

LEGAL NEWSBYTES

APRIL 2001

Introduction

Welcome to the first issue of Legal NewsBytes, an initiative of the IT/IP Practice Group (attached).

This bulletin is intended to become a regular internal update on recent developments in the law relating to information technology and intellectual property. It will consist primarily of a small selection of news items that may be of potential interest or relevance to fee earners and clients of the firm.

Circulation is intended to be internal and by email only to fee earners within the firm. The material published is not intended to be advice and no warranties as to accuracy is given, particularly as items selected are extracted from external sources. However, further enquiry can be made by referring to me or other members of the IT/IP Practice Group for further elucidation, research, advice, etc.

Please feel free to give us feedback to enable fine-tuning of the bulletin. In doing so, please bear in mind that the bulletin is intended to be a short and sweet distillation of what is an area characterised by overwhelming amounts of information.

Microsoft Crackdown

The Wall Street Journal reported earlier this month that police agencies and lawyers have moved against alleged pirates in 22 countries over the last year.

During that period, some 5,000,000 units of Microsoft products, valued at about US\$1.7 billion were seized in countries such as Hong Kong, Macaw, Malaysia, Philippines, China, Singapore, Taiwan, Thailand, the United Kingdom, Rumania, Hungary, Germany, Poland and Rumania.

Source : Wall Street Journal - 3 April 2001

Collins Class Submarine Propeller Injunction Dismissed

On 11 April 2001, Wilcox J of the Federal Court dismissed applications for injunctions made by the Swedish corporation which designed the propellers used in the Collins Class submarines that have been the subject of public controversy in recent months on the grounds that they were too noisy in operation.

The Commonwealth proposed to deliver a propeller to the United States Navy for examination and modification and the Swedish design company applied for injunctions on the grounds that the Commonwealth would infringe copyright and breach the obligation of confidence that it owed to the applicant.

Kockhams AB v The Commonwealth of Australia and Australian Submarine Corporation Pty Ltd [2001] FCA 398.

A case commentary can be found at document No. 64745 v1.

New Hong Kong Law on Copyright Commences

Amendments to the Copyright Ordinance of Hong Kong came into force on 1 April 2001.

The amendments are one of the most stringent in the world and their main effect is to introduce criminal sanctions for infringement of copyright in the course of or in connection with or for the purpose of any trade or business.

The following types of conduct are subject to fines of up to HK\$50,000 and 4 years imprisonment:

- using an unlicensed copy of a software programme in your office computer, including possibly parallel imported software;
- using software on more than one office computer where the licence is restricted for use on only one computer;
- downloading unlicensed software (including “sound files”, “wallpapers” or “screensavers”) from the internet and installing it on an office computer.

Enforcement is apparently by Customs who have extensive powers of search and seizure in the investigation of alleged infringements and also the power to forfeit suspected infringing copies whether or not a charge has been laid.

Source : Angela Wang & Co, Hong Kong solicitors

Chatroom Anonymity Preserved

On Thursday 19 April 2001, US District Court Judge Thomas Zilly declined an application by 2 TheMart.Com Inc for an order that internet chatroom site host Infospace disclose the names of 23 people who had made comments on the chatroom site that it maintained.

The applicant wanted to prove that some of the chatroom users were also members of a class-action suit against it which alleged that it had misled investors.

The applicant had alleged that the chatroom users had written critical messages about it in an effort to drive its stock price down so that they could profit by selling it short.

The Judge commented that the right to speak anonymously was not unlimited but that the applicant’s reasons for wanting the names were not sufficient because it made no direct claim against the users.

Source: Associated Press – Tuesday 24 April 2001

US Internet Filtering Law Takes Effect

On Friday 27 April 2001, a new piece of US federal legislation comes into effect.

The Children’s Internet Protection Act (“CIPA”) requires all schools and libraries to install internet blocking software in order to continue receiving federal funding. The new law also requires schools and libraries to maintain and enforce a policy of monitoring the on-line activity of minors.

The enforcement body is the Federal Communications Commission (“FCC”) and it ruled earlier this month that full compliance must occur by 1 July 2002.

The law is subject to a legal challenge by a number of civil liberty groups. That challenge will be heard in the same Pennsylvania District Court that overturned two similar controversial laws on internet content on constitutional grounds, related to the freedom of speech.

The full text of the FCC rule can be found on-line at

http://www.fcc.gov/Daily_Releases/Daily_Business/2001/db0405/fcc01120.txt

Source: <http://www.newsbytes.com>

Reforms for Australian e-Business

The Name Policy Advisory Panel to the .au.DomainAuthority(auDA) has released its report to auDA.

The panel says that companies should be allowed to have as many names as are justifiable and that individual trade marks should be allowed to have *com.au* domain names.

Names will still have to have a demonstrated connection to a company’s business, which is the case currently, as is the time limit of ownership of *com.au* names.

Australian domain names will be allowed to start with a numeral after the reforms are implemented. Geographic names in *com.au* and *net.au* will not be released at the moment as the panel states that those names will be considered as part of a separate process looking at new second-level domain names.

Further information can be obtained at www.ada.org.au.

Source: *Fairfax IT - 24April 2001*

Global e-Commerce Code Foreshadowed

It was announced on 23 April 2001 by three business groupings that they would develop a set of standards for websites to ease consumer concerns about doing business over the internet.

The US-Based Better Business Bureau will work with Eurochambres, an association of European Chambers of Commerce and FEDA, which represents European direct marketing businesses.

Participating companies would abide by benchmarks for reliability, truthful advertising, customer privacy and customer service and would be entitled to display an approved logo on their websites, known as a “trustmark”.

The three groups stated that they would merge their codes of conduct to provide a voluntary international standard for on-line commerce, as well as a framework for resolving disputes.

The parties envisage that its international trustmark program’s alternative dispute resolution processes would deal with the difficulties associated with differences in national laws on issues from free speech to child protection to privacy even though the transactions through the internet are of a borderless nature.

Participating businesses found to have violated the code (through those alternative dispute resolution processes) could have their trustmarks revoked.

Source: Reuters 24 April 2001

Australia accedes to the Madrid Protocol.

On 11 April 2001, Australia acceded to the Madrid Protocol on the international registration of trade marks.

Previously, the owner of an Australian trade mark wanting to protect their mark in other countries needed to lodge fresh separate applications in each jurisdiction, thereby multiplying the time and costs involved in protecting their marks internationally.

When the Protocol takes effect on 11 July 2001, only one single application need be made to register the mark in all of the countries party to the Protocol. The number of participating countries is 50 at present.

This means that our commercial clients will now have a simpler and less expensive way of seeking international trade mark protection than what is currently available.

(Editor's note: It is now simply a matter of waiting for IP Australia to publicise the formal procedures for applying for international registration).

Source: IP Australia.

Edited by Anthony Quahe - IT/IP Group

Jackson McDonald