



THE UNIVERSITY OF
MELBOURNE

Melbourne Law School



Centre for Media and Communications Law

Annual Report

2016



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Melbourne Law School

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Hamish Carr, Administrator

Authorised by
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:

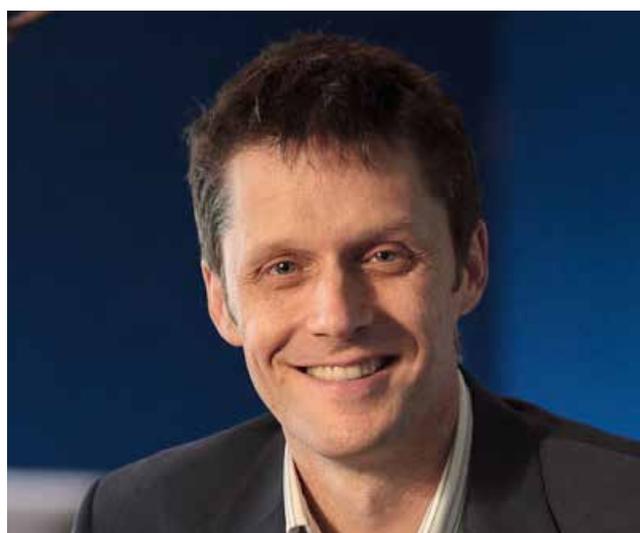
- undertaking large scale research projects;
- holding public seminars about legal and regulatory developments;
- supporting research visits from Australian and international academics, lawyers and policy makers; and
- supervising teaching and learning in media and communications law in the Melbourne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



centre for media and
communications law



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 2016 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, ContractProbe, Neural Contract Company
- 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 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

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.

Administrator

Hamish Carr joined CMCL and the Intellectual Property Research Institute of Australia (IPRIA) 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.

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 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 2016

Defamation Law

Professor Andrew Kenyon, Melbourne Law School

Dr Matt Collins QC, Victorian Bar

Privacy Law

Ms Karin Clark, Melbourne Law School

Professor Megan Richardson, Melbourne Law School

Competition and New Technologies

Professor Damien Geradin, University of Tilburg, George Mason, University and Edge Legal, Belgium

Copyright Law

Professor Graeme Austin, Melbourne Law School

Economic Regulators

Professor William Kovacic, George Washington University, United States

Film and Television: Production, Financing and Distribution

Mr Jonathan Gill, Carrick Gill Smyth

Freedom and Speech

Professor Adrienne Stone, Melbourne Law School

Professor Frederick Schauer, University of Virginia, United States

Information and Technology Contracting Law

Mr Jonathan Gill, Carrick Gill Smyth

Mr Michael Carrick, Carrick Gill Smyth

Internet Law

Mr Jonathan Gill, Carrick Gill Smyth

Professor Megan Richardson, Melbourne Law School

Mr Jason Bosland, Melbourne Law School

Regulating Infrastructure and Utilities: Competition Policy and Law

Mr Richard York, Australian Competition and Consumer Commission

Mr Simon Uthmeyer, DLA Piper Australia

Regulatory Policy and Practice

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

Sports Marketing and Media Law

Mr Paul Czarnota, Victorian Bar

Ms Sally McCausland, McCausland Media Law

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 2016 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 2016 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 2016 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 for this divergence as well as some possible reforms.

CMCL Research Spotlight

John Battle, Head of Compliance, ITN, London, United Kingdom

Research Visitor



John Battle was a visiting scholar at the CMCL in September 2016 presenting seminars and delivering content in the Juris Doctor *Media Law* subject. His seminar *Reporting terrorism and UK Media Law* was held at Mills Oakley in Melbourne for a select audience allowing intimate and robust discussion. His second seminar *UK Media Law - Recent Developments* was presented for practitioners at Corrs Westgarth in Sydney. Several media organisations and their counsel were represented enabling an engaging and informative session.

John Battle is a leading media lawyer in the UK. He is the Head of Compliance at ITN which produces television news and current affairs programmes for ITV, Channel 4 and Channel 5. He advises journalists on legal and regulatory issues both pre and post broadcast His specialist areas are contempt of court/ open justice, defamation , copyright law and privacy/ confidentiality. He previously worked as a lawyer for two leading newspaper publishers: Associated Newspapers and News UK. He is the chairman of the Media Lawyers Association and is a member of the Parliamentary and Legal Committee of the Society of Editors. He has been involved in many media law developments such as cameras in court, disclosure of prosecution evidence to the media and greater access to sports footage to news organisations.

