



Centre for Media and Communications Law  
Annual Report  
2013



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## GOALS OF THE CMCL

The CMCL is a centre for the research, discussion and teaching of all aspects of media and communications law and policy.

CMCL activities include:

- » undertaking large scale research projects;
- » holding public seminars about legal and regulatory developments;
- » supporting research visits from Australian and international academics, lawyers and policy makers; and
- » supervising teaching and learning in media and communications law in the Melbourne Law School.

The CMCL has a team of Directors from the Melbourne Law School, as well as Associates, primarily drawn from the wider University of Melbourne, and Research Staff.

It is assisted by an Advisory Board from the media and communications industries and legal practice, and receives support from the Melbourne Law School as well as external research partners.

## CMCL FINANCES

The CMCL has three major sources of funding: support from the Melbourne Law School; research funding from the Australian Research Council and other research collaborators; and income from other research-related activities, such as publications and public seminars.

The centre's main areas of expenditure in 2013 were related to its public seminars and conferences which were held in Melbourne and Sydney, hosting research visitors, and casual administrative and research assistance.

The CMCL's accounts are incorporated in the University of Melbourne's operations and supervised by the Financial Controller of the Melbourne Law School.

The CMCL has been generously supported by our Research Partners:

- Arts Law Centre of Australia
- Australian Centre for the Moving Image
- Museum Victoria
- Museums Australia
- National and State Libraries of Australasia
- National Film and Sound Archive
- National Gallery of Victoria
- National Library of Australia
- National Museum of Australia
- Powerhouse Museum
- Screen Australia
- State Library of Victoria

## CMCL ADVISORY BOARD

In 2013 the Advisory Board comprised:

- Elizabeth Beal, Studio Legal
- Bruce Burke, Banki Haddock Fiora
- Warren Coatsworth, Seven Network Limited
- Julie Eisenberg, National Prescribing Service
- Jon Faine, ABC Radio
- Stuart Gibson, Gibsons
- Jonathan Gill, Carrick Gill Smyth Lawyers
- Gail Hambly, Fairfax Media
- Jim Holmes, OVUM Pty Ltd
- Paul Kallenbach, Minter Ellison
- Richard Leder, Corrs Chambers Westgarth
- Peter Leonard, Gilbert + Tobin Lawyers
- Cheng Lim, King & Wood Mallesons
- Federal Magistrate Michael Lloyd-Jones, Federal Magistrate (Chair)
- Denis Muller, Centre for Public Policy, The University of Melbourne
- Hugh Northam, Septimus Jones & Lee
- Michael Pattison, Allens
- Nic Pullen, HWL Ebsworth Lawyers
- Michael Rivette, Chancery Chambers
- Greg Sitch, Macleay William
- Andrew Stewart, Baker & McKenzie
- Robert Todd, Blake Dawson

## CMCL ASSOCIATES

Associates of the CMCL are academics from the Melbourne Law School and elsewhere who share a research interest in media and communications law and policy. In 2013 they were:

- Katy Barnett, Senior Lecturer, Melbourne Law School
- Andrew Christie, Professor, Melbourne Law School
- Karin Clark, Senior Fellow, Melbourne Law School
- Arlen Duke, Senior Lecturer, Melbourne Law School
- Simon Evans, Professor, Melbourne Law School
- Richard Garnett, Professor, Melbourne Law School
- Jonathan Gill, Carrick Gill Smyth Lawyers
- Tim Lindsey, Professor, Melbourne Law School
- Lawrence McNamara, Deputy Director, Bingham Centre for the Rule of Law, British Institute of International and Comparative Law, London
- Tim Marjoribanks, Professor, La Trobe Business School, La Trobe University
- Andrew Mitchell, Professor, Melbourne Law School
- David Nolan, Senior Lecturer, School of Culture and Communication, University of Melbourne
- Sam Ricketson, Professor, Melbourne Law School
- Andrew Roberts, Senior Lecturer, Melbourne Law School
- Peter Rush, Associate Professor, Melbourne Law School
- Saw Tiong Guan, Senior Lecturer, Faculty of Law, University of Malaya.
- Adrienne Stone, Professor, Melbourne Law School
- Joo Cheong Tham, Associate Professor, Melbourne Law School
- Tania Voon, Professor, Melbourne Law School
- Kim Weatherall, Associate Professor, Sydney Law School, University of Sydney
- Amanda Whiting, Associate Director (Malaysia) Asian Law Centre, Melbourne Law School
- Alison Young, Professor, School of Social and Political Sciences, University of Melbourne
- Sally Young, Associate Professor, School of Social and Political Sciences, University of Melbourne

## CMCL STAFF

CMCL staff are faculty members of the Melbourne Law School, who research in the areas of media and communications law, as well as research fellows who work on specific research projects. The centre also has an Administrator and several casual research assistants.



