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8 (2011) 196 – 207

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Web based e-mail; meaning of ‘operator of an electronic

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8 (2011) 216 – 218

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9 (2012) 102 – 105

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LJN; AY6903, Voorzieningenrechter In Kort Geding (Services Court Judge Amsterdam), 345291 / KG 06-1112 AB, commentary by Arnold Roosendaal

Protection of intellectual property rights; internet; illegal downloads; privacy of customer personal data; right of interested parties to require ISP to provide personal data

6 (2009) 263 – 269

Gerechtshof 's Gravenhage 9 maart 2011 LJN: BP7080, Gerechtshof te 's-Gravenhage meervoudige kamer voor strafzaken (Appeals Court at The Hague, Criminal bench). dossier number: 22-002281-10, with thanks to Dr Maurice Schellekens for help with this translation

Threats to kill posted on web site; accused posted comments by using the connection of a third party via wi fi without permission; whether using the computer of a third party without permission is an offence in Dutch law; electronic evidence

8 (2011) 242 – 248

Norway

LB-2006-27667, 20 August 2007, Borgarting appellate court – judgement, commentary by Professor Jon Bong

Succession law; lost testament; status of electronic copies sent by e-mail

5 (2008) 134 – 140

Journal number 04-016794TVI-TRON, *Bernt Petter Jørgensen v DnB NOR Bank ASA by the Chairman of the Board* (Trondheim District Court, 24 September 2004)

Bank card; theft of card; unauthorized use; PIN; electronic signature; burden of proof; liability; gross negligence

9 (2012) 117 – 123

HR-2012-2056-A, with thanks to Arve Føyen for reviewing this translation

Criminal offence; hacking; ‘cloud’ (online) storage of personal digital data; data protection; data controller; privacy

10 (2013) 201 – 208

Poland

Sygn. akt I KZP 39/08, Polish Supreme Court, 26 March 2009, commentary by Dr Arkadiusz Lach

Electronic document; secure electronic signature (digital signature); criminal procedure; Ustawa z dnia 18 września 2001 r. o podpisie elektronicznym (Law of 2001.09.18 on electronic signature); legal effect

6 (2009) 270 – 274

Sygn. akt I KZP 2/10, Sąd Najwyższy – Izba Karna w Warszawie (Supreme Court – Criminal Chamber in Warsaw), commentary by Dr Arkadiusz Lach

Authority to intercept telephone communications; admissibility of the records in other proceedings; refusal to give opinion on this subject because of lack of relevance

7 (2010) 141 – 147

Romania

Decizia nr, 1258 dated 8 October 2009, Curtea Constituțională a României (Constitutional Court), by Bogdan Manolea and Anca Argesiu

Constitutionality of law 298/2008 regarding the retention of the data generated or processed by the public electronic communications service providers or public network providers

7 (2010) 148 – 154

Spain

STS 2047/2015, Tribunal Supremo, Sala de lo Penal (Supreme Court, Criminal Chamber), 19 May 2015, translated by Patricia Ayodeji

Spain; sexual abuse of a minor; communications via social networks; authenticity

14 (2017) 79 – 87

Sweden

Case No. 11534-13

Sweden; advanced electronic signature; effectiveness; administrative proceedings

12 (2015) 103 – 106

Turkey

Case number: 2009/11485, judgment number: 2011/4033

On-line banking; unauthorized transfers between accounts by unknown third party; negligence; liability of the bank

9 (2012) 124 – 127

Case notes

Austria

OGH Urteil vom 29.6.2000, 2 Ob 133/99v, Oberster Gerichtshof (Austrian Supreme Court), by Dr Wolfgang Freund and Mag. Lothar Farthofer

5 (2008) 141

China

Rong-Shu-Xia Computer Ltd. v China Society Publisher, by Minyan Wang

4 (2007) 95

Beijing Han-Hua-Kai-Jie Technology development Ltd. v Chen Hong, by Minyan Wang

4 (2007) 96

Zhang Hua v Shanghai Danwei Information Consultation Co. Ltd, Shanghai People’s Court of Jing’an District, by Dr Minyan Wang