Student Research Spotlight

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.

PhD Candidate Profile

Kinfe Yilma Desta

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

Kinfe is a PhD Candidate and Teaching Fellow at the Center for Media and Communications Law, Melbourne Law School. Kinfe's doctoral thesis – being supervised by Profs Andrew Kenyon & Megan Richardson – examines pragmatic approaches to international digital privacy law reform. It builds on the global interest for a new set of human rights standards for the digital space including in the form of Internet bill of rights generated by the Snowden revelations. While calls for such bill were occasionally made even before the revelations, the Internet bill of rights project has gathered momentum in the wake of the revelations. The thesis seeks to argue for a pragmatic approach for strengthening the international protection of digital privacy, informed partly by this momentum. It explores the possible ways in which the post Snowden normative momentum could be translated into a pragmatic international digital privacy law reform.

In his teaching fellow role, Kinfe teaches the breadth subject 'Free Speech and Media Law'. He has experience in university teaching in Ethiopia, and still holds a position of lecturer-in-law at Addis Ababa University Law School. He has also worked as a consultant on a number of projects on aspects of communications law and policy to the Ethiopian government.

Supervisors: Andrew Kenyon & Megan Richardson

2016 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

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

Alana James

Supervisors: Andrew Kenyon & Megan Richardson

Copyright Exceptions and Contract (PhD)

Adrian Aronsson-Storrier

Supervisors: Sam Ricketson & Megan Richardson

The Regulation of Generative Activities on Social Media (PhD)

Corinne Tan

Supervisors: Megan Richardson, Graeme Austin, & Sam Ricketson

Events

Apple: Privacy, Security and Surveillance

Professor David Partlett

Date: Wednesday 11 May 2016

Venue: Melbourne Law School

This seminar was jointly hosted by Centre for Media and Communications Law, Intellectual Property Research Institute of Australia and the Obligations Group

David F. Partlett is Asa Griggs Candler Professor of Law, having served as dean of Emory Law from 2006 to 2011. Before that he served as vice president, dean, and professor of law at Washington and Lee University School of Law for six years. He joined the faculty of the Vanderbilt University Law School in 1987. He was a fellow in the Institute for Public Policy Studies and was acting dean from 1996 to 1997. Partlett held positions in the Australian government as a senior legal officer for the Commonwealth Attorney-General's Department in Canberra, where he was responsible for policy advice on the Racial Discrimination Act and other related human rights and racial discrimination legislation. He later was appointed to the Australian Law Reform Commission.

From 1978 to 1987, Partlett was a member of the faculty of the Australian National University, and he served as associate dean from 1982 to 1985. He is a member of the American Law Institute, the American Society of Law and Medicine, and the Selden Society. He currently teaches torts and has taught courses on torts, judicial remedies, and professional liability. He has written books on torts, defamation and free speech, child mental health and medical malpractice.

A native of Australia, Partlett is an active scholar, with recent work focused on tort law, as well as defamation and free speech, child mental health, and tort theory.

Education: SJD, University of Virginia School of Law, 1982; LLM, University of Sydney School of Law, 1970; LLM University of Michigan Law School, 1974



Defamation and Privacy: Recent Developments

Dr Matt Collins QC, Aickin Chambers

Michael Rivette, Chancery Chambers

Chair and commentary: Professor Megan Richardson and Jason Bosland

Date: Thursday 2 June 2016

Venue: University House, Woodward

This seminar took the form of an interactive workshop and examined the latest developments in defamation and privacy law. 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.



Professor Megan Richardson

Dr Matt Collins QC, Aickin Chambers is a member 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.

Michael Rivette, Chancery Chambers is a member of the Victorian Bar. He has acted as Counsel for ASX and NYSE Listed corporations, Commonwealth Government departments, Hollywood actors, celebrities and individuals in relation to privacy, data security, and data breach issues. He has expertise in privacy and data breach class actions, and acted as Counsel in one of the first privacy class actions issued in the Federal Court of Australia. He is the co-author of the Australian section of the leading UK text *Tugendhat and Christie: The Law of Privacy and the Media* (Oxford University Press), and has written on the area of privacy for the *Media and Arts Law Review*. He is a guest lecturer on privacy law and data protection in the graduate program at the Melbourne University Law School.

Roundtable Debate: Security Matters More Than Silicon Valley?

