Editorial

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1 Introduction

I am delighted to be invited as a 'guest editor' of this special edition of the *International Journal of Technology Policy and Law*. I want to thank Dr. Niloufer Selvadurai and her team for their assistance, support and encouragement in making this task as pleasant as possible. I want to thank the individual contributors from various parts of the world for submitting their articles to this journal and putting the 'special' into this edition.

As originally conceived, the theme of this edition was to be commercial applications of technology, law and policy. Clearly, we live in an information age and many important issues are raised by the intersection of law, technology and policy within that commercial context. The perspectives are at once interdisciplinary and practical.

2 Technology in the workplace

We turn first to the workplace where Craig Cameron provides an insightful and practical commentary on the challenges created by the growing problem of pornography in the workplace. Technology has facilitated the infiltration of pornography into the workplace. Employers have devised employment policies as a means to regulate this infiltration of pornography. In addition to preserving the province of work for work, another major rationale for such polices is that an employee has a legal right to a safe workplace free of sexual harassment and discrimination. Cameron's article draws on unfair dismissal law in Australia to examine policies prohibiting electronic pornography in the workplace. A study of unfair dismissal cases reveals the dynamics of workplace pornography, the rationale for regulating pornography and the mistakes made by Australian employers when formulating and enforcing their policies. The article makes a series of recommendations which employers in any jurisdiction can use to strengthen their policies and minimise litigation risks.

3 Cloud computing

While technology can bring porn into the workplace, it can also move data out of the workplace. Eugene Clark and Ian M. Sims' article deals with the timely topic of cloud computing. So compelling have been the economic advantages of moving technology and data to a cloud environment, that many firms and even governments have made the move without a thorough understanding of the legal risks, especially in relation to security, privacy and intellectual property rights. This article identifies the manor risks inherent in this new form of computing and offers some suggestions on how firms and governments might best manage those risks.

4 Commercial vs. public interest in an information age

Richard I. Copp insightful article on WikLleaks explores the policy borderline between an internet site with an avowed public interest and possible liability of site owners/controllers for uploading third party contract in breach of government of commercial interests. The uploading of US diplomatic cables onto the WikiLeaks' wiki website has sparked outrage in the USA, Australia and the UK. US authorities are reportedly still considering whether they can prosecute WikiLeaks and its founder Julian Assange. Copp's article investigates the grounds under US and Australian Federal law for prosecuting both, and the implications of the case for information technology (IT) law. Conviction under US law would most likely be based on unlawful receipt or unauthorised possession of information which could injure US interests; failing to remove offending material from the wiki within a reasonable time; and 'aiding' the uploading of the stolen material albeit passively, by providing a wiki on which they could be anonymously posted by a third party. This analysis has important implications for IT law. Wiki providers – and so-called 'mirror' websites – would appear not to be liable for publishing on their wikis for defamatory or other material that does not clearly threaten national security, since they do not 'publish' material but merely make available a conduit for others to publish it. Nevertheless, a prudent wiki provider would monitor site content and remove very sensitive information. Finally, Copp explores the possibility of international regulation that would govern wikis and mirror sites.

5 Technology, law, policy and finance: electronic notes and bills of exchange, electronic funds transfer and letters of credit

The next three articles cover various aspects of technology, law and policy related to finance. The world of finance was an early adopter of technology as a means of facilitating the finance of international trade. Professor George Cho's article on electronic funds transfer (EFT) has evolved over two and half decades and promises a cashless society such as the use of digital cash in business-to-consumer (B2C) transactions in electronic commerce (e-commerce). Cho argues, however, that EFT payment systems have yet to fully mature. For successful e-commerce, the needs of trust, accessibility, security and assured online payments are almost fundamental. EFT goes only part of the

way to satisfy these requirements and there remain many issues that require resolution. Some countries have tackled these issues through specialised legislation while others have resorted to soft-touch codes of conduct. New technologies such as mobile banking (m-banking) and near field technologies point the way to the future of electronic banking. However, new issues have surfaced through opportunities for consumer fraud, technological challenges to older users and the creation of a digital divide between those who have the technology and those where are technology 'disenfranchised'.

Dr. Alan Davidson's article on letters of credit examines the policy issue of unconscionability as a ground to set aside obligations under a letter of credit. Davidson notes that letters of credit are utilised in 15% of international trade or more than one trillion dollars each year. On policy grounds of supporting the viability and long standing law in relation to letters of credit, Davidson questions recent judicial decisions in some countries which would extend the fraud exception to a more to permit the non-enforcement of a letter of credit under the more general doctrine of unconscionability. There has always been a tension in the law between the need for predictability and certainty versus the need for flexibility and accommodation of the law to specific circumstances. According to Davidson, international trade and commerce will be better served by limiting these recent judicial intrusion into what has been well settled law in relation to letters of credit.

Hong Kong's Professor Gonzalo Villalta Puig treats the important topic of negotiability of money market securities and information and communications technology in making a call for the dematerialisation of bills of exchange and promissory notes: His article considers the significance of information and communications technology to the negotiability of money market securities in Australia and, by extension, other jurisdictions with legislation derivative from the UK's Bills of Exchange Act 1882. Puig argues for the dematerialisation of bills of exchange and promissory notes through statutory provision for their creation, recording, and transfer by electronic means. While electronic bills and notes could, arguably, meet the statutory requirements for writing and signature and, therefore, be valid at common law, their legislative recognition would reduce the compliance costs that their paper counterparts generate with little if any risk of computer fraud. Perhaps more importantly, legislative recognition of electronic bills of exchange would give certainty to businesses open to electronic commerce and, thereby, help to realign commercial law with commercial practice.

6 Resolution of commercial disputes on cyberspace

The final article, by US Professor and Dean Ann E. Woodley examines the very important topic of online dispute resolution. Woodley addresses the present and future needs for appropriate processes to prevent and resolve commercial disputes, particularly those in the online, national, and international contexts. She provides a brief history of the development of ODR, and then describes its current limitations. Finally, putting theory into practice, Woodley describes her own pioneering work in teaching dispute resolution online. Through such work and its relationship to e-learning it is hoped new models of dispute resolution are evolving that will help to resolve issues generated by the rapid changes in the way the world does business.