



THE UNIVERSITY OF

MELBOURNE

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Melbourne Law School

**Centre for Media and Communications Law
Annual Report 2017**

Front cover:

Melbourne Law School

Published by

Centre for Media and Communications Law
Melbourne Law School
The University of Melbourne VIC 3010 Australia

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Professor Andrew Kenyon and Professor Megan Richardson

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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.



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.



CMCL Advisory Board

In 2017 the Advisory Board comprised:

- Elizabeth Beal, Network Ten
- Bruce Burke, Banki Haddock Fiora
- Warren Coatsworth, Seven Network Limited
- Julie Eisenberg, SBS
- Jon Faine, ABC Radio
- Stuart Gibson, Mills Oakley
- Jonathan Gill, Carrick Gill Smyth Lawyers
- Gail Hambly, John Fairfax Holdings
- Jim Holmes, Incyte Consulting
- Paul Kallenbach, Minter Ellison
- Richard Leder, Corrs Chambers Westgarth
- Peter Leonard, Gilbert + Tobin Lawyers
- Cheng Lim, King & Wood Mallesons
- Judge Michael Lloyd-Jones (Chair)
- Denis Muller, The University of Melbourne
- Hugh Northam, Septimus Jones & Lee
- Michael Pattison, Principal Michael R Pattison
- Nic Pullen, HWL Ebsworth Lawyers
- Michael Rivette, Chancery Chambers
- Greg Sitch, Macleay William
- Andrew Stewart, Baker & McKenzie
- Robert Todd, Ashurst

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 2016 they were:

- Katy Barnett, Associate Professor, 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, Director, 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
- James Parker, Senior Lecturer, Melbourne Law School
- 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
- Jason Vaurhas, Associate Professor, Melbourne Law School
- Tania Voon, Professor, Melbourne Law School
- Kim Weatherall, 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



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.

Administration

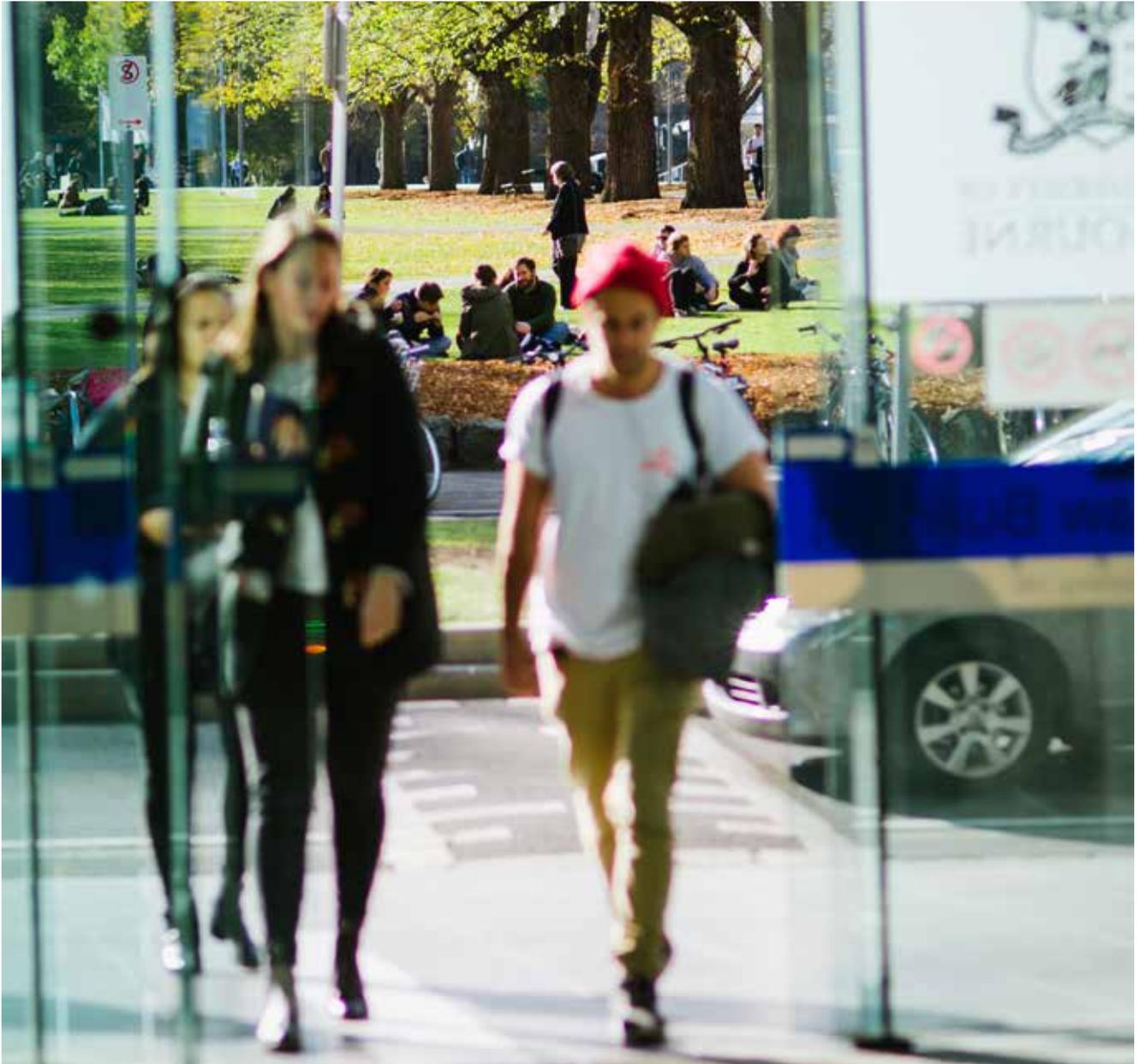
Hamish Carr joined CMCL and the Intellectual Property Research Institute of Australia (IP-RIA) as an administrator in 2015. Prior to commencing work at the Law School, Hamish was an administrator in the Faculty of Arts, School of Culture and Communication.

