



THE UNIVERSITY OF
MELBOURNE

AUSTRALIA AND NEW ZEALAND IP ACADEMICS' MINICON

A collegial workshop for HDR and ECR research

Melbourne Law School

Intellectual Property Research Institute of Australia

3 & 4 September 2020

IP ACADEMICS' MINICON | SEPTEMBER 3

Session 1: 10am - 11:40am

Copyright and lending rights

Chair: **A/Prof Rebecca Giblin** University of Melbourne, Melbourne Law School

'Don't let this flop': TikTok Creators' Strategic Improprieties

D. Bondy Valdovinos Kaye and **Dr Crystal Abidin** QUT and Curtin University

New roles for old rights: how digital copyright changes the relationship between lending and lending rights

Dan Gilbert PhD candidate, Monash University/Visiting Scholar, University of Melbourne

Nature of the Problems as to Orphan Films in Australia

Huiyang Li PhD Candidate, University of NSW

Open science and the copyright law: through the prism of three step test

Nikos Koutras Lecturer, Edith Cowan University

Session 2: 2pm - 3:40pm

Patents and Plants

Chair: **Professor Dianne Nicol** University of Tasmania

The Evolution of Agricultural Technologies as 'International Public Goods': Navigating the Globalisation of Intellectual Property in the CGIAR Network

David J. Jefferson Research Fellow, University of Queensland

Botanical Monopolies: Rethinking Resistance to Patents for Native Plants

Jocelyn Bosse PhD candidate, University of Queensland

Examining the relationship between the Convention on Biological Diversity and the TRIPS Agreement regarding transfer of technology

Temitope Kuti PhD Candidate, Victoria University of Wellington

Australia's Plant Breeder's Rights system: What is being judged?

Hamish MacDonald PhD candidate, University of Queensland

IP ACADEMICS' MINICON | SEPTEMBER 4

Session 3: 10am - 11:15am

Trademarks, bundling and transnational litigation

Chair: **Professor David Lindsay** University of Technology, Sydney

From COON® to REDSKINS®: The Belated Awakening of the Public Sphere to Stigmatising Commercial Imagery and Trade Marks

Fady Aoun University of Sydney

Developing a Legal Framework for Determining Forum Choices in Transnational Intellectual Property Litigation

Vanessa Ho PhD candidate, Macquarie University

Analysing the circumstances of illegal bundling products or services which are the subject of intellectual property rights

Masoomeh Ozgoli Master by Research candidate, Macquarie University

Session 4: 2pm - 3:40pm

Copyright and moral rights

Chair: **Professor Kathy Bowrey** University of New South Wales

Implications of Vandalising a Public Art Statute: Copyright, Moral Rights, and Graffiti

Marie Hadley and **Sarah Hook** Associate Lecturer, Newcastle Law School and Lecturer, Western Sydney University

Is reversion effective? Testing the effect of copyright reversion on the trade book industry

Joshua Yuvaraj PhD candidate, Monash University/ Visiting Scholar, University of Melbourne

Collective Management of Music Copyright in China - A Comparative Analysis of Members' Rights in Musical Collective Management Organisations in China and Australia

Qinqing Xu PhD candidate, University of Wollongong

Copyright's Relations: Thinking about the Structure of Creative Economies

Cody Rei-Anderson PhD candidate, Victoria University, Wellington

Session 5: 3:40pm - 4:30pm

Closing session - Mingle and show off your pets

Conference attendees are invited to drop in and mingle – BYO drink!

Abstracts

'Don't let this flop': TikTok Creators' Strategic Improperities

Dr Crystal Abidin Curtin University

D. Bondy Valdovinos Kaye Queensland University of Technology

TikTok is a short-video digital media platform that encourages users to create and share audio-visual content between 15-60 seconds long. A key appeal of TikTok is its platform features that facilitate seamless content creation through innovative re-use. With a few taps on a mobile device, users can create their own videos using the same visual formats or audio clips from the video they were previously watching, through practices of mimicry that have been studied as “templatability” (Leaver, Highfield, & Abidin, 2020). TikTok creators who aspire to amplify their following and visibility often study the algorithmically curated homepage (‘For You Page’) and engage in strategies to increase their chances of appearing on it, often by siphoning attention and gamifying the TikTok algorithm. In other cases, they involve deliberately copying and misattributing trending video and audio content using TikTok’s platform features.