6 (2009) 275 – 276

Brazil

RMS-AgR-ED 24257 DF, by Professor Carlos Alberto Rohrmann

3 (2006) 92 – 94

Al 564765 RJ, by Professor Carlos Alberto Rohrmann

3 (2006) 95 – 97

Colombia

Juan Carlos Samper Posada v Jaime Tapias, Hector Cediell and others, Decisión 73-624-40-89-002-2003-053-00 of 21 July 2003, by Ms Valeria Frigeri and Manuel F. Quinche

2 (2005) 95 – 102

Denmark

U.2000.1853V, Danish Western High Court, by Kromann Reumert

4 (2007) 98

U.2006.1341V, Danish Western High Court, by Kromann Reumert

4 (2007) 99

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5 (2008) 142

U 1959.40/1H, by Professor Jon Bing and Jan Hvarre

6 (2009) 277

England & Wales

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7 (2010) 155

Estonia

AS Valga Külmutusvagonite Depoo (in bankruptcy), by Viive Näslund

1 (2004) 75 – 79

France

Case number 235784 from the Conseil d'Etat, Elections municipales de la Commune d'Entre-Deux-Monts dated 28 December 2001, by Philippe Bazin

1 (2004) 81

Case number 00-46467 from the Cour de Cassation, chambre civile 2, Sté Chalets

Boisson c/ M. X. dated 30 April 2003, by Philippe Bazin

1 (2004) 82

Germany

BGH of December 12, 2000 – XI ZR 138/00, by Alexander Duisberg

4 (2007) 93 – 94

FG Münster 11 K 990/05 F (Electronically signed statement of claim – On the interpretation of the term monetary limitation), by Dr Martin Eßer

3 (2006) 111 – 112

10 A 11741/05, by Dr Martin Eßer

4 (2007) 91 – 92

GmS-OGB 1/98, by Michael Knopp

2 (2005) 103 – 104

OLG Köln, 19 U 16/02; LG Konstanz, 2 O 141/01 A; AG Erfurt, 28 C 2354/01, by Knopp, Michael

2 (2005) 105 – 106

19 February 2009, IV R 97/06, by Dr Martin Eßer

6 (2009) 278

2 BvC 3/07, 2 BvC 4/07 Federal Constitutional Court of Germany, by Dr Zoi Opitz-Talidou

6 (2009) 279 – 280

Greece

Court Decision No. 1963/(2004), by Michael G. Rachavelias

2 (2005) 107 – 111

Court Decision No. 3279/(2004), by Michael G. Rachavelias

3 (2006) 101 – 103

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1 (2004) 83 – 86

Italy

Tribunale Mondovì, 7 giugno 2004, n. 375 (decr.), Giur. It. 2005, 1026 by Gian Paolo Coppola

4 (2007) 86 – 88

Decision no. 16556 dated 29-04-2010, La Corte Suprema di Cassazione Sezione Quinta Penale (Supreme Court of Cassation, 5th Criminal Section) 29 April 2010 (the hearing took place on 14 December 2009), by Dr Giuseppe Vaciago

Facts; seizure of copies of digital documents stored on a personal computer; law dispositive provisions, interception of electronic communications; proceedings; ratio decidendi

8 (2011) 249 – 252

Lithuania

Ž.Š. v AB Lietuva taupomasis bankas, Civil Case No. 3K-3-390/2002, Civil Chamber of the Supreme Court of Lithuania, by Sergejs Trofimovs

5 (2008) 143 – 145

Netherlands

21 November 2007, LJN BC0337, Rechtbank (Lower Court) Amsterdam, by Dr Simone van der Hof

5 (2008) 146

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Derogatory images on the internet; effectiveness of a disclaimer

10 (2013) 209

LJN BV4738 (appeal in cassation re Arnhem Appeal Court, 16 June 2010, LJN: MB8100)

Automatic Number Plate Recognition (ANPR) data; improperly obtained evidence; lack of reasoning for the decision by the Appeal Court

10 (2013) 210

LJN BW0103

Article 240a Netherlands Criminal Code; showing private parts/genitals to a juvenile via a webcam

