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EDITORIAL 127

ARTICLES

Fairness and balance: Lessons from Canada for the proposed Australian law of fair use – *Melissa de Zwart*

The Australian Law Reform Commission inquiry into Copyright and the Digital Economy has recommended that “a broad, flexible exception for fair use” should be introduced into the *Copyright Act 1968* (Cth). This proposal must be analysed in the context of the significant consideration recently given to the need for reform of fair dealing law in Australia and overseas. This article examines the potential scope for an Australian law of fair use in the light of previous reform attempts and the apparent transformation of Canadian fair dealing law as a consequence of major legislative reform and judicial reconfiguration of copyright as reflecting a balance of owners’ and users’ rights. 129

Authorisation as accessorial liability: The overlooked role of knowledge – *Joachim Dietrich*

The concept of authorisation of an infringement of intellectual property rights has not been uniformly interpreted or applied in Australia and the United Kingdom. This article argues that authorisation is a form of accessorial liability. As such, it creates liability for wrongdoing that requires proof both of acts of involvement in the principal wrongdoer’s infringement, and that such involvement is engaged in with a requisite mental element. The law of authorisation has been troubled precisely because the concept does not expressly refer either to the types of involvement that it encompasses, nor the mental state that is required. Without adequate consideration of these two factors, and particularly an express focus on the level of knowledge and the content of such knowledge that is in many contexts critical, the law will continue to be opaque and make the application of “authorisation” difficult to predict. 146

Trade marks for the design and layout of retail premises – *Ben McEniery*

In January 2013, Apple Inc obtained United States trademarks for the design and layout of its retail stores. While innovative brand protection strategies of this kind are not without precedent in the United States, traders in Australia have seemingly not adopted them. This article considers the prospects of an applicant seeking to register a similar trade mark in Australia and the protection such a registration would likely provide. 167

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