

Going Digital - Legal issues for electronic commerce, multimedia and the Internet

General editors, *Anne Fitzgerald, Brian Fitzgerald, Peter Cook and Cristina Cifuentes*, Prospect Media, 1998. Recommended retail price \$145.00. ISBN number 1-86316-134-1

At the recent launch of another volume on electronic commerce, (the UNSW Law Journal's thematic edition), Communications Minister Senator Richard Alston joked that digital technology was a new boom area for litigation lawyers who could give their clients advice knowing there was no law on the issue, and for opposing lawyers who could equally confidently give their clients totally contrary advice.

While, on closer inspection, the law of digital communication is not quite so opportunistically fluid, it is an area that clearly throws up new legal challenges. Players are finding themselves squeezed into the rigid confines of traditional areas like contract and intellectual property law and having to adapt guiding principles to problems that previously didn't exist. New forms and formats sometimes defy conventional analysis.

The task of putting together a comprehensive handbook on an area of law that lends itself to trite descriptions like "rapidly moving" and "growing at exponential speed" involves one certainty: inbuilt obsolescence.

The papers in this compendium were delivered at a series of seminars during 1997 and updated for this publication. The authors of "Going Digital" are clearly alive to the timing issues: the introduction proclaims the book as a "snapshot" of the legal position in mid-1998. While in some ways the book will quickly date, it avoids medium term obsolescence

by setting itself up as a useful starting point for analysis of digital communications, looking at the basic frameworks in a comprehensive range of legal areas and identifying key issues of concern.

The book is described as having been developed for legal professionals as well as those involved in developing and using information technologies, networks and multimedia. It substantially meets this goal: the range of contributors present fairly complex ideas in a simple and straightforward manner and on the whole (and to their credit) avoid being overly legalistic.

"Going Digital" covers four broad themes: copyright, patents/trademarks, electronic commerce, and liability and privacy. Within each theme are three or four papers from different specialist contributors.

The authors start from first principles, mapping out the basics in their legal area before examining recent legal developments. The papers range from the very simple and practical (for example, a "how to" guide to copyright clearances with short explanations of key concepts and a list of what to ask when seeking copyright clearance) to the more sophisticated analysis of new forms of digital currency (a fascinating chapter on Internet banking, digital cash and stored value smartcards which explains electronic payment systems, identifies regulatory and jurisdictional issues, and sets out the legislative responses).

Many of the authors have provided useful practical grids and checklists. A chapter on website development agreements takes readers through the tricks and traps, providing checklists of contractual considerations, issues for customers of website developers to consider, and an analysis of areas of potential liability.

While the information in each of the

papers is generally valuable, the format leads to some internal repetitiveness. For example, three papers in the "Liability and Privacy" section inevitably overlap: "Online liability" (which focuses on intellectual property issues), "Defamation in Cyberspace" and "Internet Service Provider liability". These papers also expose a fundamental difficulty in this area: on the one hand, the technology is speedily throwing up new issues. On the other, many of the developments have yet to filter through the court system as parties seek commercial ways to resolve disputes. With legislators dragging their feet, Australian legislation has not moved forward significantly in the three or so years that Internet service provider liability issues have become live (with the exception of some proposals, yet to be enacted, on liability for copyright). This means that for readers familiar with basic liability issues, the detailed discussion in these chapters dealing with U.S. Internet service provider liability cases decided several years ago and the Australian analogies will not be particularly enlightening. But for newcomers, these sections are a useful outline and starting point.

And this is where the strength of "Going Digital" lays: by setting itself up to look at issues comprehensively rather than from a specialist's perspective, it is a useful tool for those who want to get across the major legal issues affecting digital activities. It is also a good starting point for specialist lawyers who want to get a general understanding of the impact of digital communications in areas outside their expertise (though they will in some cases need to skip across sections like "What is a contract"). While at times, the content may be a bit dense for non-lawyers, most of the papers are quite accessible and practically oriented.

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