10 (2013) 211

LJN: BW 3415

Virtual abusive images of children, sexually explicit images in cartoon format

10 (2013) 212

LJN BW 6444

Article 161sexies, paragraph 2 under a of the Criminal Code, mobile telephone jammer

10 (2013) 213

LJN BX0140

Analysis of seized mobile telephones

10 (2013) 214

LJN: BX0155

Money laundering; phishing; participation in a criminal organization which had the object of money laundering

10 (2013) 215

LJN BX0218

Evidence; data obtained from interception of an IP address; use in legal proceedings

10 (2013) 216

LJN BV8708

Article 248a Netherlands Criminal Code; evidence of MSN chat

10 (2013) 217

LJN BW9843

Threats via Twitter

10 (2013) 218

Poland

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5 (2008) 147 – 148

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4 (2007) 83 – 85

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5 (2008) 149 – 151

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Case No. A40-19739/08-10-141, Arbitrazh Court of Moscow, by Alex Dolzhich

6 (2009) 281 – 283

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2 (2005) 114 – 115

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2 (2005) 112 – 113

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5 (2008) 152 – 153

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6 (2009) 284 – 286

Sanae Achar v Sci-Gen Ltd [2011] SGHC 87, High Court, 8 April 2011, by Bryan Tan

Discovery; e-Discovery Practice Direction; electronically stored documents; relevance; whether necessary

8 (2011) 253 – 255

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Electronic discovery; discovery and inspection of compound documents; principle of proportionality; inspection protocol

9 (2012) 128 – 129

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I Up 505/2003, The Supreme Court of the Republic of Slovenia, by Odvetniška družba Colja, Rojs & partnerji, o.p., d.n.o.

4 (2007) 97

Up-106/05-27, by Dr Liljana Selinšek

6 (2009) 287 – 289

Sweden

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1 (2004) 80

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6 (2009) 290 – 291

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3 (2006) 108 – 110

Table of electronic signature law legislation

10 (2013) 233 – 248

15 (2018) 146 – 163

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1 (2004) 67 – 74

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9 (2012) 130 – 151

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Act of 21 March 2007 governing the installation and the use of surveillance cameras, unofficial English translation – Consolidated version

10 (2013) 219 – 223

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10 (2013) 224 – 226

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United Nations, *Promoting Confidence in Electronic Commerce: Legal Issues on International Use of Electronic Authentication and Signature Methods* (Vienna, United Nations Commission on International Trade Law, 2009)

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Table of doctorates

Name of candidate: Gita Radhakrishna

Contact: gita@mmu.edu.my

University at which the PhD is registered and the awarding institution: Universiti Multimedia (Multimedia University), Malaysia

Department or faculty: Faculty of Business (formerly known as the Faculty of Business and Law)

Title of the degree: PhD

Title of the thesis: Comparative Study of the Admissibility and Discovery of Electronic Evidence in Malaysian Civil Courts

Supervisors: Professor Myint Zan and Associate Professor Dr Dennis Khong Wye Keen

External markers: Assistant Professor Daniel Seng, Faculty of Law, National University of Singapore; Professor Eugene Clarke, School of Business, Griffith University, Gold Coast, Queensland; Professor Nazura Abdul Manap, Faculty of Law, University Kebangsaan Malaysia

Date of registration of the PhD: 12 February 2010

Date of submission: 29 December 2016

Date of award: 9 February 2018

Name of candidate: Allison Stanfield

University: Queensland University of Technology

Faculty: Faculty of Law

Title of the degree: PhD

Title of the thesis: The Authentication of Digital Evidence

Brief description:

An analysis of whether the existing rules of evidence sufficiently protects the integrity of electronic evidence in contemporary times.