Speakers: Dr Alana Maurushat, UNSW, Dr Jeb Webb, University of Melbourne, Professor Julian Thomas, Swinburne Institute for Social Research, Associate Professor Sven Feldman, Melbourne Business School

Moderators: Professor Megan Richardson and Associate Professor Kwanghui Lim

Date: Thursday 18 August

Venue: Melbourne Law School

This roundtable debate between four academic experts canvassed issues including innovation, privacy, economics, business ethics, security and defence.



Dr Alana Maurushat and Associate Professor Sven Feldman

Kiss & Tell (or be told on): Private Lives of Public People in Asia

Professor Dan Rosen, Chuo Law School, Japan

Date: 29 August 2016

Venue: Melbourne Law School

A joint seminar between the Asian Law Centre and the Centre for Media Communications Law.

Professor Dan Rosen compared recent disclosures of private information involving public figures in Japan, Thailand, and the U.S. In particular, he considered the Hulk Hogan case from the United States where a jury awarded a retired pro wrestler \$140 million in damages. The plaintiff wrestler sued a website that showed video of his having sex with wife of friend.

UK Media Law – Recent Developments

John Battle, Head of Compliance, ITN London

Chair and commentary: Lynette Houssarini, A/Deputy General Counsel, Legal and Business Affairs, ABC

CORRS
CHAMBERS
WESTGARTH
lawyers

Date: 14 September

Venue: Corrs Chambers Westgarth, 8-12 Chifley Square, Sydney

This seminar delivered to media lawyers in Sydney was jointly hosted by CMCL, Communications and Media Law Association (CAMLA) and Corrs Chambers Westgarth

The first session focused on the Defamation Act 2013 (UK) and its aftermath, including the impact that this important reform has had on media reporting. This session also examined emerging issues in privacy law and the rise of data protection. The second session considered key developments in the law of open justice, including new court reporting restrictions and cameras in the courts, along with developments in police access to journalists' source information.

John Battle is a leading media lawyer in the UK. He is the Head of Compliance at ITN which produces television news and current affairs programmes for ITV, Channel 4 and Channel 5. He advises journalists on legal and regulatory issues both pre and post broadcast. His specialist areas are contempt of court/ open justice, defamation, copyright law and privacy/ confidentiality. He previously worked as a lawyer for two leading newspaper publishers: Associated Newspapers and News UK. He is the chairman of the Media Lawyers Association and is a member of the Parliamentary and Legal Committee of the Society of Editors. He has been involved in many media law developments such as cameras in court, disclosure of prosecution evidence to the media and greater access to sports footage to news organisations.

Reporting Terrorism and UK Media Law

John Battle, Head of Compliance, ITN London

Date: 15 September 2016



Venue: Mills Oakley, Level 6, 530 Collins Street, Melbourne



This lunchtime seminar with Melbourne media lawyers discussed the following:

- Reports that may cause offence and changes in the industry regulations
- The legal duty on journalists to report information relating to terrorism
- Police access to journalistic material including sources and changes in the law
- Information provided by the police/ CPS / open justice issues

Public Lecture: The Phenomenon of Patent Thickets

Associate Professor Stefan Wagner, European School of Management and Technology (ESMT)

Date: Tuesday 25 October

Venue: Melbourne Business School

Google acquired Motorola Mobility in a headline making deal for \$12.5 billion in May 2012. Less than two years later, Google has sold Motorola Mobility to Lenovo for \$2.9 billion but decided to hold on to up to 20,000 of Motorola's mobile patents. The logic of this deal can be explained best by the existence of patent thickets – situations in which any patent holder can try to prevent competitors from manufacturing a product (in Google's case, a smartphone or the operating system) as a whole by not granting a license on a component or by demanding unreasonably high licensing fees. Only the acquisition of a big patent portfolio allowed Google to become a credible player in the IP landscape of mobile telephony and to obtain relevant cross-licenses.

This talk focused on the broader phenomenon of patent thickets – which are prevalent not only in mobile telephony but in many other industries as well – and discussed implications for managers and policy makers alike: In particular, the tendency of patent thickets to self-perpetuate and to grow is a worrying trend for all stakeholders. Additionally, patent thickets lead to an increase in firms' efforts to patent, while at the same time reducing the incentive to engage in litigation.

