From the editors...

The *iiNet* decision has led to a substantial amount of media coverage regarding the decision and what it will mean for the industry. In this journal's first article, Peter Knight takes a detailed look at the reasoning behind the decision with respect to the so-called 'safe-harbour' provisions for Carriage Service Providers in the *Copyright Act*. What do the provisions mean, how do they operate, what are they intended to prevent and how will the courts interpret them are all questions that are examined.

Recent changes to the *Telecommunications (Interception and Access) Act 1979* (Cth) have made it possible for network owners to protect their computer networks by intercepting non-voice communications. Anne Petterd reveals the key aspects of the new measures, the challenges faced and the requirements network operators will have to adhere to in order to maintain their network security.

On 30 October 2009, the Commonwealth Government announced plans to build Australia's own smart grid by inviting bids for its *Smart Grid, Smart City* project. John Gray and Vinod Sharma, in their article *'Smart Grids: what are they and what are the emerging legal issues?'*, examine this new technology and give their thoughts on the opportunities available to the IT industry, the legal implications and the commercial benefits of adopting this new advance in green IT practices.

On 8 February 2010, her Honour Justice Gordon of the Federal Court of Australia found in *Telstra Corporation Limited v Phone Directories Company Pty Limited* (2010) FCA 44 that copyright does not subsist in White Pages or Yellow Pages directories. Rebecca White and Peter Knight offer their opinion regarding the decision and provide us with some insight into their thoughts of the reasoning in the case and the possibility of the findings being overturned on appeal.

The *Personal Property Securities Act 2009* will change the way securities in Australia are created, registered and enforced. There are also new rules for determining priority of interests with flow on effects to the IT industry. Andrea Beatty and Vinod Sharma in their article look at what the changes are, how the Act will affect the IT industry and give some advice on what you can do to prepare for the reforms.

And finally, the winner of the 2009 Student Prize competition, Maneela Bansal, gives us an insight into some of the key issues confronting not only India but the world from the threat of cyber-terrorism. Maneela provides an intriguing observation of what is a new and emerging form of modern day terrorism and suggests some approaches that can be undertaken to protect the IT industry from further attacks.

Entries for the 2010 Student Prize are now open. See page 19 for further details.

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neither the means of infringement (just the precursor to the means, the actual means being the BitTorrent system)[3] nor did it control the acts of infringement, in the sense required by *Moorhouse*.[4] In addition, any suggestion that iiNet 'sanctioned, approved, countenanced' the infringing conduct of its customers was simply unsustainable on the evidence.[5]

The *ratio decidendi* of this judgment have been reported elsewhere. However, of equal interest are the *obiter dicta* of the judgment in which the Court made a number of findings regarding the operation of the so-called 'safe harbour' provisions of the *Copyright Act 1968* (Cth) ("the Act") concerning carriage service providers ("CSPs"), namely s 112E (and, effectively, its equivalent in respect of works, s 39B)[6] and Part V Division 2AA (ss 116AA to 116AJ),[7] added in case his Honour's decision on authorisation is overturned on appeal. The judgment shows how ill-considered and poorly drafted these provisions are.

Ss 39B and 112E state that a person who provides facilities for making, or facilitating the making of, a communication is not to be taken to have infringed the copyright in a work or other subject matter by *authorisation* "merely because another person uses the facilities so provided to do something the right to do which is included in the copyright."

Part V Division 2AA provides a somewhat bizarre hierarchy of behaviours, referred to as Categories A, B, C and D. Category A of Part V Division 2AA relates to "providing facilities or services for transmitting, routing or providing connections for copyright material, or the intermediate and transient storage of copyright material in the course of transmission, routing or provision of connections." It was only this category which was relevant to iiNet in these proceedings. Categories B, C and D relate to the automatic caching of copyright material by the carriage service provider (for example, to speed access to commonly sought websites), the storage of such material for a customer and providing weblinks to online locations (presumably selected by the CSP). Division 2AA, supplemented by Part 3A of the *Copyright Regulations 1969*, goes on to provide a complex web of behaviours with which the CSP must comply in order to benefit from certain protections from remedies available under the Act.[8]