### PROFESSOR ANDREW KENYON

#### Director

Andrew Kenyon researches in comparative media law, including defamation, privacy, free speech, copyright and media policy. As well as legal doctrine, this work draws on a wide range of social, cultural and political research. Between 1999 and 2012 he edited the Media & Arts Law Review (with colleagues from 2009-2012). He has also been a Network Participant in the Australian Research Council Cultural Research Network, and is a former president of the Law and Society Association of Australia and New Zealand. He has law degrees from the universities of Melbourne and London, and his memberships include the International Communication Association, the European Communication Research and Education Association, and the Socio-Legal Studies Association.



### PROFESSOR MEGAN RICHARDSON

#### Director

Megan Richardson has degrees from Victoria University of Wellington, New Zealand, Yale University, USA, and the Free University of Brussels, Belgium; and she is currently a Professor of Law at the Melbourne Law School. Her fields of research and publication include intellectual property, privacy and personality rights, law reform and legal theory. She has served on consultative panels for New South Wales Law Reform Commission and Australian Law Reform Commission privacy reviews. From 2009-2012 she was the Associate Director Law of the Intellectual Property Research Institute of Australia (IPRIA).



### JASON BOSLAND

#### Deputy Director

Jason Bosland joined the Melbourne Law School as a Senior Lecturer in 2011. Prior to that he was a Lecturer in the Faculty of Law at the University of New South Wales. Jason has law degrees from the Melbourne Law School and from the London School of Economics, where he was awarded the Stanley De Smith prize in public law. Jason's primary research interests are in the areas of media law, especially defamation and privacy, open justice and the media, contempt of court and freedom of speech.



### CLARISSA TERRY

#### Administrator

Clarissa Terry joined CMCL and the Intellectual Property Research Institute of Australia as an Administrator in 2010. Prior to commencing work at the University of Melbourne, Clarissa was a Managing Editor with Routledge and Wiley. She has a Masters in Publishing & Editing from Monash University.

## TEACHING

CMCL staff have teaching responsibilities across the Melbourne Law School's programs in media and communications law. The graduate program in Communications Law was developed to provide students with an advanced understanding of the existing and developing law affecting the media and communication industries and its impact on the publication of information, ownership, services and technology. With the rapid and evolving development of communications technologies, the program provides a valuable insight into this vibrant area of law.

In addition, interstate and international academics and legal practitioners often combine research visits to the CMCL with teaching in the Melbourne Law Masters Program in Communications Law. Most subjects in the Melbourne Law Masters program are taught intensively across one week of seminars, which makes them attractive to visiting staff and to students, especially those who already practise in law or media and communications industries.

### MELBOURNE LAW MASTERS SUBJECTS OFFERED IN 2013

#### Free Speech, Contempt and the Media

- Mr Jonathan Gill, Carrick Gill Smyth

#### Privacy Law

- Ms Karin Clark, Senior Fellow, Melbourne Law School
- Professor Megan Richardson, Melbourne Law School

#### Copyright Law

- Professor Graeme Austin, Melbourne Law School

#### Cybercrime

- Dr Alana Maurushat, University of New South Wales

#### Entertainment Law

- Professor Megan Richardson, Melbourne Law School
- Professor David Caudill, Villanova University

#### Fundamentals of Regulation

- Professor Colin Scott, University College Dublin

#### Internet Law

- Mr Jonathan Gill, Carrick Gill Smyth
- Professor Dan Hunter, New York Law School
- Professor Megan Richardson, Melbourne Law School

#### Newsgathering

- Dr Andrew Scott, London School of Economics

#### Regulation of Communications

- Mr Jonathan Gill, Carrick Gill Smyth

## BREADTH PROGRAM

Law subjects offered as breadth are designed to complement undergraduate curricula, and to provide students with an insight into the law, legal language and legal processes, as well as to teach legal thinking and skills. Many undergraduate students contemplating graduate legal study, and in particular those considering an application to the Juris Doctor degree, enrol in law breadth subjects.

### Free Speech, Social Media and Privacy Category

These subjects explore the contemporary legal realms surrounding the regulation of media (particularly social media), intellectual property, free speech and the 'right' to privacy.

#### Free Speech and Media Law

Coordinator: Megan Richardson

*Offered in 2013*

This is a subject that investigates notions of free speech and censorship. With the rise of social media and online news, the traditional methods for regulating media are becoming quickly outdated. People are often in the dark about what constitutes libel, and many believe that words posted online on social media such as Facebook, or personal blogs is exempt from laws governing media. This subject will discuss the intersections of free speech, censorship, defamation laws, blasphemy, obscenity, privacy, hacking, trespass, the 'right' to protest and laws relating to social media.

#### Privacy Law and Social Networks

Coordinator: Megan Richardson

*Developed in 2013 and first offered in 2014*

This subject explores social networks and the ways that online privacy is both constrained and protected by the law. It will detail the shift from traditional forms of media, protected by laws relating specifically to this, and the shifting landscape of social media, requiring new forms of these laws. The subject will consider controversies relating to surveillance, privacy and protection, and will ensure that students understand the legal treatment of privacy in the context of social networks.

