

## A Long Time, A Short Time

By Schon G Condon RFD

It seems so long ago that I remember writing an introduction to our newsletter, but then again much has happened since then.

Firstly, the Reality Check. One of the key points in life is actually living, when the word cancer comes into focus it is something that draws a lot more into focus with it, and whilst my experience can be considered minor against some it does bring things as a whole into perspective.

Happily I can say that with necessary surgery and quick action I can put this brief dalliance with the dreaded C behind me, but before doing so, I should say publicly thank you to all those that assisted through this brief but intense period.

Good News! It is with great pleasure and pride that I announce two recent arrivals amongst the ranks here at Condon Associates. Firstly we welcome Hakki Hassan, who joins us as a Senior Manager with over 30 years experience across the profession, including early years in the then current regulatory body and across a wide variety of industries. Hakki (pronounced Harki) will bring considerable strengths to our Insolvency and Forensic functions and will also assist with the training and development of our more junior staff. It is great to have him aboard.

The second arrival is none other than the former Deputy Official Receiver Robert (Bob) Cruickshanks. Bob has had an immense career in the field of Bankruptcy and is certainly well known if not renowned to all of the practitioners on the eastern seaboard if not nationally. We have focussed on providing an honest, fair and responsible performance in an area which is focused on more than simply the money and the addition of Bob to our team will greatly enhance our ability to deliver better quality services in this area.

Now on to a matter I raised some months ago. As I wrote recently in my Blog ([www.condon.com.au](http://www.condon.com.au)) by now every accountant and lawyer should have received an email newsletter from all of the insolvency and pre-insolvency players advising that the ATO is finally on the rampage, and yes it was also on the front page of the Financial Review, viz "ATO Blitz on Business Tax Debt's."

For those businesses that have been earning less than they have been spending, the time is finally nigh, and for some the fact that they did not act earlier may well see that their options are likely to have become somewhat limited, but prompt action now could well still see alternatives provided that there is a long term ability to maintain a positive cash flow.

The follow on from this that should not be ignored is the flow on. The fact that a debtor goes into liquidation or administration tends to bring a sudden reality that payment is not likely to be made, at least either immediately or in full. I have oft said that the fact that the debtor was itself more than 90 days should have provided the same basis for the conclusion but many small business owners seem to prefer the clarity of a formal appointment!

So why is this relevant, well if your clients don't have a big tax debt now, but they do have a very old Debtors Ledger then you may suggest that they prepare now for round two as they are likely to be key players in it.

On the other side, I noted recently that there is an expectation of a 15 percent shortfall of positions for this year's University graduates in the United Kingdom, a situation which was anticipated not to be an isolated event. Given this it will be interesting to see what larger multinational organisations do about moving the effort to where potential employees may well suddenly become, shall we say, less expensive overseas. Something to think about, no!

Anyway, thanks for your support, and enjoy the read.



Schon Condon and The Honourable David Bradbury MP enjoying themselves at the Condon Associates Annual Function on October 14th...

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# **Piracy and the effects it has on the Music Industry in relation to Intellectual Property Law**

By Hayley Condon

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Piracy is such a large and important issue covering the world in more ways than one would think. There are two major effects piracy has on businesses within any industry. Piracy allows individuals to access any file or documentation, able to tamper with documents and undervalues your product. Piracy also exposes your business to legal issues and possible damage to your company. It is something to always be mindful of and to always make sure that your network is secure.

Music is such a large part of every community around the world. Whether it is through a cultural aspect or a social aspect, music is incorporated into the everyday lifestyle of individuals around the world. However, with this positive creation come the negative attributes that are established through these creations. Music's social phenomenon has enforced engineers and designers to create new technology to implement this music for differing individuals for their daily routine. The iPod is one of the most significant creations for music usage and organisation, created in 2001. Through this creation iTunes Music Store was created in 2003 to enable songs to be purchased online and transferred straight to one's iPod. As this process of transferring files was so simple, so was the possibility of transferring illegal files onto iPods and other music devices.

Piracy is defined as being creations that have been replicated, stolen, arranged, distributed or altered without permission of the creator or owner of the file. It is a criminal act that is the deliberate infringement of the Intellectual Property Law constituted by the Australian Government. Piracy has been an issue ever since music has been created – music and piracy are one in the same – where there is one the other follows. Piracy has only become so public due to the advancement in technology. The difference is the amount of piracy over time periods – where Compact Discs were used, piracy had increased due to the capability of simply burning pirated music onto a data disc, it has now become even easier by being able to just transfer the file onto the hard drive of an iPod – no cost, no wastage, and always available and mobile. Software like Napster and LimeWire have been the main contributors to piracy. Napster was the first file-sharing network software that became available over the World Wide Web (www) and created such uproar that lawsuits were carried out by most of the major recording companies, in addition to major recording artists such as Metallica, Madonna and Dr Dre.

