

REVIEW ARTICLE

Going Digital 2000 - Legal Issues for E-commerce, Software and the Internet, Anne Fitzgerald, Brian Fitzgerald, Peter Cook and Christina Cifuentes (eds) (New South Wales: Prospect Media, 2nd ed, 2000), pp xviii + 420. Recommended retail price \$145.00 (ISBN 1 86316 134 1).*

When I reviewed the 1998 first edition of this publication¹ I commented that it was "one of the most important collections of wisdom to be assembled in this fast growing area, and no library should fail to include it if its readers are to have a chance of keeping abreast of legal developments that impact our lives to an increasing extent".

The second edition is no less important although, I regret to observe, it is marred by what I feel are too many typographical, grammatical, legal and factual errors which I would have hoped would have been eliminated by more careful checking by authors, editors and publishers. I suppose for objectivity I should confirm that I am the archetypal pedantic Virgo, but my impression is that this second edition is a rushed revamp of the first edition, and for me it spoils the more favourable impression I had of the latter.

Going Digital 2000's 23 chapters are divided into three parts: Intellectual Property Issues, E-Commerce Issues and Liability Issues, preceded by an interesting and useful contribution from Brian Fitzgerald entitled "Conceptualising the Digital Environment". Within each part of the book there are contributions from prominent writers and practitioners. These contributions, as the Foreword notes, update and augment the issues covered in the first edition.

Brian Fitzgerald's 17 page introduction to this work's 402 (A4 sized!) pages sets out to provide an overview of key features of the information society, suggests a definition of the Internet, outlines the emerging institutional structure of the information society, and explains some of the laws that facilitate the capturing of value in the information society. It is a very useful orientation tour both for those new to the area and even for old hands who may have had trouble keeping up with the frenetic pace of change over the last year or so.

Chapter 2 introduces Part 1 on Intellectual Property Issues with David Webber's contribution entitled "Intellectual property in internet software". This

* Philip N Argy, Senior Partner, Technology, Communications and Intellectual Property Group, Mallesons Stephen Jaques and Chairman Economic, Legal and Social Implications Committee Australian Computer Society Inc.

1 Available at <<http://www.austlii.edu.au/au/other/unswlj/thematic/1998/vol21no2/argy.html>>.

is followed in chapter 3 by Anne Fitzgerald and Cristina Cifuentes' "Pegging out the boundaries of computer software copyright: the Computer Programs Act and Digital Agenda Bill". Webber's chapter is not just about copyright – he considers the full panoply of intellectual property elements in the form of patents, trade marks, designs, copyright, circuit layouts and trade secrets. He quite rightly notes that trade secret/confidential information principles remain the most effective form of intellectual property protection for anything that can be kept secret. (Imagine if, instead of simply keeping it secret, the famous formula for *Coca-Cola* had simply been the subject of a patent: its commercial life would long since have expired instead of remaining more valuable today than ever before). The evolution of copyright protection for software (which I immodestly note I first recommended in a paper I delivered to the NSW Society for Computers and the Law soon after its 1982 inception, and which was subsequently published in the *Journal of Law & Information Science*² is explained and brought right up to date with a consideration of the Copyright Amendment (Digital Agenda) Bill 1999 and the most recent (1995) report of the Copyright Law Review Committee.

Particularly interesting from a copyright perspective has been the High Court's 1999 review of software copyright in *Data Access Corporation v Powerflex Services Pty Ltd.*³ David Webber returns to selected quotes from this authority on a number of occasions and accords it the significance it deserves in the development of an Australian body of technology law. Certainly it corrected a glaring error that survived for too long after *Autodesk v Dyason*⁴ in the form of the bizarre notion of substantiality being determined by reference to the ability of a computer program to operate without the copied piece of code, no matter how tiny a proportion of the whole that it represented. Software patents also receive extensive treatment in the balance of Mr Webber's chapter – again this is an area of much controversy with the main culprit correctly identified as a dearth of easily identifiable prior art which would demonstrate the lack of novelty of many new patents being claimed these days – this is a topic that *Going Digital* returns to more than once as different perspectives of the digital society are covered.

