 'Rush Delivery'.<sup>45</sup> Finally, on 9 December 2005, Brian Chase, a Rush Delivery employee, admitted responsibility for posting the comments on Seigenthaler's biography on 26 May, 2005 as a prank on a colleague.<sup>46</sup> Chase apologised to Seigenthaler who, in turn, promised that he would not pursue legal action against Chase.<sup>47</sup>

This incident demonstrates the defamation issues that surround Wikipedia. This issue is arguably exacerbated by the fact that, in many cases contributors are able to remain anonymous, except for their IP addresses. However, while the Seigenthaler controversy is a good example of where Wikipedia was misused and its editors failed to realise potential defamation, it is also illustrative of a common Internet problem. Chase chose this particular site because of the "open invitation to edit Wikipedia" that is heralded as one of the reasons behind the success of this collaborative encyclopedia.<sup>48</sup> Further, it can also be suggested that

this legal controversy can happen on any web forum. In that sense, while Wikipedia is arguably more susceptible to possible defamatory attacks, it is important to remember that it is not the only website where such attacks can occur.

### Copyright Infringement

It is not surprising that copyright infringement is listed as an issue on the Wikipedia "Criticisms of Wikipedia" page. On this page, it is acknowledged that many images and some articles that appear on Wikipedia are technically infringements of copyright.<sup>49</sup> Given the fact that many individuals do not properly understand how copyright law operates in the digital era, it is understandable that Wikipedia would experience copyright issues. However, to date, it does not appear that there has been any major legal controversy caused by this issue.

Copyright infringement on Wikipedia can occur in two ways. First, where an individual uploads text from an external Internet site or an off-line resort, with or without attribution, and either ignoring the exclusive rights of the copyright owner or in ignorance of these rights. Such an action would also arguably constitute plagiarism. Second, infringement can occur where an individual uploads an image to Wikipedia, found through the Internet or an offline source, again lacking the permission of the copyright owner to undertake this action.

The "Criticisms of Wikipedia" entry on copyright infringement focuses on the latter type of infringement. It is noted that individual images are sometimes uploaded and the contributor will tag that image as "fair use", an American legal doctrine that operates as a defence to infringement if five specific factors are satisfied.<sup>50</sup> According to Wikipedia, tagging images as 'fair use' is "discouraged but not disallowed" on the English-language version of Wikipedia.<sup>51</sup> However, Wikipedia editors will often remove an image stated to be "fair use" unless there is a "reasonable justification" for the inclusion of that image on Wikipedia under the doctrine.<sup>52</sup>

Of the four legal controversies discussed in this article, the incidence

of copyright infringement is arguably the most manageable. The issue of copyright infringement can confuse even the most knowledgeable Internet user or website developer. However, it appears that Wikipedia does take steps to reduce the incidence of this type of action. The issue of copyright infringement is arguably one that, should an incident develop into a major legal controversy for Wikipedia, will have to be more thoroughly addressed.

### Conclusion

The evidence is clear: Wikipedia continues to grow both as an encyclopedia and in terms of its popularity and success. To date, this online, collaborative encyclopedia has faced many legal challenges. However, it appears that it has also adapted its policies in line with the lessons learned from such controversies. Perhaps the success of Wikipedia – and the fact that this success has come from a non-commercial, open forum – has exposed the venture to greater criticism. It will be interesting to see whether, with newer open content forums emerging, Wikipedia can sustain its popularity in the long term, and grow in terms of the quality and reliability of its content.

<sup>1</sup> See [http://en.wikipedia.org/wiki/Main\\_Page](http://en.wikipedia.org/wiki/Main_Page) for the English language version of Wikipedia. Where a reference in this paper is given to information appearing on a Wikipedia page, the author retains on file a copy of that page as of the date specified in the relevant footnote.

<sup>2</sup> Id.

<sup>3</sup> See "Wikipedia: About", accessible at <http://en.wikipedia.org/wiki/Wikipedia:About> at 4 June 2007. For a greater discussion of the development of Wikipedia, see, for example, Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* (2006, Yale University Press, USA), at pp. 70 – 74.

<sup>4</sup> Id.

