



MELBOURNE LAW SCHOOL
Australia's first, Australia's global

Centre for Media and Communications Law
Annual Report
2011-2012

CMCL Finances and Sponsors

The CMCL has four major sources of funding: support from the Melbourne Law School; research funding from the Australian Research Council and other research collaborators; income from other research-related activities, such as publications and public seminars; and sponsorship from media organisations and law firms. The centre's main areas of expenditure in 2011 and 2012 were related to its public seminars and conferences which were held in Melbourne and Sydney, hosting research visitors, and casual administrative and research assistance.

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

The CMCL has been generously supported by our Sponsors and Research Partners

Sponsors



Past or Current Research Partners

Arts Law Centre of Australia
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National Film and Sound Archive
National Gallery of Victoria
National Library of Australia
National Museum of Australia
Powerhouse Museum
Screen Australia
State Library of Victoria

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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 sponsors and research partners.

It is the editorial base for the *Media & Arts Law Review*, a leading refereed journal in the field, which is published by LexisNexis.



CMCL Advisory Board

In 2011 and 2012, the Advisory Board comprised:

Elizabeth Beal, Herald & Weekly Times

Bruce Burke, Banki Haddock Fiora

Warren Coatsworth, Seven Network Limited

Julie Eisenberg, National Prescribing Service

Jon Faine, ABC Radio

Stuart Gibson, Gibsons

Jonathan Gill, Carrick Gill Smyth Lawyers

Gail Hambly, John Fairfax Holdings Ltd

Jim Holmes, OVUM Pty Ltd

Paul Kallenbach, Minter Ellison

Richard Leder, Corrs Chambers Westgarth

Peter Leonard, Gilbert + Tobin Lawyers

Cheng Lim, Mallesons Stephen Jaques

Federal Magistrate Michael Lloyd-Jones, Federal Magistrates Court of Australia (Chair)

Denis Muller, Centre for Public Policy, The University of Melbourne

Hugh Northam, Septimus Jones & Lee

Michael Pattison, Allens Arthur Robinson

Nic Pullen, HWL Ebsworth Lawyers

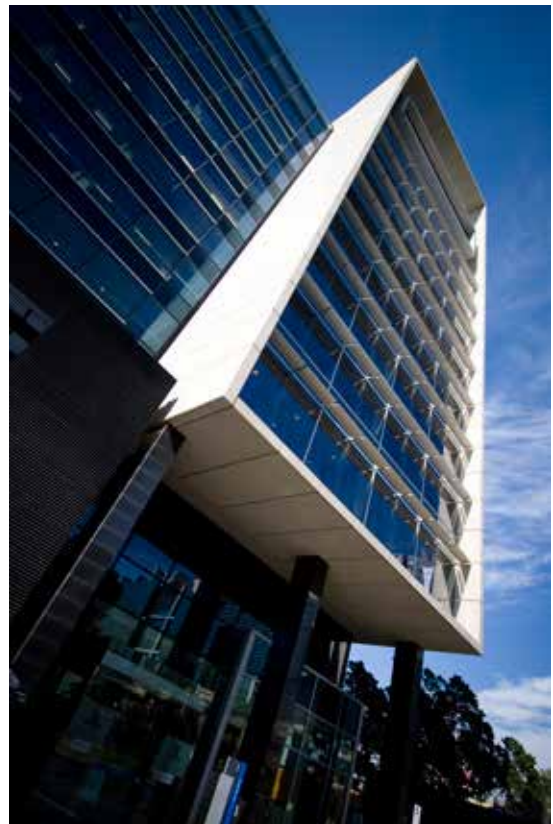
Michael Rivette, Chancery Chambers

Greg Sitch, Macleay William

Andrew Stewart, Baker & McKenzie

Robert Todd, Blake Dawson

Deanne Weir, Austar United Communications



CMCL Staff

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

Professor Andrew Kenyon

LLB(Hons)(Melb), LLM(Dist)(London), PhD(Melb)

Director

Andrew Kenyon researches in comparative media and communications law, including defamation, privacy, copyright, journalism and media policy. As well as legal doctrine, this research examines social and cultural aspects of law. He is the editor of the international refereed journal, the *Media & Arts Law Review*, a Network Participant in the Australian Research Council Cultural Research Network, and past-president of LSAANZ: the Law and Society Association of Australia and New Zealand. He is admitted to practise law in Victoria, and his memberships include the International Communication Association and the Socio-Legal Studies Association.



