



Sri Lanka Hosts Commonwealth Law and Technology Workshop for Asia



Commonwealth Deputy Secretary General, Mrs Florence Mugasha, delivering the opening remarks. Seated (right) Hon Prime Minister Mahinda Rajapakse of Sri Lanka and Mr Manju Haththotuna, CEO, Information and Communication Technology Agency of Sri Lanka (ICTA). Seated far left, Commonwealth Secretariat staff and Resource Person.

As technology develops and Commonwealth countries undertake reforms to regulate and ensure that relevant infrastructures are in place to meet the challenges presented by these innovations, the Commonwealth Secretariat continues to support their endeavours to become digitalised nations. To this effect the Legal and Constitutional Affairs Division (LCAD) and the Governance and Institutional Development Division (GIDD) organised a workshop for the Asia region in Colombo to bring attention to issues such as the relevance of technology to governance and the legislative reforms required in developing a technology environment. This is the second in a series of workshops, the first being held in Caribbean as reported in the January issue

of LAWDevelopment. The provisions of the eGovernance model laws developed by LCAD were discussed in general in order to assist government legislative drafters in their work. Attention was also drawn to LCAD's newsletter, LAWDevelopment, which monitors and reports developments in law and technology in Member Countries.

Several government dignitaries were present at the workshop which was opened by the Commonwealth Deputy Secretary-General Mrs Florence Mugasha and Prime Minister Mahinda Rajapakse of Sri Lanka. The workshop was supported by the Information and Communications Technology Agency of Sri Lanka (ICTA). The Report of the workshop can be found on www.thecommonwealth.org/law.

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Antigua and Barbuda considers Negotiated Settlement in WTO Net Gambling Case

The WTO panel proceedings over internet gambling between Antigua and the United States have been suspended the proceedings until 23rd August so that the two countries can resolve the dispute through negotiation. Antigua and Barbuda had successfully challenged the US ban on internet gambling when the WTO ruled that the ban on internet, telephone and other remote gambling services violated U.S. trade commitments. Antigua and Barbuda had been trying to build an offshore casino industry to offset declining tourism. Online gambling industry is rapidly growing worldwide and with industry estimate rated at around \$7.5 billion this year, the country is hoping to capture a small portion of that total which would assist to offset declining tourism.

Indian Supreme Court Rules - Domain Name Merits Copyright Protection

The Supreme Court has held that domain names are eligible for similar legal protection given to trademarks or any other intellectual property. The decision arose from the case of Satyam, a company listed on NASDAQ which traded under the name ‘Sify’ – a name by which it is popularly

known in India and under which its website is listed as www.sify.com. Satyam (‘Sify’) learned that another company was using (as part of its corporate and domain name) the word ‘Siffy’ which had close visual and similar phonetics with ‘Sify’ and it served a notice on the other company to desist from carrying on business in that name. Satyam also obtained a restraining injunction against ‘Siffy’. The High Court overturned the order and on appeal to the Supreme Court, it was held that although the Trade Mark Act may not adequately protect domain names, this does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing off. The Supreme Court noted that Satyam was able to show that it had the goodwill and reputation claimed by it, in connection with the trademark ‘Sify’. The respondents had argued that the name ‘Siffy’ is an acronym based on the initial letters of the promoters, but they could not provide adequate evidence to support their argument. The conclusion of the Court was that the respondents were merely seeking to cash in on the reputation of Satyam as a provider of services on the internet.

Mauritius Enacts Data Protection Act

The National Assembly of Mauritius has passed the Data Protection Act. The Act is intended to protect the privacy rights of individuals (i.e. living identifiable person) vis-à-vis the storage,

transmission and manipulation of personal data. The express consent of the data owner is needed in order to process his/her data which must only be used for the purpose for which the consent is sought. For example, a credit card company which has the consent of its customers to process their data for payment purposes must not use the data for any other function. There are exceptions to the consent requirement such as where the use of data is for the administration of justice or in the public interest. The Act defines "data" in the context of both electronically and manually stored data, but manually processed data will only be covered by the Act if it is part of a system structured by reference to individuals in such a way that specific information pertinent to a particular individual is readily accessible. Special protection is given to sensitive data such as that regarding racial or ethnic origin, political opinion, religious or similar beliefs, membership of trade union, physical or mental health, sexual preferences or practices, commission or alleged commission of an offence or proceedings for an offence of the data subject. The Act also addresses the important issue of security where the onus is on the "data controller" to prevent unauthorised access to the data.