Despite David Webber's extensive treatment of software copyright, the Chapter 3 contribution by Fitzgerald and Cifuentes increases the focus somewhat to deal with a number of recent matters of relevance. Their treatment of courts' and legislatures' attempts to accommodate computer technology protection to copyright law is so realistic that it is almost as excruciating to read their chronicle as it was to live through that period of awkwardness when those who did not know the difference between a megabyte and a mozzie bite had too great a say in the direction our laws were taking. The authors' detailed treatment of reverse engineering, binary translation and emulation merit further study by those who make decisions in these critical areas, although I am a little less

2 (1983) 1 *Journal of Law & Information Science* 256.

3 [1999] HCA 49.

4 (1993) 176 CLR 300.

enamoured with the praise heaped on the United States approach to fair use in s 107 of their *Copyright Act* 1976 – I have not seen too much brilliant jurisprudence generated by that provision and, if anything, the United States courts seem to have taken it upon themselves to decide cases based on intuition more than robust legal principle.

Chapter 4 entitled “Patents in cyberspace: electronic commerce and business method patents” is by John Swinson and Gaye Middleton from Mallesons Stephen Jaques’ Brisbane office. It examines patent law principles and developments and helps to explain the difficulties presently being experienced that David Webber’s chapter 2 raised for closer consideration in the context of software patents. Like most commentators today, Mr Swinson and Ms Middleton note that much of the criticism of recent developments can be sheeted home to the operation of the United States patent system and the United States patent office’s focus on speed rather than thoroughness in its evaluation of its examiners’ performance. The authors’ practical hints at the end of their chapter are well worth noting, as is taking account of significant differences between the United States and Australian practices in relation to patent filing rules.

Chapter 1’s author returns to give us chapter 5’s “International initiatives concerning copyright in the digital era”. Personally I would have preferred to see a closer logical grouping of the various contributions (like the first edition) so that the ones dealing with copyright were together. However, I suppose the richness of each of the contributions, and the fact that many do cover multiple bases of intellectual property, made this hard to implement across the entire publication. Mr Fitzgerald’s tracing of the Berne Convention from its 1886 roots through to its 1994 re-invigoration through TRIPS is very worthwhile, and his discussion of the 1996 Copyright Treaty reminds us that Australia has dragged the chain on its accession to this treaty. Chapter 5 finishes up by considering the transfer of principles from international to domestic law and, like earlier contributions, discusses the Copyright Reform and Digital Agenda materials that I do not really think need to be repeated in such detail in successive authors’ papers. However some practical points are made in conclusion and the sample licence clause in footnote 34 will no doubt be seized by many as a useful starting point when updating their precedents in this area!

The next two chapters track the copyright theme more faithfully. First we have David Brennan from the University of Melbourne to talk about “Simplification, circumvention, fair dealing and Australian copyright law”. This is followed by Michael Lean’s perspective entitled “Copyright clearances and electronic communications policy for organisations: a practical guide”. Mr Brennan’s chapter starts with a primer on the lexicon of copyright reform, all of which are embedded in his chapter title. His treatment concludes with a thinly-veiled warning that I commend to all: “[a]n ‘information society’ which nullifies the economic value of copyright is, quite simply, not a sustainable one”.

Michael Lean’s chapter 7 contribution is a very practical one. It includes procedures for locating copyright owners and obtaining permissions or licences to use material in digital productions and concludes with a practical checklist of actions to be carried out before publication of material on a web server. The

checklist is not confined to copyright either – it extends to practical matters of detail such as the need to include the Australian Company Number on a website (which can now be met by displaying the organisation's Australian Business Number as long as the last 9 digits are common to both).

One of the most unusual and thought-provoking contributions in *Going Digital* is Maroochy Barambah and Ade Kukoyi's chapter 8: "Protocols for the use of indigenous cultural material". This chapter should be mandatory reading for all law students, practitioners and judges alike given the increase in what the authors call "the exploitation of indigenous cultural properties". Certainly I found it fascinating to appreciate the hopeless inadequacy of the *Copyright Act's* assumption that music is a piece of individual property, whereas the underlying tenets of Aboriginal customary law see indigenous music as a source of life – conveying stories songs and dances from the Dreamtime. Self-evidently, if copyright clearances are problematical in the case of conventional music, the logistics of identifying and obtaining appropriate permissions for the use of indigenous music might be thought to be insurmountable. No wonder, then, that Daki Budtcha Records has had considerable success since its formation as Australia's first and currently only privately owned indigenous recording and music publishing company. The *Our Culture, Our Future* report on indigenous cultural and intellectual property rights was released in September 1999 and provides a 10-step set of protocols to be followed by those intending to reproduce traditional songs, music or stories. As the authors note, in the absence of legislation that addresses the underlying tenets of Aboriginal customary law, the protocols developed by Daki Budtcha Records will help to educate many others to respect Aboriginal customs and practices.

