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ARTICLES

Monopoly versus freedom of ideas: The expansion of intellectual property – Justice Ronald Sackville

Intellectual property regimes, both current and past, reflect an accommodation between the goals of rewarding creativity and protecting the freedom to build on ideas of earlier innovators. Critics of modern regimes point to the dangers in the apparently inexorable expansion of intellectual property rights, supported by a multiplicity of multi-lateral and bilateral international agreements. Sometimes the pressures for expansion produce domestic measures that are difficult to justify. Yet in other areas, such as expressions of indigenous culture, the law has been slow to respond to demands for greater protection.

One effect of the relentless expansion of intellectual property is to expose the potential conflict between its objectives and other public policy goals such as those embodied in competition principles. The more rapid the expansion of intellectual property, the more likely the conflict will be realised. 65

The interface between intellectual property and antitrust: Some current issues in Australia – Justice Kevin Lindgren

The relationship between intellectual property and antitrust or pro-competition legislation is a tense one. In Australia, the issue raises for consideration ss 46 and 51(3) of the *Trade Practices Act 1974* (Cth).

In the first part of this article seven cases are considered, four Australian, two United States and one European, and the question is asked: how would the overseas cases have been approached under Australian law?

The second part of the article addresses, from the trade practices viewpoint, the position of the Australian copyright collecting societies, and, in particular, the system of declared collecting societies and “statutory licences” under the *Copyright Act 1968* (Cth).

The third and final section of the article deals with a series of recent reform proposals. 76

The concept of “sign” in Australian trade mark law – Patricia Loughlan

The article analyses the concept of “sign” as a communicative act between a trader and a consumer and finds that the particular form that a trade mark takes is irrelevant to its status as an act of communication. The article reviews matters of legal doctrine, policy and principle in respect of those signs which are newly established in trade mark law: colours, shapes, aspects of packing, scent and sound, noting recent developments in the United States and the European Union. Two doctrinal solutions to the special issues raised by these new sign forms (namely, the potentially anticompetitive economic effects of removing them from the public domain) are noted. 95

**Of personalities and personae: A French victory for film producers and authors –
*Elizabeth Adeney***

The international medium of film poses many challenges for authors and copyright owners. So do the practices of the advertising industry. Each jurisdiction approaches these challenges differently. In a recent French decision three issues that are of interest in Australia were discussed – the copyright status of a literary or dramatic character, the use of such a persona in character merchandising, and the moral right of film directors to control the exploitation of the persona. This article examines the 2004 decision of the Paris Court of Appeal in the matter of the film *The Fifth Element*. It compares the protection offered to author and copyright owner under French law with the protection offered by Australian legislation and common law. 110

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