Supervisors: Professor Bill Duncan and Professor Sharon Christensen

External marker: Judge David Harvey (New Zealand) and Stephen Mason

Date of registration for degree: 2011

Date of submission: November 2015

Date of award: July 2016

Name of candidate: Jonas Ekfeldt

University: Stockholms universitet (Stockholm University)

Faculty: Juridiska fakulteten (Faculty of Law)

Title of the degree: LL.D., Dr. iur., Doctor of Laws

Title of the thesis:

Värdering av informationstekniskt bevismaterial

Legal evaluation of digital evidence

Brief description:

Avhandlingsprojektet har som huvudsyfte att identifiera problemområden som framträder vid viss nationellt rättsligt påbjuden hantering och värdering av informationstekniskt bevismaterial. Informationstekniskt bevismaterial ges i avhandlingen en vidsträckt generisk definition, rättsligt och tekniskt anknuten, innefattande vad som i allmänna ordalag ofta beskrivs som 'digitala bevis', 'elektroniska bevis' och 'it-forensiska bevis'. I

avhandlingen görs även bevisrättsliga analyser av aktuellt förekommande civila och polisiära s.k. 'it-forensiska analysprotokoll'.

The dissertation project has as its primary aim to identify problem areas that appear during certain legally imposed handling and evaluation of digital evidence, from a national perspective. Digital evidence is given an extensive generic definition, legally and technically based, encompassing what is generally also described as 'electronic evidence' and 'IT (forensic) evidence'. The thesis also includes evidence law analyses of currently occurring 'IT forensic analysis reports' from civilian and police sources.

Supervisors: Professor Cecilia Magnusson Sjöberg and Professor Em. Christian Diesen

External marker: not applicable

Date of registration of the PhD: 2011

Date of submission: Autumn 2015

Date of award: 1 April 2016

Name of candidate: Khaled Ali Aljneibi, LLB, LLM (Dubai)

University at which the PhD is registered and the awarding institution: Bangor University

Department or faculty: Law

Title of the degree: PhD

Title of the thesis: The Regulation of Electronic Evidence in the United Arab Emirates: Current Limitations and Proposals for Reform

Brief description:

Due to the crucial role that electronic evidence is now playing in the digital age, it constitutes a new form of evidence for prosecutors to rely on in criminal cases. However, research into the use of electronic evidence in the United Arab Emirates (UAE) is still in its initial phase. There have been no detailed discussions on the procedural aspects associated with electronic evidence when investigating crimes, or the problems and challenges faced by law enforcers when handling electronic evidence. In addition, there has also been no detailed explanation of the ideal investigation process, such as the processes involved in computer

search and seizure, and forensic investigation. As a result, the understanding and awareness of how to regulate and combat criminal cases that rely on electronic evidence is incomplete. In such situations, offenders usually take advantage of this lack of prescription in law. Because the understanding and awareness levels associated with electronic evidence is not perfect in the UAE, the UAE needs to promulgate new rules for handling electronic evidence as its laws are currently focused on traditional eyewitness accounts and the collection of physical evidence. Thus, it is very important that issues related to the existing approaches pertaining to electronic evidence in criminal procedures are identified, and that reform proposals are developed, so that new rules for handling electronic evidence can be adopted to effectively combat crime, by making full use of it.

This thesis examines the problems and challenges currently affecting the regulation electronic evidence in the UAE, and contributes to the body of academic literature in this area. Such a contribution is appropriate in the UAE context, where the law currently lacks sufficient academic input, especially concerning electronic evidence. The thesis makes actual recommendation as to how the substantive law may be reformed in the form of draft articles and includes an analysis as to how the process of prosecution and evidence collection can be facilitated. In particular it suggests that the electronic evidence process should be regulated in order to facilitate effective investigation and make full use of electronic evidence. This will ensure that electronic evidence is used in a transparent manner to preserve the integrity of criminal procedure, thereby safeguarding the accused, whilst at the same time facilitating prosecution and trial proceedings.

Supervisors: Dr. Yvonne McDermott and Professor Dermot Cahill

External markers: Professor Gavin Dingwal and Mr Griffiths Aled

Date of registration of the PhD: 1 May 2010

Date of submission of the PhD thesis: May 2014

Date PhD awarded: 1 June 2014

Name of candidate: Maria Astrup Hjort

University: Universitet i Oslo (University of Oslo)

Department or faculty: Det juridiske fakultet (The Faculty of Law, Department of Public and International Law)

Title of the degree: PhD

Title of the thesis:

Tilgang til bevis i sivile saker – med særlig vekt på digitale bevis

Access to evidence in civil proceedings – with particular emphasis on digital evidence

Brief description (it will be helpful if you provide this information in both your native language and in English):

Avhandlingen tar utgangspunkt i et scenarium der en part vet eller tror at det eksisterer materiale som kan brukes som bevis i en kommende eller verserende rettssak, og at parten ikke selv har hånd om dette beviset. Hovedproblemstillingen er i hvilke tilfeller og på hvilke betingelser parten kan få tilgang til beviset. Problemstillingen fordrer en rettsdogmatisk analyse av de tre fremgangsmåtene for tilgang til realbevis; å få bevis stilt til rådighet, bevisopptak og bevissikring.

