

Copyright Law in Australia

Thesis Question

Do the extant Australian copyright laws and the International treaties on intellectual property rights afford adequate protection to the rights of the copyright owners in the context of the internet?

Introduction

The broad interpretation of the terms by the different conventions and the complex technologies, which circumvent the rights of the copyright holders, pose a major threat to copyright protection in the context of the internet.

This dissertation discusses the various infringements of the copyright law in the domain of the Internet. In this regard various international conventions like the Berne Convention, the WIPO and the TRIPS were scrutinized. Moreover, various provisions of the copy right laws of Australia were discussed. In addition, a number of relevant court cases were analyzed. The lacunae in the implementation of the copy right law, pertaining to the Internet, were then discussed. Finally, conclusions were arrived at, which supported my thesis statement.

Copyright Law

Advances in the technology used in the internet and computer software have rendered it very simple to replicate or reorganize databases. The fundamental duty of copyright law is to protect creativity, while permitting the public to access such creative information irrespective of its form. In the Internet context, copyright law has to balance not only the interests of the owner of creative information but also the information that should be made available to the public. Copyright protection in the area of the Internet promotes intellectual development. If there is an absence of protection for intellectual creativity in the context of the internet then there would be a significant reduction in the information being made available to the public. Hence, the interests of the copyright owners must be protected on the one hand, and the infringements caused on Internet should be compensated for on the other¹.

The Internet is expanding very quickly and this growth is being matched by its infringements². The rapid expansion of the Internet has not been matched by the laws, which have remained static and incapable of dealing with these infringements.

Since, information can be transmitted anonymously over the Internet identifying culprits is almost impossible. Therefore, the copyright owners began to sue the Internet

¹ Bryan Mercurio, *Internet Service Provider Liability for Copyright Infringements of Subscribers: A Comparison of the American and Australian Efforts to Combat the Uncertainty*, Murdoch University Electronic Journal of Law, Volume 9, Number 4, 2002, October 6, 2007, <<http://www.austlii.edu.au/au/journals/MurUEJL/2002/51.html>>

² Ari Staiman, *Shielding Internet Users from Undesirable Content: The Advantages of a PICS based Rating System*, 20 Fordham International Law Journal p 866, 874, 1997.

service providers for such infringements by their subscribers, since no other remedy was available to them³.

A copyright infringement requires the reproduction of a substantial portion of the collection and not just the copying of individual items⁴. The protection offered by this Act to a work remains unaffected by the mere fact that it forms a part of some compilation⁵. Therefore, the copyright holder of such a work can either prohibit its reproduction or permit its use by others⁶. However, the Act, in all probability, is almost certain to permit right holders to ensure that their rights are not violated and this will definitely improve the lot of the ISPs and their users⁷.

The Explanatory Memorandum to the Digital Agenda recommends that the ISPs that allow or assist copyright infringement would not obtain protection under the provisions of the Act. This recommendation is impractical and can only be interpreted correctly by the courts.

Moreover, this novel piece of legislation will guarantee that an apposite equilibrium is maintained amidst the proprietary interests of the users and owners of copyright. The results of this Act could be akin to that of the *American Digital*

³ Bryan Mercurio, *Internet Service Provider Liability for Copyright Infringements of Subscribers: A Comparison of the American and Australian Efforts to Combat the Uncertainty*, Murdoch University Electronic Journal of Law, Volume 9, Number 4, 2002, October 6, 2007, <<http://www.austlii.edu.au/au/journals/MurUEJL/2002/51.html>>

⁴ Caenegem, William van. *Intellectual Property Law and Innovation*. 2007. P. 39. ISBN: 052183757X

⁵ Copyright Amendment (Digital Agenda) Bill 1999.

⁶ Dellebeke, Marcel. *Copyright in Cyberspace: Copyright and the Global Information Infrastructure*. 1997.P.469. Otto Cramwinckel Uitgever. ISBN: 9075727917.

⁷ Copyright Amendment (Digital Agenda) Bill 1999.

*Millennium Copyright Act*⁸, nevertheless, the absence of procedures could induce litigation and enhanced costs to the ISPs and their customers.

International Organizations and Copy Right Law

An agreement exists between the *World Trade Organization* or WTO and the *World Intellectual Property Organization* or WIPO, whereby the WIPO facilitates the WTO in its implementation of the TRIPS. Moreover, the WIPO and the WTO have combined forces in order to assist the developing nations to comply with the WTO Agreement on Trade-Related Aspects of the TRIPS⁹.

