

# Australian Intellectual Property Journal

Volume 34, Number 4

2024

EDITORIAL – *Editor: David Brennan* ..... 175

## ARTICLES

### **Authorisation Liability in Copyright Law: At What Point Does Indifference Amount to Authorisation Liability? – *Emily Harris***

Over the last few decades, authorisation liability has been the subject of numerous debates in Australian copyright law. Debates centre around the doctrine's parameters, such as how narrow or wide the doctrine should be as well as the specific types of behaviour encompassed within its parameters. The majority of cases in Australia have adopted a broad understanding of authorisation liability, while others have shown preference for a narrow conception. This divide has further complicated an already nebulous and uncertain area of copyright law. This article examines these issues in light of the recent High Court decision, *Real Estate Tool Box v Campaigntrack*. It argues that this High Court decision clarifies and refines the parameters of authorisation liability and in so doing, may work towards greater clarity and certainty in Australian copyright law. However, this judgment marks only a subtle step towards a narrowing of the doctrine, meaning that uncertainties may continue to persist. This article ends by considering the policy implications of the scope of authorisation liability and how finding an equilibrium between broad and narrow interpretations is crucial to serving the interests of various parties affected by authorisation liability in copyright law. .... 176

### **The Nature of the Copyright Prerogative in Australia – *Dilan Thampapillai***

Section 8A of the *Copyright Act 1968* (Cth) preserves the Crown's prerogative rights in copyright. This prerogative must reflect the prerogatives as they have been brought into being by s 61 of the Constitution of Australia. Yet, the copyright prerogative also has its roots in English constitutional law and commentaries. Due to the paucity of jurisprudence, little is really known about the precise nature of the copyright prerogative in Australia. The Copyright Law Review Committee's (CLRC) Report on Crown Copyright found the scope of the prerogative to be unclear but stated that it extended to primary legal materials. The CLRC questioned whether a duty to disseminate existed. This article argues that the nature of the copyright prerogative must be influenced by both the extant theoretical commentaries on the prerogatives and the broader jurisprudence on the various other prerogatives. Consequently, the copyright prerogative must be understood as a power connected to a duty. In turn, this requires that to the extent that a copyright prerogative exists, it is subject to a duty to disseminate. .... 195

### **Breach of Confidence and s 183 of the Corporations Act – *Justin Wheelahan***

Section 183 of the *Corporations Act 2001* (Cth) prevents improper use of information obtained by virtue of being an employee or officer of a corporation to improperly gain an advantage for themselves or another, or to cause detriment to the corporation. Two

divergent lines of authority have accreted on s 183 with different glosses on the ambit of the meaning of “information”. A broad view holds the term connotes its ordinary meaning of “knowledge of the facts”, while a narrow view has interpreted the term as requiring the kind of confidentiality equity would protect by way of an injunction. In *New Aim Pty Ltd v Leung* an expanded bench of five justices was convened to decide a ground of appeal that *Futuretronics.com.au Pty Ltd v Graphix Labels Pty Ltd* (a Full Court decision that applied a narrow view) was wrongly decided. The Full Federal Court found it unnecessary to decide the point. This article compares the elements of breach of confidence with breach of s 183 to elucidate the overlaps and differences between the equitable and statutory causes of action. .... 209

---

**VOLUME 34 – 2023–2024**

Table of Authors ..... 227

Index ..... 229