The features and affordances of social media platforms can ‘nudge’ users and creators towards IP infringement. However, this rarely leads to any formal legal action in non-commercial User Generated Content (UGC) settings (Tan, 2018). Rather than focus on commercial exploitation of UGC, previous studies suggest that creators prioritise giving credit – or the moral right of attribution – as increasingly important on digital platforms such as Deviant Art (Perkel, 2016), Instagram (Meese & Hagedorn, 2019) and YouTube (Pappalardo & Meese, 2019). At present, the features and affordances of TikTok offer limited avenues for commercialization but valorises creators of popular video or audio challenges and memes (Kaye, 2020). Creators want to go viral on TikTok and some will do so by catapulting or feeding off the success of others.

From COON® to REDSKINS®: The Belated Awakening of the Public Sphere to Stigmatising Commercial Imagery and Trade Marks

Fady Aoun University of Sydney

The Black Lives Matters social justice movement has shone a harsh light on endemic structural racism in Western civil societies, especially as it relates to police brutality and the perceptions of the Other. A small, but important consequence of this movement is the long overdue mobilisation of the wider public sphere against harmful racist tropes and enduring stigmatising commercial imagery and trade marks. This outcome is due in large part to the sustained efforts of marginalised groups in drawing to the attention of the broader public sphere the problem of various stigmatising trade marks, such as Saputo’s COON trade mark and the Washington REDSKINS suite of trade marks.

Through the lens of Habermasian public sphere theory, this article documents the struggles of Native Americans as against the Washington REDSKINS trade marks and Aboriginal activist Stephen Hagan as against the COON cheese trade marks. In so doing, it laments trade mark law’s unfulfilled emancipatory potential and observes that pecuniary concerns once more predominate in forcing positive change.

Despite this gloomy representation, discursive contestation between marginalised groups and wider society over stigmatising trade marks as well as some hard-fought — though short-lived — jurisprudential victories in trade mark law suggest that meaningful normative and empirical

change is indeed possible in the long run. It is hoped that these case studies also serve as cautionary tales against the adoption or promulgation of stigmatising trade marks and that decision-makers treat the concerns of marginalised groups seriously.

Botanical Monopolies: Rethinking Resistance to Patents for Native Plants

Jocelyn Bosse PhD candidate, University of Queensland

Native to the north-western Australian continent, the Kakadu plum (*Terminalia ferdinandiana*) is a tree that produces a small, green fruit, known to Aboriginal peoples for its food and medicinal uses. Long after Australian scientists showed the fruit to have the highest content of vitamin C (ascorbic acid) in the world, the Kakadu plum became the focus of high-profile biopiracy allegations, which targeted US companies that were seeking patent rights over cosmetics containing Kakadu plum extract in 2010. The paper draws upon ethnographic work with plant and food scientists, Aboriginal persons, commercial entities, and government officials, to explore the materialities of patent claims to Kakadu plum and the diverse methods of resisting such intellectual property rights over the last ten years.

Anthropologists, science & technology scholars, and historians have engaged with the nexus of scientific research, patent ownership, and the self-determination work of Indigenous peoples as a productive site of inquiry (Foster 2017; Osseo-Asare 2014; Hayden 2003; Shiva 1999). Drawing on such work, this paper compares the examination and opposition proceedings to a patent filed by the company, Mary Kay Inc., in both Australia and the United States. In the Australian context, the paper considers how opposition to the appropriation of Indigenous knowledge about the Kakadu plum became entangled with efforts to reimagine the Australian brand in a way that aligned with national reconciliation policies (Aronczyk 2013; Coombe 1998). By following this thread of the Kakadu plum patent dispute, the paper highlights the claims of identity, belonging, and ownership that characterised the resistance to patent claims by US companies, which drew heavily on the logic of access and benefit sharing legislation. However, existing scholarship on Kakadu plum patent claims has exclusively focused on the opposition proceedings before IP Australia (Holcombe and Janke 2012). By contrasting the Australian dispute with the examination at the US Patent and Trademark Office, the paper highlights the more productive avenues for resistance to patents over native plants that mobilise the internal logics and rules of the patent system (Robinson and Raven 2017).