New Zealand - On line Credit-Card Fraudster Convicted

The first conviction under the new computer provisions of the Crimes Act of New Zealand took place when Phillip Greig was sentenced in the Manukau District Court in June for five charges of using a credit card to unlawfully obtain property and one charge of dealing with accessing a computer system – the internet. Mr Greig took stolen credit-card numbers and used them for online "card-not-present" transactions. He visited an internet chatroom and obtained a link to a site listing stolen credit card numbers. He then rang a computer seller, Compulink and used several credit card numbers to buy \$6,900 worth of equipment. He returned again to spend a further \$1,400 on computer gear. His luck turned when he tried to convert the goods into laundered cash by

selling the equipment on an auction website. Staff at Compulink recognised the equipment online and called the police.

Pleading that he needed to meet his household expenses, Mr Greig admitted guilt and was sentenced to 20 months in prison for accessing a computer system and 18 months for other charges of credit-card fraud. He was refused home detention and the sentences are to be served concurrently.

Sweeping Reform on Online Gambling

The New Zealand Gambling Act which was passed last year became effective from 1st July. It introduced sweeping legislative changes to control the growth of gambling venues and restrict internet gambling. Under the Act it will be harder to get gambling licences and easier to lose them. It prevents the opening of more casinos and the existing ones from expanding. Public Houses, clubs and casinos will need policies to identify and approach problem gamblers and people under 18 years of age will no longer be allowed to use poker machines.

The Act also reduces the number of operating pokies and local authorities will play a key part in how those numbers change. Interactive gambling by internet, cellphone and television is allowed but this can only be done through the Lotteries Commission. New Zealanders will be able to bet on overseas websites. Community groups such as schools, churches and clubs can run house games with prizes up to \$5000 without paying licensing and compliance fees but not pokies.

A gambling Commission is established under the Act with powers to suspend and cancel casino licences. It will also become an appeal body dealing with public and industry complaints. The Gambling Act replaces the Gaming and Lotteries Act of 1977 and the Casino Control Act 1990.

LAW DEVELOPMENT SECTION TACKLES ANTI COMPETITION ISSUES



Members of the Asia Expert Group Meeting on the Draft Competition Model Bill

The role of competition in economic growth and development is not in doubt. But competition can only be sustained if it brings the desired effects which include the diffusion of economic power and the maximisation of innovation, economic and social mobility. There are three ingredients of a successful competition policy - a domestic institution that promotes competition and staffed with able and economically literate personnel who are free of biases against business and are genuinely independent of the politicians who appoint them; having the right procedures in place and the enactment of a properly drawn up competition legislation. The latter is the most important.

As part of the mandate of the Legal and Constitutional Affairs Division (LCAD), the Law Development Section is assisting the development of a model law on competition which would provide an excellent starting point for Member Countries desirous of reform in this area. Whilst the end product is intended to promote a robust competition atmosphere, it is also intended to be sensitive to the needs of small and developing

countries, particularly the vulnerable sectors of their economies.

Issues which arose from the draft model law developed by the Law Development Section are being addressed by regional experts. The first of these expert group meetings took place in Singapore in May 2004 for the Asia region. The meeting deliberated, amongst others, on significant issues such as how to prevent a corporation from abusing its dominant position; the judicial and enforcement powers of a competition commission; ensuring the independence of a competition commission; detection of cartel activities; areas which must and may be excluded from the ambit of competition law and policy and consumer protection in a competition atmosphere, especially from anti-competitive behaviour resulting for example from collision between companies. The meeting also examined the types of encouragement which could be provided for small businesses in order to be able to compete equitably and effectively. The report of the Expert Group Meeting can be found on www.thecommonwealth.org/law.

COMMONWEALTH LAW BULLETIN CELEBRATES 30 YEARS OF PUBLICATION

Commonwealth Law Ministers, at their meeting in 1973, mandated the Commonwealth Secretariat to produce, on a regular basis, a bulletin or journal highlighting significant developments in various areas of the law in Commonwealth countries, with a view to keeping Commonwealth Governments apprised of these developments. This resulted in the birth of the *Commonwealth Law Bulletin (CLB)*. The *CLB* is central to disseminating information by the Legal & Constitutional Affairs Division on legal developments around the Commonwealth. The information provision role played by the *CLB* is essential if one of the Commonwealth's major comparative advantages is to be maintained – that of sharing of legal tradition and experience. It fosters development of common approaches to new issues and saves significant time and effort, particularly in small states.

