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Editorial 163

ARTICLES

Three dimensions of patent infringement: Liability for creation and distribution of CAD files – *John Liddicoat, Jane Nielsen and Dianne Nicol*

3D printing is contributing to a global trend toward customisation, user innovation and democratisation of design and manufacture. A key element of 3D printing is that computer-aided design (CAD) files are used to instruct printers to create physical 3D products. This article explores patent liability for creators of CAD files that provide directions for the creation of potentially infringing products. This analysis compares the Australian position to that in the US and UK. One US commentator has suggested that 3D printing will leave patentees helpless to combat widespread infringement. By examining primary and secondary infringement case law, this article finds that Australian law creates relatively clear liability for the creation and distribution of CAD files. 165

The secondary sale, copyright conundrum: Why we need a secondary market for digital content – *Jessica Stevens*

This article considers the resale of digital copyright content. Other jurisdictions, including the EU and the US, have recently considered whether consumers have rights to buy and sell second-hand digital content. In Australian copyright law, there is no clear principle of first sale or exhaustion that positively permits the second-hand sale of copyright goods. In the context of physical goods, resale is generally not an infringement in Australia; but without a clear right, the resale of digital goods will be an infringement of Australian copyright law. This article considers the public policy considerations around establishing a digital secondary market. It first provides a review of recent US and EU cases that reflect upon the legality of secondary digital markets, with reference to the history and development of the first sale doctrine and the principle of exhaustion. This article then reviews the potential impact of secondary markets on consumers' access to copyright goods. It is proposed that, given the indeterminacy of economic analyses in this context, careful consideration should be given to the social and personal impacts of restrictions on alienation of digital goods, compared to their physical equivalents. It is suggested there is good reason to think enabling digital secondary markets could improve access to content and foster the innate human desire to share and gift. Finally, this article considers the potential legal framework that would support and enable digital secondary markets to exist under Australian law. 179

IP in transition: Desperately seeking the big picture – *Jeremy Phillips*

This is the edited text of the Sixth Francis Gurry Public Lecture on Intellectual Property, delivered by the author at the Melbourne Law School on 12 November 2014. 195

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