## RESEARCH

In 2013 staff associated with CMCL were involved in four major research projects and one research infrastructure project.

### **ARC Discovery Project- Defamation and Privacy: Law, Media and Public Speech**

Investigators:

- Professor Andrew Kenyon (Melbourne Law School, University of Melbourne)

### **ARC Discovery Project- 'Nothing Can Be Created Out of Nothing': Workers, Their Know-How and the Employment Relationships that Support Them**

Investigators:

- Dr Chris Dent, Melbourne Law School, University of Melbourne
- Dr William Van Caenegem, Bond University
- Professor Christopher Arup, Monash University
- Associate Professor John Howe, Melbourne Law School, University of Melbourne
- Mr Colin Fenwick, Melbourne Law School, University of Melbourne

### **ARC Linkage Project: Testing Trade Mark Law's Image of the Consumer**

Investigators:

- Associate Professor Kimberlee Weatherall, University of Sydney
- Professor Michael Humphreys, University of Queensland
- Dr Sarah Kelly, University of Queensland
- Associate Professor Jennifer Burt, University of Queensland
- Professor Megan Richardson, Melbourne Law School, University of Melbourne

### **ARC Discovery Project- Drug Companies, their Patenting Strategies and High-Cost Pharmaceuticals: An Empirical Investigation**

Investigators:

- Professor Andrew Christie, Melbourne Law School, University of Melbourne
- Professor David Studdert, Melbourne School of Population Health
- Professor Peter McIntyre, University of Sydney
- Dr Chris Dent, Melbourne Law School, University of Melbourne

### **ARC Linkage Infrastructure Equipment and Facilities Project: The Australasian Legal Scholarship Library: New Content and Sophistication for World-leading Legal Scholarship Repository and Citor**

Investigators:

- Professor Graham Greenleaf, University of New South Wales
- Professor Andrew Kenyon, Melbourne Law School, University of Melbourne
- Professor Andrew Mowbray, University of Technology, Sydney
- Professor Brian Fitzgerald, Australian Catholic University
- Professor Michael Blakeney, University of Western Australia
- Professor Anne Twomey, University of Sydney
- Professor Peter Cane, Australian National University
- Associate Professor Dan Svantesson, Bond University
- Professor Arie Freiberg, Monash University
- Associate Professor Leighton McDonald, Australian National University
- Associate Professor David Rolph, University of Sydney
- Mr Andrew Wells, University of New South Wales
- Professor Andrew Byrnes, University of New South Wales
- Professor Ross Grantham, University of Queensland
- Professor Anita Stuhmcke, University of Technology, Sydney
- Professor Janet Chan, University of New South Wales



## CMCL RESEARCH SPOTLIGHT



**SOPHIE WALKER**

**Research Fellow**

Sophie joined CMCL in November 2012 as a research fellow to work with Andrew Kenyon researching defamation and privacy law. One of her first tasks was examining transcripts of interviews with media law practitioners from the UK and Australia to understand how defamation and privacy law are working in practice. In the UK, defamation law's role in shaping public speech has come under scrutiny, first in the form of the Leveson enquiry into the culture, practices and ethics of the British press and more recently through the passage of the 2013 Defamation Act.

In this shifting landscape, the project has focused on how two key defences in defamation law that are meant to protect freedom of expression, have been applied restrictively so as to inhibit public speech.

During 2013, Sophie worked on a various papers and assisted Andrew with his work related to the project. One paper looks at the history of reform of qualified privilege in the UK, starting from the middle of last century through to the 2013 Defamation Act. Another examines the fair comment defence in Australia and the UK, how complexities and uncertainties surrounding the defence restrains the form of speech it is supposed to protect, and possible avenues for reform.



**JASON BOSLAND**

**Senior Lecturer**

Jason's current research on open justice explores the common law duty of courts to provide publicly available reasons for their decisions. The pre-modern position was that a failure to provide reasons did not constitute an error of law. However, the position in Australia has evolved such that the duty to provide reasons is now considered an 'incident of the judicial process' and has been recognised more recently as flowing from the principle of open justice.

Against the backdrop of the emerging case law in Australia linking the duty to provide reasons with the open justice principle, Jason's research considers when and how such a duty is to be exercised, what it might require in terms of public access to and publication of reasons, and the circumstances in which the publication of reasons can be withheld or subject to suppression by the courts.

Jason has been awarded an Early Career Research grant to further his research in 2014.

## RESEARCH SUPERVISION

CMCL is committed to providing outstanding research training for our PhD and MPhil students. CMCL staff supervise candidates completing a three year Research Support Program, which assists students to develop the high level skills needed to complete an outstanding thesis.