Chapter 9 marks a change of topic with Phillip Hourigan's paper on "Domain names and trade marks: an Australian perspective". As Mr Hourigan points out in his very first paragraph, there can be only one top level domain which is hard to reconcile with multiple trade mark classes that potentially accommodate multiple legitimate uses of the same mark. It appears that the High Court's unanimous decision in *Campomar v Nike*⁵ had not been handed down at the time of Mr Hourigan's paper as it casts much light on this apparent dichotomy. Whilst the decision does not deal with domain names as such, its consideration of the interaction of trade mark, trade practices and passing off laws is extremely useful and instructive to those grappling with cybersquatters. The extraordinary success enjoyed by ICANN's Uniform Dispute Resolution Policy in just the first 6 months of 2000 shows how quickly things move in the digital era. Although Mr Hourigan's paper records all of the evolutionary trail up to its implementation, it is a shame that he had completed his paper before UDRP's solid performance record had reduced to academic hypotheses a fair few of what could otherwise have been astute and thoughtful predictions. One example of the errors that I mentioned creeps in on page 157 with the following misleading juxtaposition of sentences: "At present Robert Elz of the University of Melbourne holds the delegation of the control of the .au space in Australia from the [Internet

Assigned Numbers Authority]. Domain name administration was previously handled in Australia by Melbourne IT...". Let me set the record straight: Robert Elz came first! The author's consideration of the operation of s 120 of the Australian *Trade Marks Act* 1995 is particularly useful, as is his review of recent decisions and a comparison with the United States experience. However, again through no fault of his own, the extraordinary extent to which disputants have resorted to ICANN's UDRP in the first half of 2000 really supersedes a good deal of the discussion of the alternatives.

Part 2 on Electronic Commerce starts out with Andrea Beatty's revamp of her similar paper in the 1998 edition of *Going Digital*. As one of her partners I have to disclose a subjective bias in reviewing Ms Beatty's contribution. Nevertheless it is an important and useful contribution. You do not have to be Einstein to appreciate the importance as we head towards the Twenty-First Century (yes, my Virgoan pedantry demands no recognition of the next millennium before 1 January 2001) of a paper entitled "Internet banking, digital cash and stored value smart cards". The author notes that, as Australian law governing e-commerce is embryonic, institutions offering e-commerce products have to protect their interests by carefully drafted contracts. For balance, consumer rights issues are equally thoroughly addressed as are the important practical issues of jurisdiction and the stringent regulatory regime covering deposit taking institutions. The *Electronic Transactions Act* 1999 (Cth), although only commencing on 15 March 2000, receives an appropriate degree of discourse, although a more critical analysis is deferred until Adrian McCullagh's paper in chapter 11: "Legal aspects of electronic contracts and digital signatures".

Mr McCullagh suggests that "the single most important feature of e-commerce is that it is paperless". From this proposition develops a number of legal issues worthy of consideration, until we come to a legal assertion the accuracy of which I question: "[a] contract is formed in the jurisdiction where acceptance is received". I have gone through life thinking that a contract is formed in the jurisdiction where acceptance of an offer occurs, although I accept that until the acceptance is communicated, the offeror might withdraw the offer and there will not be any contract. One of us is wrong, and the consequences may be critical in determining the legal result in the event of contractual disputes straddling multiple jurisdictions. A contract requires offer, acceptance and consideration. In many cases acceptance is communicated by conduct, such as by a seller of goods on the Internet debiting the purchaser's credit card, or simply by delivering the goods. If Mr McCullagh is correct, then an express jurisdiction clause will be needed in every contract made on the World Wide Web between residents of different jurisdictions. Although that may be good practice in any event, if I am right the seller simply needs to ensure that it only accepts offers in the jurisdiction whose law it wishes to govern the transaction. As noted earlier, as a fellow member of the Federal Attorney-General's Electronic Commerce Expert Group, Mr McCullagh is able to comment very usefully on the provisions of the *Electronic Transactions Act* 1999 (Cth). Despite my honourable mention in footnote 43, the author disagrees with my assertion that the Commonwealth's Constitutional power to legislate with respect to electronic communications

extends to the validation of contracts effected thereby. One wonders how s 6(3) of the *Trade Practices Act* 1974 (Cth) has survived for 26 years if I am wrong, and I read ss 12(1)(g) and 16(1)(d) of the *Year 2000 Information Disclosure Act* 1999 (Cth) as supporting my submissions in that regard. Nevertheless, to be pragmatic, the Federal Government has confined itself to Commonwealth law; the States, led with some alacrity by New South Wales and Victoria, have already introduced mirror legislation which makes the hope of uniform national legislation somewhat more likely a prospect than the uniform national evidence legislation which was the previous great promise back in 1995 (and still yet to be adopted by other than New South Wales).

