

## **Launch of**

### **“Copyright law, digital content and the Internet in the Asia-Pacific”**

**Speech delivered by the Hon Justice Douglas, 16 June 2008**

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This work, edited by Professor Brian Fitzgerald, Professor Fuping Gao, Mr Damien O’Brien and Mr Samsung Xiaoxiang Shi, focuses geographically on the Asia-Pacific, and particularly on China and Australia, but addresses universal themes about the law of copyright and its adaptation to the Internet in the 21<sup>st</sup> century.

As Mr John Howkins asks in chapter 1 “What is the right way to regulate ideas in the 21<sup>st</sup> century?” How do we reconcile the protection of rights in ideas and their expression while permitting them to be used as their creators intended and in a way that rewards the creators appropriately? Are the industrialised economies with developed intellectual property systems justified in asking that developing economies use strong protection of intellectual property when their economies themselves in the 19<sup>th</sup> and earlier 20<sup>th</sup> centuries arguably exploited the limited protection then accorded to those who created inventions or expressed original ideas elegantly? Is there information that demands to be free or that needs to be free to allow the rapid development of industries based upon it such as

the core technology used to establish the worldwide web or global positioning systems? Should the fostering of creativity and innovation be the objective of all intellectual property laws?

Similarly Professor Fuping Gao, in chapter 2, focuses on the need to construct a trade or market mechanism capable of inspiring creators while facilitating the distribution and consumption of digital content products. He wants to ensure the openness of networks in communication channels, the adoption of a register system of approval instead of a licence-based system for market entrance and the creation of enforceable standards for content legality. He believes that it is impossible to rely solely on government to control cyber-space.

The potential for harm from ready access to controversial material on the Internet is examined by Peter Coroneos in his chapter on “Internet content policy and regulation in Australia” where he argues that the traditional role of common carriers as mere conduits may be drawing to an end. Associate Professor Daniel Seng focuses on similar issues in his chapter on the “Regulation of the interactive digital media industry in Singapore”. The basic requirement of the law there is that Internet services cannot operate against the public interest, public order, national harmony or offend good taste and decency.

Eric Priest's chapter on how to "monetise" content online addresses the very real problems implicit in the nature of the communication of information on the Internet exemplified by the use of programs or systems such as Napster, Kazaa and Limewire to exchange information subject to copyright, where the copyright holder's rights in their properties may not be recognised.

The central theme of his chapter is not protection of copyright but monetisation of copyrighted works on the Internet. He points out that strategies involving litigation or the use of software to limit copying by the use of digital rights management software have not offered a secure path to remuneration in the face of near-ubiquitous free content online. He discusses other models including those supported by advertising and the voluntary blanket licensing model by charging fees to Internet service providers. That seems to me to be one of the most interesting areas of discussion for combining the general use of the Internet with the maintenance of some form of ability to earn income from intellectual property rights.

One straw in the wind I read of recently is that Apple's iTunes Music Store is now the largest single distributor of music in the USA, having overtaken the Walmart store chain. By the same token the numbers of

files paid for through its store still pale into insignificance compared to those downloaded for nothing. Perhaps its integration of hardware and software in its iPods provides a solution to some of these issues by allowing consumers to link into the “Cloud” to obtain information in a form not tethered to desktop or laptop computers but made accessible in such a way that copyright owners are more readily recognised. Similarly, Amazon’s “Kindle” and Sony’s Reader may be the beginning of a solution to the exploitation of digital rights for authors of more traditional texts.

Services that can add value effectively, such as, in my experience, those provided by some legal publishers and some newspapers published on the Internet, such as the Financial Times and the Wall Street Journal may also have some solutions to the problem of how to make money out of information on the Internet where so much free information is available. Mr Priest is sceptical, however, about the practicability in China of reliance on digital rights management software to affect online consumer consciousness in China.

Apart from theoretical discussions of that nature, the book also provides useful information about the licensing of Internet providers in China, the regulatory environment there and in other countries such as Singapore

and Indonesia while providing interesting speculation about the future of copyright law in Professor Fitzgerald's chapter 9. Professor Fitzgerald's comment that we should not allow everyday people to be put in the position of facing criminal charges because industry has been unwilling to provide new business models is compelling. It is only recently, by the introduction of s 109A, that our *Copyright Act* has made legal the transfer of legitimately purchased music by its owner from a CD to an iPod.

He recommends a move beyond the limited conceptual framework of copyright to a legal framework that looks more closely at the relationships any individual or entity has with information, knowledge, culture or creativity, driven not only by any online social networks that are developing but also by the large corporations underpinning those activities such as Google, Yahoo and Baidu. The dispute between book publishers and Google over the process of establishing Google Books seems to me to be one of the more interesting areas in which those disputed ideas are being played out. In that context Mr O'Brien's article about the Viacom v Utube and Google litigation points out that it has the potential to redefine copyright law in the digital era.

Creative commons licences are discussed as is the Australia/China free trade agreement and its implications for intellectual property law while

the book concludes with a substantial chapter on jurisdictional issues based on the nature of the activities, the location of the computer equipment and the point of access to the Internet where the authors, Professors Fitzgerald and Mr Shi argue that unclear approaches to jurisdiction have the potential to stymie innovation. They conclude that there is an urgent need for countries like China, Australia and the USA to work together to find clear and more robust solutions in the area of jurisdiction.

As you can see the book covers a wide range of developments in one of the more fascinating and developing areas of modern culture. It focuses geographically on the Asia-Pacific but the ideas discussed are ones that are relevant all around the world. The book had its origin in a conference held in May 2007 in Shanghai and is produced by the ARC Centre of Excellence for Creative Industries and Innovation at the Queensland University of Technology. It is another example of cutting edge work being produced from that University and the East China University of Political Science and Law which will help us develop clearer ideas about how best to exploit the creative opportunities offered by the creation of digital content and its distribution on the Internet. These are ideas that are reshaping society where it is highly important for the legal system to create appropriate structures for the proper exploitation of the

opportunities offered by these exciting developments. I commend the work to you.