Staff associated with CMCL supervised four ongoing research higher degree candidates and four candidates who completed their studies in 2013:

### CURRENT CANDIDATES

#### **Monitoring Laws: The Role of Privacy Law in Managing Public Surveillance by the State (PhD)**

*Jake Goldenfein*

Supervisors: Megan Richardson & Andrew Kenyon

#### **Empirical assessment of the theoretical justifications for intellectual property and information protection (PhD)**

*Vicki Huang*

Supervisors: Megan Richardson & Chris Dent

#### **Copyright Exceptions and Contract (PhD)**

*Adrian Storrier*

Supervisors: Sam Ricketson & Megan Richardson

#### **The Regulation of Generative Activities on Social Media (PhD)**

*Corinne Tan*

Supervisors: Megan Richardson, Graeme Austin, & Sam Ricketson

### COMPLETED IN 2013

#### **Lockean Foundations of Private Property Rights (PhD)**

*Saba Elkman*

Supervisors: Michael Bryan & Megan Richardson

#### **Privacy and the Pictures: The Photographed and Filmed (Women) who Forged a Right to Privacy in the United States (1880-1950) (PhD)**

*Jessica Lake*

Supervisors: Barbara Creed & Megan Richardson

#### **Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi (PhD)**

*James Parker*

Supervisors: Andrew Kenyon & Shaun McVeigh

#### **"Share It Maybe" Reconsidering Australia's Fair Dealing Exceptions to Copyright for Musical Works (MPhil)**

*Mary Sheargold*

Supervisor: Megan Richardson

## THESIS SPOTLIGHT



### **ACOUSTIC JURISPRUDENCE: LISTENING TO THE TRIAL OF SIMON BIKINDI**

**Dr James Parker (completed 2013)**

**Supervisors: Andrew Kenyon & Shaun McVeigh**

*Dr Parker was nominated by his examiners for the "Chancellor's Prize for Excellence in the PhD thesis". Only the top 5% of PhD students are nominated for this prestigious award each year. Dr Parker is currently working on converting his thesis into a book which will be published with Oxford University Press in 2015.*

#### **Abstract:**

Sound is a fact of life. It is not a fact, however, that contemporary legal scholarship has made any particular efforts to acknowledge, let alone to interrogate in any depth. As a community of jurists we have become deaf to law and to the problem of the acoustic. We must begin to take responsibility for a dimension of legal thought and practice that is no less real or significant simply because we barely attend to it.

This thesis argues, therefore, for a specifically acoustic jurisprudence. It proceeds by means of a case study. Between September 2006 and December 2008, Simon Bikindi stood trial at the International Criminal Tribunal for Rwanda in Arusha, Tanzania, accused of inciting genocide with his songs. My analysis of the Bikindi case is pursued according to two main axes. First, the Tribunal's 'sonic imagination': how it thought about matters of acoustics for the purposes of judgment. Second, the 'judicial soundscape': the Tribunal's own acoustics, how sound operated in the courtroom, what work it did, how it was used, ignored, co-opted or otherwise perceived. Each of these two lines of inquiry is further divided into three parts, on the topics of song, speech and sound respectively. I demonstrate how the ICTR drew on, reproduced and gave juridical shape to a whole range of familiar ways of imagining sound in its various forms. And I show how, even though the Tribunal was not always insensitive to matters of acoustics, its approach to Bikindi's songs displayed an acute form of legal deafness: a real misunderstanding of how songs work, what they do and why they are important.

Although the thesis takes the Bikindi case as its main site of analysis, its most important implications are intended to be much broader. Most of all, it is addressed to a gap in the extant literature on the formal, aesthetic and material dimensions of legal practice. Drawing on the jurisprudential literature into which it inserts itself, the emergent field of sound studies and a theological and metaphysical tradition which extends back at least as far back as Ancient Greece, it is both an argument for the importance of attending to questions of sound in law and a first exemplification of what it might mean to do so.

## STUDENT RESEARCH SPOTLIGHT

### CORINNE TAN

#### PhD Student

Corinne began her doctoral research under the supervision of Professors Megan Richardson, Sam Ricketson and Graeme Austin at the end of 2012. Her doctoral research examines how content generative activities of users are regulated by various modes of regulation, namely, terms of service, technological affordances, copyright legislation and user culture, on social media sites. Her project adopts a bottom up approach and involves an empirical examination of the specified factors that can influence user behaviour on popular social media sites, including Facebook, YouTube and Twitter. With the findings from her project, Corinne hopes to be able to theorise on how generative activities of users are regulated on social media, in a coherent and logical manner, and further that her applied project will have some sound takeaways for legislators, who have an interest in regulating the spaces we inhabit on social media.

Corinne's project overlaps with her broad research interests in cyberspace law, internet governance, regulation, copyright law and behavioural law. Before coming to Melbourne for her doctorate, Corinne initiated and completed her own project investigating how effective copyright exceptions are for the visually impaired in Singapore, in helping them gain access to information - she subsequently published her findings in an article titled 'Moving Towards a More Inclusive Copyright Regime for the Visually Impaired' in the *Singapore Academy of Law Journal* in 2012. She also completed her Master of Laws degree at the Melbourne Law School in 2011, where she re-discovered her love for research related writing. Additionally, after being called to the Singapore Bar in 2007, Corinne gained experience as a practising corporate lawyer in Allen & Overy Shook Lin & Bok LLP (as it was then known), and subsequently as a legal counsel at a public-listed telecommunications company in Singapore, advising on intellectual property related issues.

