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Update Summary

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**THE LAW OF INTELLECTUAL PROPERTY:
COPYRIGHT, DESIGNS AND CONFIDENTIAL
INFORMATION**

Ricketson & Creswell

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UPDATED COMMENTARY

Sam Ricketson has written new commentary on:

Recent Developments

Developments in Artificial Intelligence

The European Union has recently adopted *Regulation (EU) 2024/1689*, a comprehensive regulation addressing various aspects of AI development and deployment. While not specifically focused on intellectual property, the regulation touches on copyright and related rights, particularly in recitals 104-109 and article 53. It emphasises the need for general-purpose AI model providers to comply with copyright laws, obtain necessary authorisations for text and data mining of protected works, and provide transparent summaries of training data used. The regulation also requires providers to implement policies ensuring compliance with EU copyright laws, regardless of where the AI models are trained.

In parallel, the Australian Government has published a broad "whole of government" policy document on AI in June 2024, which, while not focusing specifically on IP issues, demonstrates the government's commitment to addressing the multifaceted challenges posed by AI technologies.

See [RD.2300].

Inquiry into enforcement of copyright and further copyright consultations

The Attorney-General's website outlines a governance framework for the Copyright and AI Reference Group (CAIRG), which includes a broad membership of stakeholders with expertise in copyright law, creative industries, AI technology, and indigenous cultural and intellectual property. A smaller steering committee of up to 20 members from within CAIRG will be responsible for developing ideas and proposals before consulting the wider group. More details can be found in the governance framework document on the Attorney-General's website. See [RD.2000].

WIPO Treaty open for signature

The second Diplomatic Conference held in May 2024 resulted in the agreement of the *WIPO Treaty on Intellectual Property, Genetic Resources, and Associated Traditional Knowledge*. This treaty, which is now open for signature, primarily affects patents and disclosure requirements. Meanwhile, work on the protection of traditional cultural expressions, relevant to copyright, designs, and related rights, will continue under the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore (IGC). The next meeting of the IGC on these topics is scheduled for December 2024, during its 49th session. See [RD.1900].

Fee increases for registered designs

These are contained in the *Intellectual Property Legislation Amendment (Fee Amounts and Other Measures) Regulations 2024* (Cth) (F2024L01093) (registered 2 September 2024; in force 1 October 2024). See [RD.2500].

Origins and scope of the action for breach of confidence

Basic requirements of the modern action – The obligation of confidence – No relationship between the parties – the changing UK position and subsequent Australian developments

The decision of the Supreme Court of New South Wales in *HWL Ebsworth Lawyers v Persons Unknown* (2024) 113 NSWLR 418; [2024] NSWSC 71 is a striking illustration of the way in which the action of breach of confidence may be deployed against the surreptitious removal and threatened misuse of a party's confidential information. Injunctive relief was granted against "hackers" of confidential client information held by a firm of solicitors that was the subject of a blackmail attempt at extortion from the solicitors. See [25.145] and [27.5].

Justifications for Breach of Confidence

Disclosures that are justified as being in the public interest – Interlocutory relief

In *Karas v LK Law Pty Ltd* (2023) 296 FCR 39; 171 IPR 153; [2023] FCAFC 15, the Full Federal Court held that a prima facie case of iniquity will be required before interlocutory injunctive relief should be refused. See [26.25].

The Jurisdictional Basis for the Action of Breach of Confidence and future developments, including the protection of privacy

Privacy protection and the reconceptualising of breach of confidence – A statutory right of action – recent law reform proposals

On 12 September 2024, the Federal Government introduced legislation implementing the ALRC's recommendations for a statutory tort addressing serious privacy invasions. This tort, part of broader privacy reforms, would allow legal action for intentional or reckless privacy breaches where there's a reasonable expectation of privacy and the

invasion is serious. It includes defences to protect legitimate activities, offers various remedies, and has specific provisions like damage caps. See [28.110].