For chapter 12 Mr McCullagh is joined by Ian Commins to co-author "Cryptography: from information to intelligent garbage with ease". This is an extremely useful contribution to *Going Digital* as it explains in almost easy to understand language many quite complex processes. The historical treatment of the subject is impressive as is the discussion on public/private key certification infrastructure. Australia's tenacious adherence to the Wasenaar Arrangement is discussed but the relaxation of many measures occurred too recently to be acknowledged in this paper.

Chapter 13 marks another change of topic, this time Patrick Gunning's "Legal aspects of privacy and the internet" deals with another increasingly important topic. Indeed at the Computer Law Association's May 2000 conference in Washington DC the legal issues surrounding privacy were predicted to become the single biggest growth area for United States lawyers over the next three to five years. Although the United States has historically been somewhat *laissez-faire*, their pragmatic approach to trade policy is driving the renewed focus on what is required to appease the stringent adherents to the European Directive that requires suitable national treatment before critical exchanges of personal information can be permitted. The United States is not alone, with Australia's recent moves perhaps explicable by similar motivations, although most commentators have been more critical of Australia's proposed legislation than they have of the much weaker United States proposals. Mr Gunning discusses the National Privacy Principles in some detail and with a very practical orientation. Particularly intriguing is the OECD's "privacy policy statement generator" which contains a questionnaire the answers to which are used to generate a draft privacy policy for an organisation. The role of Internet Service Providers ("ISPs") in privacy protection, the laws relating to interception of telecommunications, the regulation of encryption software and the perennial subject of cookies are also dealt with in Patrick Gunning's chapter.

Whilst death and taxes we are told are certainties, Danny Fischer's "Electronic commerce and international taxation" gives an useful overview of the Australian income taxation system and addresses concepts such as residence, permanent establishment, and the impact of e-commerce on them. The characterisation of income for digitally delivered products, online transmission of copyright material and the domestic and global response of revenue authorities to e-commerce also attract thoughtful analysis culminating in the obviously correct observation that revenue authorities globally have to use

existing taxation rules, which rely on physical presence and tangible goods, to address the borderless, mobile, global economy and its intangible goods.

Chapter 15 sees the return of Gaye Middleton, this time in co-authorship with Jocelyn About to create a deceptively simply titled paper: "Jurisdiction and the internet". This is a very important contribution – the topic is plainly one which governments and regulatory agencies across the globe are straining to address in a principled but pragmatic way. The authors review recent United States decisions and are forced to conclude that the principles are not all that useful because many of them conflict with each other. At the moment the United States Supreme Court seems to prefer the 'focal point' test rather than the 'purposeful availment' test, yet the latter appears to be gaining ground in lower court decisions. In some recent cases a 'sliding scale' test of interactivity has been tried in website jurisdiction cases, with the likelihood of jurisdiction being attracted apparently correlative with the degree to which a person in the alleged jurisdiction is required to interact with the site. For myself, I prefer the simplistic "who is doing what, where and when?" test. This generally resolves itself into a factual question about the location of the server on which specific content appears, or about the place where offers are accepted by traders. This, in turn, may involve the simple but often difficult to answer question of the location of a server with a specific IP address. Current traceroute and whois services do not help much in this regard – what you really want is a physical location equivalence table for the DNS – perhaps Internet ver 6 should include this feature. Certainly I strongly disagree with the myth perpetuated by D J Post in his 1997 *Wayne Law Review* article that events over the Internet take place "everywhere, if anywhere, hence no place in particular". This is dangerous nonsense that an ill informed court might unknowingly take as an accurate statement of fact.