Finance

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 2016 were related to its public seminars, hosting research visitors, and casual administrative and research assistance.

The CMCL's accounts are incorporated in the University of Melbourne's operations and are subject to University of Melbourne financial policies and procedures. Overall responsibility and financial management of the CMCL account lies with the Centre Directors and is subject to a financial governance framework overseen by the Manager of Finance, Planning and Strategy.



Teaching

CMCL staff have teaching responsibilities across the Melbourne Law School's programs in the Melbourne Law Masters, the Juris Doctor and Breadth subjects. The 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 2017

New Media and Communications: Law and Policy

Mr Jonathan Gill, Carrick Gill Smyth

Privacy Law

Ms Karin Clark, Melbourne Law School

Professor Megan Richardson, Melbourne Law School

Appropriation, Art and the Law

Professor Sonia Katyal, University of California, United States

Competition and New Technologies

Professor Damien Geradin, University of Tilburg, University College London and EDGE Legal, Belgium

Copyright Law

Professor Graeme Austin, Melbourne Law School

Entertainment Law

Professor Megan Richardson, Melbourne Law School

Professor David Caudill, Villanova University, United States

Internet Law

Mr Jonathan Gill, Carrick Gill Smyth

Mr Jason Bosland, Melbourne Law School

Media, Free Speech and the State: Contempt, Pornography, National Security

Mr Jonathan Gill, Carrick Gill Smyth

Regulatory Policy and Practice

Professor Karen Yeung, King's College London, United Kingdom

Juris Doctor

Media Law

Jason Bosland

This subject examines the core legal constraints imposed on the media in their publishing activities. The first part of the course requires students to analyse and evaluate broad principles relating to freedom of speech and public interest and their application to the media. It also examines the greater role that the legal protection of human rights, especially in the international context, has played in the development of media law. The second part of the course explores the constraints that are imposed on the media in their reporting of court proceedings, including contempt of court and the issuing of suppression orders by the courts. The third part of the course comprises a comparative, in-depth examination of the law of defamation across Australia, the United Kingdom and the United States. It also draws on case studies from other jurisdictions, such as Canada and South Africa. The final part of the course looks at privacy and the media. It considers the current state of privacy protection in Australia, and requires students to undertake a critical, comparative analysis of the position in Australia and recent developments in the United Kingdom and the United States.

Breadth Program

Law subjects offered as Breadth are designed to complement undergraduate curricula across the university, 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 Melbourne undergraduate students contemplating graduate legal study, and in particular those considering an application to the Juris Doctor degree, enrol in law breadth subjects.

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 in 2017 Jason Bosland

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 in 2017 Megan Richardson

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 2017 staff associated with CMCL were involved in major research projects and a research infrastructure project.

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

Free Speech, Confusion and the Marketplace of Ideas

Investigators:

- Professor Andrew Kenyon, Melbourne Law School, University of Melbourne
- Professor Megan Richardson, Melbourne Law School, University of Melbourne
- Professor Graeme Dinwoodie, University of Oxford, Faculty of Law
- Professor Jacob Rowbottom, University of Oxford, Faculty of Law

This is a project run under the Oxford Law Faculty - Melbourne Law School Research Partnerships scheme, funded by Allan Myers QC

A standard rationale for free speech is that truth will emerge through the ‘marketplace of ideas’, a rationale that some have associated with the 19th century liberal-utilitarian philosopher JS Mill but is also explicitly stated by Holmes J in *Abrams v US* (1919). Given this rationale, it is puzzling to observe how much truth-endangering confusion is tolerated in areas of media and communications law.

Consider, for instance, defamation law, trade mark law and the law of passing off. These areas of law are supposedly concerned with confusion (at least as indicators of legally cognizable harms). But in fact they delineate their scope for controlling confusion far from comprehensively, using tests such as the ‘ordinary reasonable’ person or average consumer to determine just whose confusion the law should seek to address (so persons whose conclusions are deemed ‘farfetched and fanciful’ appear to be left out of account under these standard tests). Further they erect a range of thresholds and defences that apply notwithstanding the likelihood that the communication will lead to confusion and even in the face of evidence of actual confusion (for instance the ‘actual malice’ standard for public figures in US defamation law and the ‘public interest’ defence under the 2013 UK defamation statute; the ‘use as a trade mark’ threshold in Australian trade mark law and the ‘fair use’ defence to trade mark infringement in the US and the UK).

