

BOOK REVIEWS

O Akindemowo, *Information Technology Law in Australia*, LBC Information Services, Sydney, 1999

This text represents a comprehensive effort to fill the void of textbooks relating to information technology law in Australia, and as such provides an invaluable tool for academics, law students, and practitioners alike who are endeavouring to take a grasp of the developing niche. The use of the phrase "void of textbooks" is by no means poetic license. Akindemowo recognises this in her preface by stating:

"This book has been written to fill a gap in the market of which I, and doubtless others similarly interested in the Australian legal response to the information technology revolution, have been aware of for a number of years. It has been a matter of frustration for me, as an academic and teacher, that there was no comprehensive text dealing with information technology law in Australia"¹.

The text is clearly targeted towards the legal environment as opposed to the technical, placing a high degree of emphasis on the legal aspects of information technology. By the same token, the material is not devoid of technological exploration and to this end Akindemowo has included an extremely useful glossary for those of us who aren't quite sure what terms such as *firewall*, *LAN*, *spam*, *worm*, and *WYSIWYG* mean in the technological context².

The text appears to take heed of the fact that in the absence of specific regulation, information technology is regulated (or attempting to be regulated) by the existing law. As a consequence, a wealth of material is examined in the 317-page text.

There are seven chapters in the text and I will endeavour to provide a brief outline of each. Apart from providing a general introduction to the text, Chapter 1, *Introduction*, outlines such areas as the evolution of computers and their use in contemporary society, as well as the history and composition of the Internet.

¹ O Akindemowo, *Information Technology Law in Australia*, Sydney, LBC Information Services, 1999 at vii.

² n1 at 281-298.

As the title indicates, Chapter 2, *Commercial Obligations and Liabilities*, focuses on the obligations and liabilities of all participating parties in relation to computer transactions. The arising issues range from the ownership of software designs, the relationship between designers and employers to negligence and product liability for defective hardware and software (which is of particular relevance to Y2K liability, although there is authority to suggest that software per se may not be goods³). Contractual obligations and the question of whether there is an electronic postal acceptance rule is also examined as is the practical question of whether shrinkwrap licenses form part of a contract for the sale of software.

Chapter 3, *Electronic Financial Transactions*, represents an insightful and extensive review of Australian financial and payment systems. It covers recent developments resulting from the Wallis Committee⁴ including the changing role of the Reserve Bank and the Australian Securities and Investments Commission, as well as the introduction of the Australian Prudential Regulation Authority and the Payments Systems Board. The chapter also provides a comprehensive examination of the functions of money and the evolution from the barter system to modern electronic payment systems such as EFTPOS⁵, Bpay, electronic cheques, digital cash and smart cards (stored value cards). Accompanying the written text are easily understood flow charts that outline how such transactions are effected.

Chapter 4, *Intellectual Property*, represents a genuine attempt to examine the enormous area of intellectual property law, as it relates to computers and the Internet, and condense it into 60 pages. In so doing, some of the general areas of intellectual property are deficient, rendering this chapter a difficult read for those with insufficient background knowledge. Nevertheless, the chapter examines some extremely interesting areas such as the patentability of computer hardware and software, circuit layout rights, copyright, and trademarks as domain names disputes. The chapter also briefly examines actions for unfair trading as well as the duty of confidence and trade secrecy.

Chapter 5, *Computer Crime, Telecommunications and Internet Abuse*, goes a long way towards counteracting the dearth of articles relating to

³ *Caslec Industries Pty Ltd v Windhore Data Systems Pty Ltd*, Unreported, Fed Ct NSW, 13 Aug 1992, per Gummow J; Fed #580.

⁴ *Financial System Inquiry Final Report*, Canberra, AGPS, 1997.

⁵ Electronic Funds Transfer at Point of Sale.

this area over the past decade. The chapter centres around crimes committed by hackers under the specific computer-related offences vested in the *Crimes Act 1914* (Cth), as well as other telecommunications offences⁶. This is a *must read* for anyone interested in the area.

Chapter 6, *The Protection of Data and Privacy*, examines the various forms of privacy protection in Australia. It reviews the *Privacy Act 1988* (Cth) together with the relevant international covenants and guidelines that resulted in the Acts enunciation. The chapter also examines the indirect forms of privacy protection, acknowledging that there is no recognised tort of *invasion of privacy*. In a concise format, the chapter examines contractual liability, negligence, interference with contract, intentional infliction of emotional distress, breach of statutory duty, misfeasance, defamation, nuisance, conversion, trespass and deceit as possible indirect causes of action for breach of privacy principles. Finally the chapter considers the notions and rights provided pursuant to freedom of information legislation⁷.

Chapter 7, *Procedural Matters*, is a brief examination of the admissibility of computer evidence, and jurisdictional issues in relation to information technology.

Akindemowo has endeavoured to examine the above areas in accordance with the law as at November 1998. However, unfortunately, the developing nature of this area has already rendered some parts of the text outdated. This is evident given the introduction of such Bills as the *Electronic Transactions Bill 1999* (Cth) (which adopts the principles vested in the 1996 UNCITRAL⁸ Model Law on electronic commerce referred to in the text⁹) and the introduction of the *Copyright Amendment (Digital Agenda) Bill 1999* (Cth). There is little doubt that a revised edition will encompass such developments. One would also hope to see the inclusion of an additional chapter, dealing with the issue of Internet censorship, particularly the issues surrounding the passage of the *Broadcasting Services Amendment (Online Services) Act 1999* (commencing on 1 January 2000), whereby material on the Internet will be subject to classification and censorship by the

⁶ Other offences examined include those vested under the Telecommunications Act 1997, the Telecommunications (Interception) Act 1979 and s85ZE of the Crimes Act 1914.

⁷ Freedom of Information Act 1982.

⁸ United Nations Commission on International Trade Law.

⁹ n1 at 264.

Australian Broadcasting Authority in a manner similar to that of films and computer games.

While the inclusion of such developments remains to be seen, it is clearly evident that the text makes a significant contribution to this area of law, and simultaneously provides a benchmark from which others may follow. At a retail price of \$69.00, it is a must for anyone in the Australian legal environment wishing to develop their knowledge in the growing niche of information technology law.

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