Beth Finch deals with "Consumer protection on the internet" in her useful chapter 16 contribution. I do not agree with Ms Finch's assertion, despite her footnote 63 authority from the *Otago Law Review*, that if "the internet vendor places advertisements on the internet which reach consumers in Australia, then it is likely that they are either carrying on business or engaging in conduct in Australia". Unless the web server on which the advertisement is placed is in Australia I do not accept that proposition at all. Why should the position be any different from mail order? A consumer places an order with an offshore trader, the offer is accepted overseas and the goods are sent to Australia. That conduct per se has never been regarded as attracting Australian jurisdiction and the same conduct using the World Wide Web should not lead to a different result. Amazon.com in Seattle happily accepts orders from Australia which are subject to the laws in force in the State of Washington, USA. I would have thought it was quite safe in doing that even without a jurisdiction clause in its express terms. The position is quite different with a fax or email intentionally sent to an address in Australia – in that case it is easy to demonstrate that the sender intended the contents of the communication to be received and acted upon in Australia, but a passive web site offshore is no different to a billboard on an overseas sporting venue that you might see if you visited, or you might see

whilst watching an overseas sporting event on television. Although Ms Finch argues that a totally passive website would not attract jurisdiction without "something more", I remain disturbed by her suggestion that "something more" can be "a consumer acting on the advertising". The balance of Ms Finch's paper reviews policy issues and regulatory activity but is not recent enough to have dealt with the Minister for Financial Services and Regulation's May 2000 *Building Consumer Confidence In Electronic Commerce*. I do agree with Ms Finch that an international dispute resolution regime, perhaps under the auspices of the World Trade Organisation as she suggests, is worth pursuing. The experience of those resolving domain name disputes under the ICANN rules is certainly showing the paradigm to be workable and effective.

Chapter 16 is an updated version of Steve White's first edition paper on "Website development agreements". He includes a checklist for website customers to consider, and a review of the liability issues that need to be addressed. Certainly, one cannot disagree with the author's conclusion that an appropriately drafted website development agreement is essential, and as the changes made from his first edition show, it is in the area of legislative change that most action seems to be occurring.

Part 3 on Liability Issues begins with Patrick Quirk's "Defamation in cyberspace and the corporate cybersmear". The importance of the issues raised in our borderless world is high, and the paper remains a useful guide to publishers and ISPs concerned about their liability. The updating of the paper usefully includes a reference to the eminently sensible decision of Simpson J in *Macquarie Bank v Berg*⁶ in which Her Honour noted the inappropriateness of the Supreme Court of New South Wales purporting to restrain the defendant from promulgating content throughout the world. Her Honour noted the concession by Plaintiff's counsel that there was no way to restrict the operation of the court's injunction, but I can envisage a time soon when injunctions will be framed by reference to a group of IP addresses as the courts and counsel become more savvy about how TCP/IP protocols work.

Brian Fitzgerald's third contribution to the collection is Chapter 19: "Internet service provider liability". In the short time since the first edition much has changed. I have spent many years lobbying for our regulators and legislators to understand the difference between the medium and the message and to understand that the postman should not be liable for what he carries. Whereas this message seemed to be getting through in 1998, within a year we saw the position swapped to one of total pragmatism – the paradigm seemed to have become "if an ISP can possibly intercept material, they may have to do so as there's no-one else to protect our children from the filth on the Internet". Thus the *Broadcasting Services Act* 1992 (Cth) was amended in 1999 to impose an obligation on ISPs to remove objectionable material if it is hosted in Australia and made the subject of a take down notice. I am rather surprised that Mr Fitzgerald has not updated his paper to cover this. Whilst the consideration of ISP liability for defamation and copyright infringement is useful, it does not

6 [1999] NSWSC 526.

advance the position much from the first edition and leaves me wondering whether the second edition is not just a little too soon after the first edition to be truly useful.

Peter Coroneos' contribution entitled "Anathema or necessity? The regulation of internet content" ensures that chapter 20 fills in the update gaps left by chapter 19. A comprehensive discussion of the *Broadcasting Services Amendment (Online Services) Act 1999* (Cth) is a 'must read' for any ISP and content provider. Also covered, given Mr Coroneos' position as Executive Director of the Internet Industry Association, is that organisation's latest Code of Practice, compliance with which is likely to be a good defence to any action under the amended *Broadcasting Services Act 1992* (Cth). The new regime does not require content blocking nor real time filtering of web content, although properly understood it may require an ISP to cease replicating particular Usenet newsgroup content in Australia. Certainly, the Australian Computer Society worked hard to have the Government understand the importance of not making the ISP the censor – their sole role is to remove access to material over which they have control and which is the subject of a formal take down notice issued by the Australian Broadcasting Authority.