<sup>5</sup> See "Jimmy Wales", [http://en.wikipedia.org/wiki/Jimmy\\_wales](http://en.wikipedia.org/wiki/Jimmy_wales) at 12<sup>th</sup> June 2007.

<sup>6</sup> "Not Just A War of Words", *The Sydney Morning Herald* (Sydney), 21 April 2007, accessible at <http://www.smh.com.au/news/world/not-just-a-war-of-words/2007/04/21/1176697134712.html> at 4<sup>th</sup> June 2007.

<sup>7</sup> Asher Moses, "Chaser's War on Wikipedia Founder", *The Sydney Morning Herald* (Sydney), 26<sup>th</sup> April 2007, accessible at <http://www.smh.com.au/news/technology/chaser-war-on-wikipedia/2007/04/26/1177459849504.html> at 12<sup>th</sup> June 2007.

<sup>8</sup> See "Wikipedia: About", above n 3.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> "Not Just A War of Words", above n 6.

<sup>12</sup> Id.

<sup>13</sup> Anselm Spoerri, "What Is Popular on Wikipedia and Why?" (2006) 12(4) *First Monday*, [http://firstmonday.org/issues/issue12\\_4/spoerri2/index.html](http://firstmonday.org/issues/issue12_4/spoerri2/index.html) at 4<sup>th</sup> June 2007.

<sup>14</sup> See "Criticism of Wikipedia", accessible at [http://en.wikipedia.org/wiki/Criticism\\_of\\_Wikipedia](http://en.wikipedia.org/wiki/Criticism_of_Wikipedia) at 4<sup>th</sup> June 2007.

<sup>15</sup> Ibid, at "Exposure to Vandals".

<sup>16</sup> See "Hillary Rodham Clinton", [http://en.wikipedia.org/wiki/Hillary\\_Rodham\\_Clinton](http://en.wikipedia.org/wiki/Hillary_Rodham_Clinton) at 12<sup>th</sup> June 2007.

<sup>17</sup> See "Criticism of Wikipedia: Difficulty of Fact-Checking", above n 14.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> See "Sinbad", [http://en.wikipedia.org/wiki/Sinbad\\_\(actor\)](http://en.wikipedia.org/wiki/Sinbad_(actor)) at 12<sup>th</sup> June 2007.

<sup>21</sup> "Not Just A War of Words", above n 6; see also "Sinbad – Erroneous Death Report", Ibid.

<sup>22</sup> "Not Just A War of Words", above n 6

<sup>23</sup> See "Wikipedia: About", above n 3.

<sup>24</sup> Jim Giles, "Internet Encyclopedias Go Head to Head", *Nature*, 15<sup>th</sup> December 2005, vol. 438, p. 900.

<sup>25</sup> Id.

<sup>26</sup> See "Criticism of Wikipedia – Quality Concerns", above n 14.

<sup>27</sup> Associated Press, "Expert Exposed as College Dropout", *The Sydney Morning Herald* (Sydney), 8 March 2007, accessible at <http://www.smh.com.au/news/web/expert-exposed-as-college-dropout/2007/03/08/1173166865472.html> at 4<sup>th</sup> June 2007.

<sup>28</sup> "Not Just A War of Words", above n 6.

<sup>29</sup> Id.

<sup>30</sup> See "Criticism of Wikipedia – The New Yorker article and the Essay Controversy", above n 14.

<sup>31</sup> Associated Press, above n 27.

<sup>32</sup> Id.

<sup>33</sup> "See Criticism of Wikipedia – The New Yorker article and the Essay Controversy", above n 14.

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<sup>34</sup> See 'Seigenthaler controversy' on Wikipedia, accessible at [http://en.wikipedia.org/wiki/John\\_Seigenthaler\\_Sr.\\_Wikipedia\\_biography\\_controversy](http://en.wikipedia.org/wiki/John_Seigenthaler_Sr._Wikipedia_biography_controversy) at 8<sup>th</sup> June 2007.

<sup>35</sup> John Seigenthaler, "A False Wikipedia 'Biography'", *USA Today* (USA), 29<sup>th</sup> November 2005, accessible at [http://www.usatoday.com/news/opinion/editorials/2005-11-29-wikipedia-edit\\_x.htm](http://www.usatoday.com/news/opinion/editorials/2005-11-29-wikipedia-edit_x.htm), 8<sup>th</sup> June 2007.