The objective of the WIPO is to protect intellectual property rights all over the world. Moreover, it has to guarantee administrative cooperation between the intellectual property rights agreements¹⁰. The WIPO, which is a component of the United Nations, has sponsored several significant conventions in the area of intellectual property rights. Australian law takes cognizance of the fact that the owners of copyrighted material are entitled to safeguard the financial benefits inherent in such matter. The *Berne Convention of 1886*, the *Universal Copyright Convention of 1952* and the *Rome Convention of 1961* constitute the principal international conventions that govern copyrights. The main objective of the Berne Convention is to afford protection to the

⁸ Digital Millennium Copyright Act 1998.

⁹ WTO and WIPO join forces to help developing countries meet year-2000 commitments on intellectual property. July 21, 1998. Retrieved on October 7, 2007
http://www.wto.org/english/news_e/pres98_e/pr108_e.htm

¹⁰ Article 3. Part I – General Provisions and Basic Principles. URUGUAY ROUND AGREEMENT: TRIPS

rights of authors and films. This protection is not extended to computer software programs and computer databases¹¹.

In order to cope up with the swift changes in the area of intellectual property, the WIPO instituted the *WIPO Copyright Treaty* and the *WIPO Performances and Phonograms Treaty* in 1996. These treaties permit authors, actors and producers to display their creations in public over the radio, television or the internet. Moreover, these treaties addressed the lacunae in the Berne Convention by providing protection to computer software and computer databases. The Universal Copyright Convention establishes the least requirements in respect of the rights of authors in countries having trade agreements with the author's country¹².

In *Stevens v. Sony* the Federal Court held that access codes for the Sony Playstation were technological means of protection in the context of the copyright law. The High Court set aside this decision, stating that the loading of a game into the *Random Access Memory* of the Playstation could not be construed to constitute replication in a tangible form. This was extended to the storage of films on Random Access Memory¹³.

The member countries of WIPO have to ensure that the necessary legal remedies and protection are available to authors so that they can enforce their intellectual

¹¹ Chissick, M., & Kelman, A. (2002. P. 140). *Electronic Commerce: Law and Practice*. Sweet & Maxwell. ISBN: 0421764309.

¹² Chissick, M., & Kelman, A. (2002. P. 140). *Electronic Commerce: Law and Practice*. Sweet & Maxwell. ISBN: 0421764309.

¹³ *Stevens v. Kabushiki Kaisha Sony Computer Entertainment*, 58 (High Court of Australia October 6, 2005).

property rights. These measures permit an interpretation that is quite general and consequently, the different states have wide latitude in deciding upon the manner of implementation¹⁴.

A copyright infringement transpires whenever any act is either committed or authorized, which falls within the purview of the individual rights of copyright holders, without their consent. Similarly, a copyright infringement occurs if any article is imported or sold in Australia, whose manufacture in Australia by the importer would constitute a copyright infringement¹⁵.

The application of the principles of copyright infringement becomes complex in cases relating to what is tantamount to empowering someone else to infringe copyright. Instances are provided by peer to peer file sharing web sites¹⁶. Such empowerment was precisely defined in *University of New South Wales v. Moorhouse*, wherein the Australian High Court held that the University had provided authorization for activities that were tantamount to copyright infringement¹⁷.

The Copyright Amendment (Digital Agenda) Act 2000

Furthermore, the *Copyright Amendment (Digital Agenda) Act 2000* deemed that copyright infringement transpired if any circumvention device was supplied in order to

¹⁴ Article 11, WIPO Copyright Treaty. (1967). UN.

¹⁵ Campbell, D. (2007. P. 1/59). *The Internet: Laws and Regulatory Regimes [2007]* – I. Lulu.com. ISBN: 1430320427.

¹⁶ Campbell, D. (2007. P. 1/59). *The Internet: Laws and Regulatory Regimes [2007]* – I. Lulu.com. ISBN: 1430320427.

¹⁷ *University of New South Wales v. Moorhouse* , 133 CLR 1 (High Court of Australia 1975).

avoid technological protection measures. This proved to be ineffective because these provisions were applicable only to the preclusion of replication and not re use or access to copyrighted material¹⁸.

