AUSTRALIAN INTELLECTUAL PROPERTY JOURNAL

Volume 22, Number 4

December 2011

EDITORIAL 159

ARTICLES

Graduated response schemes and the question of parental liability – *John Bourke*

In Australia, copyright holders are making a strong push for the introduction of a graduated response scheme. Though there are variants, the archetype of the graduated response scheme is the "three strike" policy whereby internet users are warned when they are detected infringing copyright on the internet; after the third infringement, the user's connection may be terminated. However, because an account holder may not be responsible for the infringement, with these schemes comes the possibility of users being disconnected from the internet despite having committed no wrong. Parents who allow their children to use the internet at home are therefore susceptible to disconnection when their child infringes copyright, and this raises an important question: are parents legally responsible for their child's copyright infringement on the internet? This article considers this question by examining: (1) the doctrine of parent liability in tort law; (2) the doctrine of authorisation liability in copyright law; and (3) the grounds for liability in ISP contracts. 161

Authorisation under copyright law and "the nature of any relationship" – *Brendan Scott*

In this article the author argues that recent authority on authorisation under Australian copyright law has not honoured the requirement that the primary infringement must have been consequent on the alleged authorisation. This appears to be the result of too robust an application of the judgment of Gibbs J in University of New South Wales v Moorhouse (1975) 133 CLR 1 in approaching s 101(1A) of the Copyright Act 1968 (Cth). The author argues that the "nature of any relationship" between the alleged authoriser and the primary infringer is a critical factor in determining authorisation; one which is implicit in Gibbs J's judgment and one which colours other factors such as the power to prevent. The article argues that the "nature of any relationship" must be such as to support a communication of the alleged authorisation and to allow the primary infringer's actions to be consequent on the alleged authorisation, and that this requires a consideration of the primary infringer's receipt of the alleged authorisation. 172

Copyrighting clothing: The US "fashion Bill" as a model for fashion design protection in Australia – *Madeleine Sy Chan*

In both the US and Australia, the fashion industry has operated with limited intellectual property protection for garment designs. This has led to efforts to increase fashion design protection in the US. Amid continued debate over whether such protection is required, this article considers whether the latest attempt – the Innovative Design Protection and Piracy Prevention Act – is an appropriate model of fashion design protection for Australia. It is argued that in substance, the Bill strikes the proper balance of competing interests of designers and the public, by only rewarding those designs which are most worthy of

protection. However, as an amendment to the Copyright Act 1976 (US), the form of protection is inappropriate due to the differences in US and Australian copyright law. Three options are proposed to enhance fashion design protection in Australia, with the ultimate recommendation that sui generis protection is most appropriate. 197

VOLUME 22 – 2011

Table of Authors 211
Index 213