



# Melbourne Law School



Centre for Media and Communications Law

Annual Report

2014



**Front cover:**  
Melbourne Law School

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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 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 2014 were related to its public seminars and the CMCL medal 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 are subject to University of Melbourne financial policies and procedures. Overall responsibility and financial management of the CMCL account lies with the Centre Director and is subject to a financial governance framework overseen by the Manager of Finance, Planning and Strategy.

## 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.

### 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.



## CMCL Advisory Board

In 2014 the Advisory Board comprised:

- Elizabeth Beal, Studio Legal
- Bruce Burke, Banki Haddock Fiora
- Warren Coatsworth, Seven Network Limited
- Julie Eisenberg, SBS
- Jon Faine, ABC Radio
- Stuart Gibson, Gibsons
- Jonathan Gill, Carrick Gill Smyth Lawyers
- Gail Hambly, John Fairfax Holdings Ltd
- 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, Federal Circuit Court (Chair)
- Denis Muller, 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, Ashurst

## 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 2014 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
- 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

## 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 2014

### Defamation Law

Dr Matt Collins SC, Victorian Bar

### Privacy Law

Ms Karin Clark, Senior Fellow, Melbourne Law School

Professor Megan Richardson, Melbourne Law School

### Economic Regulators

Professor William Kovacic, George Washington University, United States

### Film and Television Law: Production, Financing and Distribution

Mr Jonathan Gill, Carrick Gill Smyth

### Freedom of Speech

Professor Adrienne Stone, Melbourne Law School

Professor Katharine Gelber, University of Queensland

### Information Technology Contracting Law

Mr Jonathan Gill, Carrick Gill Smyth

Mr Michael Carric, Carrick Gill Smyth

### Internet Law

Mr Jonathan Gill, Carrick Gill Smyth

Professor Dan Hunter, Queensland of Technology

Professor Megan Richardson, Melbourne Law School

### Regulating Infrastructure

Mr Richard York, Frontier Economics

Mr Simon Uthmeyer

### Regulatory Policy and Practice

Professor Karen Yeung, King's College London, U.K.

## 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 Melbourne 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 in 2014 Megan Richardson

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 2014 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 2014 staff associated with CMCL were involved in major research projects and a 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 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 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

## Research



### 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, from January 2014 to December 2015**

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 for this divergence as well as some possible reforms.

## CMCL Research Spotlight



### Dr Paul Wragg, Associate Professor in Law, University of Leeds UK

#### Research Fellow

Dr Paul Wragg, Associate Professor in Law, University of Leeds, UK, and Academic Fellow of the Honourable Society of the Inner Temple visited the Centre in July 2014 as part of a longer period of research leave spent in Australia. Dr Wragg's expertise centres on press freedom and press reform (<http://www.law.leeds.ac.uk/people/staff/wragg/>). His time was spent considering the Australian Law Reform Committee's proposals to strengthen Australian privacy law through the introduction of a commonwealth statute. The ALRC made several references to Dr Wragg's submissions in their final report. Whilst at Melbourne he spoke to a paper outlining his view that the Australian media, counter-intuitively, would be best served by the sort of privacy law proposed by the ALRC. The UK's experience of a near identical tort had not led to an inhibited press regime but, instead, had protected a broad range of privacy-invading expression through a generous judicial reading of the term 'public interest'. Helpful comments from his presentation were incorporated in the final version of the paper, which was published in the *Sydney Law Review* (36(4), 619-641)

([http://sydney.edu.au/law/slr/slr\\_36/slr36\\_4/SLRv36n4Wragg.pdf](http://sydney.edu.au/law/slr/slr_36/slr36_4/SLRv36n4Wragg.pdf))

## Thesis Spotlight

### Privacy and the pictures: the photographed and filmed (women) who forged a right to privacy in the United States (1880-1950)

Dr Jessica Lake (completed 2014)

Supervisors: Megan Richardson and Barbara Creed

*Jessica's thesis will be published by Yale University Press under the title *The Face that Launched a Thousand Lawsuits* in 2016. Jessica is currently on maternity leave from her position as lecturer in law at Swinburne University. She was a Visiting Research Fellow at the CMCL in 2014.*

'Privacy and the Pictures' presents interdisciplinary research into the ways in which the 19th century technologies of photography and cinema gave birth to a 'right to privacy' in the United States and an investigation into how and why this happened. Such an investigation necessitates a gendered analysis, as my research suggests that during the period from 1880 to 1950, cases claiming 'a right to privacy' involving film (still and moving) were, more often than not, brought by women.