This project funding enables us to interrogate closely the multiple ways in which Anglo-Australian as well as American media and communications law allows for confusion, the marketplace of ideas rationale notwithstanding – and also to consider the possible reasons

Research Spotlight

Paul De Hert Vrije Universiteit Brussels

Research Visitor



Paul De Hert (Vrije Universiteit Brussels) – is a renowned privacy scholar and organizer of the largest privacy conference in the world Computers Privacy and Data Protection. His research addresses problems in the area of privacy & technology, human rights and criminal law. Currently he is expanding his scope of interest including research on issues with regard to the human rights status of the elderly and the principle of neutrality in a democratic state. To satisfy his multiple curiosities de Hert teams up regularly with other authors. A human rights approach combined with a concern for theory is the common denominator of all his work. He is Co-Director of the Research group Law Science Technology & Society (LSTS), Director of the Research group on human rights (HUMR), and Director of the Department of Interdisciplinary Studies of Law (Metajuridics).

During Professor Paul De Hert's time at CMCL he worked closely with its Directors and MLS faculty. He presented a paper for the CMCL privacy scholars meeting and conducted an interdisciplinary workshop for PhD candidates and Early Career Researchers. This workshop 'Privacy, Politics and Law: in Conversation with Prof. Paul De Hert' (by application) received submissions from PhD candidates and Early Career Researchers from around Australia and New Zealand (early career researchers are those who have been awarded a PhD in the last 5 years). Professor De Hert read and commented on the work of 8 participants. In addition places were made available for several non-presenting participants.

Research Supervision

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

2017 Candidates

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

Vicki Huang

Supervisors: Megan Richardson & Chris Dent

Government Mass Surveillance and Law in the Five Eyes Countries (PhD)

Alana James

Supervisors: Andrew Kenyon & Megan Richardson

The Regulation of Generative Activities on Social Media (PhD)

Corinne Tan

Supervisors: Megan Richardson, Graeme Austin, & Sam Ricketson

The Right to Digital Privacy in International Law: Towards a Pragmatic Approach

Kinfe Yilma Desta

Supervisors: Andrew Kenyon & Megan Richardson

Events

Reshaping IP's Fabric: Privatisation Versus Public Domain in the Era of Artificial Intelligence

Dr Ana Ramalho Assistant Professor of Intellectual Property Law

University of Maastricht

Chair **Michael Pattison** Principal Michael R Pattison, Australian Lawyer

Discussant **Associate Professor Kwanghui Lim**

1 March | Melbourne Business School, BTR, 200 Leicester St, Carlton, Victoria

This workshop addressed the challenges that artificial intelligent systems (AIS) might pose to traditional concepts of copyright authorship.

In many jurisdictions – including Europe and Australia - authorship seems to be somewhat connected to the conditions for protection, which might imply that, absent a human author, a work will not be original and therefore not copyrightable. This may leave many works that would otherwise be copyrightable without protection, thereby causing legal uncertainty; but it also raises questions about whether protection should at all be available, and about whether copyright is fit for purpose in face of technological progress in the area of AIS.



Michael Pattison and Associate Professor Ana Ramalho

The workshop explored whether the current legal framework can accommodate AIS as creators for purposes of copyright protection, and then followed to consider the more

normative question of whether AIS' creations should be copyright protected, or rather belong in the public domain. Dr Ramalho concluded by suggesting a model for the legal regime of works created by AIS.

Ana Ramalho is a Portuguese national with policy and legal expertise in the field of intellectual property (IP) and European law. Currently an Assistant Professor of Intellectual Property at Maastricht University, she holds a 5-year advanced LL.B. from the University of Lisbon (1999), an LL.M. in Intellectual Property and Competition Law from the Munich Intellectual Property Law Center (2007), a Research Master in Intellectual Property Law from the University of Lisbon (2008), and a PhD in Copyright and European Law from the University of Amsterdam (2014). Throughout her career she has taken on commissioned research and consultancy on a range of international and European IP topics for several private and public institutions, including the World Intellectual Property Organization and the European Patent Office. Ana has published extensively on IP law and policy. Her publications have been cited and referenced in court cases by Courts of Appeal in Portugal, and translated into other languages due to their topicality. Her current research interests include the impact of the Court of Justice of the EU on IP law- and policy-making, and problems of IP ownership in the realm of artificial intelligence.

This workshop was hosted by the Melbourne Business School and supported by the EU Centre on Shared Complex Challenges.



European Union Centre on Shared Complex Challenges



THE UNIVERSITY OF MELBOURNE



The EU Centre on Shared Complex Challenges is co-funded by the European Commission and The University of Melbourne

IP Developments in Europe | Melbourne & Sydney Seminars

Dr Ana Ramalho Assistant Professor of Intellectual Property Law

University of Maastricht

Host: **Matthew Swinn** Partner at King & Wood Mallesons, Melbourne; **Cate Nagy** Partner at King & Wood Mallesons, Sydney

Melbourne | 2 March

Where: King & Wood Mallesons, Level 50, Bourke Place, 600 Bourke Street, Melbourne

Sydney | 13 March

Where: King & Wood Mallesons, Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney

These seminars provided an overview of recent IP developments in Europe, namely the state-of-play of the unitary patent (especially considering the imminent Brexit); the Trade Secrets Directive; the new Trademark Regulation; and the proposed Directive on copyright in the Digital Single Market.