New roles for old rights: how digital copyright changes the relationship between lending and lending rights

Dan Gilbert PhD candidate, Monash University/Visiting Scholar, University of Melbourne

Lending rights are rights to remuneration for the use of works in libraries. The first was enacted in Denmark in 1946, in response to fears that the growth of public libraries would diminish book sales, and have since spread to thirty-four nations across the world. Although these schemes differ substantially in their aims and implementations, they all share the common feature of applying to authors over books lent by public libraries – representing an important source of income in a time of dramatic change to the publishing industry.

However, only a handful of schemes have adapted their lending rights for digital works, despite the increasing importance of these works to libraries, readers, and authors. Those schemes which have been extended to electronic works have done so only after considerable consultation and debate. Which raises the question: why are these schemes so difficult to modernise?

When an analogue work is lent by a library without payment, none of a copyright holder's exclusive rights are invoked. As a result, the act may plausibly result in a loss of sales. However, when an electronic book is lent, the particularities of digital copyright necessitate that a 'copy' is made at the point of transfer to the reader's device, or a 'communication to the public' has occurred when the book is made available. The result is that library lending is placed firmly within the copyright holder's exclusive rights, and allows copyright holders to differentiate or even preclude libraries from lending works, as well as to offer licence terms which could be established to account for any loss. What does this mean for lending rights?

In prior work, I have explored the unique place lending rights occupy on the continuum between copyright and state support for the arts in the context of physical lending. In particular, I sought to elucidate the circumstances under which the Berne Convention would require a nation to extend its lending right to foreign authors. In this paper, I explore the roles that remain for lending rights in a digital context, and consider the implications under international copyright.

Implications of Vandalising a Public Art Statute: Copyright, Moral Rights, and Graffiti

Marie Hadley and **Sarah Hook** Associate Lecturer, Newcastle Law School and Lecturer, Western Sydney University

This article considers the copyright implications of vandalising a public art statue. Following the death of George Floyd on the 25 May 2020 at the hands of Minneapolis Police, Black Lives Matter protests ignited around the world. The statues of prominent imperialists, slavers, and others were torn down or defaced as part of this action. In legal commentary such acts would typically be considered through the lens of the criminal law as an act of criminal damage. This article breaks from that tradition – exploring statue vandalism as an act that can infringe copyright, violate moral rights, but also, itself possibly vest in copyright as a form of protest art. When a public art statue that is still in copyright is vandalised, what are the legal issues?

The article proceeds as a hypothetical, systematically teasing out the rights of the author of the statue, the commissioner of the work who owns its copyright, the vandal who applies paint to the work for a political objective, the bystander who might document the event through a photograph, and the newspaper who might publish that photograph. Vandalism is approached as a potential copyright infringement, moral rights infringement, and transformative art. The example of photographs of vandalised statues extends the inquiry: bringing to the fore an examination of the the rights of the author and copyright owner in light of the panoramic exception and the fair dealing defences.

As a whole these perspectives show how the different rights enshrined in the *Copyright Act 1968* (Cth) intersect and interact. But perhaps more importantly, it tells something of the law's recognition – and disavowal – of aesthetics, and what this might mean for the politics of the present.

Developing a Legal Framework for Determining Forum Choices in Transnational Intellectual Property Litigation

Vanessa Ho PhD candidate, Macquarie University

Forum choices occur when litigants can choose among multiple courts or tribunals which may