En type bevis som det ofte er utfordrende å få tilgang til, er digitalt lagrede bevis. Mens fysiske gjenstander stort sett er klart definert og avgrenset, er digitalt lagret informasjon dynamiske størrelser i stadig endring som gjerne er lagret sammen med en mengde annen informasjon uten relevans for saken. I tillegg er digitalt lagret informasjon lett å kopiere, manipulere og slette. Disse trekkene utfordrer spørsmålet om tilgang, både praktisk og rettslig. Digitale bevis er derfor godt egnet til å belyse spørsmål knyttet til bevis tilgangsinstituttet. Det er imidlertid vanskelig å behandle alle bevis tilgangsspørsmål med utgangspunkt i digitale bevis, og noen spørsmål behandles derfor for realbevis generelt. Hovedvekten vil likevel - såfremt det er mulig – være på digitale bevis.

Avhandlingen har et komparativt tilsnitt, der svensk, dansk og engelsk rett er med på å belyse norsk rett.

The thesis is based on a scenario where a party knows or believes that there exists material that can be used as evidence in an upcoming or pending case and where the party is not in possession of this evidence. The main question is in what circumstances and on what conditions the party can get access to the evidence. The problem requires a dogmatic analysis of the three procedures for access to real evidence according to Norwegian law; the obligation to make evidence available, taking of evidence and securing of evidence.

One type of evidence that it is often challenging to get access to is digitally stored evidence. While physical objects are generally clearly defined and delineated, digitally stored information is dynamic and often stored together with a plethora of other information, irrelevant to the case. In addition, digitally stored information is easy to copy, manipulate, and delete. These features are challenging the issue of access, both practically and legally. Digital evidence is therefore well suited to shed light on issues related to the provisions on access to evidence. It is however difficult to treat all questions related to access to evidence based on digital evidence, and some questions are therefore discussed based on real evidence in general. The emphasis will anyway – if possible – be on digital evidence.

The thesis has a comparative perspective, where Swedish, Danish and English law shed light on Norwegian law.

Supervisors: Professor Inge Lorange Backer and Professor Magne Strandberg

Date of registration for degree: 1 February 2007

Date of submission: 13 March 2015

Date of defence: 6 May 2015

Name of candidate: Giuseppe Vaciago

University: Università degli Studi di Milano-Bicocca
(University of Milan – Bicocca)

Department or faculty: Facoltà di Giurisprudenza
(Faculty of Law)

Title of the thesis:

Digital forensics, procedura penale Italiana e diritti fondamentali dell'individuo nell'era delle nuove tecnologie

Digital Forensics, Italian Criminal Procedure and Due Process Rights in the Cyber Age

Brief description:

Il mondo digitale interagisce con la giustizia in molteplici segmenti: sempre più numerosi sono i casi in cui esso è sede di reati (dal furto di identità, fino ad arrivare al cyberterrorismo) e non lontani sono i tempi in cui esso sostituirà il tradizionale modo di intendere il processo (questo sta già accadendo nel processo civile e presto accadrà anche nel processo penale). Come Sherlock Holmes nel XIX secolo si serviva costantemente dei suoi apparecchi per l'analisi chimica, oggi nel XXI secolo, egli non mancherebbe di effettuare un'accurata analisi di computer, di telefoni cellulari e di ogni tipo di apparecchiatura digitale.