Specific IP issues discussed in more detail and included:

- The ground for refusal of registration due to functionality of the sign (based on both the new Trademark Regulation and the recent Rubik's cube case);
- Articles 11 and 13 of the proposed Directive on copyright in the Digital Single Market (which refer to a new exclusive right for press publishers and to the use of protected content by information society service providers, respectively); and
- The right of communication to the public as interpreted by the Court of Justice of the European Union in relation to hyperlinking (especially in cases Svensson and GS Media).



**European Union Centre on
Shared Complex Challenges**

**KING & WOOD
MALLESONS**

The EU Centre on Shared Complex Challenges is co-funded by the European Commission and The University of Melbourne

Privacy's Blueprint: The Battle to Control the Design of New Technologies

Professor Woodrow Hartzog

Starnes Professor of Law, Samford University, United States of America

15 March | Melbourne Law School

Technological design that affects our privacy is now so pervasive, we hardly even notice it. Every day the devices and software we use-social media, mobile apps, databases and smart phones-are built to give away our stories. And the law barely cares. In this talk based on his forthcoming book, Professor Woodrow Hartzog argued that the law must address technological design and proposed how to do so in a way that is flexible and not unduly constraining.



Professor Woodrow Hartzog

We must ask and answer hard questions like should the law prohibit malicious interfaces designed to trick us into personal disclosure? Should designers be forced to build backdoors into encryption for the government? Should there be minimum data security standards for technologies in order to keep our information safe from hackers? Privacy law must take design more seriously. To get it right, we need a blueprint.”

Woodrow Hartzog is the Starnes Professor of Law at Samford University's Cumberland School of Law and an Affiliate Scholar at the Center for Internet and Society at Stanford Law School. His research on privacy, media, and robotics has been published in numerous law reviews and peer-reviewed publications such as the Yale Law Journal, Columbia Law Review, California Law Review, and Michigan Law Review. Has also written for popular publications such as The Guardian, Wired, The Atlantic, CNN and BBC. His book, Privacy's Blueprint: The Battle to Control the Design of New Technologies, is under contract with Harvard University Press.

The Digital Map: Copyrightability of Spatial Data

Dr. Marlena Jankowska Assistant Professor, Faculty of Law and Administration, University of Silesia, Poland

21 March | Melbourne Law School

Significant changes in the nature of Spatial Data Infrastructure (SDI) have created new legal uncertainties that have not yet received sufficient attention from the legal profession in Europe. The practice of using SDI has nevertheless shown that there are many legal issues worth noting, especially concerning intellectual property rights. On that subject, what we have to confront in the doctrine of copyright law is the balance between the competing principles of accessibility of public information against the principles of copyright protection. At the same time, the technological challenge stimulates doubts about copyright protection even more, as it is not certain whether SDIs are copyrightable at all. As there are many standpoints in that matter, it has to be answered whether U.S. and European legal regulations, as well as the technical framework of creating the digital data and databases (e.g. the ISO standards), can strip away the creative element from the work. It should also be noted that the current legal standpoint on maps is a vague one that leaves many unanswered questions. Should we, for example, assume that an idea may only be copyrightable if it is individualized, creative and has been articulated in some form? Do we need to re-imagine the relationship between factual content (e.g. geographical information) and a creative form of expression (e.g. a cartographic map)? Additional challenges emerge when we consider the relationship of the above to space law.

Dr. Marlena Jankowska is an Assistant Professor in the Faculty of Law and Administration at the University of Silesia in Katowice in Poland, as well as an experienced attorney specializing in intellectual property, new technologies and geoinformation law. She also directs the Institute of Intellectual Property based in Katowice, Poland.

OAIC & University of Melbourne - Privacy Event

Timothy Pilgrim PSM Australian Information Commissioner and Australian Privacy Commissioner

Dr Monika Zalnieriute Melbourne Law School Postdoctoral Fellow

James Horton Datanomics

Chair **Professor Megan Richardson** Melbourne Law School

28 March | Melbourne Law School

The Australian Information and Privacy Commissioner, Timothy Pilgrim, led a legal, social policy and rights panel at the University of Melbourne. Commissioner Pilgrim was joined by human rights scholar and advocate, Dr. Monika Zalnieriute, and technology advisor, James Horton. This free event was hosted by the Office of the Australian Information Commissioner (OAIC) and the University of Melbourne.

University of Melbourne's privacy law expert and CMCL Co Director, Professor Megan Richardson, MC'd the interactive panel and will take questions from the floor and from the

live Twitter feed #ppnMelbourne. Privacy professionals, academics and students with an interest in privacy rights were encouraged to attend and join the discussion.



Dr Monika Zalnieriute, James Horton, Timothy Pilgrim, Professor Megan Rikchardson

Algorithmic Regulation

Professor Karen Yeung Kings College, London

11 April | Melbourne Law School

Innovations in networked digital communications technologies, including the rise of 'Big Data', ubiquitous computing and cloud storage systems, may be giving rise to a new system of social ordering known as algorithmic regulation.