The *Copyright Act 1968* provides protection for copyrighted materials by bestowing certain rights on the copyright holders that prohibit the unauthorised copying, public performance, broadcast and use in any manner of such copyrighted material that is detrimental to the rights of copyright holder.

Copyright, although not tangible, can be considered to be property, which is an expression of ideas, creativity and labour of the copyright owner. Copyright protects the interests of its owner and prohibits unauthorised use. It is a combination of rights bestowed on their owners, which enables them to use such material in accordance with their wishes¹⁹.

International Treaties on Intellectual Property Rights

Among the international treaties, *Agreement on Trade-Related Aspects of Intellectual Property Rights* or TRIPS is not only dominant but also powerful in the context of intellectual property issues and constitutes the primary instrument for the integration of international intellectual property laws. The signatories to this treaty include the US and Australia. According to TRIPS, applications received from foreign

¹⁸ Campbell, D. (2007. P. 1/59). *The Internet: Laws and Regulatory Regimes [2007]* – I. Lulu.com. ISBN: 1430320427.

¹⁹ *What is copyright?* Copyright law in Australia - A short guide - June 2005, retrieved October 4, 2007, <<http://www.ag.gov.au/copyright/shortguide# 1>>

state parties are to be given proper attention by the receiving nations. Consequently, TRIPS requires a national treatment of patents²⁰. Moreover, TRIPS maintains executable norms for patent rights and duration at the national level²¹. In addition to this, TRIPS provides the highest level of favour to the contracting states due to this favoured nations status, bilateral agreements with regard to intellectual property gain international importance²².

TRIPS is one of the principles of WTO and hence it is significant in matters relating to intellectual property²³. It is obligatory for the signatories to the WTO to enforce TRIPS and any failure to do so could result in multilateral trade sanctions²⁴. This important feature of TRIPS makes it very powerful and ensures efficiency in integrating worldwide patent laws. Moreover, the actions initiated by the WTO with regard to member state compliance or failure of compliance with TRIPS, buttress the stand of TRIPS on international patent agreements and thereby create the total integration of national patent laws²⁵.

The pre TRIPS condition in the countries to which Australia had exported intellectual property materials, particularly the Asian countries, was that intellectual property rights were accorded a much lower level of protection in comparison to that obtaining in Australia. TRIPS enhanced the average level of protection for intellectual

²⁰ Article 1(3), TRIPS.

²¹ Article 28, TRIPS.

²² Article 4, TRIPS

²³ Marrakesh Agreement Establishing the World Trade Organization, opened for signature 15 April 1994, 1867-9 UNTS 1, 33 ILM 1125 (entered into force 1 January 1995).

²⁴ Article 50, TRIPS.

²⁵ Joshua Harrison, *On the Convergence of US and Australian Patent Law*, Melbourne Journal of International Law, 2001 MelbJIL 14, October 5, 2007, <<http://www.austlii.edu.au/au/journals/MelbJIL/2001/14.html>>.

property rights in countries, which imported such material from Australia and enhanced the total value of intellectual properties exported by Australia²⁶.

However the existing Australian trade in intellectual property cannot be properly evaluated, in order to assess the long term benefits of TRIPS, from the perspective of Australia's national interests. At present Australian intellectual property exports are higher than their imports²⁷. Since, the intellectual property exports by Australia to the developing countries in Asia are increasing²⁸ the TRIPS constitutes an important means of protecting future Australian intellectual property exports to those countries.²⁹

Subsequent to the release of the consolidated *Copyright Convergence Group Report* in 1994, Australian legislators endorsed significant efforts to formulate a legislative program. The *Copy Right Convergence Group Report* recommended the abolition of the diffusion right and the need to introduce a broad – spectrum, impartial technological right to authorise transmissions to the public³⁰.

The Australian *Attorney General Discussion Paper* recommended a neutral transmission right for technology that was to be made public, which would concentrate reciprocally on demand services³¹. Another recommendation was that only the

²⁶ John Revesz, *Trade – Related Aspects of Intellectual Property Rights*, 28 May 1999, October 5, 2007. <<http://www.pc.gov.au/research/staffers/trips/>>.

²⁷ Keith Marcus, *Strengthening Intellectual Property Rights in Asia: Implications for Australia*, Australian Economic Papers, 1998, p350.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Copy Right Convergence Group Report, *Highways to Change: Copyright in the New Communications Environment*, August 1994 at 20, 24, 28.