Chapter 21 comprises "The Y2K experience: lessons for lawyers, firms, IT specialists and others working in the digital economy" by Eugene Clark, George Cho and Arthur Hoyle, all from the University of Canberra. The authors suggest that "few analysts or commentators have picked up on the most significant aspect of the Y2K saga: the major reason things did not go tragically wrong is that businesses, governments and other organisations were proactive in raising awareness about the problem and in committing resources, time and planning in acting proactively to prevent it from occurring". In this first of the three chapters on Y2K and the law, the authors submit that "for those organisations which already had in place a sound legal risk management program, the Y2K issue proved to be unproblematic; not only did most of these firms manage the risk, they benefited from it". That may be stretching things a bit much in my view, but I do agree that Y2K had beneficial outcomes to the extent that it focussed business people on their critical inputs and supply chain dependencies in a way that had never before occurred on such a large scale.

Chapter 21 continues with a consideration of what goes to make up an effective compliance programme, and discusses the issues surrounding the development of a compliance manual. Most of it is good practice in any event, but there is no denying that the Y2K problem did show how many organisations needed to be re-told how to suck eggs! I agree with the authors that it is often the case that what does not happen is more significant than what does; that what goes on behind the scenes is more important than what is prominent in the headlines.

In chapter 22 Leif Gamertsfelder sketches the Australian legal landscape in relation to the Y2K bug in a paper entitled "Legal liability for electronic date recognition defects". I must say I was intrigued by the author's deliberate refusal to use the terms 'millennium bug' or 'Y2K problem'. This he explains on the basis that "a less grandiose term is preferred... so that the essential nature of the

problem is described". I am not sure that is the result, but the chapter nevertheless succeeds in presenting an excellent review of the legal principles against which failure of software to perform correctly will be judged. Also considered are class action and cross border litigation issues, with the chapter concluding with a discussion of alternative dispute resolution mechanisms in the context of "EDR disputes".

Chapter 23 concludes the book with an insight into the shape of litigation to come. "Ready or not, here Y2K comes: likely winners and losers in the Y2K compliance game" is from two of the three authors of chapter 21: Arthur Hoyle and Eugene Clark. It reviews the state of Y2K readiness in several developed and developing countries and also considers legislative responses in Australia and the United States. Surprisingly to me, the authors suggest that the low incidence of litigation being monitored in the United States may be misleading. They suggest that the lack of standardisation in Y2K evaluation methodology and the lack of regulation of the programming community has resulted in a heightened sense of unease and hesitation among high technology industry players. The chapter seems to change tense in places as if the authors did not have enough time to revamp earlier material to take account of the world's actual experience. Thus, we have the interesting introductory remarks with the benefit of hindsight juxtaposed with a prospective assessment of the "likelihood of occurrence of significant international problems on 1 January 2000" and some present tense assessments of Australia's readiness. It is a little odd but does not detract too much from the value of the paper. Perhaps it might have been better not to try to add in some after-the-event material so that the paper remained consistently written from a present/prospective perspective. The discussion of the *Year 2000 Information Disclosure Act* 1999 in Australia and the *Year 2000 Information and Readiness Disclosure Act* 1998 in the United States (the former quickly becoming known colloquially in the same terms as the latter: the 'Good Samaritan Act'). For myself the most useful part of chapter 23 is the review of United States case law categorised by industry sector such as Health, Business, Telecommunications and the like. The authors conclude that the lack of Australian case law or guiding legislation (other than the 'Good Samaritan Act') has left Australia largely watching developments in the United States. I must say, speaking for myself, that is a prospect I regard with some bemusement – if we have a chance to avoid rushing in where fools often go first, we may not be angels but we are likely to avoid the jurisprudential quagmire into which American courts often descend when trying to grapple with novel technological issues.

A two page rather rudimentary Glossary and 15 page index completes this large work. On balance, I feel that the second edition is premature. While the first edition was excellent, in my view more time was needed for some of the issues to mature and develop before a second edition was prepared. It is not that the pace of change has slowed, but it looks to me as though the authors of the first edition papers had difficulty freshening up their 1997/98 thoughts without a more substantial effort than they have been able to devote. *Going Digital 2000* is

still a most valuable addition to the literature, but if you already have the first edition, to my mind the second edition cannot justify the additional shelf space.