Stefan Wagner joined ESMT Berlin in February 2011 as an assistant professor and received tenure as of 2016 as an associate professor. Previously, he received his Habilitation in 2010 and his Doctorate in Management (summa cum laude) in 2005 from Ludwig-Maximilians-University Munich.

During the course of his education Stefan was supported by the Studienstiftung des Deutschen Volkes (German National Academic Foundation). He was Fulbright Scholar at the University of California Los Angeles UCLA and Visiting Scholar at the National Bureau of Economic Research NBER, Cambridge MA, as well as at the Intellectual Property Institute of Australia IPRIA, Melbourne. Since 2016, Stefan has been a Senior Fellow at the Berlin Centre for Consumer Policies (BCCP).

Stefan's research interests cover the intersection of firm strategy, technological innovation, industrial organization and law. Currently, he is primarily interested in the interaction of the changing landscape of intellectual property rights (in particular patent systems) and firms' long term strategy regarding their innovative activities. The results of his research have been published in general management journals such as *Management Science* and the *Strategic Management Journal*, and also in top field journals – in innovation, for example in *Research Policy*; and in economics, for example in the *Journal of Industrial Economics and Economics Letters*.



International Workshop on Remedies for Breach of Privacy

Date: 12–13 December 2016

Venue: Melbourne Law School

On 12–13 December 2016 the Centre for Media and Communications Law at Melbourne Law School hosted the *International Workshop on Remedies for Breach of Privacy*, a collaborative project between Melbourne Law School and Victoria University of Wellington. This two-day workshop included presentations from leading academics, judges and practitioners from Australia, Canada, New Zealand and the United Kingdom.



Assoc. Professor Jason N E, Melbourne Law School, Assoc. Professor Nicole Moreham, University of Wellington

The papers will be published as an edited collection in 2017, to be edited by the convenors of the workshop, Dr Jason N E Varuhas (Associate Professor, Melbourne Law School) and Dr Nicole Moreham (Associate Professor, Victoria University of Wellington Faculty of Law). The motivation for the workshop is the development over the last fifteen years, across common law jurisdictions, of actions for breach of privacy in equity and at common law. With these developments apex courts are increasingly being called upon to elaborate the rules and principles governing remedies for such actions including damages and injunctions, yet very little has been written on these topics despite their great practical significance. The aim of this workshop was to lead thinking and provide answers to pressing issues facing apex courts by bringing together experts drawn from the academy, practice and the judiciary, and from the legal disciplines implicated by privacy remedies, including torts, equity, and human rights law. This coming together of different types of experts led to a rich and stimulating discourse which greatly advanced thinking on this cutting edge topic.



Selected Publications

Edited Book

Kenyon, A.T. (ed.) (2016) *Comparative Defamation and Privacy Law* Cambridge University Press

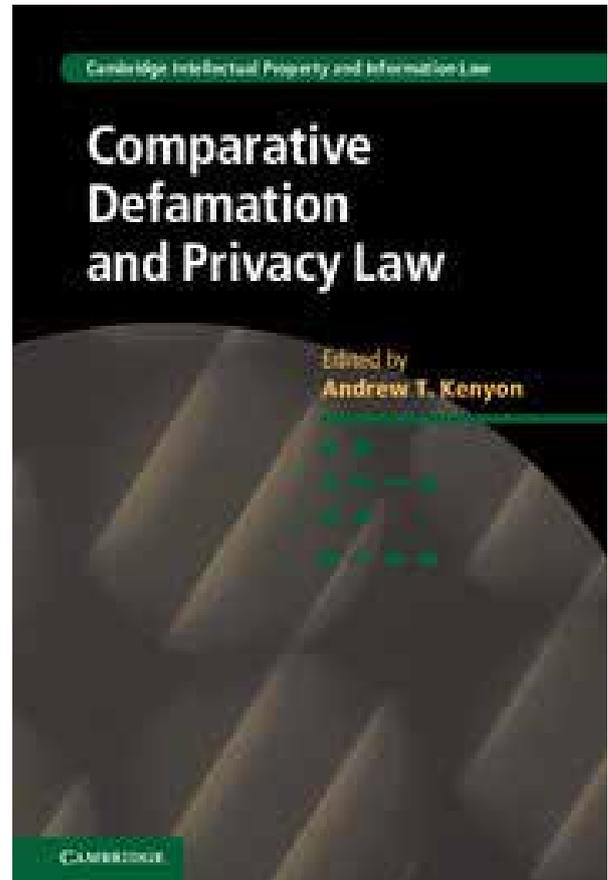
Research Book Chapters

Aplin, T. & Bosland, J. (2016) The uncertain landscape of Article 8 of the ECHR: the protection of reputation as a fundamental human right?. In A. Kenyon (Eds.), *Comparative Defamation and Privacy Law*. (pp. 265–290). United Kingdom: Cambridge University Press