³¹ Raani Costelloe, *The New Digital Copyright Law in the Media, Entertainment and Communications Industry*, 12(1) AIPJ 19, 2001.

authorization principle should be employed to establish ISP liability³². In April 1998, the Australian government gave directions to the effect that liability should not be fixed on ISPs, just because the ISPs resources had been utilized to perpetrate infringement³³. The *Copyright Amendment (Digital Agenda) Act 2000 (Digital Copyright Act)* preserves the 1998 reforms and thereby sustains the confidence of the ISPs³⁴.

Notwithstanding, these developments, this Act brings about the betterment of the situation obtaining in respect of users and the ISPs and it is anticipated that the right holders will be in a position to enforce their rights in an efficient manner. In addition, the Act ensures that an appropriate balance is maintained between the rights of copyright owners and the rights of copyright users. The main drawback in this situation is that despite the fact that in its final form, this Act will be akin to the American Act, formality and procedures are absent and this could bring about an enhancement in costs and litigation.

There are exceptions in this Act for temporary reproduction of copyrighted material, which are very important as they have been conducive to the further expansion of the Internet, because there is a need to make temporary copies of copyrighted materials in order to make them available to the public. Browsing of copyright material online by the public is included under the exception for temporary copies.³⁵

³² Attorney – General’s Discussion Paper.

³³ The Hon Daryl Williams and Senator Richard Alston, "Copyright Reform and the Information Economy", Joint Media Release, 30 April 1998.

³⁴ Bryan Mercurio, *Internet Service Provider Liability for Copyright Infringements of Subscribers: A Comparison of the American and Australian Efforts to Combat the Uncertainty*, Murdoch University Electronic Journal of Law, Volume 9, Number 4, 2002, October 6, 2007, <<http://www.austlii.edu.au/au/journals/MurUEJL/2002/51.html>>

³⁵ Mia Garlick & Simon Gilchrist, 'The Digital Age: Will Oz Ever Get There' (1999) 3 TeleMedia 6, 79.

The liability of ISPs has been elaborately addressed by the Act with regard to direct and authorisation liability. The Act reversed the *Telstra* decision and offered protection to the ISPs on whose servers the content material was not discovered. The principal premise was that the ISPs would not violate the provisions by providing their servers without determining the content, but they would be violating the provision if any modification or editing of the communications occurs. The Act, however, does not impede copyright owners from initiating action against ISPs that indulge in infringements³⁶. Although the amendments brought by the Act are similar to American, European and WIPO standards, there are certain shortcomings with regard to the protection provided to the ISPs. The protections provided by the Act are not intricate like the US protections. In order to overcome this problem, the Australian Act combines authorisation principles with express limitations of liability in dealing with copyright infringement³⁷.

It was decided in the *Moorehouse* case that an ISP, having knowledge about infringement activity on its servers, should adopt adequate steps to circumvent liability. However, the Act does not define the term reasonable measure³⁸.

Sound recordings and software programs can be neither banned nor permitted by copyright holders in Australia. This has not been to the liking of the US, which is very

³⁶ Bryan Mercurio, *Internet Service Provider Liability for Copyright Infringements of Subscribers: A Comparison of the American and Australian Efforts to Combat the Uncertainty*, Murdoch University Electronic Journal of Law, Volume 9, Number 4, 2002, October 6, 2007, <
<http://www.austlii.edu.au/au/journals/MurUEJL/2002/51.html>>

³⁷ Bryan Mercurio, *Internet Service Provider Liability for Copyright Infringements of Subscribers: A Comparison of the American and Australian Efforts to Combat the Uncertainty*, Murdoch University Electronic Journal of Law, Volume 9, Number 4, 2002, October 6, 2007, <
<http://www.austlii.edu.au/au/journals/MurUEJL/2002/51.html>>

³⁸ Ibid.

much insistent that Australia should implement legislation that would establish exclusive rental rights. Under certain circumstances, it is permissible to import books that have been printed abroad as per the provisions of the *Australian Copyright Amendment Act 1991*. Original works in literature, arts, music, drama and recordings in music and film obtain copyright protection automatically³⁹.

Even though there is no practical and substantive stance for intellectual rights in the Australian Constitution, Australia developed the integration of patent laws. However, further development of the Australian IP law is required in order to overcome the constitutional barrier, to conciliatory positions between utilitarian purposes and moral commitments⁴⁰.