Algorithmic regulation refers to decision-making systems that regulate a domain of activity in order to manage risk or alter behaviour through continual computational generation of knowledge by systematically collecting data (in real time on a continuous basis) emitted directly from numerous dynamic components pertaining to the regulated environment in order to identify and, if necessary, automatically refine (or prompt refinement of) the system's operations to attain a pre-specified goal.

In this seminar, Professor Yeung offered a descriptive analysis of algorithmic regulation, classifying these decision-making systems as either reactive or pre-emptive, and offered a taxonomy that identified 8 different forms of algorithmic regulation based on their configuration at each of the three stages of the cybernetic process: notably, at the level

of standard setting (variable vs fixed behavioural standards); information-gathering and monitoring (historic data vs predictions based on inferred data) and at the level of sanction and behavioural change (automatic execution vs recommender systems).

Professor Yeung mapped the contours of several emerging debates surrounding algorithmic regulation, drawing upon insights from regulatory governance studies, legal critiques and selective insights from surveillance studies to highlight various concerns about the legitimacy of algorithmic regulation.

Presented in conjunction with the Centre for Corporate Law and Securities Regulation.



Professor Megan Rikhardson and Professor Karen Yeung

Website blocking injunctions: lessons from the UK and EU

Dr Jaani Riordan

12 April | Melbourne Law School

As Australian courts begin to apply s 115A of the Copyright Act 1968 (Cth), it is timely to consider the experience of the English and European courts in relation to website blocking injunctions.

This presentation considered the evolution of blocking remedies in the European Union, including:

- emerging practices in relation to jurisdiction, discretion, costs, and safeguards;

- the extension of blocking remedies to new categories of wrongdoing under the courts' inherent jurisdiction;
- the new phenomenon of 'live' blocking orders which target infringing transmissions of live sports broadcasts; and
- practice and procedure in blocking applications



Dr Jaani Riordan and seminar attendees

Dr Jaani Riordan is a barrister at specialist intellectual property chambers 8 New Square in London, and has appeared in major blocking cases including *Cartier International AG v British Sky Broadcasting Ltd* [2016] EWCA Civ 658 and *Football Association Premier League Ltd v British Telecommunications plc* [2017] EWHC 480 (Ch). He is the author of *The Liability of Internet Intermediaries* (OUP, 2016).



This seminar was presented in conjunction with the Science & Technology Law Association, Melbourne Law School.

Copyright and The Cost of Imagination Foregone

Professor Pat Aufderheide

University Professor of Communication Studies, American University, Washington, D.C

26 April | Melbourne Law School

As Australian policymakers enter the third decade of grappling with the challenge of adapting copyright law to the modern era, they enter a polarized, unproductive debate that pits tech innovation interests against the interests of creators invested in their copyrights. In reality, creators have at least as much interest in user rights (exception and limitations) as they do in copyright monopoly rights. Aufderheide discussed her research, primarily from the U.S. but with some data from research in Australia, with creative organizations and creators on their use of copyright exceptions and limitations. The U.S. research demonstrates the difference in creative potential and productivity when creators are able to access functional exceptions.

Patricia Aufderheide is University Professor of Communication Studies in the School of Communication at American University in Washington, D.C., and founder of the Center for Media & Social Impact, where she continues as Senior Research Fellow. In 2017, she is a Fulbright Scholar at Queensland University of Technology. Her books include *Reclaiming Fair Use: How to Put Balance Back in Copyright* (University of Chicago), with Peter Jaszi; *Documentary: A Very Short Introduction* (Oxford), *The Daily Planet* (University of Minnesota Press), and *Communications Policy in the Public Interest* (Guilford Press). She co-coordinates the Fair Use and Free Speech project at the Center with Prof. Peter Jaszi of the Washington College of Law. Aufderheide has received numerous journalism and scholarly awards, including a research award from the International Communication Association in 2011, a career achievement award in 2008 from the International Digital Media and Arts Association and the Scholarship and Preservation Award in 2006 from the International Documentary Association.



Professor Patricia Aufderheide, Professor Andrew Kenyon and Jason Bosland

Private Power Online: how does EU law fare?

Dr Angela Daly

Queensland University of Technology

3 May | Melbourne Law School

The emergence of very large transnational private companies which provide critical Internet infrastructure and services has brought with it corresponding concerns about the power of these companies to control, surveil and otherwise influence our communications. Many of these companies also gather vast amounts of data by and about their users – a bank of data which has proved attractive to the public power of nation-states' security and law enforcement agencies, which have accessed it in less than transparent and legitimate ways, as Edward Snowden's revelations from 2013 attest.

Against this backdrop, and adopting a socio-legal methodology, this presentation considered some key topics, such as net neutrality, the Commission investigations into Google and the emergence of cloud computing, and considers how well existing EU legal and regulatory frameworks are able to protect individual Internet users' interests vis-à-vis private power online.

This presentation was based on her book, *Private Power, Online Information Flows and EU Law*, which has just been published by Hart.

