

Book Review

Information technology law in Australia by Olujoke Akindemowo (LBC Information Services) 1999 pp xxxiv +317

Information technology law is a growth industry in Australia and worldwide. Many firms have created new practice groups to deal specifically with legal issues arising from the use of computers. One of the real obstacles to developing expertise in this field has been that there is little ready material which can be used by the student or practitioner to gain an insight into the collection of legal issues to which this area gives rise. Of course there is a real difficulty, as well as a certain amount of irony, in attempting to capture information technology law in book form. It is a rapidly evolving field covering a multitude of legal issues. The Australian Federal Government has been preoccupied with a broad range of reforms which would come under the banner of information technology, including reform of the Copyright Act,¹ the release of draft Privacy legislation,² recognition of the value of electronic commerce³ and the introduction of Internet content regulation.⁴

It is therefore with some trepidation and a good deal of fortitude that someone would undertake the task of writing a book in an area which will soon be drastically altered by legislative amendment. Olujoke Akindemowo acknowledges these difficulties in the Preface to her book, stating that the book is intended to be an account of the development of the law and a description of the current state of play. The book was written to fill what Akindemowo perceived as a gap in the market for a comprehensive text dealing with information technology law in Australia. The law is stated as being current as at November 1998 and therefore despite being published in 1999, does not contain any reference to the rapid developments of the last twelve months. This limitation is one that would be readily acknowledged by anyone working in the area as an occupational hazard.

The book deals with "the many issues that are raised by the use of computers, telecommunications, and the Internet, as they arise in the context of the Australian legal and regulatory framework."⁵ The aims of the book state that it is intended to provide a resource for students, academics, legal practitioners and IT professionals with an interest in the legal and regulatory issues that affect the industry. The topics covered by the book include commercial obligations and liabilities, electronic financial transactions, intellectual property, computer crime, telecommunications and internet abuse, protection of data and privacy and procedural matters, including evidence and jurisdiction.

¹ Copyright Amendment (Digital Agenda) Bill 1999 (Cth).

² Privacy Amendment (Private Sector) Bill 2000 (Cth).

³ For example, see Department of Communications, Information Technology and the Arts, *Australia's Ecommerce Report Card*, October 1999, [http://www.noie.gov.au/ReportCard/Broadcasting Services Amendment \(Online Services\) Act 1999](http://www.noie.gov.au/ReportCard/Broadcasting%20Services%20Amendment%20(Online%20Services)%20Act%201999) (Cth)

⁴ Olujoke Akindemowo, *Information technology law in Australia*, LBC Information Services, p. vii.

The book begins with a brief history of computing, based on the premise that a basic grasp of computers, how they work and their extensive role in modern society is necessary in order to understand the legal issues to which they give rise. The introduction also includes a lengthy discussion of the nature and function of law-making in society. Whilst this might seem unusual in a text of this type, Akindemowo believes it is essential to promote the understanding that legal issues that are raised by the use of information technology give rise to novel issues that need to be dealt with carefully. She promotes the need to recognise information technology law as a field of its own and argues well in this book for the recognition of information technology law as a specialist area.

The first substantive section, *Commercial Obligations and Liabilities*, deals with a range of issues that may arise from computer related transactions. It examines these issues with reference to particular transactional relationships, such as the section on the legal status of the software designer vis-a-vis ownership of the end product, which discusses issues arising from the employment/contractor relationship. Other sections deal with the manufacturer, consultant, supplier and customer. During the course of this examination legal issues such as negligence, product liability, the *Trade Practices Act 1974* and contract are discussed. There is also a brief mention of potential Y2K liability. The focus of this part of the book would have benefited from some explanation regarding the approach the author has adopted. Whilst the latter part of the chapter includes a description of the types of agreements common to the computing industry, it may have been useful to clarify this at the beginning of the chapter, before commencing an analysis of their legal effect. For example, with a flow chart demonstrating the evolution of a product from the original concept to purchase by the consumer. This chapter also includes a very useful description of the standard clauses that appear in such agreements. It is rare for students to have access to contractual documents, which put into practice the theories they have studied, and this is a valuable inclusion in the text.

The next section is *Electronic Financial Transactions*. This chapter begins with an outline of the Australian financial system and its regulatory underpinnings. A great deal of the chapter is devoted to discussing issues created by the digital environment and their impact on current concepts, such as what is a bank and whether digital cash can be regarded as money. It provides an extensive description of the various cyberpayment systems and how they may fit within traditional legal rules. It also provides a good overview of the types of payment systems currently available or envisaged, how they operate and what legal issues they may give rise to. It does not however deal with some specific IT issues such as digital signatures and encryption in any detail and this weakens the coverage of this chapter.

The section on *Intellectual Property* begins with a general introduction to the nature of intangible property and intellectual property law. It then discusses the nature of the Australian law relating to patents, circuit layouts, copyright, trade marks, unfair trading, breach of confidence and trade secrets. The examination of copyright law is limited by the fact that the introduction of a

new right of communication was still under consideration at the time the book was written. It also contains an historical excursus back to the Act of Anne, which is probably unnecessary in this context. However, it does include a very good discussion of the look and feel doctrine and its potential relevance to Australian law. This is certainly a highlight. The discussion of domain names in the context of trade mark issues was rather brief. Also, whilst the possibility of legal liability for hypertext linking is mentioned it is not examined in any detail.

Computer Crime, Telecommunications and Internet Abuse covers a range of topics, including regulatory issues. It provides a comprehensive description of various misuses of computers, particularly those made possible through the networking of computers by the Internet, and the potential legal remedies for such wrongs. This chapter is a good resource on the issue of computer crime. The regulation of pornography and other objectionable content is not discussed in extensive detail but again this book was written prior to the introduction of the *Broadcasting Services Amendment (Online Services) Act 1999* (Cth).

The Protection of Data and Privacy provides a general description of the state of privacy law in Australia. It outlines the remedies that are available under a variety of laws in the absence of a generally enforceable right of privacy. Finally, the chapter on *Procedural Matters* covers issues arising from the admissibility of computer generated evidence and the ever-present problem, in our new networked global environment of jurisdiction.

An extensive glossary is included at the end of the book. Not all of the terms used in the glossary actually appear in the text but it is useful to have such related terms defined in one area, particularly as the book may be used by students and practitioners unfamiliar with the computing environment.

As Akindemowo has stated in the Preface to her book, the label "information technology law" is imprecise and raises varying expectations. Some areas that are of particular concern to a practitioner involved in Internet law, such as linking and framing, are not dealt with in detail in this book. However, it does provide a straightforward, easy to read outline of legal issues arising more generally from the use of computers. This book fulfills the need to have a basic text which clearly describes the nature of the underlying technology and identifies the applicable legal principles. In this sense it is an ideal book to recommend as an introduction for those unfamiliar with the area. Staying up to date in this field is a full time occupation and this book provides a welcome Australian starting point.

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