As a result of the legal proceedings, Napster incurred significant legal costs in addition to which the Court imposed certain restrictions to the manner in which Napster would operate in the future. Because Napster failed to comply with the Orders of the Court, further Orders were provided by the Court, which resulted in the Napster website being removed from the Internet. Napster was subsequently placed

into Liquidation, albeit referred to as Bankrupt in the United States. LimeWire and many other file-sharing networks have since surfaced around the web since Napster's decline in 2000. The variance in these newer networks is the licensing and copyright filtering proposed in their user agreements that must be agreed upon before allowing one to use the software. The variance is the ability to share copyrighted files within the network to many users, however all non-copyrighted material must be found and destroyed upon upload. However, how is this still a legal arrangement – by using this software, users are still able to not purchase the software, not purchase the music or files, and still use these files on their own devices. So has LimeWire and these other softwares actually assisted in preventing piracy or are they actually the major causes of it? In a way of helping to protect the creative artists and their work for a bit longer, the United States legislation The Sonny Bono Copyright Term Extension Act of 1998, that was later made legislation internationally, extended 'copyright protection from the life of the author plus fifty years to the life of the author plus seventy years', as clarified by Dr Matthew Rimmer in his publication Digital copyright and the consumer revolution: Hands off my iPod, 2007. This legislation may differ by the varying role of the owner within the music industry, be it the author of the music, the recording company, or an inheritor.

Intellectual Property Law is that which relates to trademarks, patents, designs, copyright, circuit layout rights, plant breeder's rights, and confidentiality/trade secrets as identified by IP Australia, which is a body of the Australian Government that deals with all issues relating to Intellectual Property. Intellectual Property is defined as the protection of the possessions from one's mind in material form. It is a way to protect creators, those that make their living by inventing and generating new and exciting ideas for everyday users, however there are people who want to steal this intellect in order to make some money for themselves. Copyright is established at the time of creation – paperwork and authority approval is not necessary, but worthwhile.

Today, piracy is becoming a major issue not only in the music industry but also in all Intellectual Property industries. Filmmakers have actually assisted the anti-piracy action by creating short advertising videos about the punishment of pirating films through copying for personal use or selling for personal gain in order to hopefully scare some individuals out of committing the crime. The music industry is so badly affected by piracy that it has caused an annual six percent decline in CD sales in from 1999 to 2003; and has now caused a massive ten percent decline which is forever increasing annually on all music sales. An amazing ninety percent of software in China is downloaded over the Internet. Artists are now selling their albums for free over the Internet in order to try and advertise their music and place a non-downloadable file within the music making them urge the consumer to buy the album – the artists are paid through income derived from advertising on the website. Through research conducted by Darren Levin in 2010, eighteen percent of Australia's population download music annually. In 2010, the Australian Bureau of Statistics with the Music Industry Piracy Investigations listed the amount of people who download music to be 2.8 million Australians, which is approximately

twelve percent of our current population. Whilst the percentage has greatly decreased, the population increases by almost half a million Australians every year, meaning the actual amount of piracy has greatly increased.

Piracy is expected to dramatically increase over time, although many governing companies are working towards ways of preventing its escalation. The major challenge in preventing piracy is the extensive possibilities created by the Internet – its large population, its ever-growing capabilities and the amount of users who are increasingly becoming experienced in the degrees of Internet technology and software. Piracy is monitored by Internet provider companies such as TPG and also by governing companies such as APRA, but this large task is being performed with only limited resources. This unfortunately means that piracy is continuing, and artists and recording studios are being denied royalties which rightfully should be paid to them. It is also contributing to the decline of retailers in the music industry.

## **Senate inquiry into insolvency regulation – Maggie Lau**

By Maggie Lau

Recent high profile corporate collapses have put the Australian Securities and Investments Commission (“ASIC”) under the spotlight as to its ability to preside over corporate insolvencies. This has instigated an inquiry by the Senate Economics References Committee into the regulation, registration and remuneration of the insolvency industry.

The Committee released a report on 14 September 2010 (“the Report”) after its inquiry. One of the most prominent issues which the Report focused on was the Liquidator’s charges, which are believed by some to be excessive and outstrip the value of assets recovered in the winding up. The Report went on to highlight the conduct of a particular registered Liquidator which did little to speak favourably for the industry as a whole.

Stuart Ariff (“Ariff”), formerly a Registered Liquidator and Official Liquidator, was found guilty of 83 charges of gross misconduct in respect of his duties to 16 companies. In his administration of Carlovers Carwash Limited, he consumed more than \$11 million in deed funds for his remuneration and disbursements while Creditors, whose claims amounted to \$4.5 million, received nothing. Carlovers noted that “Mr Ariff took false or nonexistent fees and disbursements, over-serviced, prolonged settlements, charged excessively high fees, took fees not approved by creditors and arranged associate companies to circumvent creditor approval for payment of remuneration.”

The Committee noted that although three formal complaints were forwarded to ASIC and over fifty informal complaints were made to the Insolvency Practitioners Association of Australia and various accountancy bodies over 2005 to 2007 regarding Mr Ariff’s conduct, “ASIC only took action when the media became involved.” The Report stated that this case highlighted ASIC’s lack of response to investigate promptly into complaints about Liquidators’ misconduct.

As a result of the conduct of Mr Ariff, ASIC sought to cancel his registration as a Liquidator. Further proceedings associated with this resulted in orders from the Court that Mr Ariff is now prohibited from holding the office of an insolvency practitioner for life and he was also ordered to pay \$5 million to victims.