The proliferation of images that occurred in the late 19th and early 20th centuries as a result of developments in photography and cinema caused new potential harms to individuals (particularly women), which existing laws (such as copyright, defamation and breach of confidence) were inadequate to address. Drawing upon extensive original research in film and legal archives across the United States, 'Privacy and the Pictures' demonstrates that it was women who forged a 'right to privacy' in the United States by claiming control and ownership over images (still and moving) of their faces and bodies. At a time when they still lacked a range of civil and political rights, women asserted the right to control the circulation and publication of their images, first, to prevent themselves from being reduced to nameless, 'pretty', objects; second, to protest the transformation of their bodies into spectacles of 'monstrosity'; third, to limit their exposure on the big screen to the mass 'gaze' of audiences; fourth, to control the development of their careers as models, dancers and actors; and fifth, to reclaim their life stories from exploitation by film studios.

'Privacy and the Pictures' introduces these important contestations in a new account of film history in the United States and also offers an alternative explanation of 'a right to privacy' within the law, one informed by a consideration of women's (and some men's) historical, cultural and embodied experience.

## 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.

### Current Candidates

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

Jake Goldenfein

Supervisors: Andrew Kenyon & Megan Richardson

#### **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

## Student Research Spotlight

### Jake Goldenfein

#### PhD Student



Jake Goldenfein began his PhD in 2011 under the supervision of Professor Megan Richardson and Professor Andrew Kenyon, and is expecting to submit towards the end of 2015. His research is a socio-legal investigation into state criminal information systems and databases,

and the laws that regulate them. In the context of criminal and security information systems it is proposed that privacy law functions to interrupt or regulate the way in which the state comes to know its subjects. This understanding of privacy begins with the proposition that the existence of the legal subject depends on its representation or mediation through technical apparatuses. The thesis then uses critical historical and media theoretical methodologies to identify the harms associated with how particular recording techniques constitute their subjects. The application of privacy law to those surveillance regimes is then analysed to ascertain whether the doctrinal or conceptual basis behind privacy is suitable or effective at assuaging those harms.

The thesis engages several case studies – beginning with the evolution of police and judicial photography, then looking at text-based intelligence dossiers, and finally contemporary algorithmic data-mining and profiling technologies. The intention is to expose the beginnings and modern articulation of law enforcement as an information technology, and interrogate the aptitude of contemporary legal regimes for its regulation. This project is multi-disciplinary in method and fits broadly under the law and technology moniker.

During the period Jake has been enrolled as a PhD candidate, he has tutored several subjects in the breadth program at Melbourne Law School, as well as at the arts faculty at the University of Melbourne, and at Swinburne Institute of Technology. He has presented papers at several overseas conferences, and has been a visiting researcher at the Law, Science, Technology, Society research group at the Free University in Brussels. Jake has also published several articles in various Australian journals, and won the Melbourne Law School Published Student Research Prize in 2013, and the 2014 Australian Privacy Foundation Sir Zelman Cowan Privacy Essay Competition.

## 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 2014:

### CMCL Visiting scholars



**Professor Estelle Derclaye**  
The University of Nottingham



**Dr Jessica Lake**  
Swinburne University of Technology



**Professor Allen Hammond**  
Professor of Law, Santa Clara Law



**Professor Graeme Dinwoodie**  
Professor of Law, University of Oxford. Photo: Phil Sayer



**Dr Paul Wragg**  
Associate Professor, University of Leeds School of Law

## Public Seminars

### The end of the Internet as we know it?

Date: 30 January 2014

Venue: Level 10 Boardroom, Melbourne Law School,

The US circuit court decision in Verizon v FCC marked the second time in recent years that the court has rebuffed the manner in which the Federal Communications Commission (FCC) has sought to regulate ISPs' provision of broadband service. The decision has been described as the unleashing of AT&T, Comcast and Verizon; the death knell for an open internet; a serious blow to the Obama administration's net neutrality regulatory efforts; the herald of a substantial change in the business plans of Google and Netflix; and bad news for innovation, small businesses and end users in the United States.

