The Material in this publication is based on papers presented at the First International Forum on the Content Industry: Legal and Policy Framework for the Digital Content Industry collaboratively held by the East China University of Political Science and Law (http://www.ecupl.edu.cn) and the Queensland University of Technology (http://www.qut.edu.au) in Shanghai, People’s Republic of China, May 2007. This publication is an output of the ARC Centre of Excellence for Creative Industries and Innovation (http://www.cci.edu.au) Queensland University of Technology.

Unless otherwise stated, the law as it appears in this book is current as at December 2007. Note the text of some of the chapters has been slightly modified as a result of translations.

ISBN 978-1920898-72-4

The digital version of this book is also available electronically through the Sydney eScholarship Repository (http://ses.library.usyd.edu.au) and The Queensland University of Technology ePrints Repository at: (http://eprints.qut.edu.au).
PREFACE

In 2006 East China University of Political Science and Law (ECUPL) and the Queensland University of Technology (QUT) established the ECUPL-QUT Sino-Australian Intellectual Property Law Research Collaboration Program. The Program jointly hosted by Professor Fuping Gao (Dean of Intellectual Property School, ECUPL) and Professor Brian Fitzgerald (Director of Intellectual Property Law Research Program, QUT) aims to develop stronger research links between the two universities in the area of intellectual property law and is one of the first collaborations of its kind in China and Australia.

In particular, the Program will investigate:

- the role of Australian and Chinese copyright law in the digital environment;
- the implementation of the proposed Australia-China Free Trade Agreement in regard to intellectual property law;
- intellectual property law issues for the digital content industry in China and Australia;
- patent law issues relating to new technologies under Australian and Chinese law; and
- trade marks and domain names under Australian and Chinese law.


The editor’s acknowledge the generous support of both ECUPL and QUT, in particular ECUPL President, Professor Qinhua He, and General Secretary, Professor Zhichun Du and QUT Vice-Chancellor Professor Peter Coadlrake and University Registrar Dr Carol Dickenson, who all participated in the conference. The editor’s are also very grateful to the International Cooperation and Exchange Centre at ECUPL for their assistance, in particular Professor Xiaohong Liu and Ms Fei Xia.
The editor’s also thank all of the speakers and participants at the “Legal and Policy Framework for the Digital Content Industry Forum”, who helped to make it a tremendously successful event. The Conference which featured a number high profile speakers, led by Chief Justice Zhipei Jiang, Chief Justice of the Supreme Court of the People’s Republic of China, attracted over 100 participants from Australia, China, Singapore, Hong Kong, Taiwan, Japan, the United States, the United Kingdom, France, Germany and the Netherlands. We are particularly grateful to all the speakers who participated in the Conference, particularly Chief Justice Zhipei Jiang, Chief Justice of the Supreme Court of the People’s Republic of China and Chao Xu, Director of Copyright Department, National Copyright Administration of the People’s Republic of China.

The editor’s also acknowledge the generous support of conference sponsor’s, the Australian Research Centre of Excellence for Creative Industries and Innovation (CCi) hosted by QUT, QUT’s Institute of Creative Industries and Innovation (iCi), Tencent QQ.com, Shanda Interactive Entertainment, TransAsia Lawyers and Shanghai De Qin Law Firm.

The editor’s are also particularly grateful for the tremendous assistance in organising and running the conference provided by Conference Secretariat Qian Sun, Nina Shen, Weifen Fu, Min Li and all of the ECUPL student volunteers. The editors also owe thanks to Celeste Bennett for her assistance in the preparation of the chapters which appear in this book.

December 2007

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Intellectual property law and its application to new digital technologies has rapidly become one of the most important areas of the law. The development of new technologies over the past few years, such as the Internet and the vast array of digital content which is now available, have created many difficult challenges for the law and the Courts. These challenges can be no better appreciated, than in my experiences as a Judge in this area, with there being 17,769 intellectual property cases before the courts of the People’s Republic of China in 2006. Among these cases are 2,277 criminal cases, with 3,508 individual offenders punished.

Intellectual property plays a key role in the development of the national economy of the People’s Republic of China. Hu Jintao, Secretary General of the CPC Central Committee, in an effort to strengthen the intellectual property system of the People’s Republic of China, delivered an important speech in the Politburo’s 31st Collective Study on 26 May 2006 in which he said “We should give full play to the intellectual property system in strengthening national economic, scientific and technological capabilities, as well as our international competitiveness and safeguarding national interests and economic security, so that it can provide a strong backbone for China to enter the ranks of innovation-oriented countries.”

Intellectual property law is an integral area of the law for any society. As a general principle, it refers to the various rights, which the law and courts accord for the protection of investment in creative effort. Intellectual property laws also aim to strike a careful balance in providing incentives for innovation. If there is too little protection, investment in intellectual property dependent industries will be jeopardised. While too much protection, is likely to disadvantage society and encourage monopolies.

This collection of scholarly papers will prove to be a valuable resource for students, practitioners, judges and anyone interested in understanding some of the challenging issues, which new technologies have created for the law. It brings together a wide range of experts in
their respective fields from across the Asia-Pacific region, which helps to make it a truly unique and diverse collection. I trust you will enjoy the book.

Chief Justice Zhipei Jiang

Supreme Court of the People’s Republic of China

Beijing

November 2007
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