Dr Angela Daly is Vice Chancellor's Research Fellow in Queensland University of Technology's Faculty of Law and a research associate in the Tilburg Institute for Law, Technology and Society. She is a socio-legal scholar of technology and is the author of *Socio-Legal Aspects of the 3D Printing Revolution* (Palgrave 2016) and *Private Power, Online Information Flows and EU Law: Mind the Gap* (Hart 2016). She holds a PhD in Law from the European University Institute, and previously was Postdoctoral Research Fellow in Media and Communications Law at the Sunburned Institute for Social Research.



Dr Angela Daly

Look what they've done to my data: issues in privacy, security and data protection

10 May | Melbourne Law School

This panel discussion with the Victorian Privacy and Data Protection Commissioner David Watts took place at the University of Melbourne. Commissioner Watts was joined by big data, information security and artificial intelligence experts Abigail Payne, Vanessa Teague, and Pompeau Cassanovas. This free event was hosted by the Victorian Office of Commissioner for Privacy and Data Protection and the University of Melbourne.

David Watts Commissioner for Privacy and Data Protection, Victoria. With a background in

law, the Commissioner has practiced in both the private and public sectors, specialising in information technology, information privacy, intellectual property, governance and regulatory systems. In 2016 David was selected to lead a global study on big data and open data that will culminate in a paper presented to the UN General Assembly in October next year.

Abigail Payne Director and Ronald Henderson Professor, Melbourne Institute of Applied Economic and Social Research, Faculty of Business and Economics, University of Melbourne. The Melbourne Institute is the leading Australian institute on applied economic and social research. Professor Payne's own work focuses on empirical public economics issues encompassing questions around student performance and understanding donor and charity behaviour.

Vanessa Teague is a cryptographer with an interest in cryptographic protocols that support a free and democratic society. Her main research interest is in electronic voting protocols, which aim to protect individual vote privacy while providing verifiable evidence of a correct election result.

Pompeu Casanovas of Universitat Autònoma de Barcelona (UAB), is Director of Advanced Research, former Director of the Institute of Law and Technology, and Professor of Philosophy and Sociology of Law at the UAB Law School. He has 20 years of experience conducting research on legal sociology, pragmatics and AI and law, including as principal investigator of over 50 national, European, and international projects.

Commissioner
for Privacy and
Data Protection



The Future of Patent Law

The Honourable Randall Rader

16 May | King & Wood Mallesons, Level 50, 600 Bourke Street Melbourne

The Honourable Randall Rader, formerly Chief Judge of the US Court of Appeals for the Federal Circuit, spoke on The Future of Patent Law in Melbourne on 16 May 2017.

In a world where IP doctrines and policies are changing rapidly in the two leading economic markets -- China and the US -- intellectual property retains a prominent component of market success. Thus learning the future of patent law changes may have important implications for businesses and law firms alike.

The Honourable Randall Rader was appointed to the United States Court of Federal Claims in 1988. In 1990, he was nominated to a seat on the United States Court of Appeals for the Federal Circuit. In 2010, he became Chief Judge of the Federal Circuit. In 2014, he retired.

While on the circuit, he served as a law professor, having taught patent law and advanced intellectual property courses at the University of Virginia School of Law, Georgetown University Law Center, Washington, DC, the Munich Intellectual Property Law Center, and The George Washington University Law School, Washington, DC. He is the co-author of a casebook on patent law used at over sixty-five law schools.

CMCL & IPRIA ECR Workshop (by application)

Privacy, Politics and Law: in Conversation with Prof. Paul De Hert

Professor Paul De Hert Vrije Universiteit Brussels

2 October | Melbourne Law School



Workshop participants w/ Professor Paul de Hert and Professor Megan Richardson

The CMCL, IPRIA and Melbourne Law School was excited to announce that Professor Paul De Hert (Vrije Universiteit Brussels) – a renowned privacy scholar and organizer of the largest privacy conference in the world Computers Privacy and Data Protection - would conduct an interdisciplinary workshop for PhD candidates and Early Career Researchers. We invited applications from interested PhD candidates and Early Career Researchers from any faculties to apply (early career researchers are those who have been awarded a PhD in the last 5 years). Professor De Hert read and commented on the work of 8 participants from across Australia and New Zealand. Places were also made available for ten non-presenting participants who participated in the discussion. Selected presenting participants from outside of Melbourne were provided with hotel accommodation while in Melbourne.

Professor Paul De Hert's work addresses problems in the area of privacy & technology, human rights and criminal law. Currently he is expanding his scope of interest including research on issues with regard to the human rights status of the elderly and the principle of neutrality in a democratic state. To satisfy his multiple curiosities de Hert teams up regularly with other authors. A human rights approach combined with a concern for theory is the common denominator of all his work. He is Co-Director of the Research group Law Science Technology & Society (LSTS), Director of the Research group on human rights (HUMR), and Director of the Department of Interdisciplinary Studies of Law (Metajuridics).

This Workshop was part of the CMCL and IPRIA Interdisciplinary Workshop Series.

