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Patenting Software Inventions, Abstract Ideas, and Judicial Characterisation: The Shift Away from Recognising Patentability of Computer Software in Australia after Encompass, Rokt and Aristocrat – *Michael Williams and Vanessa Farago-Diener*

Initially, courts around the world found computer software inventions to be valid subject matter for patentability. However, recent decisions of the US Courts have tended to find that software patents are invalid on the basis that they represent unpatentable abstract ideas. Similarly, recent decisions in Australia have found such patents ineligible to qualify as a "manner of manufacture". Notably, over the last decade Australian Courts have struck down all but one software patents, for failure to meet the requirements for patentability, despite the well-established test in National Research Development Corp v Commissioner of Patents. Consequently, most software patents are likely to be unprotectable here, where the inventions cannot be characterised as relating to something else. This article explores recent developments, the critical role played by judicial characterisation of the inventions at issue and what the future might hold for software patents in Australia in the absence of legislative reform. 182

Crown Copyright 2.0 in Canada – *Ysolde Gendreau*

In 2019, the Supreme Court of Canada rendered the first decision in its history on Crown copyright in *Keatley Surveying Ltd v Teranet Inc*. The opinions written by the majority judges and by the concurring judges deal with issues that are fundamental to this concept and draw comparisons with the equivalent Australian High Court decision, *Copyright Agency Ltd v New South Wales*. At the same time, both groups of judges wanted to ensure that their decision is consonant with the approach that the Court has taken to copyright law since it started, at the beginning of the century, to be actively interested in its policy underpinnings. This article looks at the different reasonings that the judges adopted and includes comments on their pronouncements as well as on some points on which they remained silent. 210

Artificial Intelligence: Painting the Bigger Picture for Copyright Ownership – *Courtney White and Rita Matulionyte*

To receive copyright protection in Australia works must be original, among other requirements. The originality standard involves "independent intellectual effort" that originates from an actual person. The reality of today's creativity domain is that works are not always originating from actual persons. Due to impressive advancements in technology, some works are being created by artificial intelligence (AI). These works cannot meet copyright requirements under current law and subsequently do not receive

copyright protection. This article endeavours to answer a two-tiered question raised by the challenges AI works pose for traditional concepts of copyright. First, should copyright subsist in works created by AI? Second, who would possibly be the copyright owner for such works? Answering these questions involves a discussion of utilitarian and natural rights theories and references to United States and United Kingdom discussions on the conversation around copyright and AI. 224

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