

Intellectual Property

Cases, Materials
and Commentary

5TH EDITION

S Ricketson • M Richardson • M Davison

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Preface

Change remains a continuing feature of the Australian intellectual property law landscape, even though less than four years have elapsed since the fourth edition of this casebook. There have been significant court decisions in all areas, and major amendments to patents, trade marks and designs laws were contained in the artfully entitled Intellectual Property Laws Amendment (Raising the Bar) Act 2012, just passed as this edition was going into page proofs. Policy reviews have also continued apace, amid much official fanfare and calls for public consultation, with detailed references being made to various parliamentary committees, the Advisory Council on Intellectual Property, the Productivity Commission and the Australian Law Reform Commission.

So far as possible, we have sought to include and discuss these changes in the present volume; in consequence, there has been significant revision and/or restructuring of most of the chapters. Change has not been confined to the domestic sphere: at the international level there has also been considerable movement, particularly in relation to developing countries and the growing recognition of the relationship between intellectual property regimes and human rights concerns. In one specific area, Australia is leading the world; namely, in relation to plain packaging legislation for tobacco products, which has led to challenges within the World Trade Organisation under the TRIPS Agreement and the Paris Convention.

As stated in the Preface to the previous edition, any text in this area, whether treatise, monograph or casebook, is but a snapshot in time of a continuous stream of material that is altering daily before one's very eyes. On the other hand, there is a need to maintain perspective and balance with respect to these matters, and to recognise that there are important themes that continue to underlie and sustain intellectual property law and practice. We refer again to the Book of Ecclesiastes (1:8) which states, 'there is no new thing under the sun'. The truth of this statement is more than borne out by the history of intellectual property, which reveals striking counterparts to each of the pressing debates and controversies of today (and tomorrow), whether they be over the impact of new technologies, the scope of protection (or whether there should be any at all), or the balance between users and right holders. It is our hope that the present edition will enable readers to perceive this broader perspective and appreciate intellectual property as a whole, notwithstanding the increasingly compartmentalised and specialised character of contemporary intellectual property law and practice. Above all, we hope that the present edition continues to communicate our own enthusiasm for the subject and the host of interesting legal and policy questions that it raises.

So far as the individual chapters are concerned, Sam Ricketson is responsible for Chapters 3–9 and 11–14, Megan Richardson for Chapters 1–2, 10 and 15 and Mark Davison for Chapters 16–19. Authorial responsibility for the overall work, however, is both joint and several. While there are differences in style and emphasis between chapters, we hope that readers will appreciate the diversity of perspectives and approaches that joint authorship allows. Nominally the currency date for the edition was the end of April 2012, but in many cases

updating occurred at the page-proof stage (as late as July 2012). Developments in this area do not wait upon publishing deadlines, and inevitably, teachers and students will need to update and revise their material over time. Our expectation, however, is that there will be a sufficient corpus of both current and seminal material in the present edition to make this task a relatively minor one, at least for the reasonably foreseeable future.

As always, it is difficult to single out particular individuals to be thanked for their contributions to this book. We are very grateful to many people — academics, practitioners, judges and students — who, over the years, have generously shared knowledge and ideas about intellectual property matters with us. Directly and indirectly we have been informed and influenced by these interchanges, and we again take the opportunity of acknowledging this. We also wish to thank LexisNexis and, in particular, our editor, Georgia O'Neill, for her patient and meticulous editing of a large and unwieldy manuscript. Finally, we are grateful to our families for their patience and understanding during the revision process.

Sam Ricketson
Megan Richardson
Mark Davison

6 August 2012

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