La presente opera si prefigge due compiti: il primo è quello di offrire al lettore un'analisi della prova digitale e dell'articolato sistema di regole e procedure per la sua raccolta, interpretazione e conservazione. La casistica giurisprudenziale, non solo italiana, ha dimostrato come l'errata acquisizione o valutazione della prova digitale possa falsare l'esito di un procedimento e come il digital divide sofferto dalla maggior parte degli operatori del diritto (magistrati, avvocati e forze di polizia) possa squilibrare le risultanze processuali a favore della parte digitalmente più forte.

This paper focuses specifically on digital forensics and the rules and procedures regulating the seizure, chain of custody and probative value of digital evidence, with particular emphasis of three distinct aspects. Firstly, the extremely complex nature of digital evidence; Secondly, the dire need for

an adequate level of computer literacy amongst judges, lawyers and prosecutors. The last, but no less crucial aspect involves the potentially prejudicial effects of invasive digital forensic techniques (such as the remote monitoring of data stored on hard drives) on the suspects fundamental freedoms (the right to privacy and the inviolability of personal correspondence) and due process rights (including the privilege against self-incrimination and the right to an adversarial hearing on the probative value of the electronic data proffered as evidence).

Supervisor: Professor Andrea Rosseti

External marker: Giovanni Sartor

Date of registration for degree: 21 March 2011

Date of submission: 24 January 2011

Publication of thesis: January 2012

URL:

<https://boa.unimib.it/handle/10281/20472?mode=full>

Name of candidate: Aashish Srivastava

University at which the PhD is registered and the awarding institution: Monash University

Department or faculty: Business Law and Taxation

Title of the degree: PhD

Title of the thesis: Is the Pen Mightier than the Electronic Signature? The Australian Businesses' Perspective

Brief description:

Using a qualitative approach, the thesis conducts a comprehensive empirical investigation to identify factors that have contributed to the low acceptance of electronic signatures, in particular, the digital signature in the Australian business community.

Supervisors: Professor Paul von Nessen and Mr Paul Sugden

Date of registration of the PhD: November 2004

Date of submission of the PhD thesis: November 2008

Date PhD was awarded: April 2009

Thesis published: Aashish Srivastava, *Electronic Signatures for B2B Contracts Evidence from Australia* (Springer India, 2013)

Name of candidate: George Dimitrov

University at which the PhD was registered and the awarding institution: Katholieke Universiteit Leuven

Department or faculty: Interdisciplinair Centrum voor Recht und Informatica

Title of the degree: PhD in Laws

Title of the thesis: Liability of Certification Service Providers

Supervisor: Professor Dr Jos Dumortier

Thesis published: George Dimitrov, *Liability of Certification Services Providers* (VDM Verlag Dr. Müller, 2008)

Name of candidate: Adrian McCullagh

University at which the PhD is registered and the awarding institution: Queensland University of Technology

Department or faculty: Information Security Research Centre, Faculty of Information Technology

Title of the degree: PhD

Title of the thesis: The Incorporation of Trust Strategies in Digital Signature Regimes

Brief description: The aim of this research is to document the differences between a traditional signature and an electronic signature including in particular one form of electronic signature known as a "digital signature". It will be established that it is a fallacy for legislators to insist upon functional equivalence between electronic/digital signatures and traditional signatures from a legal perspective. Many jurisdictions have not only advocated functional equivalence but in so doing have also approached the legal recognition of signing digital documents from a technology neutral language perspective in their respective electronic signature legislative regimes, whilst at the same time attempting to create some magical certainty for commerce to rely on. In short, there is, as this thesis will show, a clear contradiction

concerning technology neutral language in electronic signature regimes and the certainty that commerce requires. Technology neutral language regimes provide no guidance to either the judiciary or commerce in their dealings with enforceable contracts that are evidenced electronically and where the "signature" is in dispute. There are, as will be established in this thesis, too many fundamental differences for functional equivalence to be achieved. This thesis does not attempt to define an electronic signature, as any definition would most likely overtime become outdated as technology advances such concept, but this thesis does describe a set of elements which if technologically achievable would closely correspond to the traditional concept of a signature as commercially and legally understood.

Supervisors: Professor William Caelli and Professor Peter Little

External markers: Professor Alan Tyree and Professor Bob Blackley Snr, University of Texas A&M

Date of submission of the PhD thesis: July 2001

Date PhD awarded: 3 February 2001