<sup>36</sup> See 'Seigenthaler controversy', above n 34.

<sup>37</sup> The statements, in their entirety, were quoted by Seigenthaler in his *USA Today*, piece. See Seigenthaler, above n 35.

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> Jimmy Wales in Ken S. Myers, "Wikimmunity: Fitting the Communications Decency Act to Wikipedia" (2006) 20(1) *Harvard Journal of Law & Technology* 163 at 170 – 171.

<sup>42</sup> Seigenthaler, above n 35.

<sup>43</sup> Id.

<sup>44</sup> See Myers, above n 41 at pp. 172 – 201.

<sup>45</sup> See 'Seigenthaler controversy', above n 34; see also Katharine Q. Seelye, "A Little Sleuthing Unmasks Writer of Wikipedia Prank", *The New York Times* (New York), 11 December 2005, accessible at

<http://www.nytimes.com/2005/12/11/business/media/11web.html?ex=1291957200&en=a50503d3b281b485&ei=5088&partner=rssnyt&emc=rss> at 12<sup>th</sup> June 2007.

<sup>46</sup> Id.

<sup>47</sup> Id.

<sup>48</sup> Myers, above n 41, at p. 170.

<sup>49</sup> See 'Criticisms of Wikipedia – Copyright Issues', above n 14.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id.

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## GooTube: Who is the empire now and will it strike back?\*

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*\*Note: This article is not intended to be, and must not be used as a substitute for, legal advice. The thoughts and arguments presented herein have been formulated in the abstract, and without the benefit of the full range of materials which must be considered before advising in respect of these issues in relation to a particular service or entity. The article is designed only to be a comparative analysis of US and Australian Copyright law, with specific reference to topical subject matter.*

### Introduction

The high profile legal battles between the Record Industry Association of America and Napster<sup>1</sup>, and more recently, Universal Music and Sharman Networks (the *Kazaa* litigation)<sup>2</sup>, are part of the folklore of the internet. These disputes were played out both in and out of the courtroom, with sophisticated spin merchants on both sides casting the victims either as "poor, unremunerated artists" or conversely, "disenfranchised music lovers".

The originating claims in both matters were brought when the popular use of file sharing technology was relatively new. At the time, much was made of the new era in digital file sharing and manipulation: "Rip.Mix.Burn." proclaimed an advertisement for Apple computers. The prevailing climate encouraged users to cease being simply passive consumers of information, and to become active agents in the creation (and distribution) of their own audio-visual destinies.

Napster has long since settled and *Kazaa* decided, but since these cases, the proliferation of high speed broadband (except, perhaps, in Australia) and various innovative new applications have combined to focus attention even more greatly on the consumer as 'creator'.

Indeed, pundits and the popular media alike have proclaimed the arrival of "Web 2.0". Whether Web 2.0 ought properly to be distinguished from Web 1.0 is a moot point<sup>3</sup>, because there is no doubt that a fundamental shift has occurred in the way 'consumers' think of, and use, the internet<sup>4</sup>. No longer limited to sharing audio files, consumers are armed with an impressive arsenal of expressive multimedia tools, which they seem happy to deploy in conjunction with licensed and unlicensed copyright materials alike.

Another notable shift has occurred in the content ownership landscape. Whereas in the Napster days, traditional media content owners were battling 'upstart' companies with little

market power, the lines are no longer so easily drawn. Google's purchase of YouTube and News Corporation's purchase of MySpace have thrown the traditional content ownership models into disarray. Suddenly, 'progressive' content delivery models are owned by major corporates. Consequently, it is more difficult to confidently predict the endurance of the status quo.

In light of this shift, and the expanding role of consumer-producers, the question which presents itself is: was that early, triumphant, litigation by incumbent content owners a portent of things to come, or just an anomaly which would only delay the demise of outdated business models?

The recent filing of a complaint by media giant Viacom against Google<sup>5</sup> gives us our first glimpse into the future battles for control of the distribution of copyright materials.

Given the global jurisdiction of the internet, and Australia's prominence in copyright prosecutions, the purpose of this article is to briefly summarise