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EDITORIAL 57

ARTICLES

Searching for the silver bullet: How website blocking injunctions are changing online IP enforcement – *Michael Williams and Rebecca Smith*

Despite online copyright infringement being widely recognised as a problem, there continues to be disagreement about the best form of response. In recent years, the focus has been on legislative and non-legislative “graduated response” schemes, which have been introduced in many countries but continue to be controversial. Australia has been slow to respond to the problem, despite the overrepresentation of Australians amongst the ranks of global internet infringers. In 2014, the Australian government undertook the first review of potential legislative options to address online infringement. One of the options identified was the potential for rights holders to be given a sui generis right of action to obtain “no fault” website blocking injunctions against ISPs. With the recent announcement that the Australian government intends to amend the Copyright Act 1986 (Cth) to allow rights holders to seek such injunctions, this article examines the case for website blocking injunctions and how this form of relief has emerged as the preferred method of tackling online infringement in the United Kingdom and Europe. 59

Another missed opportunity to reform compulsory licensing and Crown use in Australia – *Jane Nielsen, Dianne Nicol, John Liddicoat and Tess Whitton*

This article considers the current status of the provisions in the Patents Act 1990 (Cth) relating to compulsory licensing and Crown use, and provides an analysis of the report resulting from the Productivity Commission’s 2013 inquiry into the compulsory licensing of patents. The provisions relating to use without authorisation contain a number of deficiencies, some of which have been well documented. While the Productivity Commission was given the opportunity to rectify a number of these issues, its somewhat tentative approach to reform means that the prospect of significant clarification has been passed up. This article urges that the ramifications of implementing the proposed tests be carefully considered. Rather than promoting clarity, certainty and simplicity, the proposed amendments are likely to exacerbate the problems inherent in the current compulsory licensing provisions, and introduce a host of new issues that will require resolution. 74

The limitations of the Australian resale royalty scheme and its implications for artists – *Jennifer Kwong*

Visual artists and craft practitioners are central to a vibrant arts sector, but their income is often lower than that of other creators. Although copies of an artwork can earn the artist some money, the sale of an artwork is more often a single, final event and artists generally receive no income from subsequent resales. In June 2010, the Resale Royalty Right for Visual Artists Act 2009 (Cth) created a resale royalty right in Australia, recognising the right of artists to an ongoing economic interest in their art, and established a scheme to collect and distribute royalties. This article explores the extent to which the current

operation of the scheme provides an additional source of income to artists through royalties derived from resales. It concludes that limitations inherent in the Act restrict the scope of eligible artists and the efficiency with which artists can rely on resale royalties as a source of income. 93