In Australia, the name of the owner and date are not required for procuring a copyright on intellectual property. In other countries these requirements are compulsory in order to get a copyright. Incorporation of the name and date in the copyright would restrict violators. However, if the owner of a copyright affixes a hologram on the material then there is the danger of losing the copyright altogether. Under those circumstances, registering the hologram design would enable the owner to claim protection on his copyrighted material⁴¹.

Copyright law not only protects the rights of the owner but it also places a liability on the owner for authorising copyright infringement. The decisions of the

³⁹ International Business Practices. 1993. P. 168. DIANE Publishing. ISBN: 1568064551.

⁴⁰ Samuel Murumba, *The Emerging Law of the Digital Domain and the Contract/IP Interface: An Antipodean Perspective*, Brooklyn Journal of International Law 91, 2000, p.113.

⁴¹ What is copyright, October 5, 2007, <<http://www.ipaustralia.gov.au/ip/copyright.shtml>>

courts are not unanimous in this regard. The courts consider the key concepts of control and knowledge of the owner in the event of infringement and employ common sense rules in cases of verbal authorisation of infringement, in order to protect the rights of the owner of the copyright as well as balance the dangers to society, by imposing excess liability.⁴²

Cases on Infringement of Copyright Law

In the *Desktop Marketing Systems Pty Ltd v. Telstra Corporation Ltd* the Federal Court of Australia upheld the decision that copyright protection could be extended to databases like telephone directories. The *Desktop Marketing Systems* had utilized data from *Telstra Corporation Ltd*'s databases for a software application that provided telephone directory information. The Full Court opined that denial of copyright protection to the *Telstra Corporation Ltd* would unjustly permit the *Desktop Marketing Systems* to benefit from the time, effort and money invested by the former to develop the database. This decision clearly indicates the lower threshold of originality required in Australian law for according protection to databases⁴³.

However, in *Feist Publications Inc v Rural Telephone Service Co Inc* the US Supreme Court held that the white page telephone directories produced by Rural Telephone Service Co Inc failed to meet the basic standards of originality for protection of copyright in the United States. The Court ruled that in order to be considered original

⁴² Michael Napthali B Ec, M Law & LP, *Unauthorised: Some thoughts upon the doctrine of authorisation of copyright infringement in the peer-to-peer age*, October 5, 2007, <<http://www.frankellawyers.com.au/media/article/Unauthorised.pdf> >

⁴³ *Desktop Marketing Systems Pty Ltd v. Telstra Corporation Ltd* (2002) FCAFC 112

a compilation should invariably satisfy the minimum norm for creativity, while selecting or arranging data in a creative manner⁴⁴.

The decision in *Feist* paved the way for the introduction of a *sui generis* context for databases by the international treaties such as those of the European Union, World Intellectual Property Organisation and the US Congress. Among these three only the EU was successful in implementing a *sui generis* database regime⁴⁵.

The concept of subsistence originality of copyright became the subject matter for the Federal Court of Australia, while deciding the appeal in the *Telstra* case. There is a disagreement in this regard between the UK copyright law and Australian copyright law. *Regulation 5(a) of The Copyright and Rights in Databases Regulations 1997*⁴⁶, of the United Kingdom, clearly establishes a distinction between databases and other compilations, and the statutory definition of originality for databases. The *Feist* decision, which is equally important to the UK and Australia, is based on the judgement in *Matthewson v Stockdale*⁴⁷, in which the general principles of originality and the test for originality for subsistence of copyright scope in the context of compilations were established⁴⁸. In the *Matthewson* case, the respondent was an Australian national company, which had produced electronic compilations of the white pages and yellow pages of telephone directories. These compilations were taken from the records of the telephone subscribers. A, one of the parties to the case, had wilfully copied the

⁴⁴ Desktop Marketing Systems Pty Ltd v. Telstra Corporation Ltd (2002) FCAFC 112

⁴⁵ Desktop Marketing Systems Pty Ltd v. Telstra Corporation Ltd (2002) FCAFC 112

⁴⁶ Statutory Instrument 1997 No. 3032. The Copyright and Rights in Databases Regulations 1997. Crown copyright 1997.