Kenyon, A.T. (2016) Defamation and privacy in an era of 'more speech'. In A. Kenyon (Eds.), *Comparative Defamation and Privacy Law*. (pp. 1–16). United Kingdom: Cambridge University Press

Kenyon, A.T. & Richardson, M. (2016) Reverberations of Sullivan? Considering defamation and privacy law reform. In A. Kenyon (Eds.), *Comparative Defamation and Privacy Law*. (pp. 331–353). United Kingdom: Cambridge University Press

Richardson, M. & Thomas, J. (2016) Pictorial Publics, the Visual Internet and Image Rights. In Frankel, S & Gervais, D (Eds.) *The Internet and the Emerging Importance of New Forms of Intellectual Property*. (pp. xxx–xxx). United Kingdom: Kluwer Law International



Journal Articles Refereed

Bosland, J. (2016). WikiLeaks and the not-so-super injunction: The suppression order in DPP (Cth) v Brady. *Media and Arts Law Review*, 21(2), 34–63.

Journal Articles Unrefereed

Richardson, Megan (2016). The Fate of 'Privacy' in an Automated Society. *Pandora's Box*, 2016(1), 75–82.

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



2016 Volume 21

Issue 1

Articles

Bold but cautious: The right to erasure as a pragmatic approach to data protection in the digital era

Emily Meller

WikiLeaks and the not-so-super injunction: The suppression order in DPP (Cth) v Brady

Jason Bosland

Secrecy and disclosure: The Australian Border Force Act 2015 (Cth) protecting our borders from free speech

Stephanie Szkilnik

NZ Media Law Update

Ursula Cheer

Case Note

Safeguarding the Kung Fu Panda: Merchandising rights as a means for trademark opposition

Lizhou Wei*

Book review

Hong Kong Media Law: A Guide for Journalists and Media Professionals by Doreen Weisenhaus, with contributions by Rick Glofcheski and Yan Mei Ning, 2nd ed, Hong Kong University Press, 2014, 480 pp, ISBN 9789888208098.

Mark Pearson, Professor Griffith University

Issue 2

Articles

The private international law implications of a privacy tort under state or territory legislation

Sirko Harder* and Normann Witzleb^

Of pride and prejudice: Mangled art, mutilated statues, hypersensitive authors and the moral right of integrity

Eugene C Lim

Interlocutory injunction, freedom of the press and public interest: The University of Hong Kong v Hong Kong Commercial Broadcasting Co Ltd

Anne S Y Cheung

Case Note

PJS v News Group Newspapers Ltd

Finian Cullity*

Book reviews

Defamation Law by D Rolph (Lawbook, 2016) 424 pp ISBN 9780455228570.

Rebecca White, Barrister

Privacy Revisited: A Global Perspective on the Right to Be Left Alone by Ronald J Krotoszynski Jr (Oxford University Press, 2016) 312 pp ISBN 9780199315215.

Kinfe Micheal Yilma, PhD Candidate, Melbourne Law School

2016 Volume 21

Issue 3

Introduction

Privacy in the age of surveillance

Jason Bosland

Articles

BD use by law enforcement and intelligence in the national security space: Perceived benefits, risks and challenges

Dr Alana Maurushat

The high-wire: The delicate balance between communications surveillance, constitutional rights and the media in South Africa

Dario Milo and Stuart Scott

A different kind of shot: Policing, media, and body worn video

Jessica Chapman

Stealing surveillance: Prosecuting misuses of non-covert CCTV in New Zealand

S Che Ekaratne

Individual privacy management

Marcin Betkier

Privacy and the Internet of Things

Megan Richardson, Rachelle Bosua, Karin Clark and Jeb Webb with Atif Ahmad and Sean Maynard

Puzzling out global privacy: The EU transfer effect

Nina Yiannopoulos

Watching women: Past and present legal responses to the unauthorised circulation of personal images

Jessica Lake

Issue 4

Articles

Avenging revenge porn: Why we need more than just the criminal law

Elizabeth Bird

The Duke and his manservant in a world of online defamation: Rethinking the multiple publication rule in 21st century Australia

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