

## Endnotes

1. See <[www.spamfilterreview.com/spam-statistics.html](http://www.spamfilterreview.com/spam-statistics.html)>.
2. Adobe's Portable Document Format.
3. Tagged Image File Format.

4. [2002] VSC 73 (22 March 2002) BC200201564.
5. At [385].
6. *British American Tobacco Australia Services Ltd v Cowell* [2002] VSCA 197

- (6 December 2002) BC200207341.
7. At [175].
8. At [173].
9. *Report of the HIH Royal Commission* (Vol 1) 4 April 2003 p 30.

## bytes

### New piracy report: open source could save billions

In July 2004 the Business Software Alliance (BSA) released a report on illegal copying of software around the world. The report, conducted by the International Data Corporation, details high levels of illegally copying of software in the South East Asian region, with rates as high as 92 per cent in some areas and 36 per cent overall. The report assesses losses around the world at \$29 billion. The results in this report are broadly consistent with those from previous reports conducted by the BSA in this area. This suggests that the losses to the economy due to piracy are a natural concomitant of the closed source development model.

Open Source Industry Australia Ltd (OSIA) estimates that illegal deployment and use of open source software worldwide is substantially below that set out in the BSA report. Open source as a development model has historically demonstrated low levels of illegal copying and usage, even in countries such as China, Russia and Zimbabwe, where reports of illegal use of closed source software are very high. OSIA notes that widespread adoption of open source software could save the economy billions of dollars from revenue that would otherwise be lost to illegal copying. With low levels of illegal copying, open source provides an important platform for the creation and maintenance of national IT sectors. As such, OSIA argues that open source ought to be a key element of any country's information technology strategy. See <[www.bsa.org/globalstudy/](http://www.bsa.org/globalstudy/) and <[www.osia.net.au/](http://www.osia.net.au/)>. ●

Brendan Scott, *Open Source Law*.

### Australian Privacy Commissioner launches online interactive system: ComplaintChecker

The Australian Privacy Commissioner (the Commissioner) received 1276 complaints for the 2003/04 financial year; 60 per cent of these complaints related to private sector organisations. This is more than six times the number of complaints received before the *Privacy Act 1988* (Cth) (the Act) was extended to cover much of the private sector in 2001.

Of the complaints made to the Commissioner about half are not investigated for various reasons; for example, because the complainant has not yet raised the issue with the agency or organisation, or because an exemption applies, such as the exemption for employee records.

To assist members of the public who may be thinking about making a privacy complaint the Office of the Federal Privacy Commissioner (the Office) has developed an expert system called *ComplaintChecker*. *ComplaintChecker* is a logical decision tree which reaches conclusions on the basis of user input to help people decide whether to lodge a complaint. *ComplaintChecker* was launched on 28 July 2004.

*ComplaintChecker* is an online interactive system which poses a series of up to eight simple questions requiring 'yes', 'no' and 'I don't know' user responses. It is designed to give individuals information on whether the Commissioner is likely to be able to investigate their complaint. It also outlines the steps the individual needs to take for the Commissioner to investigate a matter.

*ComplaintChecker* gives assistance to individuals about privacy complaints against private sector organisations, government agencies, credit providers and credit reporting agencies; it does not

cover complaints about tax file numbers, data matching or spent convictions. In these cases the complainant is referred to the Commissioner's website or hotline.

The Act includes exceptions, exemptions and discretions which affect the Commissioner's powers to investigate complaints received. *ComplaintChecker* incorporates these, and allows individuals to see how they would apply to their specific complaint scenario.

If after having used *ComplaintChecker* people are still not sure if the Commissioner is likely to investigate their complaint, they are encouraged to seek further information from the Office or to go ahead and lodge a complaint.

To complement the *ComplaintChecker*, the Office has published casenotes outlining the application of the Commissioner's discretions when deciding whether to investigate complaints. These casenotes are derived from actual de-identified complaints lodged with the Commissioner.

Similarly, the Office routinely publishes other casenotes that outline complaints about breaches of the Act, how the law applies and remedies agreed to between the parties to a complaint. The Office also publishes formal decisions made by the Commissioner under s 52 of the Act. These are published on the Office's website as 'Determinations'.

*ComplaintChecker* is located on the Commissioner's website at <[www.privacy.gov.au/privacy\\_rights/ComplaintChecker/index.html](http://www.privacy.gov.au/privacy_rights/ComplaintChecker/index.html)>.

Casenotes and determinations are located on the Commissioner's website at <[www.privacy.gov.au/act/casenotes/index.html](http://www.privacy.gov.au/act/casenotes/index.html)>.

The Office's hotline number is 1300 363 992. ●

*For more information contact Annelies Moens, Deputy Director Compliance, Office of the Federal Privacy Commissioner.*