

Good starting point

Electronic Information and the Law

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review by Holly Raiche and Phillip Roberts

Information is a difficult concept for lawyers to define and categorise. In its pure form, it is not recognised as intellectual property at all. Once transformed, it can be anything – scholarly treatise, a piece of music, even a tweet. Even then, it does not necessarily attract copyright protection, give rise to personal rights or causes of action.

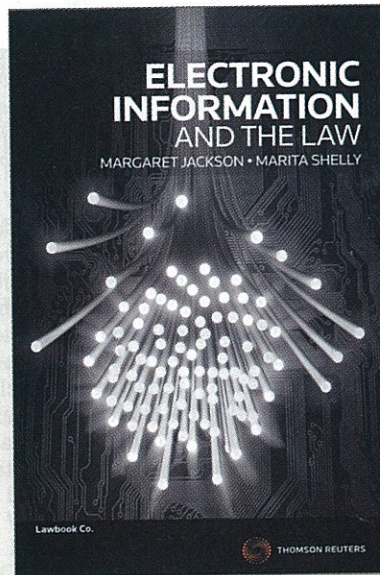
Entering into a 'binding contract', creating a document 'in writing' and 'publishing' a book are all defined and well understood concepts in an analogue world. As information is increasingly created in digital form and communicated electronically, this book maintains, the law has handled the transition fairly successfully overall.

This well-argued, useful reference for lawyers provides rigorous discussion of a wide range of legal issues that arise in relation to how information is managed and will help those seeking a summary of the main issues on a particular topic or to read in full.

Some digital communications are unique to the digital internet world and present new legal issues. Are metatags personal information and, if so, what privacy protections should apply? If electronic information is stored in the cloud, how can one find out where – geographically – it is located? Alternatively, is jurisdiction to be determined by other means?

Several chapters examine online contracts and the vexed area of privacy. The authors note that data-breach notifications are mandatory in jurisdictions abroad. In 2006, the Australian Law Reform Commission report "For Your Information: Australian Privacy Law and Practice" recommended they be made mandatory, and recent speeches by the federal Privacy Commissioner suggest that office agrees. Another area of concern is when transactional information – the data that indicates sites that individual computers have visited – becomes 'personal information'. Should it become subject to clearer privacy protections?

The cloud (data centres) is also



examined. The authors point to recent decisions that suggest location of the server indicates the appropriate jurisdiction for grounding actions in relation to information. If the data centre (or centres) holding the information is located elsewhere, does that compete for jurisdictional claim? That is, if one can determine where

the information is actually stored at all.

The High Court decision in *Roadshow v iiNet* handed down in April this year has impacted the law regarding copyright and ISP liability and any readers interested in these topics should update the book's discussion by reference to some of the more recent literature about that decision.

Examining copyright infringement by search engines, the authors point out that in the US the Digital Millennium Copyright Act provides a safe harbour defence that normally protects search engines such as Google. The same is not true under the *Copyright Act* in Australia, where the safe harbour provisions only apply to carriage service providers as defined by the *Telecommunications Act*. The authors recommend amending the Australian position to bring it into line with the US.

It is worth noting that in November 2011 the Commonwealth Attorney-General's Department released a public consultation paper titled "Revising the Scope of the Copyright Safe Harbour Scheme", which has put on the table the possibility of just such an amendment being made. □