The Report also covered complaints made and proceedings against other practitioners in relation to their lack of independence.

In light of the shortfalls the Report believed existed in the current insolvency system, the Senate listed 17 recommendations in the Report which may be incorporated, including the following:-

- The transfer of ASIC’s corporate insolvency arm into the Insolvency and Trustee Service Australia (which oversees personal insolvencies) to form the Australian Insolvency Practitioners Authority (AIPA).
- The new regulator to establish a “flying squad” to conduct random and targeted audits of insolvency practitioners as a more proactive approach to monitor the industry.
- The new regulator to establish a new licensing system for insolvency practitioners. Under such a regime, a liquidator’s licence can be suspended if they are not properly insured or the regulator believes they have overcharged.

Should the recommendations be implemented, it means that there will be stricter regulation of insolvency practitioners’ remuneration. The Insolvency Practitioners Association of Australia and the Institute of Chartered Accountants of Australia seem willing to embrace the reforms.

In considering if there will be any immediate legislative amendments following the Senate Committee’s findings, a spokesman for Treasurer Wayne Swan has indicated that “the government has no plans to amend the framework for supervision of the insolvency industry”.

The Committee’s recommendations have been criticised by some as a mere shift of responsibility from ASIC to another. Without identifying the underlying deficiencies of the current regulator, the new regulator may be faced with the same difficulties.

Although it has been contended that ASIC is overburdened and lacks sufficient resources to carry out its responsibility to oversee insolvency practitioners, critics have pointed out that having limited resources does not preclude a reshuffling of priorities by ASIC. Michael Aitken, professor of Capital Market Technologies at the University of NSW, noted that, “...if the committee found out something, it found out that this area is not a current priority for ASIC. That is not to say it can’t become a priority.” This is especially relevant seeing the steep escalation in the number of corporate insolvencies due to the global financial crisis.

It is noted and understood that the conduct of a minority of parties can tarnish the reputation of a whole industry. However, if the conduct of these parties serves as a catalyst to bring reforms to the system, and creates a greater confidence in the community, then such measures should be a welcome change.

## **Parramatta Accountants Discussion Group – Report**

By Alexander Frazer - Chairman

There has been an ever growing need in the Parramatta Business Community where working professionals could come together during a busy working week and discuss issues relevant to their personal and professional endeavours with like-minded peers who come from a wide variety of business backgrounds. Out of this need has grown the Parramatta Accountants Discussion Group. The Parramatta Accountants Discussion Group or "PADG" as it is otherwise known serves as an important forum where members of the business community can come together and discuss important issues across a wide range of topics such as Accounting, Law, Finance and Investment in a relaxing and comfortable environment.

On Monday the 13th of October, the inaugural Meeting of the Parramatta Accountants Discussion Group was convened at the Lighthouse Restaurant in Parramatta over a relaxing lunch and drinks.

To kick off the discussions, we were fortunate enough to be addressed by Mr Phillip Win and Mr Kurt Ohlsen from Profile Financial Services who facilitated discussions with the Group on updates within the Investment Industry, an assessment of the recent Cooper Review, and an analysis on the Future of Financial advice. They concluded with a case study of a client who was in need of sound financial advice to structure his personal affairs moving forward.

The members who have joined us to date (and the number is growing rapidly) come from a wide range of backgrounds including Business Services Firms, Law Firms and Legal Practitioners and Members of the Insolvency community. We are also fortunate to have a broad composition in member age and level of professional experience which further adds to the relaxed atmosphere of the group. The next PADG meeting is scheduled for Monday 8th November, 2010 and will re-convene in the New Year starting from the 2nd Monday in February and continuing on a monthly basis. For our upcoming discussion, the details are as follows:

**Date:** Monday 8 November  
**Location:** Lighthouse Restaurant Parramatta  
**Time:** 1230pm-2:30pm  
**Cost:** \$40 per person which includes lunch and drinks  
**Speaker:** Nicholas Dale (Gillis Delaney Lawyers)  
**Topic:** "An Introduction to the Personal Properties Securities Act"

If you are interested in obtaining further information about the Discussion Group or would like to express your interest in becoming a Member, please do not hesitate to contact Hayley Condon on **(02) 9893 9499** or via email [hayley.condon@condon.com.au](mailto:hayley.condon@condon.com.au)

## **Condon Associates Celebrate Four Years in the Industry**

By Hayley Condon

On Thursday 14th of October, we at Condon Associates celebrated our 4th year as a firm, with the presence of many of our colleagues in the field. It was an amazing evening with twinkling lights falling from every corner, sheets of chiffon covering the roof with soft light shining through and silver everywhere to be found. With the luck on our side, the day could not have been any more perfect as the sun shone all day, while rain was never to be seen until the following day. It was an event not to be missed with the company of such noteworthy attendees including The Honourable David Bradbury MP. Photos of this glorious night will be posted on our upcoming new website that will be going live at [www.condon.com.au](http://www.condon.com.au) in just a few short weeks. So stay tuned...



Our support team for the function...Scott, Hayley and Natalie

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