have jurisdiction to hear the dispute. As there is currently no international regulatory framework to govern forum choices during transnational intellectual property litigation, scholarly research has raised concerns that litigants currently have a high opportunity to sort the legal system through inappropriate forum choices. This results in potentially unfair and inefficient outcomes. In this context, the central research question of my PhD thesis is: could an effective international regulatory framework be developed to facilitate forum choices which promotes efficiency and justice in transnational intellectual property litigation? To address this question, a theoretical framework must be developed for two purposes. The first purpose is to identify when rules and principles that impact upon forum choices are considered to be effective. The second purpose is to assess the feasibility of whether an international regulatory framework could be implemented. The second chapter of my thesis seeks to develop an appropriate theoretical framework by investigating the potential of rational choice theory, game theory and systems theory. It will be argued that rational choice theory is the most appropriate to apply to the thesis as it is capable of analysing both how humans make decisions on forum choices and how rules can shape these choices. As the predictive capability of rational choice theory is limited in multi-party, iterated scenarios, game theory will be used to extend upon rational choice theory when assessing the feasibility of implementing an international regulatory framework. Rational choice theory and game theory models share the same assumption that humans are rational maximisers of utility. This shared assumption makes game theory suitable as an extension upon rational choice theory. As such, the coordination game model of the Battle of the Sexes may be utilised to assess what conditions would be required for nation-states to agree upon standard rules and principles that impact upon forum choices during transnational intellectual property litigation.

The Evolution of Agricultural Technologies as 'International Public Goods': Navigating the Globalisation of Intellectual Property in the CGIAR Network

David J. Jefferson Research Fellow, University of Queensland

As new methods for the production of genetically modified plants emerged in the 1980s, intellectual property (IP) gained importance in agricultural research. Scientific institutions, including the CGIAR, which is a network of international organisations engaged in research on agriculture and food security, have needed to adapt to a new reality in which technologies that in the past would have been publicly available are now often privatised. The CGIAR has attempted to adjust to the changing nature of agricultural research while taking a cautious approach to IP, as embodied in the *CGIAR Principles on the Management of Intellectual Assets*. These Principles conceptualise all 'intellectual assets' that are produced or acquired by the CGIAR network as 'international public goods'.

This paper maps the history of the making of the CGIAR intellectual asset management strategy, and document how certain Centres have applied the Principles since they were enacted in 2012. The paper focusses specifically on three Centres that are underrepresented in contemporary scholarship, namely the International Livestock Research Institute (ILRI), the International Crops Research Institute for the Semi-Arid Tropics (ICRISAT), and the International Potato Center (CIP). The paper presents a case study from each of these Centres, in which CGIAR intellectual assets have been protected as IP. Through these case studies, the paper critically evaluates how individual Centres justify the use of IP as a means to actualise the CGIAR Vision ('A world free of poverty, hunger and environmental degradation').

The paper argues that although the expanded utilisation of proprietary legal claims over agricultural technologies over the past decade has undoubtedly altered the CGIAR agenda in certain respects, IP is far from ubiquitous within the network. Indeed, few of the fifteen CGIAR Centres routinely file applications to obtain patents or plant variety protection for their intellectual assets. However, other, less overt effects of the growth of IP in agricultural research may be shaping the activities that the various Centres undertake. For instance, the perceived potential for IP generation has encouraged the development of new relationships between CGIAR scientists and external entities, including universities and private companies. Furthermore, the possibility that IP claims may be filed has necessitated the adoption of new administrative practices, such as those related to the transfer of research materials.

Open science and the copyright law: through the prism of three step test

Nikos Koutras Lecturer, Edith Cowan University

Enabling open science has many advantages and is essential in order to spread scientific knowledge and to allow others to build upon it. Open science relates to the traditional idea that scientific research results and data should be accessible to all. Open science is generally regarded as an effective way to increase the reliability of scientific research. Empirical research has shown that open science has a potential to boost research visibility of scholars and significant scientific impact of publications. In practice, open science often encounters different types of limitations, such as the legal framework, publishing practices and restraints imposed by various stakeholders. These limitations restrict the opportunities to effectively operationalize the principles that have been adopted at the international, national and regional level. Scientists often transfer (all or some of) their economic rights to the publishers of scientific journals. However, copyright law should also balance the interests of those who create content and own those exclusive rights with the public interest in having the widest possible access to that content. In theory, open science could support copyright law in achieving these objectives by facilitating access to scientific knowledge ultimately promoting progress in science. Digital technologies have radically changed the way creative content is produced and accessed. This has resulted in significant challenges for the international and national copyright law frameworks.

