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# Update Summary

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**UPDATE 215**

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## **COMPUTER CONTRACTS PRINCIPLES AND PRECEDENTS**

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## Computer Contracts

### Data precedents

Added new commentary on AI clause for professional services engagement terms concerning the use of Artificial Intelligence (AI). See [4A8.10].

### E-Commerce

New commentary discussing Artificial Intelligence regulation in Australia and the European Union. See [1A.4165] and [1A.4166].

### Intellectual Property

Updated commentary regarding what constitutes a substantial part of an alleged computer program work, with reference to *Motorola Solutions Inc v Hytera Communications Corporation Ltd* [2022] FCA 1585. See [3.200].

Updated commentary on the meaning of “set of instructions” in relation to cases involving alleged infringement of copyright in computer programs, with reference to *Motorola Solutions Inc v Hytera Communications Corporation Ltd* [2022] FCA 1585. See [3.550].

For there to be a reproduction there must be both: (a) objective similarity between a substantial part of the original work and the alleged reproduction; and (b) a causal connection between the works such that the original work must have been copied. See [3.755].

Updates in relation to the concept of “reproduction” as well as the meaning of “adaptation”, “version” and “any language, code or notation”. See [3.770] to [3.776].

Updated commentary concerning the communication of a work to the public, with reference to *Motorola Solutions Inc v Hytera Communications Corporation Ltd* [2022] FCA 1585. See [3.780].

Updates in the commentary on reframing the test for software patentability, with reference to *Aristocrat Technologies Australia Pty Ltd v Commissioner of Patents (Cth) (No 3)* [2024] FCA 212. See [3.4646].

The United States Patent and Trademark Office (USPTO) has published Guidance on inventorship for artificial intelligence-assisted inventions which applies to all patent applications filed before, on, or after February 13, 2024. See [3.4649].

The elements to be satisfied in an action for infringement of the equitable obligation of confidence were summarised in *Native Extracts Pty Ltd v Plant Extracts Pty Ltd (No 2)* [2024] FCA 106. See [3.4950].

Updated commentary regarding contractual protection of computer products and computer-related services, with reference to *Native Extracts Pty Ltd v Plant Extracts Pty Ltd (No 2)* [2024] FCA 106. See [3.5300].

### Remedies

Updated commentary in relation to claims for loss of profits, where these are in effect claims for the loss of opportunity to derive revenue, with reference to *Henley Arch Pty Ltd v Lucky Homes Pty Ltd* (2016) 120 IPR 317; [2016] FCA 1217. See [4.2250].

Updated commentary on section 115(4) concerning the principles for an award of additional damages under *Copyright Act* s 115(4)(b). See [4.2410].

Added under examples of infringements an example of the Privacy Commissioner's consideration of a complaint which traversed a wide range of Australian Privacy Principles (*AHM and JFA (Aust) Pty Ltd* [2024] AICmr 29). See [4.6760].