⁴⁷ *Matthewson v Stockdale* (1806) 12 Ves 270 (33 ER 103)

⁴⁸ *Matthewson v Stockdale* (1806) 12 Ves 270 (33 ER 103)

directories of the respondent to produce CD – ROMs. These CDs were prepared in such a way that they reproduced the names and addresses of the respondent's subscribers. A had arranged the names of the respondent's subscribers by nature of trade and had adopted the headings that were contained in the yellow pages directories published by the respondent. However, the format used by A was different from that of the respondent's compilation.

In *Sands & McDougall Pty Ltd v Robinson*⁴⁹, the test of authorship was discussed. It was opined by the court that the concept of originality was correlated to the concept of authorship⁵⁰.

A compilation can be accorded a copyright as an original literary work if the producer or compiler puts in labour in exercising skill, judgment or knowledge, while identifying the information to incorporate in the compilation. Moreover, such an endeavour could be the collecting of information, commentaries and presenting the information by arranging the collected material in systematic or easily decipherable form⁵¹.

Further, a compilation of factual information can be treated as an original literary work for the purpose of obtaining a copyright for the work, if the compiler had engaged substantial labour or incurred expenditure, while collecting information for such a compilation. The compiler of information is required to demonstrate that he had undertaken labour or had incurred expenses in excess of the accepted minimum norms.

⁴⁹ *Sands & McDougall Pty Ltd v Robinson* (1917) 23 CLR 49

⁵⁰ *Ibid.*

⁵¹ *G A Cramp & Sons Ltd. v Frank Smythson Ltd.* [1944] AC 328

There is no need to limit the labour and expenditure to present the compilation in substantive form but such labour and expenses may be incurred in the process of arriving at the material form of the compilation or for the purpose of preparing such a compilation.

Conclusions

A number of difficulties had to be countenanced by copyright holders who endeavoured to safeguard their work, due to the twin factors of the law remaining unchanged and speedy growth of the Internet. The ISPs were compelled to guard themselves against infringement of copyright claims. Moreover, the fact that copyright owners had to be accorded protection and compensation for copyright infringements that took place on the internet, was acceded to by the governments of the US and Australia. Nevertheless, it was accepted by them that ISPs should not be made accountable for copyright infringements committed by their users.

However, unlike the detailed scheme of the US Act, the scheme outlined for Australia resembles a general guideline that does not address the more intricate problems thrown up by copyright infringement. Moreover, some of the sections, like the manner in which it has dealt with authorisation liability and the general absence of instructions in respect of the removal of allegedly infringing material, present a number of difficulties. Australian case law is silent on these issues and it is not possible to conclude at this stage to state this legislation will proceed, in its development, along the same lines as the corresponding law in the US. Despite the manner in which the

Australian courts will take decisions regarding these issues, the number of cases that will be filed in the context of infringement of copyright in the internet context, is bound to increase tremendously. Moreover, the Act's unclear position in the context of a number of issues serves to enhance the probability of litigation. The need of the hour is to amend the contentious provisions of the extant legislation.

Safeguarding the interests of copyright holders, in respect of their works, proved to be difficult, due to the unprecedented growth of the Internet and static legislation, and the extant protection mechanism proved to be inadequate in curbing acts of infringement, which resulted in a number of copyright infringement claims against the ISPs. The Australian copyright act protects ISPs whose servers did not contain infringing material; however, if the ISP becomes of aware of copyright infringement on its servers, then it has to adopt reasonable measures, which are undefined. This permits ISPs to evade liability. In some important decisions like the *Sony* case the courts did not favour the copyright holders' rights. Moreover, the international treaties failed to make legislation that would directly relate to the Internet with the result that the individual member states were permitted to make their own laws in this context. The Internet is unbounded, which makes it subject to a number of jurisdictions. There are several reasons for the digital era to pose a unique challenge to copyright. It is difficult for copy right holders to isolate infringements on the Internet.