Since the start of 2013, Corinne has been a Teaching Fellow at the Melbourne Law School and has tutored in the breadth subjects 'Free Speech and Media Law' and 'Corporate Law' taught by the Melbourne Law School to undergraduates in other disciplines. She enjoys the experience of teaching and interacting with a diverse cohort of local and international students, and appreciates how teaching complements her research.

With content from the first substantive chapter of her project, Corinne published an article titled 'Terms of Service on Social Media Sites' in the *Media and Arts Law Review* in 2014. She also contributed her opinion on the complaint filed by renowned copyright professor Lawrence Lessig against Liberation Music Pty Ltd (a Melbourne based record company) to the *European Intellectual Property Review*. Most recently, in the middle of 2014, Corinne returned more inspired from a conference titled 'Social Media and the Transformation of the Public Space' organised by the University of Amsterdam, where she presented her findings on the technological features of social media sites which result in generative behaviours of users.

## VISITING SCHOLARS

Under the CMCL's Research Visitors Program short-term fellowships are awarded to academics, practising lawyers and media industry professionals. Fellowships enable visitors to spend time, usually between two and four weeks, in Melbourne devoted to research.

CMCL hosted the following visitors during 2013:

### CMCL VISITING SCHOLARS



**Sarah Joseph**

Professor, Monash University, Melbourne



**Matthew Sag**

Professor of Law, Loyola University Chicago, USA



**Dan Hunter**

Professor of Law, New York Law School, USA



**Eric Descheemaeker**

Lecturer, University of Edinburgh, UK

## CMCL CONFERENCE

### MEDIA, COMMUNICATION, PUBLICS

Date: 25-26 February 2013

Venue: Melbourne Law School

The biennial CMCL conference showcased papers from international and local scholars over two days.

### KEYNOTE SPEAKERS



Dr Mark Andrejevic, Centre for Critical and Cultural Studies, University of Queensland

**Pre-emptive Security: Policing, Security, and the Big Data Divide**



Professor Tanya Aplin, Dickson Poon School of Law, King's College London

**Privacy Reform Post Leveson**



Dr Alana Maurushat, Cyberspace Law and Policy Centre, University of NSW

**Piratage**

## CONFERENCE SPEAKERS

**Trade Marks and the 19th Century Public – Lessons from Negligence**

*Chris Dent, Melbourne Law School*

**Managing the Biotype: Histories of Photography, Privacy and Politics**

*Jake Goldenfein, Melbourne Law School*

**The Position of the Public in Australian Trade Mark Law: An Historical Perspective**

*Amanda Scardamaglia, Swinburne University of Technology*

**The Question of 'Influence' and Convergent Media**

*Terry Flew, Queensland University of Technology*

**Privacy, Precedent and Public Communicators: Is there a fade effect?**

*Regan Neal, University of Queensland*

**Just another business - linking the media consumer law 'safe harbour' to ethical compliance**

*Mark Pearson, Griffith University*

**National Broadband Plans in Australia and the United States: From Aspirational Goals to Implementation Realities**

*Stuart Brotman, Northwestern University, Qatar*

**Big Data and Sharing of Data for Data Analytics**

*Peter Leonard, Gilbert + Tobin Lawyers*

**International Trade Law Implications of International Mobile Roaming Regulation**

*Tania Voon, Melbourne Law School*

**The New Challenge to Free Speech and Privacy: A Study of Online Social Evaluation Sites**

*Anne Cheung, University of Hong Kong*

**The double perception of surveillance: strong with interpersonal and weak with institutional surveillance**

*Massimo Ragnedda, Northumbria University*

**Does Your Company Need a Social Media Policy?**

*Pauline Rapaport, University of NSW*

**Free Speech and the Development of an International Media Law**

*Daniel Joyce, University of NSW*

**Freedom of Speech and Society A Social Approach to Freedom of Expression**

*Harry Melkonian, Macquarie University Law School*

**National Media Regulation and Global Cultural Literacy: International Perspectives on the Regulation of Young People's User-Generated Content**

*Mark McLelland, University of Wollongong*

## CONFERENCE SPEAKERS CONTINUED

### **Femme fatale: women, crime and news frames: has anything changed?**

*Mandy Oakham, RMIT University*

### **News Media on Trial: Australian Football and Sexual Assault**

*Deb Waterhouse-Watson, Monash University*

### **Cyber bullying in New Zealand – the Law Commission’s proposal**

*Rosemary Tobin, University of Auckland*

### **Regulation of online pornography and the protection of minors: An analysis of recent developments in the People’s Republic of China**

*Yan, Mei Ning, Shantou University Law School*

### **Using antitrust to govern online search: an analysis of the European Commission’s ongoing investigation into Google**