Trade Marks & Free Speech: Perspectives on The Slants Case

9 October | Melbourne Law School

Rochelle Dreyfuss Pauline Newman Professor of Law and Co-Director, Engelberg Center on Innovation Law & Policy at New York University School of Law

Susy Frankel Professor of Law and Director of the New Zealand Centre of International Economic Law at Victoria University of Wellington

Vicki Huang Lecturer in IP law at the Faculty of Business and Law, Deakin University

Dan Rosen Professor of Law at Chuo University Law School, Tokyo

The Hon Justice Julie Dodds-Streeton QC Judge in Residence, Melbourne Law School

The US Supreme Court's decision in *Matal v. Tam*, 582 U.S. ____ (2017) has been described as rocking the IP world (or alternatively deeply controversial) in holding the Lanham Act's "disparagement clause" unconstitutional. The unanimous verdict was issued on an application by Simon Tam of the Asian-American rock band The Slants seeking to "reclaim" the derogatory term "The Slants" by registering it as the band's trade mark. As Justice Alito put it, speech that disparages may be hateful but under the First Amendment judges protect the freedom to express "the thought that we hate."

In this seminar we heard perspectives from four trade mark academics and a former Australian federal court judge on the meaning, significance and implications of the decision for trade mark, branding and language practices.



Professor Megan Richardson, Professor Dan Rosen, Vicki Huang, Professor Susy Frankel and Professor Rochelle Dreyfuss

CMCL Annual Update & Dinner | Defamation, Contempt & Open Justice

Dr Matt Collins QC Aickin Chambers

Jason Bosland Deputy CMCL Director, Melbourne Law School

Chair and commentary: **Professor Andrew Kenyon** Melbourne Law School

18 October | University House, Woodward | Melbourne Law School

This seminar took the form of an interactive workshop and examined the latest developments in defamation, contempt and open justice. Combining professional and academic expertise, the evening was informative for a wide range of practitioners and was designed to meet the CPD requirements of lawyers. Registration included dinner at University House Woodward.

Dr Matt Collins QC, Aickin Chambers is the Senior Vice-President of the Victorian Bar and a Senior Fellow at the Melbourne Law School. He is the author of all three editions of *The Law of Defamation and the Internet* (OUP, 2001, 2005, 2010), the standard international text on the application of principles of defamation law to online publications, and of *Collins on Defamation* (OUP, 2014), a leading text on the law of defamation of England and Wales. He has acted as Counsel in several of the most high profile defamation and related actions in Australia in recent years.

Jason Bosland, Deputy Director of the Centre for Media and Communications Law at Melbourne Law School, where he teaches communications and intellectual property law. He holds degrees from the University of Melbourne and the London School of Economics. His primary research interests lie in media law, including defamation and privacy, open justice and the media, contempt of court and freedom of speech.



Dr Matt Collins QC, Professor Andrew Kenyon and Jason Bosland

Boxes and Grunts: Staging self-censorship and the limits of excess

Dr Claire Maree Asia Institute

Discussant: **Professor Dan Rosen** Chuo Law School, Tokyo, Japan and Visiting Research Scholar, MLS

4 December | Melbourne Law School

The use of 'bleeps' is a common trope of self-censorship in entertainment television that facilitates the image of personalities and comedians speaking candidly. Censorable speech includes not only speech acts containing explicit language, but also 'scandalous talk'; sections of entertaining banter in which the names of personalities and entertainers are explicitly mentioned. In Japanese media, in-house manuals regiment the editing of explicit and discriminatory language whereas concern for privacy and defamation laws regiments the use of personal images and reference to individuals in media broadcasts.

In this presentation, Dr Claire Maree examined the practice of overlaying 'tennis grunts' and text boxes to 'bleep out' speech acts performed by queer/queen personality Matsuko Deluxe in the late-night television show *Matsuko no heya* (Matsuko's Room; Fuji Television Network [FNS], 2009-2011). Unlike its contemporaries, *Matsuko no heya* (MNH) contains very little text-on-screen. The 'bleeps' and 'boxes' introduced to mask problematic speech, therefore, appear as traces of post-production editing. At the meta-level there is repeated reference to production processes, and the question of how to deal with speech deemed to be 'unusable' is openly discussed. Regimentation of selected talk reinforces Matsuko's image as a sharp-tongued, honest-speaking and entertaining personality. In the context of Matsuko's media persona, and wider representations of queer/queen talk in mainstream media, use of self-censorship technologies position the queer/queen style as excessive and always already exceeding the limits of respectability.

This presentation was part of Dr Claire Maree's current research project that examines the use of text-on-the-screen in Japanese media (ARC DP150102964).

Claire Maree is Senior Lecturer in Japanese at the Asia Institute, University of Melbourne. Her research areas are critical language studies, gender/sexuality and language studies, media studies and queer studies. Claire is currently sole CI on 'Writing Identity onto the Screen: Subtitles and captions in Japanese media' (ARC DP150102964). She also collaborates with colleagues from Australia and Japan: on 'Thirty Years of Talk: A Panel Study of Kobe Women's Interview Discourse' (ARC DP170102598). Major publications include: *Discourse, Gender and Shifting Identities in Japan: the Longitudinal Study of Kobe Women's Ethnographic Interviews 1989-2019, Phase One* (C. Maree & K. Okano, eds. Routledge, 2018); 'Onē-kotoba' Ron (On 'Onē-kotoba [language of queens]') (Seidosha, 2013); *Hatsuwasha no gengo sotoratejī toshite no negoshiēshon kōi* (Negotiation as a Linguistic Strategy of Speakers) (Hituzi Shobo, 2007).