Examining the relationship between the Convention on Biological Diversity and the TRIPS Agreement regarding transfer of technology

Temitope Kuti PhD Candidate, Victoria University of Wellington

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) stipulates that one of the objectives of intellectual property is the facilitation of the transfer of technology between countries, with a view to enhancing further technological innovation across the globe. This is in recognition of the extreme technological incapacity of many countries and as part of the bargain reached during the negotiation of the TRIPS Agreement. However, beyond the provision encouraging the granting of incentives to institutions in order to promote technology transfer, the TRIPS Agreement does not indicate how technology transfer will be achieved. Research has shown that the actualisation of technology transfer requires much more than the domestic implementation of the TRIPS Agreement as other issues like recipient country policies, human resource capacities and the country's stage of development are important factors.

The Convention on Biological Diversity 1992 (CBD) and its Nagoya Protocol on Access and Benefit

Sharing 2010 (Nagoya Protocol) clearly advance the transfer of technology as one of the non-monetary benefits to be conferred on countries and communities that provide genetic resources and/or traditional knowledge. These instruments expressly connect the attainment of their objectives to the intellectual property framework which is globalised in the TRIPS Agreement. Some scholars have postulated that for the CBD to truly achieve its intended objectives, indigenous communities, as the primary custodians of and rightsholders over traditional knowledge, must be active participants in bioprospecting and not mere bystanders or informers. This is in line with what the Nagoya Protocol refers to as “endogenous research capabilities”. However, these communities are generally known to lack the required modern technological capabilities to carry out ‘research and development’ in the sense employed by the CBD. This is where the provisions on transfer of technology and the linkage with the TRIPS Agreement become of great relevance.

Generally, the TRIPS Agreement and the CBD have been shown to be at odds with one another especially with regards to their fundamental objectives as well as their institutionalised mechanisms. This research thus addresses the question of how the technology transfer intent of the CBD can be actualised and measured. As examples, this essay will examine the implementing frameworks in South Africa and Switzerland to ascertain how these cross-cutting and seemingly contradictory issues are engaged to produce mutual supportiveness.

Nature of the Problems as to Orphan Films in Australia

Huiyang Li PhD Candidate, University of NSW

Orphan works are copyright material whose copyright owners cannot be identified or located after a diligent search. According to the available literature, the situation as to orphan works has been constructed as a legal problem, which attributes the inaccessibility of orphan works to the limitation of the formal law. What is overlooked is that in practice, it is the gatekeeper, namely, the memory institution who operates the formal law that determines access to orphan works, rather than the formal law as such. To elucidate the real nature of the problems as to orphan works in Australia, it is necessary to identify how this issue is currently being regulated in practice in the first place. This paper seeks to excavate that terrain, exploring the nature of this perceived problem, based on current access policies within Australian memory institutions. As the specific access policies within different creative sectors can be diverse, this paper only focuses on one category of copyright subject matter: cinematograph film. To identify how the accessibility of orphan films is currently being regulated in practice, I conducted several in-depth interviews within Australian memory institutions, including the most important repositories for Australian history: the National Archives of Australia and the National Film and Sound Archive of Australia.

These interviews suggest that some memory institutions are relatively conservative in providing offsite access to their film collections without permission from the copyright owner. By exploring the legal and non-legal considerations behind these practices, I find that some memory institutions operate as ‘benign’ gatekeepers in managing their film collections. To minimise the risk that a potential user may infringe copyright, these memory institutions are relatively conservative in providing offsite access without permission, even if the institution as such has a low risk of liability. In this case, the nature of the problems as to orphan films means that as a result of the role of memory institutions as ‘benign’ gatekeepers, potential users are deprived of the rights to decide on whether or not to use an orphan film without permission on their own, especially if the film is not available in the market.

Australia's Plant Breeder's Rights system: What is being judged?

Hamish MacDonald PhD candidate, University of Queensland

Australia's Plant Breeder's Rights (PBR) system exists to transform plant varieties into objects of intellectual property. As complex biological entities capable of modifying and reproducing themselves, however, plants often prove difficult subjects for intellectual property law. Propertising plants necessitates the standardisation of how plant varieties are defined, measured and described, along with the standardisation of plant varieties themselves. This chapter examines the techniques, tools, institutions, laws, theoretical concepts, and social arrangements which facilitate this standardisation.

In Australia, plant varieties are judged with the aid of legal-bureaucratic forms, which transform a group of living plants into an abstract varietal description of morphological and physiological characteristics. This "variety" is a distinctly legal construct, taking the taxonomic concept as its starting point and then further modifying it to introduce the identifiability required for the law to operate. Nonetheless, taxonomy, botany and genetics are fundamental to the assessment and standardisation of plant varieties. This interplay between law and science is evident in the concept of essential derivation, a legal concept designed to prevent "cosmetic breeding" which has become the topic of vigorous scientific and legal debate. The typical narrative of the relationship between law and science, which casts the law as a slow institution struggling to keep up with the rapid disruptions of scientific, clearly is not the case here. Instead, intellectual property disputes create a space for scientific inquiry, in a coproductive relationship.

At a deeper level, the object of plant breeder's rights is itself ambiguous. Plant breeder's rights have a theoretical foundation in the genotype, which provides plants with their reproducibility and hence their suitability as intellectual property. This is formally codified in the PBR law's definition of the variety as "resulting from the genotype of each individual in the plant grouping". Nonetheless, the system in practice is heavily orientated around the plant phenotype, and shifting further towards a genotypic conceptualisation presents intractable problems. These difficulties stem from the artificial and negotiated nature of the plant variety, from its uncertain conceptual foundations, and from the practical difficulties of varietal testing and standardisation. With highly-targeted genetic modification technologies becoming increasingly common, and no clear thresholds for distinctness between varieties, this confusion looks only likely to increase in the future.

Analysing the circumstances of illegal bundling products or services which are the subject of intellectual property rights

Masoomeh Ozgoli Master by Research candidate, Macquarie University

Bundling products and services is mostly being used by large enterprises, especially technology companies, as a marketing tool to promote their products or services. The main benefit of this method is that usually bundled items are priced lower than the total price contained products. Bundling is a common online and offline retailing method which can be conducted as 'pure bundling' or 'mixed bundling' depending on the nature of the business. Despite its economic advantages, bundling goods and services which are subject matters of intellectual property (IP) rights, can be misused by business owners. In fact, customers may be forced to purchase a package of products that may include items which are not wanted by the purchasers. Moreover, emerging new technologies raise many questions about how bundling and tying conducts can be practiced causing anticompetitive conducts and violating the objectives of IPs.

In such a context, the central research question to be addressed by this paper is to how to maintain a balance between the objectives of competition law and IP law or limiting the interface between them. Through this research, the author hope to help to develop clear standards for bundling IP products, in order to protect consumers from anticompetitive conducts. The outcome will also enable IP right holders to benefit from their inventions without being treated unfairly by corporations.

This paper will initially define the general meaning of different types of bundling and its implication in various circumstances. Next, the role of bundling IP products in promotion of innovation and competition will be discussed. To develop this matter, anti-competitive and pro-competitive effects of bundling with regards to different nature of products will be analysed. Since there are multiple legal analyses of bundling IP subject matters, different approaches which have been established by different jurisdictions will be examined through the case law. Lastly, the illegal use of bundling IP products will be outlined, and number of recommendations will be presented to Australian authorities to protect all the involved stakeholders in bundling IP subject matters.

Copyright's Relations: Thinking about the Structure of Creative Economies

Cody Rei-Anderson PhD candidate, Victoria University, Wellington

The social purpose justification of copyright as an economic right asserts that by providing a set of legal rights in creative works that can be traded, licensed and contracted around, copyright encourages the production of creative works in society. In recent decades, debates around the optimal scope of copyright protection have often centred economic efficiency as the metric with which to evaluate the success of the copyright regime. At the same time, sceptical voices have introduced powerful critiques of copyright: that it entrenches existing social and distributive inequalities, that it circumscribes the freedom of expression of creators and audiences, and that the concepts of authorship and work embedded in the right's definition are incoherent. However, the economic efficiency framework remains dominant, with some critiques working on its terms while others fail to present a unified challenge. In this paper I will argue for an alternative theoretical approach to copyright which incorporates these critiques by focusing on copyright's structural and relational role in creative economies, and which is concerned in the first instance with inequalities.