While the decision will likely have a profound impact, it is important to carefully examine what the court did decide and what it didn't decide in order to determine what that impact might be. For instance, a closer look at the decision confirms that the FCC retains significant regulatory authority if it chooses to exercise it. Thus the government was not precluded from exercising regulatory authority. Moreover, placing the decision in the context of the market suggests that in the short term, big ISPs may still be vulnerable to competitive market pressures. This talk explored the decision and its impact.

#### Speaker Bio

Professor Allen Hammond IV holds the Phil and Bobbie Sanfilippo Chair at Santa Clara University and is director of the Law and Public Policy Program at SCU's Center for Science, Technology, and Society. A professor at Santa Clara University School of Law since 1998, he currently serves as director of the Broadband Institute of California. He is the author of many articles and the editor, with Barbara S. Cherry and Stephen S. Wildman, of Making Universal Service Policy: Enhancing the Process Through Multidisciplinary Evaluation (Lawrence Erlbaum Associates, 1999)

## Defamation and Privacy: Comparative Law, Media and Public Speech Workshop

### A workshop for invited participants

Date: 23 - 24 April 2014

Venue: Woodward Centre, Level 10, Melbourne Law School

The Centre for Media and Communications Law held a two day workshop at Melbourne Law School. The workshop formed part of a project conducted by Professor Andrew Kenyon, funded by the Australian Research Council and entitled "Defamation and Privacy: Law, Media and Public Speech". The aim of the workshop was to consider current issues and research in defamation and privacy as related to media and journalism and to public speech more generally. The workshop involved a range of law academics from Commonwealth jurisdictions (Australia, Canada, NZ, UK, US). An edited book is being produced from the workshop.



## Free and Fair Media Reporting of Elections

### A free public seminar in association with ERRN (VIC) & Election Watch

Date: 3 June 2014

Venue: Melbourne Law School

2014 saw elections held in many countries in the Asia-Pacific: the world's largest democracy, India, had its general elections so did the nations of Fiji and Tonga. Australia also held its share of elections, South Australian State elections and Senate elections in Western Australia; in November, State elections were also held in Victoria.

What should be the role of the media in reporting on elections? What is its particular responsibility for promoting free and fair elections? And what are the challenges for the media meeting its democratic responsibilities?

Organised in conjunction with the Australian Broadcasting Corporation, this seminar brought a panel of journalists and experts to discuss these important questions from different national perspectives.

**Stephanie March** is the India Correspondent with the ABC's overseas TV channel, Australia Network. Since taking up the role in 2011 she has covered a variety of stories concerning South Asia - including this year's general election India. She has previously worked at the ABC's bureaus in Parliament House, Melbourne and Darwin.

**Mr Dhanjay Deo** is a Fijian journalist. He has worked for Communications Fiji Limited, Suva Fiji since 2006. Dhanjay is a news and current affairs, as well as sports reporter – covering Fiji, regional and international sports. His coverage of national affairs included the 2006 Military takeover, the Laisenia Qarase versus Frank Bainimarama trial and judgment, coverage of the consultation on the 2013 Constitution and its implementation, and the Abrogation of the 1997 constitution and implementation of new decrees. Dhanjay has a Diploma in Pacific Journalism from the University of the South Pacific.

**Lady Luseane** is the News Editor at BroadCom Broadcasting, Tonga. As part of her responsibilities, she assigns journalists to stories and is responsible for news output on a daily basis. Lady Luseane also hosts a talkback program on media development in Tonga. Lady Luseane, who holds a Diploma in Journalism from the University of Jamaica, is currently President of the Tonga Media Council and a Member of Pacific Islands News Association (PINA). Previously, Lady Luseane was Production Director at the Tonga Broadcasting Commission.

**Associate Professor Sally Young** is an Australian Research Council Future Fellow. She is currently researching newspaper power and media policy in Australia. She is also leading an ARC Linkage project which is conducting the first major history of press photography in Australia. She writes widely on the Australian media, journalism and politics. Her last book was the only book-length study of election reporting in Australia, *How Australia Decides: Election Reporting and the Media* (Cambridge University Press, 2011). She writes a monthly column for the *Age* newspaper

## Public Seminars

### The Defamation Act 2013 (UK) Seminar and Book Launch

A free public seminar presented by the Centre for Media and Communications Law, List A barristers & Gilbert + Tobin

#### Melbourne

Date: 4 June 2014

Venue: Melbourne Law School

#### Sydney

Date: 12 June 2014

Venue: Gilbert + Tobin, Level 37, 2 Park Street, Sydney

The Defamation Act 2013 (UK) commenced operation on 1 January 2014. It implements the most wide-ranging reforms ever undertaken to this ancient cause of action. Almost every aspect of English defamation law is touched by the reforms, whose implications will take years to percolate.