*Angela Daly, European University Institute*

### **The novel as social commentary: A space for 60 Years Later and the Wind Done Gone?**

*Dilan Thampapillai, Deakin University*

### **Challenges to Conducting Research into Representations of Minors**

*Adam Stapleton, University of Wollongong*

### **Transgressive Music Subcultures in Online Environments: Visibility, Exposure and Literacy**

*Andrew Whelan, University of Wollongong*

### **Defamation and the Universal Right to Protection of Reputation**

*Roy Baker, Macquarie Law School*

### **The Australian Origins of the Reynolds Defence of ‘Responsible Journalism’**

*Eric Descheemaeker, University of Edinburgh*

### **Judicial Perceptions of the Media: Three Views**

*David Rolph, University of Sydney*

### **Street View and the Use of ‘Googlish’ to Deflect Privacy Problems**

*Mark Burdon, University of Queensland*

### **The Impact of Law on Media Reporting of Earthquakes in Christchurch 2010-2011**

*Ursula Cheer, University of Canterbury*

### **Suppression Orders in the Victoria Courts: 2008-2012**

*Jason Bosland, Melbourne Law School*

### **Contempt of Court in the Internet Age**

*Nick Taylor, University of Leeds*



## PUBLIC SEMINARS

### THE STATE OF SUPPRESSION ORDERS IN VICTORIA AND NEW SOUTH WALES

*In association with Gilbert + Tobin Lawyers*

#### MELBOURNE

Date: Monday 13th May 2013

Venue: Gilbert + Tobin, Melbourne

#### Speakers:

- Peter Leonard (Chair), Partner, Gilbert + Tobin
- Jason Bosland, Senior Lecturer, Melbourne Law School
- Peter Bartlett, Partner, Minter Ellison
- The Hon. Justice Bernard Bongiorno AO (Discussant), Judge in Residence, Melbourne Law School

#### SYDNEY

Date: Tuesday 14th May 2013

Venue: Gilbert + Tobin, Sydney

#### Speakers:

- Peter Leonard (Chair), Partner, Gilbert + Tobin
- Jason Bosland, Senior Lecturer, Melbourne Law School
- Gail Hambly, Group General Counsel & Company Secretary, Fairfax Media
- The Hon. Justice Bernard Bongiorno AO (Discussant), Judge in Residence, Melbourne Law School

It is often lamented that there is a problem with suppression orders in Victoria. It has been reported that between early 2006 and June 2008, 627 suppression orders were issued by the Victorian courts; by comparison, only 54 equivalent orders were made in NSW. Since then, the reported figures suggest that the rate has increased quite dramatically, with 644 such orders said to have been made in Victoria in 2011 alone. But not only are the Victorian courts said to grant too many suppression orders, they have also criticised for making orders which are too broad in scope and often without sufficient temporal limitations. This study examines the validity of these criticisms by undertaking an empirical analysis of all of the suppression orders distributed to the media by the Victorian courts between 2008 and 2012. In particular, the study demonstrates: the rate at which suppression orders have been made by year and by court; the powers pursuant to which the orders have been made; the frequency with which the courts make different types of orders (ie proceedings vs general); the degree of clarity of the orders; the rate at which the orders contain an end date; and, finally, the rate at which specific types of information are suppressed (for example, the defendant's identity, the identity of a witness or victim, particular pieces of evidence, prior convictions, etc). Drawing upon the results of the data analysis, conclusions are then made about the state of suppression.

### POLICING POLITICAL SPEECH: JAPAN'S MISTRUST OF THE MARKETPLACE

*In association with the Asian Law Centre, Melbourne Law School*

Date: Thursday 29 August 2013

Venue: Melbourne Law School

**Speaker: Professor Dan Rosen, Chuo University**

**Chair: Professor Andrew Kenyon, Melbourne Law School**

Electoral campaigning in Japan is heavily regulated, with strict limitations and controls over the form and content of political speech. The system has been hesitant to embrace new technology; the July 2013 election for the upper house of the Diet was the first in which internet campaigning was allowed, following amendments to Japan's electoral law earlier this year. This presentation considered the new law in the context of overall campaign regulation in Japan, and explored the effects of the current system on democracy and freedom of speech.

Professor Dan Rosen has lived in Japan for nearly 20 years and taught at many of its best-known universities. Dan has been a professor at Chuo University Law School since 2004 and an adjunct professor at Waseda University since 2005. From 1997-2004, Dan was a member of the Faculty of Law at Doshisha University in Kyoto. He also has been an adjunct or visiting professor at Kobe, Osaka, Ritsumeikan, and Ryukoku Universities. In the United States, Dan was a member of the faculty at Loyola University Law School. Before that, he served as a law clerk to James R Browning, Chief Judge of the US Court of Appeals for the Ninth Circuit. Rosen received JSD and LLM degrees from Yale Law School and a JD from Southern Methodist University (SMU), where he was Editor-in-Chief of the law journal. In addition to Dan's regular teaching and research, he comes to Melbourne every year in connection with a joint student program conducted by Chuo and Melbourne Law Schools.

## **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (CRTC) CHAIRMAN**

Date: Wednesday 10 July 2013

Venue: Melbourne Law School

**Speaker: Jean-Pierre Blais, CRTC Chair**

**Chair: Andrew Kenyon, Melbourne Law School**

A discussion with the Canadian Radio-Television and Telecommunications Commission (CRTC) Chair, Jean-Pierre Blais. The CRTC is an independent public organisation that regulates and supervises the Canadian broadcasting and telecommunications systems.

Jean-Pierre Blais began his term as the 10th Chairperson of the CRTC on June 18, 2012. Before joining the CRTC, Mr Blais was Assistant Secretary of the Treasury Board Secretariat's Government Operations Sector. From 2004 to 2011, he was Assistant Deputy Minister of Cultural Affairs at the Department of Canadian Heritage. Soon after assuming his duties, he created the Task Force on New Technologies to study the impact of the Internet and digital technologies on Canada's cultural policies, which led to a new approach focused on Canadians and innovation. He contributed to the successful transition to digital television by co-chairing the Government-Broadcaster Committee. In addition, he served as Director of the Canadian Television Fund. Mr Blais holds a Master of Laws from the University of Melbourne in Australia, as well as a Bachelor of Civil Law and a Bachelor of Common Law from McGill University. He is a member of the Barreau du Québec and the Law Society of Upper Canada.

## **AUSTRALIAN LAW REFORM COMMISSION'S DISCUSSION PAPER ON COPYRIGHT AND THE DIGITAL ECONOMY**

Date: Tuesday 16 July 2013

Venue: Melbourne Law School

**Speaker: Jill McKeough, Australian Law Reform Commission**

**Chair: David Lindsay, Monash University**

A roundtable discussion with Professor Jill McKeough on the Australian Law Reform Commission's Discussion Paper on Copyright and the Digital Economy (DP 79), hosted by the Centre for Media and Communications Law. Professor McKeough was the Commissioner at the ALRC with particular responsibility for the Copyright and the Digital Economy Inquiry. After a brief welcome from Professor Megan Richardson, the discussion was introduced and chaired by Associate Professor David Lindsay of Monash University.

## IP TRENDS IN THE EUROPEAN UNION: AN OVERVIEW OF RECENT DECISIONS OF THE COURT OF JUSTICE

Date: Tuesday 26 November 2013

Venue: Melbourne Law School

**Speaker: Enrico Bonadio, City University London**

The talk focused on some recent decisions released by the Court of Justice of the European Union in the field of intellectual property law. In particular, the following hotly debated cases were highlighted: (i) *Brüstle* (on patentability of human embryonic stem cells); (ii) *Murphy* (on satellite TV transmission of sport events in the EU); (iii) *Scarlet v Sabam* (on the need to find a balance between copyright and fundamental rights such as free speech); (iii) *Promusicae* (on the need to strike a balance between copyright and privacy); (iv) *Google AdWords* (on liability of search engines that sell trademark-infringing keywords to on-line advertisers); (v) *Lego* (on the unregistrability of the iconic Lego brick as trademark as its shape is necessary to obtain a technical result). These cases show that intellectual property rights are not absolute rights, but have to be balanced against public interests as well as the rights of other stakeholders, such as users, competitors and Internet service providers.

Enrico Bonadio is Lecturer in Law at City University London (City Law School), where he teaches Intellectual Property Law and EU Law. He holds a PhD in International and EU law from the University of Florence. He is Associate Editor and Intellectual Property Correspondent of the *European Journal of Risk Regulation*. Enrico is a Solicitor qualified to practise in England and Wales as well as Italy. He regularly publishes and lectures in the field of International and European Intellectual Property Law. He recently published a book on the Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS') and genetic resources. Enrico is a Visiting Professor at Université Jean Moulin Lyon and Université Catholique de Lyon as well as lecturer in Intellectual Property law at the LLM in Intellectual Property offered by WIPO and the University of Turin. He has also taught at Universidad San Carlos de Guatemala, Université de Toulouse (France), University of Turku (Finland), University of Wroclaw (Poland), Moscow State Law Academy (Russia) and University of Pisa (Italy).

## NEW DEVELOPMENTS IN UK COPYRIGHT LAW, INCLUDING OPEN ACCESS PUBLISHING

Date: Tuesday 10 December 2013

Venue: Melbourne Law School

**Speaker: Estelle Derclaye, Professor of IP, University of Nottingham**

Following the Hargreaves review, UK copyright law is slowly but surely being transformed/reformed. After the adoption of the *Enterprise and Regulatory Reform Act* (ERRA) in 2013, the Intellectual Property Bill was being considered and included changes to design and patent law. Copyright exceptions were also on the government's agenda. The talk addressed some aspects of the ERRA and of these new legislative projects. The talk also included a discussion of recent open access initiatives in the UK. It presented a summary of the main research gaps that the literature review written in the framework of the new RCUK copyright centre 'CREATE' ([www.create.ac.uk](http://www.create.ac.uk)) has identified. Doctoral Research, funded by CREATE, has also started on one of the gaps namely the relationship between copyright, competition and open academic publishing, which includes the fate of not only academic articles but also academic books.