Professor Andrew Kenyon

Professor Megan Richardson

BA, LLB(VUW), LLM(Yale), LLM(Brussels)

Director

Megan Richardson received her BA.LLB from Victoria University of Wellington, New Zealand. She has an LLM from Yale University, where she was a Fulbright scholar, and an LLM in comparative law from the Free University of Brussels. Prior to her appointment at the University of Melbourne, Megan was a Senior Legal Research Officer at the New Zealand Law Commission and for a brief time worked at the Victorian Law Reform Commission and Australian Law Reform Commission. She has also worked as a solicitor practising commercial law at Chapman Tripp Sheffield Young in Wellington. Particular areas of academic interest and expertise are in the fields of intellectual property and privacy.



Professor Megan Richardson

Jason Bosland

LLB (Melb), LLM (LSE)

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.



Jason Bosland

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 2011 and 2012 they were:

Chris Dent

LLB, BA (Hons), PhD (Perth)

Senior Research Fellow

Chris Dent is a Senior Research Fellow with the CMCL and the Intellectual Property Research Institute of Australia at the Melbourne Law School. The focus of his work at the CMCL is the operation of defamation law in practice - in particular, conducting empirical research with practitioners. Prior to commencing work at the University of Melbourne he carried out research for the Law Reform Commission of Western Australia and the Victorian Law Reform Commission. His qualifications are from Murdoch University and include a PhD in Law, awarded in 2003.

Clarissa Terry

BA, MA Publishing & Editing (Melb)

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.

Katy Barnett, Lecturer, Melbourne Law School

David Brennan, Associate Professor, Melbourne Law School

Andrew Christie, Professor, Melbourne Law School

Karin Clark, Special Counsel, Allens Arthur Robinson

Arlen Duke, Senior Lecturer, Melbourne Law School

Simon Evans, Professor, Melbourne Law School

Jonathan Gill, Senior Fellow, Melbourne Law School

Richard Garnett, Professor, Melbourne Law School

Tim Lindsey, Professor and Federation Fellow, Melbourne Law School, Director, Asian Law Centre

Lawrence McNamara, Reader, School of Law, University of Reading

Tim Marjoribanks, Senior Lecturer, School of Social and Political Sciences, University of Melbourne

Andrew Mitchell, Associate Professor, Melbourne Law School

David Nolan, Lecturer, School of Culture and Communication, University of Melbourne

Sam Ricketson, Professor, Melbourne Law School

Peter Rush, Professor, Melbourne Law School

Saw Tiong Guan, Lecturer, Faculty of Law, University of Malaya.

Adrienne Stone, Professor, Melbourne Law School

Joo Cheong Tham, Associate Professor, Melbourne Law School

Tania Voon, Associate Professor, Melbourne Law School

Kim Weatherall, Senior Lecturer, TC Beirne School of Law, University of Queensland

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, Senior Fellow, School of Culture and Communication, University of Melbourne

Research Spotlight

Jake Goldenfein

Jake began his doctoral research under the supervision of Professors Andrew Kenyon and Megan Richardson in 2011. His doctoral research investigates the role of privacy law in the regulation of institutional surveillance of public places and information. The thesis, entitled *Monitoring Laws: Privacy and Surveillance in Public*, argues that the harms and injuries to citizens produced by the contemporary surveillance environment are more a reflection of archival processes than the 'misuse of private information' or 'intrusion on seclusion' which privacy law more typically addresses. To that end, his work involves an historical analysis of state surveillance practices, from police photography to intelligence dossiers, to aerial observation, in order to better elucidate the harms produced by those practices as they continue into contemporary life.

Jake's work crosses several disciplines which accord with his broad interests, including privacy law, media law, intellectual property, media and communications history and theory, communications policy, and legal history among others. The incorporation of those fields in his doctoral work reflects his background of doing research at numerous institutions including New York Law School, Swinburne University's Institute for Social Research, and Melbourne Law School. Jake has also taught at the University of Melbourne and Swinburne University of Technology, and is a 2013 Teaching Fellow at Melbourne Law School, where he will teach 'Free Speech and Media Law'. He is extremely pleased with the Law School's encouragement of cross-disciplinary studies and the independence given to graduate researchers in defining the parameters of their projects.