For the most part, although not uniformly, the reforms recalibrate English law in favour of freedom of expression, making it harder for claimants to bring successful defamation claims, and extending dramatically the divergence between English and Australian principles that has become increasingly evident since the turn of the century.

In this early evening seminar, Dr Matt Collins QC provided an overview of the key reforms in and likely implications of the 2013 Act, and identified some of its ambiguities, contestable questions of construction, and apparently unintended consequences.

#### Book Launch

The seminar was timed to coincide with the Australian release of Dr Collins' new book on the English law of defamation.

Dr Matt Collins QC is a member of the Victorian Bar and of One Brick Court Chambers in London, a senior fellow at the Melbourne Law School, and the author of Collins on Defamation (Oxford University Press, 2014) and all three editions of The Law of Defamation and the Internet (Oxford University Press, 2001, 2005 and 2010).

### The Use of Survey Evidence in US Trademark Litigation

Chair: Professor Megan Richardson, Melbourne Law School

Date: 23 July 2014

Venue: Melbourne Law School

David Caudill briefly surveyed the use of survey evidence in US trademark litigation, including (i) conventional (social science) methodologies and the legal standards for admissible surveys, as well as (ii) recent cases using survey evidence to determine trademark infringement and offensive trademarks.

Followed by comments from Vicki Huang.

**Dr. David Caudill** is professor and the Goldberg Family Chair in Law at Villanova University, where he teaches property law, expert evidence, and sports law. He is the author of numerous books and journal articles in the fields of scientific evidence, legal ethics, and law-and-literature. He is currently teaching Expert Evidence (with Dr. Gans) in the Melbourne Law Masters program, and is scheduled to teach Entertainment Law (with Professor Richardson) in Melbourne in 2015.

**Vicki Huang** is a law lecturer at Deakin University. Ms Huang graduated from the Melbourne Law School with first class honours. She also attended Columbia University Law School on a Burton Memorial Fellowship and graduated with an L.L.M. with honours as a Harlan Fiske Stone Scholar. Prior to her appointment at Deakin, Ms Huang was a sessional lecturer at the Melbourne Law School. Ms Huang previously worked for the Federal Court of Australia as a Research Associate to the Hon. Justice Finkelstein. She also worked for a number of years at law firms in Melbourne (Ashursts) and California (Morrison Foerster) with a focus on litigation and intellectual property law. She was admitted to practice in Victoria and is admitted to the State Bar of California. Ms Huang is currently a PhD candidate at the University of Melbourne. Her research focusses on all aspects of intellectual property law and empirical research methods into law. She currently teaches property law, corporations law and marketing law.

## The Whistleblowers: Jesselyn Radack & Thomas Drake

A seminar for media law students presented by the CMCL in association with the Centre for Advancing Journalism, University of Melbourne

Date: 29 July 2014

Venue: Old Arts, University of Melbourne

Whistleblowing is on the rise, despite the risks. By holding the powerful to account - exposing dark secrets, unethical practice or illegality—ordinary people can shape history, but also suffer great consequences. A memory stick in a computer can now download more documents than the Pentagon Papers, and they can all be uploaded to the web. But at the same time, technology makes it harder for journalists to protect their sources. Whistleblowers face increased surveillance, with surveillance cameras on every corner, and even their mobile phones potentially used as tracking devices.

In this special lecture, two fearless whistleblowers talked about how their truth-telling subsequently saw them branded 'traitors'. They gave hints for journalism practice, and discussed the implications for the law.

**Jesselyn Radack**, former USA Justice Department ethics advisor and whistleblower, is now the director of National Security & Human Rights at the Government Accountability Project (USA). She was named one of Foreign Policy magazine's '100 Leading Global Thinkers of 2013'. She was defense attorney for National Security Agency whistleblowers Edward Snowden and Thomas Drake. She regularly writes for the Los Angeles Times, The Washington Post, Salon, and Philadelphia Inquirer.