Bibliography

1. Staiman, Ari, Shielding Internet Users from Undesirable Content: The Advantages of a PICS based Rating System, *20 Fordham International Law Journal* p 866, 874, 1997.
2. Article 1(3), TRIPS.
3. Article 3. Part I – General Provisions and Basic Principles. URUGUAY ROUND AGREEMENT: TRIPS
4. Article 4, TRIPS
5. Article 11, WIPO Copyright Treaty. (1967). UN.
6. Article 28, TRIPS.
7. Article 50, TRIPS.
8. Attorney – General’s Discussion Paper.
9. Mercurio, Bryan, Internet Service Provider Liability for Copyright Infringements of Subscribers: A Comparison of the American and Australian Efforts to Combat the Uncertainty, *Murdoch University Electronic Journal of Law*, Volume 9, Number 4, 2002, October 6, 2007, <
<http://www.austlii.edu.au/au/journals/MurUEJL/2002/51.html>>
10. Caenegem, William van. *Intellectual Property Law and Innovation*. 2007. P. 39. ISBN: 052183757X
11. Campbell, D. (2007. P. I/59). *The Internet: Laws and Regulatory Regimes [2007]* – I. Lulu.com. ISBN: 1430320427.
12. Chissick, M, & Kelman, A, (2002. P. 140). *Electronic Commerce: Law and Practice*. Sweet & Maxwell. ISBN: 0421764309.
13. Copyright Amendment (Digital Agenda) Bill 1999.
14. Copy Right Convergence Group Report, *Highways to Change: Copyright in the New Communications Environment*, August 1994 at 20, 24, 28.

15. Dellebeke, Marcel. *Copyright in Cyberspace: Copyright and the Global Information Infrastructure*. 1997. P.469. Otto Cramwinckel Uitgever. ISBN: 9075727917.
16. Desktop Marketing Systems Pty Ltd v. Telstra Corporation Ltd (2002) FCAFC 112
17. Digital Millennium Copyright Act 1998.
18. Revesz, John, *Trade – Related Aspects of Intellectual Property Rights*, 28 May 1999, October 5, 2007. <<http://www.pc.gov.au/research/staffers/trips/>>.
19. Harrison, Joshua, On the Convergence of US and Australian Patent Law, *Melbourne Journal of International Law*, 2001 MelbJIL 14, October 5, 2007, <<http://www.austlii.edu.au/au/journals/MelbJIL/2001/14.html>>.
20. *International Business Practices*. 1993. P. 168. DIANE Publishing. ISBN: 1568064551.
21. Marcus, Keith, Strengthening Intellectual Property Rights in Asia: Implications for Australia, *Australian Economic Papers*, 1998, p350.
22. Marrakesh Agreement Establishing the World Trade Organization opened for signature 15 April 1994, 1867–9 UNTS 1, 33 ILM 1125 (entered into force 1 January 1995).
23. *Matthewson v. Stockdale* (1806) 12 Ves 270 (33 ER 103)
24. Garlick, Mia & Gilchrist, Simon, The Digital Age: Will Oz Ever Get There (1999) 3 *TeleMedia* 6, 79.
25. Napthali, Michael, *Unauthorised: Some thoughts upon the doctrine of authorisation of copyright infringement in the peer-to-peer age*, October 5, 2007, <<http://www.frankellawyers.com.au/media/article/Unauthorised.pdf>>
26. Costelloe, Raani, The New Digital Copyright Law in the Media, Entertainment and Communications Industry, 12(1) *AIPJ* 19, 2001.
27. Murumba, Samuel, The Emerging Law of the Digital Domain and the Contract/IP Interface: An Antipodean Perspective, *Brooklyn Journal of International Law* 91, 2000, p.113.
28. *Sands & McDougall Pty Ltd v. Robinson* (1917) 23 CLR 49

29. Statutory Instrument 1997 No. 3032. The Copyright and Rights in Databases Regulations 1997. Crown copyright 1997.
30. Stevens v. Kabushiki Kaisha Sony Computer Entertainment, 58 (High Court of Australia October 6, 2005).
31. The Hon Williams, Daryl and Senator Alston, Richard, Copyright Reform and the Information Economy, Joint Media Release, 30 April 1998.
32. University of New South Wales v. Moorhouse, 133 CLR 1 (High Court of Australia 1975).
33. *What is copyright?* Copyright law in Australia - A short guide - June 2005, retrieved October 4, 2007, <[http://www.ag.gov.au/copyright/shortguide# 1](http://www.ag.gov.au/copyright/shortguide#1)>
34. What is copyright, October 5, 2007, <<http://www.ipaustralia.gov.au/ip/copyright.shtml>>
35. WTO and WIPO join forces to help developing countries meet year-2000 commitments on intellectual property. July 21, 1998. Retrieved on October 7, 2007 http://www.wto.org/english/news_e/pres98_e/pr108_e.htm