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EDITORIAL – *General Editor: Dianne Nicol* 3

ARTICLES

Topics of interest: Section 180 of the Copyright Act 1968 and the Assignment Deed for Copyright in the Australian Aboriginal Flag – *David J Brennan*

The assignment in Deed form on 21 January 2022 from its artist Harold Thomas to the Commonwealth of all copyright in the Australian Aboriginal Flag artistic work raises the issue of whether, by reason of that assignment, the Australian copyright in the work entered the Australian public domain. This piece interrogates that issue and concludes that such entry into the public domain is not merely a possibility but a likelihood. It also suggests a way to reverse any such entry by the parties agreeing to rescind the Deed and for Thomas to instead assign the copyright to a custodial body, independent from government, in accordance with a bipartisan and unanimous recommendation of a 2020 Senate Select Committee. 4

Zombie Marks Redux: Is Australia Safe from the New Zealand Variant? – *Robert Burrell and Michael Handler*

In *International Consolidated Business Pty Ltd v SC Johnson & Son Inc*, the New Zealand Supreme Court interpreted the New Zealand trade mark statute in a manner that leaves open the possibility of unused marks whose registrations have been revoked turning into “zombies” and blocking the registration of later, similar marks. In this article we explore the implications of this decision for Australia. Specifically, we analyse the new normative justification for recognising zombie marks put forward by the New Zealand Supreme Court, and its reinterpretation of the old British cases on which the current Australian approach rests. We argue that both the justification and the reinterpretation are unconvincing and ought not to be followed in Australia. We also show that the Supreme Court’s decision rests on a misunderstanding of a provision of the New Zealand statute that allows for orders for the removal of a mark to be “backdated” to an earlier point in time, and suggest that while the introduction of such a provision into Australian law would be beneficial, it should not be interpreted in such a manner that would open the door to zombie marks. 19

Does the Patents Act 1990 Protect Space Technology? – *Stefan Paterson*

Australian intellectual property (IP) laws were legislated before any real prospect of the commercialisation of outer space. However, over the past decade, there has been an explosion in the number of commercial entities performing activities in outer space. For example, commercial space stations and in-orbit R&D facilities are currently in the planning and building stage for launch in the very near term. These activities require

extensive research and development, and any IP generated needs to be protected as part of commercialisation strategies. However, the current legislation does not provide enough protection for space-related technology due to the limited extent of this legislation into outer space. This article explores the deficiencies of the Australian Patents Act for the protection of space-related technology. 34