**Thomas Drake** is a former senior executive at the National Security Agency where he blew the whistle on massive multi-billion dollar fraud, waste and the widespread violations of the rights of citizens through secret mass surveillance programs after 9/11. As retaliation and reprisal, the Obama Administration indicted Mr Drake in 2010 as the first whistleblower since Daniel Ellsberg charged with espionage in the United States and faced 35 years in prison, turning him into an Enemy of the State for his oath to defend the Constitution. In 2011, the government's case against him collapsed and he went free in a plea deal. He was a visiting professor of strategic leadership and information strategies at the National Defense University with the Industrial College of the Armed Forces. Previous to NSA, he was a principal in a couple of dot coms. He is the recipient of the 2011 Ridenhour Truth Telling Prize, and a joint recipient with Ms Jesselyn Radack of the 2011 Sam Adams Associates Integrity in Intelligence Award and the 2012 Hugh M Hefner First Amendment Award.

## The legitimacy of press regulation: Assessing the political, popular and journalistic response to Leveson's reform proposals

A seminar for invited guests presented by the Centre for Media and Communications Law

Date: 29 July

Venue: Melbourne Law School

It has been sometime since Lord Justice Leveson's damning report on the culture and ethics of the press but his vision for increased press accountability has yet to be realised in practice. The government agreed with Leveson's proposal that an independent and powerful press regulator (or regulators) should be created to replace the current Press Complaints Commission and, by means of a controversial Royal Charter, established a mechanism for officially recognising prospective regulators. The press response to this has been predictable and pointedly defiant. The major titles have formed their own 'regulator' (IPSO), which does not conform to a number of Leveson's key recommendations (including independence) and which refuses to engage with the government's recognition process. Consequently, the debate on press reform is beginning to coalesce around a central theme: whether IPSO's constitution and ethos satisfies the 'spirit of Leveson'. By exploring Leveson's report, its political and popular reception and the critical academic debate on the legitimacy of press regulation, this paper examines this term in order to contribute to that debate and offer some views on the future of press regulation, both in the UK and worldwide.

**Dr Paul Wragg** is an Associate Professor in Law at the University of Leeds and an Academic Fellow of the Honourable Society of the Inner Temple in London. His research concerns the application of free speech theory to contemporary legal problems and he has written extensively on the privacy/press freedom dichotomy. He visited Sydney Law School and Melbourne Law School in July to further his comparative law research into Australian proposals for privacy statute and has contributed submissions to the Australian Law Reform Committee's inquiry.

## Public Seminars

### Litigating Media Privacy Cases

Date: 6 November 2014

Venue: Gilbert + Tobin Lawyers Level 22 101 Collins Street Melbourne VIC 3000

In 2014 the Australian Law Reform Commission proposed a statutory tort for serious invasions of privacy. But what privacy protection is currently available to privacy litigants and how should lawyers approach media privacy cases? This seminar drew on the experience of lawyers who have been engaged in litigating media privacy cases in Australia and the UK and offered insights based on their experience.

**Barrister Michael Rivette**, of Chancery Chambers, Melbourne, has accrued more than 30 years legal experience as a media and entertainment lawyer and advocate. Among other things, he successfully argued the privacy issues in the landmark decision of *Giller v Procopets* (2008) 24 VR 1. As special leave to the High Court was denied, the *Giller* case stands as the highest authority in this area of the law. His publications in the area of privacy and media law include the Australian section of the leading UK text *Tugendhat and Christie: The Law of Privacy and the Media* (Oxford University Press), co-authored with Megan Richardson, and "Litigating Privacy cases in the wake of *Giller v Procopets*" (2010) 15 (2) *Media & Arts Law Review* 285.

A former partner at the London law firm Lovells, **Linden Golding's** private practice experience covered a broad range of contentious and non-contentious issues in Europe as well as a number of Asian territories and the USA, principally in copyright, privacy and trade secrets but also in IT, trademarks and related areas. Her clients have been drawn mainly from the media and entertainment field and included the Motion Picture Association, Fremantle Media, Phonographic Performance Limited, The Performing Right Society, Video Performance Limited, The Mechanical Protection Society Limited, Boosey & Hawkes, Nintendo, Electronic Arts, Guardian Media Group, MGN Limited, Trinity Mirror PLC, ABKCO Music, ITV PLC, Southern Star and EMAP PLC. She is a regular speaker at conferences and her publications include 'Intellectual Property' in the *Media Law and Practice Handbook* published by Oxford University Press

### The Great Trade Mark Debate

Date: 10 December 2014

Venue: Melbourne Law School

#### Motion: Trade Marks Should be Kept in their Place

The debate between four leading academic experts canvassed issues including territoriality, functionality, and the proper legal protection of trade marks

#### Affirmative:

**Beth Webster** (Melbourne Institute of Applied Economics and Director, IPRIA)

**Christine Greenhalgh** (Economics Research Director, Oxford Intellectual Property Research Centre)

#### Negative:

**Graeme Dinwoodie** (Director, Oxford Intellectual Property Research Centre)

**Graeme Austin** (Melbourne Law School and Victoria University of Wellington Law Faculty)

#### Judging panel

The Honourable Julie Dodds-Streeton Q.C (former Federal Court judge)

**Janice Luck** (Melbourne Law School)

**Kwanghui Lim** (Melbourne Business School)

*Thanks to the Oxford MLS Research Partnership and IPRIA (Intellectual Property Research Centre) for sponsoring the Oxford academic visits.*



## CMCL Medal

The CMCL Medal: New Voices in Media Law Competition is an initiative of the CMCL to seek succinct, innovative analyses of contemporary issues in media law. The competition is open to final year JD and LLB students in Australia and New Zealand, and those who graduated in the last five years and currently reside in Australia or New Zealand. Each finalist makes a short presentation of their paper before a prestigious judging panel, over a dinner for legal and industry professionals, academics and students in Melbourne. The CMCL medal winner receives a medal, a prize of \$1,500, and an invitation to develop their paper for possible publication in the Media & Arts Law Review. Other finalists receive \$500 and a certificate.

Date: 3 September 2014

Venue: University House @ Woodward,  
Melbourne Law School, Level 10, Carlton, VIC



### Winner of the 2014 CMCL Medal Competition

**Dinika Roopani**, 'The Scope and Content of "A Publication" on the Internet for the Purposes of Defamation Law'. This article considers how courts in Australia have approached the concept of 'publication' in defamation cases involving publications on the internet.

### Finalists for the 2014 CMCL Medal Competition

**Jarrod Bayliss-McCulloch**, 'Risks and opportunities in big data - how well adapted are Australia's privacy laws?'. This paper looks at information security and the protection of privacy in the context of 'big data'.

**Jennifer Kwong**, 'Moral Rights in the Ballpark: Banksy and the Right to Integrity of Authorship'. This paper considers the legal protection of street (graffiti) artists' moral right of integrity under the Copyright Act 1968 (Cth).

Given the high standard of submissions, all three finalists will have their pieces published in an upcoming issue of the *Media & Arts Law Review*.

## Selected Publications

### Books

Kenyon, A, Majoribanks, T, Royan, N, Whiting, A (eds), *Democracy, media and law in Malaysia and Singapore: A Space for Speech*, Routledge, United Kingdom (2014)

Barendt, E, Bosland, J, Craufurd-Smith, R and Hitchens, L, *Media Law: Text, Cases and Materials*, Pearson, Harlow (1st ed, 2014) pp 699 + xlvii.

### Research Book Chapters

Kenyon, A, Majoribanks, T, Royan, N, Whiting, A, 'Introduction: Making Spaces for Speech', Routledge, Abingdon (2014) pp 1-24

M. Richardson and A. Kenyon, 'Privacy online: Reform beyond law reform' in N. Witzleb, D. Lindsay, M. Paterson, S. Rodrick (eds), *Emerging Challenges in Privacy Law: Comparative Perspectives*, Cambridge University Press, Cambridge (2014) pp 338-352

### Journal Articles Refereed

Bosland, J, Gill, J, 'The Principle of Open Justice and the Judicial Duty to Give Public Reasons' (2014) 38(2) *Melbourne University Law Review* 482-524

Kenyon, A, 'Assuming free speech' (2014) 77 *Modern Law Review* 379-408

Kenyon, A, 'Protecting speech in defamation law: Beyond Reynolds-Style Defences' (2014) 6 *Journal of Media Law* 21-46

Kenyon, A, 'Free-media-speech: Free speech and Public Media' (2014) 10 (2) *International Journal of Media and Cultural Politics* 155-162