My argument will draw and build on the relational theory of copyright put forward in Carys Craig's *Copyright, Communication and Culture*. Craig called for a greater attentiveness to "the relationships of power and responsibility that [the copyright system] generates", basing her critique in large part on the incoherence of the concepts of authorship and work, and the primacy which copyright affords the ownership relation between author and work while occluding the social context of creativity. I will argue that there is also a viable relational critique that looks primarily at the role copyright as an economic right plays in the structure of relationships between creators, audiences and intermediaries.

My approach will aim to avoid the perils of starting from an economic efficiency framework which favours concentration of economic power. Instead of maximising economic efficiency first and considering distribution of the benefits later, the framework I will propose is concerned with inequities (in bargaining power, etc.) in the first instance. This approach would open space within the contestation of copyright law for the question of what to value, such that diversity, access, and education might compete on more equal grounds with economics.

Collective Management of Music Copyright in China - A Comparative Analysis of Members' Rights in Musical Collective Management Organisations in China and Australia

Qinqing Xu PhD candidate, University of Wollongong

This paper critically analyses the rights of individual composers and lyricists, the 'real' music creators, as members of a musical collective management organisation (CMO) in China and Australia. Generally, a CMO assists in managing fragmented copyright which individual creators cannot easily do on their own. However, the rights of individual members of the Music Copyright Society of China (MCSC) are not effectively protected.

Using case studies, this paper focuses on the rights of members in MCSC, the first CMO in mainland China and the only CMO in the field of music. The relationship between MCSC and its members remains ambiguous as a trust in the Chinese context. Furthermore, copyright owners have to exclusively license their copyright to MCSC to join the organisation, and are not able to participate in the management of their own economic copyright. In practice, this has resulted in many complaints and disputes. This paper will first examine the relationship between MCSC and its members, and then explore how music creators can protect their rights while being members of MCSC.

In the field of copyright, China is a relative newcomer whilst Australia has a longer history in copyright law and has had experience in protecting members' rights in the CMOs. For example, members of the Australasian Performing Right Association (APRA) retain the ability to directly license their public performance rights by themselves through 'opt out' and 'licence back'. Although members in APRA can participate in the management of those rights, the direct licensing system does not work as effectively as it would be expected. The complicated procedures and limitations result in only a few members applying to do so.

This paper, using a comparative law approach, discusses the common challenges of copyright protection for music creators. It contrasts the collective management system in China and Australia to draw from and highlight lessons that China can learn from Australia despite legal and economic differences. Suggestions on how to ensure individual members' rights in MCSC will be provided in order to better protect music creators' benefits, promote continued music development and wide use of such work.

Is reversion effective? Testing the effect of copyright reversion on the trade book industry

Joshua Yuvaraj PhD candidate, Monash University/ Visiting Scholar, University of Melbourne

The Authors Interest Project, headed by Associate Professor Rebecca Giblin (ARC Grant FT170100011), is investigating how copyright law can be amended to get authors paid and get books read. As part of this project, I am investigating how statutory reversion of copyright assignments by authors, after a period of time and/or a set of circumstances, can be used to achieve these aims in Australia and abroad. This presentation is an outline of my research findings thus far.

I will first provide the argument for reversion, together with a short history of the concept as it has evolved in the Commonwealth and the United States. I will then present two sets of findings which will inform the testing of reversion as a viable means to secure payments for authors and the availability of books.

The first is a review of the reversion clauses in a set of Australian book publishing contracts going back more than fifty years: are they included at all, are they phrased to be fairly enforceable by authors, and have they changed over time? This data will show whether private contracts between authors and publishers are adequate to secure the benefits of reversion for authors and the wider public in Australia.

The second set of findings is an analysis of entries of reversion notices filed in the US Copyright Office Database concerning trade books (the US Copyright Act allows for authors or their heirs to terminate grants of copyright after 35 years). These findings will help us to see how this right is being used and whether books for which grants of copyright are reverted are more widely available.

Both these sets of findings are important in providing data to help construct a reversion scheme that will actually benefit authors and the public.



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