The first issue of the *CLB* was published in July 1974 containing a modest 50 pages of information on topics indicated to be of special interest by Law Ministers. Since then it has grown in stature and esteem. The *CLB* provides an invaluable resource in that it is a one-stop reference manual of developments in the law mainly in Commonwealth jurisdictions and also outside the Commonwealth. Topics covered range from recent legislative initiatives, case law, law reform proposals, international law, and developments in the legal profession, to articles of topical interest and outcomes of international meetings. Because of this ambitious range, it is a unique publication in a legal literature environment that is increasingly geared towards specialist concerns. It can therefore be described as one of a kind and an invaluable research tool for lawyers, judges,



academics and policy makers alike. Nowhere is this more the case than in small jurisdictions often with no resources to subscribe to costly legal publications produced in major Commonwealth capitals. Judges and practitioners use it to keep themselves updated with recent developments in jurisprudence; law drafters use it for precedents of legislation which they themselves are about to draft; law reform agencies use it to monitor the activities of fellow law reform agencies and policy makers use it for ideas and approaches. The *CLB* clearly fills a vital gap in many countries whose legal systems may be based on precedent but to whom the necessary jurisprudence is not readily available. The *CLB*

continues to serve both developing and developed Commonwealth member countries. If the law is one of the consensual cementing agencies of the Commonwealth, the exchange of ideas, concepts, techniques, and rationales of the law as a social instrument provided by the *CLB* helps to give that consensus. Its role in a Commonwealth which now includes new legal traditions may be even more critical.

As it celebrates its 30th year of publication, the *CLB* continues to be the flagship publication of the Secretariat in the legal field.

The Editors of LAWD also take this opportunity to say goodbye to the editor of CLB, Pam Nadarasa (Sri Lanka)

who leave in the latter part of this year.

We wish her all the best in her future endeavours.

Canada—Competition Bureau Imposed Fine on Scammer

A man has been fined 40,000 Canadian dollars for deceptive practices under the misleading representation provisions of the Competition Act of Canada. Daniel Klemann of the Internet Registry of Canada (IROC) targeted and sent deceptive mail to over 73,000 businesses and other non profit bodies that their Internet domain name registration were about to expire and gave several options for their renewal. His intention was to deceive the recipients into thinking that they were existing customers of IROC's domain name registration service. In addition to being fined he was also prohibited from engaging or participating in any activity involving the making of representations for the purpose of soliciting business for five years without first obtaining a positive written opinion from the Competition Bureau, pursuant to section 124.1 of the Act.

Supreme Court's Landmark decision on Web Music—ISPs Not Liable for Copyright Fees

The Supreme Court has ruled that Internet Service Providers (ISPs) are not liable for copyright fees for music downloaded from the internet. This was so held in a case brought by the Society of Composers, Authors and Music Publishers of Canada (SOCAN) who argued that copyright laws could be stretched to apply to offshore web that serve Canadians so that Internet Service Providers (ISPs) would pay tariff for music downloaded from the internet in Canada. This argument was opposed by the Canadian Association of Internet Providers, alongside the subsidiaries of high-tech giants such as Bell, Sprint, AOL, MCI, IBM and Yahoo. They argued that artists should seek royalties directly from Web sites that offer their works, not from the companies that provide access to the Internet. Whilst this decision was seen as victory for internet users because it keeps internet rates low for consumers, others feel that it makes clear that Canadian copyright laws needs reform.

The Canadian position was compared to the United States where ISPs can be forced to remove

content from their servers if they are properly notified that one of their users is breaking copyright law. At the same time, US law protects the ISPs from possible legal action by customer for having their content removed.

This case started in 1996 when SOCAN first asked the copyright board to implement tariffs on ISPs. A federal appeal court decided that ISPs were not liable for such royalties unless a website distributing music was cached, or copied on to the ISP's service.

The Supreme Court ruling does not prevent recording artists from suing websites that distribute their music without authorization. This could apply even to sites in other countries, as long as the end users are Canadian or there is some other "real and substantial" connection to Canada. The supreme court decision is at www.lexum.umontreal.ca/csc-scc/en/rec/html/2004scc045.wpd.html

Samoa Ratifies Annex IV of Marine Pollution (MARPOL) Convention

Samoa has ratified the Regulations for the Prevention of Air Pollution of Ships. The Regulation is Annex IV of the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto. Samoa's ratification is significant in that not only does it bring the Regulation into force, it also means that the full set of MARPOL international regulations for the prevention of pollution by ships are now in force. This particular Regulation sets limits on sulphur oxide and nitrogen oxide emissions from ship exhausts and prohibits deliberate emissions of ozone-depleting substances. It also prohibits the incineration on board ships of certain products, such as contaminated packaging materials and polychlorinated biphenyls (PCBs).