Presented in conjunction with the Asian Law Centre.

Press Freedom in Europe in the 21st Century

Professor Dirk Voorhoof Copenhagen University

Date: 15 November

Venue: Melbourne Law School

A seminar focused on developments regarding protection of journalistic sources and whistleblowers, access to public documents and investigative journalism.

Dirk Voorhoof holds a Master Degree in Law (1979) and Communication Sciences (1980), and a PhD in Law (1990). He was a lawyer at the Brussels Bar (1990-1992), a Member of the Federal Commission for Access to Administrative Documents (1994-2005), of the Flemish Media Council (2005-2012) and of the Flemish Regulator for the Media (2006-2016).

He lectured at Ghent University (1992-2016), in the Media Law Advocates Programme at the University of Oxford (2000-2007) and at Copenhagen University (2004-2017), teaching courses Media Law, Copyright Law, Journalism & Ethics and European Media Law.

He reports on developments regarding freedom of expression, media and journalism in Europe, including in Iris, legal newsletter of the European Audiovisual Observatory, Auteurs & Media and Mediaforum. He is a member of Legal Human Academy, of the CMPF Scientific Committee, European University Institute, Florence, of the Global FOE&I @Columbia experts network, Columbia University, New York, of the Executive Board of the European Centre for Press and Media Freedom (ECPMF), Leipzig and of the Committee of Experts on Internet intermediaries (MSI-NET) of the Council of Europe.

He is the co-author of the free online e-book *Freedom of Expression, the Media and Journalists: Case-law of the European Court of Human Rights* (also available in French and German).



Professor Andrew Kenyon and Professor Dirk Voorhoof

Media and Arts Law Review

The *Media & Arts Law Review* is a quarterly, refereed journal examining all areas of media and arts law, including: communications, contempt, copyright, cultural heritage, defamation, digitisation, entertainment, free speech, IP, journalism, privacy, and the public interest.

The Review has a distinguished Editorial Board and publishes independently refereed articles, from Australian and international authors. It also includes regular update reports about media and arts law developments from a team of International Contributing Editors. The updates offer a snapshot of matters such as case law, legislation, law reform, international conventions, and changes in industry self-regulation. Reports include the US, the UK.

Editors

- Jason Bosland, Senior Lecturer, Melbourne Law School, Australia
- Melissa de Zwart, Professor, The University of Adelaide, Australia



Publications

Edited Book

Richardson, M, Ricketson, S. (ed.) (2017) *Research Handbook on Intellectual Property in Media and Entertainment*. Edward Elgar Publishing Ltd.

Research Book Chapters

Richardson, M. (2017) Introduction. *Research Handbook on Intellectual Property in Media and Entertainment*. Edward Elgar Publishing Ltd.

Richardson, M. & Dinwoodie, G. (2017) Publicity Right, Personality Right, or just Confusion?. *Research Handbook on Intellectual Property in Media and Entertainment*. Edward Elgar Publishing Ltd.

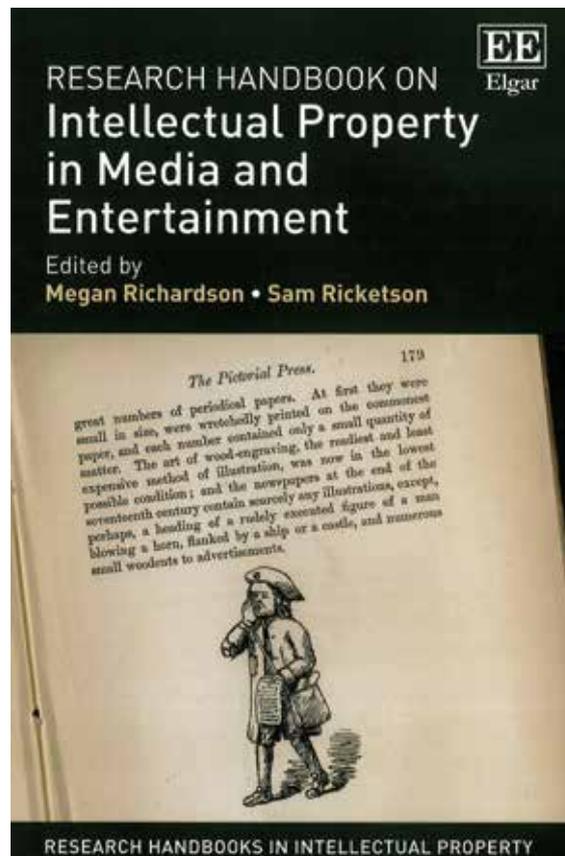
Journal Articles Refereed

Bosland, J. (2017). Two Years of Suppression under the Open Courts Act 2013 (Vic). *Sydney Law Review*, 39 (1), 25—57.

Richardson, M. & Bosua, Rachele. & Clark, K. & Webb, J. & Ahmad, A. Towards responsive regulation of the Internet of Things: Australian perspectives, *Internet Policy Review*, 6 (1),

Journal Articles Unrefereed

Kenyon, A.T. & Svensson, E-M. & Edstrom, M. Building and Sustaining Freedom of Expression Considering Sweden, *Nordicom Review*, 38 (1), 31—45.



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