Kenyon, A and Walker, S, 'The cost of losing the code: Historical Protection of Public Debate in Australian Defamation Law' (2014) 38(2) *Melbourne University Law Review* 554-589

## Publications Spotlight

### Democracy, Media and Law in Malaysia and Singapore

#### A Space for Speech

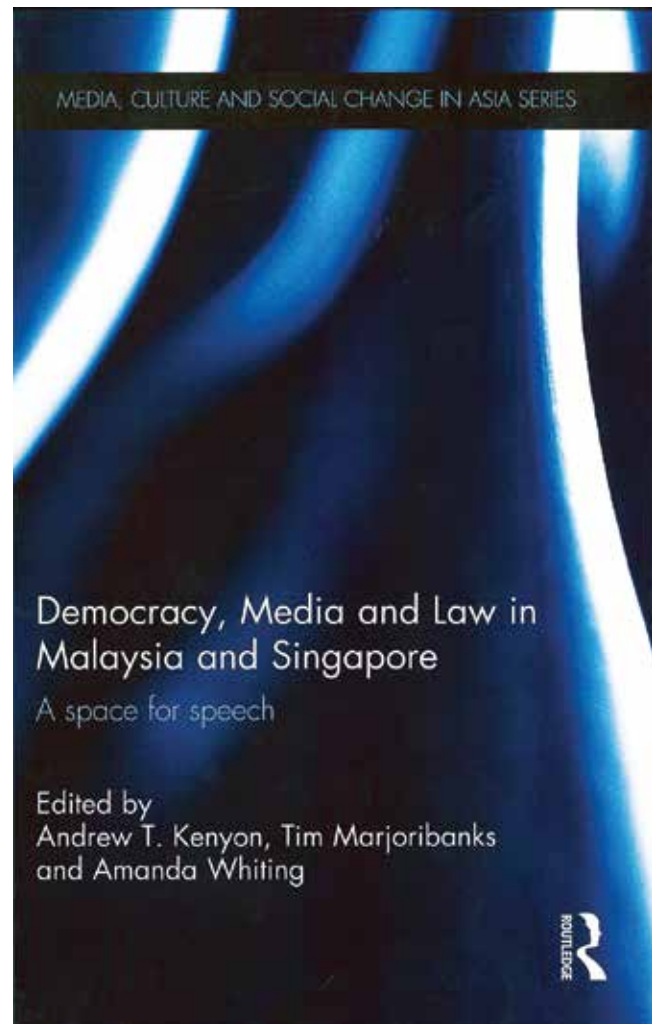
Andrew T. Kenyon (Editor), Tim Marjoribanks (Editor), Amanda Whiting (Editor)

Routledge, (2014)

Commentators on the media in Southeast Asia either emphasise with optimism the prospect for new media to provide possibilities for greater democratic discourse, or else, less optimistically, focus on the continuing ability of governments to exercise tight and sophisticated control of the media. This book explores these issues with reference to Malaysia and Singapore. It analyses how journalists monitor governments and cover elections, discussing what difference journalism makes; it examines citizen journalism, and the constraints on it, often self-imposed constraints; and it assesses how governments control the media, including outlining the development and current application of legal restrictions.

This collection of essays is one of the outcomes of a research project titled 'The Media and ASEAN Transitions: Defamation Law, Journalism and Public Debate in Indonesia, Malaysia and Singapore' that was generously funded by the Australian Research Council during the period 2006-2010 (Grant DP 0662844). This grant also allowed us to engage two marvelous Principal Research Fellows, Ms Naomita Royan and Mr Nang Hean Leng, whose scholarly and administrative assistance has been essential to the production of this book. We are also extremely grateful to Melissa Crouch for her diligent editorial assistance.

The essays that now appear in this book were first discussed in the workshop 'Malaysia and Singapore – media, law, social commentary, politics', hosted by the Centre for Media and Communications Law and Asian Law Centre at the Melbourne Law School in June 2010. At that workshop presenters and commentators had the opportunity to engage with each other's ideas and to refine or revise the arguments put forward in the papers. We thank Sen Lam, Somnia Randhawa and Jacqueline Ann Surin for participating as robust commentators at the workshop, as also presenters whose papers, for a variety of reasons, are not included in this book: Ang Hean Leng, Mohd Azizuddin Mohd Sani, Wong Chin Huat and Zaharom Nain.



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## Melbourne Law School

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