Estelle Derclaye is Professor of Intellectual Property Law at the University of Nottingham. She holds degrees in law from the University of Liège (Licence en droit; Diplôme d'Etudes Spécialisées en droit), George Washington University (LLM) and London (PhD). She joined the University of Nottingham in 2006. Before joining Nottingham, she practiced intellectual property in an international law firm in Brussels and prior to that, she was a lecturer at the Universities of Leicester and London (Queen Mary). In 2008, she was appointed as a member of the Copyright Expert Panel of the Strategic Advisory Board for Intellectual Property Policy, which advised the UK Intellectual Property Office. In 2010, Professor Derclaye was a Senior Visiting Scholar at the University of California, Berkeley. In 2012, as part of the new RCUK Centre for Copyright and New Business Models in the Creative Economy (CREATE), she was awarded funding for a research fellow and a PhD student to work on open publishing, more specifically open academic publishing.



## SELECTED PUBLICATIONS

### EDITED BOOKS

Hunter, D, Lobato, R, Richardson, M and Thomas, J, *Amateur Media: Social, Cultural and Legal Perspectives*, Routledge, United Kingdom (2013)

### REVISED BOOKS

Ricketson, S, Richardson, M and Davison, M, *Intellectual Property: Cases, Materials and Commentary (5th ed)*, LexisNexis Butterworths. Australia (2013)

### RESEARCH BOOK CHAPTERS

Frankel, S, Nixon, C, Richardson, M and Yeabsley, J, 'The Challenges of Trans-Tasman Intellectual Property Coordination' in S Frankel and D Ryder (eds), *Recalibrating Behaviour: Smarter Regulation in a Global World*, LexisNexis, New Zealand (2013), 101-138

Richardson, M and Goldenfein, J, 'Competing Myths of Informal Economies' in D Hunter, R Lobato, M Richardson and J Thomas (eds), *Amateur Media: Social, Cultural and Legal Perspectives*, Routledge, United Kingdom (2013), 18-26

Richardson, M and Thomas, J, 'Privacy' of Social Networking Texts' in D Hunter, R Lobato, M Richardson and J Thomas (eds), *Amateur Media: Social, Cultural and Legal Perspectives*, Routledge, United Kingdom (2013), 215-221

### JOURNAL ARTICLES REFEREED

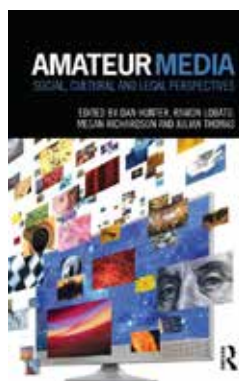
Bosland, J and Bagnall, A, 'An Empirical Analysis of Suppression Orders in the Victorian Courts: 2008-12' (2013) 35 *Sydney Law Review* 671-702

Richardson, M, 'Honour in a Time of Twitter' (2013) 5 *Journal of Media Law* 45-56

Richardson, M, 'Reforming Privacy Law – Again' (2013) 5 *Journal of Media Law* 345-354

Richardson, M, 'Responsive Law Reform: A Case Study in Privacy and the Media' (2013) 15 *European Journal of Law Reform* 20-37

## PUBLICATIONS SPOTLIGHT



### AMATEUR MEDIA: SOCIAL, CULTURAL AND LEGAL PERSPECTIVES

Dan Hunter, Ramon Lobato, Megan Richardson, Julian Thomas

Routledge, United Kingdom (2013)

The rise of Web 2.0 has pushed the amateur to the forefront of public discourse, public policy and media scholarship. Typically non-salaried, non-specialist and untrained in media production, amateur producers are now seen as key drivers of the creative economy. But how do the activities of citizen journalists, fan fiction writers and bedroom musicians connect with longer traditions of extra-institutional media production?

This edited collection provides a much-needed interdisciplinary contextualisation of amateur media before and after Web 2.0. Surveying the institutional, economic and legal construction of the amateur media producer via a series of case studies, it features contributions from experts in the fields of law, economics and media studies based in the UK, Europe and Singapore.

Each section of the book contains a detailed case study on a selected topic, followed by two further pieces providing additional analysis and commentary. Using an extraordinary array of case studies and examples, from YouTube to online games, from subtitling communities to reality TV, the book is neither a celebration of amateur production nor a denunciation of the demise of professional media industries. Rather, this book presents a critical dialogue across law and the humanities, exploring the dynamic tensions and interdependencies between amateur and professional creative production. This book will appeal to both academics and students of intellectual property and media law, as well as to scholars and students of economics, media, cultural and internet studies.

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