Governments were urged to take steps to ratify other IMO pollution-prevention instruments, such as the International Convention on the Control of Harmful Anti-fouling Systems on Ships of 2001, which has so far been ratified by eight of the 25 States representing 25% of the world's tonnage required for it to enter into force.

India – Court Refuses to “lift” the Corporate Veil for a Wrongdoer.

A High Court in India has held that a petitioner, being the wrongdoer herself, cannot seek to lift the corporate veil to see the real persons behind the face of the corporate personality. The Delhi Development Authority (DDA), the urban development authority for India’s capital city, leased out a property to the petitioner with a condition that the premises should not be used by any other person other than the petitioner without its consent. The petitioner floated her private limited company and the company started conducting business from the leased premises. The DDA initiated eviction proceedings against the company and cancelled the lease of the petitioner. The petitioner challenged the actions of the DDA contending that she was the major shareholder in the company and as such, the use of the premises cannot be termed as use by any other person. The Court rejected this argument on the ground that as a wrongdoer herself - allowing the leased premises to be used by the company in violation of the lease terms - the corporate veil cannot be lifted in her favour.

South Africa – Competition Tribunal Threatens To Criminalise Price-Fixing Offences

The Chairman of the Competition Tribunal of South Africa has warned that executives of companies found guilty of anticompetitive behaviour could face imprisonment if South Africa takes the United States approach. This remark was prompted by the case of Toyota which imposed minimum resale prices on its car dealers. Admitting its guilt, Toyota was fined 12 million Rands for this anti-competitive behaviour. The Chairman of the Tribunal, Mr David Lewis hoped this would be a deterrent to other companies acting along similar lines. He noted that many other jurisdictions are already following the United States’ example by introducing criminal penalties on corporate officers who are responsible for price fixing offences. He felt this would provide a “sobering thought” to executives everywhere. The investigation into Toyota sparked a probe into the rest of the motor industry in South Africa, to

determine why vehicle prices remained so high. The Commission was looking at the relationship between car makers and dealers and between car makers themselves to find out if there was a price collusion. The manager for enforcement and exceptions, Diane Terblanche noted the detrimental effect of such activities. She remarked that price fixing did not mean just higher prices, it also resulted in poor services. If prices were the same at every car dealership, there would be no competition to drive up service. The case was brought by a consumer, Graeme Tucker who was commended for demonstrating that “consumers do not have to accept the appalling treatment to which they are commonly subject.”

India - Special Economic Zones Legislation Cleared

The Union Cabinet has approved a proposal for enactment of a Central legislation on Special Economic Zones (“SEZs”) to provide an internationally competitive duty free environment for promotion of exports. This intention is to encourage the private sector to commit substantial funds in the development of infrastructure in SEZs. The salient features of the proposed SEZ legislation are:

- SEZs will be recognised as “deemed foreign territory” and supplies from Domestic Tariff Area to SEZs treated as export. This would integrate the zones with the domestic industry;
- Existing incentives and facilities such as exemption from Custom/ Excise duty for development of SEZ and setting up of units, income tax exemption, exemption from Central Sales Tax, Service Tax etc. are reflected in the proposed legislation to impart stability to the fiscal regime;
- Limited domestic market access on the basis of duty forgone proposed;
- Single window mechanism; and
- Strengthening of one stop clearance at the Zone level.

One of the distinguishing features of the SEZ policy was that unlike other countries where SEZs have been developed by the government, Indian SEZs will be private sector driven in cooperation with the state governments.

Upcoming Activities

1 - 5 September 2004

Commonwealth Law and Technology Workshop for the African Region
Cape Town, South Africa

7 - 10 September 2004

Commonwealth Expert Group Meeting on Draft Model Bill
on Competition for the Africa Region
Victoria, Seychelles

18 – 20 October 2004

Commonwealth Meeting of Senior Officials of Law Ministries
London, UK

21 – 22 October 2004

Meeting of Law Ministers of Small Commonwealth Jurisdictions
London, UK

LAWD is a free quarterly publication produced by the staff of the Law Development Section, Legal and Constitutional Affairs Division (LCAD) of the Commonwealth Secretariat. It is also available on our website at www.thecommonwealth.org/law

Please send enquiries and contributions to:

Cheryl Thompson-Barrow or Margaret Bruce
The Editors, LAWD

Tel: +44 (0)20 7747 6121

Fax: +44 (0)20 7747 6406

E-mail: lds-lcad@commonwealth.int

Design by: Law Development Section

Printed by: Printing Section, Corporate Services Division

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