

FOREWORD

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Welcome to this, a special edition of the UNSW Law Journal which explores the legal, regulatory and public policy issues central to the development of electronic commerce.

As we approach the new millennium, electronic commerce is emerging as a key engine of economic growth in developed economies. Electronic commerce provides opportunities for business to reach global customers and gain access to new markets; create new products and services; realise new sales opportunities; lower costs; reduce inventories and cycle times; provide more efficient and effective customer service and increase productivity.

With our increasingly computer literate society and advanced telecommunications infrastructure, Australia is well placed to 'punch above its weight' in the information economy. The Federal Government is committed to building:

- a technologically literate workforce and consumer population with access to competitively priced and world-class infrastructure, hardware and software;
- a commercial culture, extending to smaller firms, of identifying and maximising the beneficial potential of on-line business;
- compatibility between Australian and international technical and regulatory standards; and
- business and consumer confidence in electronic commerce.

Whilst changes must be made to laws and regulations to accommodate electronic commerce, there need not be a legal revolution to match the technological one. In many areas of law and policy, only minor changes are called for to allow electronic commerce to progress along the same lines as traditional commerce.

In the process of developing an appropriate level of regulation, governments need to be guided by certain principles and objectives:

- all citizens, regardless of where they live and work or their economic position, should have equitable access to the information economy;
- industry self-regulation and competitive market based solutions are preferable to government imposed regulation, unless there are overwhelming reasons for government intervention;
- government should intervene in the market place only to ensure that the Internet is a safe and secure place to do business, for example, by protecting the intellectual property of material provided on the Internet;
- consistency of national approaches with agreed international positions.

The global network technologies which underpin electronic commerce create a borderless world which challenge our existing national policy frameworks. This was recently highlighted at the OECD Ministerial Conference in Ottawa, *A Borderless World: Realising the Potential of Global Electronic Commerce*.

OECD Ministers concluded that international cooperation is an important aspect of policy development for the digital age and that “whether the action is domestic or regional, private or public sector, all electronic commerce policies and activities will have limited impact unless they facilitate a global approach.”

Ottawa conference participants discussed the issue of trust in electronic commerce, recognising that consumers and business will not fully embrace electronic commerce until they are confident that services and networks are secure and reliable, that transactions are safe and private, and that redress mechanisms are available.

A key theme which emerged from Ottawa was the tendency towards hybrid regulatory solutions which balance social and equity principles with economic concerns about regulatory burdens. For example, in the area of consumer protection, various approaches are being developed to implement and enforce consumer protection principles in the on-line environment, including legislative or regulatory, self-regulatory, technological or contractual mechanisms.

The Australian Government’s overall regulatory objective is an internationally consistent legal framework that will:

- remove existing uncertainties affecting electronic commerce;
- put electronic commerce and paper-based commerce on the same legal footing;
- not discriminate between different forms of technology.

This framework brings together many policy areas for addressing the interests of business and consumers, all of which I am pleased to see are covered in this

special edition of the Law Journal: security, privacy, electronic signatures and authentication, protection of intellectual property (while guaranteeing important educational benefits from free Internet access), consumer protection, Internet content standards and taxation administration.

Let me illustrate some of the approaches being adopted by the Australian Government to increase confidence of Australian consumers and businesses in electronic commerce. The Federal Government is:

- proposing to legislate for the recognition of electronic signatures and related aspects of evidencing and recognising on-line contracts, broadly consistent with the Model Law proposed by the UN Commission on International Trade Law;
- facilitating access to and use of authentication and encryption technology and systems, recognising that consumers and business (especially smaller firms) expect to have confidence in knowing the identity of other on-line parties.
 - the Government proposes to establish itself as an example of good practice, with the GATEKEEPER project for authenticating on-line parties doing business within government or with government purchasing agencies.
 - consultations with industry are proceeding on Commonwealth initiatives for developing confidence in authentication processes being offered by e-commerce intermediaries.
 - government adoption of the OECD Encryption Guidelines.
- encouraging the production and use of on-line content through proposed amendments to the *Copyright Act 1968 (Cth)* to:
 - create a right of communication to the public to cover the transmission and making available of copyright material, for example on the Internet.
 - make exceptions to the communication right for fair dealing, and access by libraries, archives, galleries, museums, schools, colleges and universities.
 - improve enforcement measures targeted at protecting copyright material made available on-line.

- encouraging business to implement the *National Principles for the Fair Handling of Personal Information*, released in February this year by the Privacy Commissioner.
- committed to enhancing on-line consumer protection. The recently released *Principles for Consumer Protection in Electronic Commerce* will be complemented by further guidelines on best practice approaches to dispute handling and industry conduct, greater cooperation in enforcement activity involving electronic commerce, and readily available on-line consumer related information.
- addressing community concerns about objectionable on-line content through a national industry based regulatory scheme for service providers, a consistent State and Territory legislative framework to guide content providers, the promotion of content labelling and filtering technologies, and educational campaigns.

The legal profession is increasingly participating in these issues. The authors and readers of this special edition of the *University of New South Wales Law Journal* are among the professionals who will be contributing further to the design and implementation of these issues in electronic commerce law: the commercial and consumer framework for the Information Age.

I congratulate the editor and board of the *Journal*, as well as the distinguished authors of the various articles in this edition, for their ground-breaking contribution to legal and policy analysis in the new, complex and exciting area of electronic commerce.