In 2013, Jake presented at the Law, Culture, Humanities conference at Birkbeck, London, where he discussed the history of police photography and its role in producing degenerate and criminal 'biotypes'. Research for that paper, along with other research from his thesis, was published in an article in the *University of New South Wales Law Journal*. Jake has also published in the *Media and Arts Law Review* and various online fora. He co-wrote a book chapter with Megan Richardson in a text on *Amateur Media* and was an editor of the online journal *The Fortnightly Review of IP and Media Law*. He is presently co-editing with Laura Peterson and Marc Trabsky a symposium issue of the *Griffith Law Review*, based on presentations at the Melbourne Doctoral Forum on Legal Theory, which Laura, Marc and Jake co-convened in 2011.

Prior to commencing his PhD, Jake worked as a research assistant at New York Law School in the United States, but had also worked in a Melbourne law firm, and was an admitted lawyer in Victoria. Jake received a BSc/LLB (Hons) from the University of Melbourne in 2008.



Jake Goldenfein

Student Research Prize

Dr Emily Hudson

2012 Harold Luntz Graduate Research Thesis Prize and Vice Chancellor's Prize for Excellence in the PhD Thesis

The Harold Luntz Graduate Research Thesis Prize is awarded annually to the Melbourne Law School graduate research student judged to have presented the best thesis in the previous year, provided that the nominee meets an overall level of excellence required for the award. It is named for Emeritus Professor Harold Luntz, a world expert on torts law and a former dean and professor at Melbourne Law School. The Vice Chancellor's Prize is the only University wide award for a PhD Thesis. The awards are clustered into three faculty groupings - Humanities, Creative Arts and Social Sciences; Science and Engineering; and Medicine, Dentistry and Health Sciences.

In 2012, both prizes were won by:

Dr Emily Hudson

Copyright Exceptions: The Experiences of Cultural Institutions in the United States, Canada and Australia

Dr Hudson was supervised by Professor Andrew Kenyon and Associate Professor David Brennan.

Dr Hudson has written an outstanding PhD thesis with high significance for copyright law and its reform. Her research has made, and continues to make, a considerable impact both within and beyond academic circles.

The Selection Committee for the Harold Luntz Prize said that Dr Hudson's thesis 'draws on theoretical, comparative and empirical research methods to examine the practical operation of copyright exceptions in Australia, Canada and the United States for libraries, archives and museums in their dealings with copyright material. The thesis has made a lasting and significant contribution to the field of copyright law and practice with relevance to both law reform and academic debate. The quality of her associated publications, presentations and professional roles reflects the international esteem in which she is rightly held based on her research in this field.'

Dr Hudson has been Career Development Fellow in Intellectual Property Law at the University of Oxford, associated with St Peter's College, since January 2012. She is also a member of the Oxford Intellectual Property Research Centre. In addition to her work in intellectual property law, Dr Hudson researches in personal property law and law as it relates to cultural institutions and the arts.



Dr Emily Hudson

Teaching

CMCL staff have teaching responsibilities across the Melbourne Law School's programs in media and communications 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.

In 2011, the program benefited from teaching by Jonathan Gill (Carrick Gill Smyth), Professor Graeme Austin (University of Arizona, United States), David Brennan (Melbourne Law School), Kimberlee Weatherall (University of Queensland), Richard York (Frontier Economics), Simon Uthmeyer (DLA Phillips Fox), Professor Megan Richardson (Melbourne Law School), Professor David Caudill (Villanova University, United States), Emily Hudson (University of Queensland), Professor Damien Geradin (Tilburg University, Netherlands), Professor Fiona Macmillan (University of London), Professor Patrick Birkinshaw (University of Hull), Michael Carrick (Carrick Gill Smyth).

Offered in 2011

Group A

Free Speech, Contempt and the Media
Privacy Law

Group B

Communications Law
Competitions and New Technologies
Copyright Law
Cultural Heritage, Trade and Development
Entertainment Law
Film and Television Law: Production, Financing and Distribution
Information Technology Contracting Law
Regulating Access to Public Information

In 2012, the program benefited from teaching by Professor Andrew Kenyon (Melbourne Law School), Dr Matt Collins (Victoria Bar), Godwin Busuttill (5RB Chambers), Karin Clark (Melbourne Law School), Professor Megan Richardson (Melbourne Law School), Professor Maurice Stucke (University of Tennessee), Arlen Duke (Melbourne Law School), Associate Professor David Brennan (Melbourne Law School), Kimberlee Weatherall (University of Queensland), Jonathan Gill (Carrick Gill Smyth), Professor Maeve McDonagh (University College Cork), Professor Adrienne Stone (Melbourne Law School), Associate Professor Katharine Gelber (University of Queensland), Michael Carrick (Carrick Gill Smyth), Professor Dan Hunter (New York University), Richard York (Frontier Economics), