

THIS DEED OF SETTLEMENT

is entered into this

day of

2002

BETWEEN:

TROY ROLLO of Level 4, 1 James Place, North Sydney in the State of New South Wales ("The Settlor")

and

KIMBERLEY JAMES HEITMAN of care of 35 Stirling Highway, Crawley in the State of Western Australia and TERENCE GIUFRE-SWEETSER of 1/128 Bowen St, Spring Hill in the State of Queensland ("The Trustees")

BACKGROUND:

- A. Joseph John McNicol is the defendant in District Court of Western Australia proceedings 1317 of 2002.
- B. The Settlor wishes to provide for the establishment of a fund to be used to assist Mr McNicol to meet the costs of his defence of the said proceedings and any subsequent appeals, and for related purposes.
- C. For this purpose the Settlor has transferred or is to transfer to the Trustees the settled sum of \$2.00.
- D. The Trustees have consented to act as the Trustees of this Deed upon the trusts and subject to the powers and provisions set out in this Deed.

THIS DEED WITNESSES that the parties agree that:

1. Establishment of trust

1.1 Name

The trusts created by this Deed are to be known by the name "Unsolicited Bulk Email Defence Fund".

1.2 Declaration of trust

The Settlor and the Trustees hereby declare that they will stand possessed of the settled sum, along with all moneys, investments, property and income received by the Trustees as additions to the trust fund from time to time ("the Trust Fund"), upon the trusts and subject to the powers and provisions expressed in this Deed.

1.3 Purposes

The purposes of the trust shall be:

- (a) to reimburse Joseph John McNicol of 17 Bolderwood Drive, South Lake in the State of Western Australia for any costs or liabilities necessarily or properly incurred in his defence of District Court of Western Australia proceedings 1317 of 2002 between The Which Company Pty Ltd as plaintiff and the said Mr McNicol as defendant;
- (b) to reimburse in like manner any other person who becomes a defendant to any proceedings at the suit of a plaintiff who claims relief against that defendant on the ground in effect that the defendant has alleged against the plaintiff that the plaintiff

has sent or has in any way caused or contributed to the sending of unsolicited bulk email;

(c) to donate funds towards the general purposes of any body, corporation or incorporated or unincorporated association, carrying on its activities on a charitable or not-for-profit basis, the purposes of which include or are supportive of the suppression of unsolicited bulk email, and without limitation including:

- i. the Coalition Against Unsolicited Bulk Email (CAUBE);
- ii. the Internet Society of Australia Limited (ISOC-AU);
- iii. Electronic Frontiers Australia Incorporated (EFA); and
- iv. the Western Australian Internet Association Incorporated (WAIA).

1.4 Excluded beneficiaries

The assets and income of the trust shall not be paid or transferred directly or indirectly to:

(a) the Settlor;

(b) the Trustees; or

(c) any person claiming under or in right of the Settlor or the Trustees;

provided however that nothing in this Deed shall prevent the distribution of any assets or income of the trust to any body referred to in clause 1.3(c) above to be used for the purposes of that body notwithstanding that a party referred to in this clause is an officer of that body.

2. Powers of trustees

2.1 Application of Trust Fund

The Trustees may at their absolute discretion from time to time apply any income or assets of the Trust Fund as follows:

(a) to pay the same towards the purposes of the trust;

(b) to accumulate or invest the same; or

(c) to set aside a sum to meet any anticipated or actual taxation liability of the trust.

2.2 Not obliged to maintain capital

The Trustees shall not be obliged to maintain the capital of the Trust Fund.

2.3 Powers of investment and management

The Trustees shall have the powers specified by part IV of the Trustees Act 1962 (WA) together with any other powers enjoyed by a trustee at law or in equity.

2.4 Receipt of gifts

The Trustees may receive property by gift inter vivos, by will or under the provisions of any other trust or trusts or otherwise from any person as additions to the Trust Fund.

2.5 Winding up

The Trustees may cause the Trust Fund to be wound up by transferring any of its remaining assets after satisfaction of its lawful debts and liabilities to any body referred to in paragraph 1.3(c) above, whereupon the Trustees shall resign and this Deed shall cease to have any continuing effect.

3. Duties of trustees

3.1 Duty to act impartially

The Trustees shall at all times act fairly and impartially and shall not act at the direction of any donor to or beneficiary of the Trust Fund.

3.2 Separation of fund

The Trustees shall where practicable keep the Trust Fund separate and distinct from any other trust fund or other moneys.

3.3 Accounts

The Trustees shall keep complete and accurate books of account of all income and expenditure of the Trust Fund.

3.4 Audit

The Trustees shall if requested by the Appointor or by any other person who has contributed to the Trust Fund cause the accounts of the Trust Fund to be audited by an independent company auditor, provided that such an audit shall not be required if the Trustees believe on reasonable grounds that the Trust Fund contains insufficient funds to pay for the cost of such an audit.

4. Exercise of powers and discretions

4.1 Trustees to act jointly

The Trustees shall act jointly, and may do so:

- (a) in writing signed by all or a majority of the Trustees;
- (b) by a resolution duly passed at a meeting of the Trustees.

4.2 Delegation

The Trustees shall not be bound in any case to act personally but may delegate the exercise of all or any of their powers or discretions in writing to any third party, and may execute any power of attorney or other instrument required for such purpose.

4.3 Appointment of new trustee

In the event that a Trustee shall wish to resign that position, the Trustees shall jointly appoint a replacement for the resigning Trustee. In the event of the death of a Trustee or his resignation in circumstances which preclude the joint appointment of a replacement, the remaining Trustee shall acting alone appoint a new trustee.

4.4 Sole trustee

If at any time only a sole Trustee acts, that Trustee may fully and effectively continue to exercise the powers and discretions granted to the Trustees by this Deed.

4.5 Alternate trustee

Any Trustee may with the consent of the other Trustee appoint any person to be an alternate Trustee in his place, which appointment shall have effect during any period that such Trustee is absent or unavailable to act, until the appointment is revoked by the Trustee.

4.6 Resolution of disagreements

In the event of a disagreement between the Trustees as to the manner in which their powers or discretions should be exercised or as to any other matter affecting the Trust Fund, the disagreement may if either Trustee so requires be referred for arbitration to the Western Australian Internet Association Incorporated pursuant to the Arbitration Policy of that Association in force from time to time, and the Trustees shall give effect to the decision of the arbitrator as though it were a decision by all the Trustees.

5. Protection of trustees

5.1 No liability except in case of fraud

No Trustee acting honestly and in good faith shall be responsible for:

- (a) any loss or damage to the Trust Fund or any part thereof or to any person by the exercise or failure to exercise of any discretion or power pursuant to this Deed or at law; or
- (b) any breach of duty or trust whatsoever.

5.2 Indemnity of trustees

The Trustees may be indemnified out of the Trust Fund against liabilities incurred by them in the good faith execution or attempted execution or failure to execute their powers or discretions under this Deed.

5.3 Disclosure of documents

The Trustees are not bound to disclose to any person any document disclosing any deliberations or reasons of the Trustees as to the manner in which the Trustees should exercise or fail to exercise any power or any discretion conferred upon them by this Deed.

5.4 No enquiry of accounts required

Any person becoming a Trustee of the Trust Fund may accept the accounts presented by his predecessor Trustees of the assets and income of the trust without being bound to make any further enquiry into the accuracy of the same.

6. Miscellaneous provisions

6.1 Interpretation

References to a party to this Deed include the party, his executors, administrators, or permitted assigns (or in the case of a corporation, the party and its successors and assigns or permitted assigns). The word "person" includes a corporation. Words written in the singular shall include the plural and vice versa, and the masculine or neuter genders shall include every gender. References to statutes shall include all statutes, amending, consolidated or replacing them. If two or more parties enter into covenants, obligations or agreements together, those covenants, obligations or agreements shall bind them all jointly and severally. The words "in writing" include any communication sent by letter, facsimile or email.

6.2 Time

Where under this Deed:

- (a) anything is required to be done on the 29th, 30th, or 31st day of a month which does not contain such a date, references to that date shall be construed as references to the last day of the month;
- (b) anything falls due to be done on a Saturday, Sunday or gazetted public holiday or a notice is deemed to be served on that date, the next day which is not a Saturday, Sunday or gazetted public holiday will be the date by which that thing falls due or when service is deemed to occur.

6.3 Further acts

Each party do whatever further acts and execute whatever further documents as might be required by law or reasonably requested by the other party in order to carry out and effect the intent and purpose of this Deed.

6.4 Governing law

The laws of Western Australia govern this Deed. Any dispute arising from this Deed is to be determined by the courts of Western Australia and any court of appeal from a Western Australian court.

6.5 Entire Agreement

This Deed constitutes the entire agreement between the parties and supersedes all prior representations, agreements and understandings, whether verbal or in writing.

6.6 Severability

If any provision of this Deed is held invalid, unenforceable or illegal for any reason, the Deed shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

EXECUTED BY THE PARTIES on the day and year first above written.

SIGNED by Troy Rollo
in the presence of:

}

Witness signature

Witness name

Witness address

SIGNED by
Kimberley James Heitman
in the presence of:

}

Witness signature

Witness name

Witness address

SIGNED by
Terence Giufre-Sweetser
in the presence of:

}

Witness signature

Witness name

Witness address

DEED OF SETTLEMENT

between

**Troy Rollo
("The Settlor")**

and

**Kimberley James Heitman
and Terence Giufre-Sweetser
("The Trustees")**

2002

iLaw

Jeremy Malcolm, B Com LLB (Hons)
Barrister and Solicitor
PO Box 7586
CLOISTERS SQUARE WA 6850

TABLE OF CONTENTS

1. Establishment of trust.....	1
1.1 Name.....	1
1.2 Declaration of trust.....	1
1.3 Purposes.....	1
1.4 Excluded beneficiaries.....	2
2. Powers of trustees.....	2
2.1 Application of Trust Fund.....	2
2.2 Not obliged to maintain capital.....	2
2.3 Powers of investment and management.....	2
2.4 Receipt of gifts.....	2
2.5 Winding up.....	3
3. Duties of trustees.....	3
3.1 Duty to act impartially.....	3
3.2 Separation of fund.....	3
3.3 Accounts.....	3
3.4 Audit.....	3
4. Exercise of powers and discretions.....	3
4.1 Trustees to act jointly.....	3
4.2 Delegation.....	3
4.3 Appointment of new trustee.....	3
4.4 Sole trustee.....	4
4.5 Alternate trustee.....	4
4.6 Resolution of disagreements.....	4
5. Protection of trustees.....	4
5.1 No liability except in case of fraud.....	4
5.2 Indemnity of trustees.....	4
5.3 Disclosure of documents.....	4
5.4 No enquiry of accounts required.....	4
6. Miscellaneous provisions.....	5
6.1 Interpretation.....	5
6.2 Time.....	5
6.3 Further acts.....	5
6.4 Governing law.....	5
6.5 Entire Agreement.....	5
6.6 Severability.....	5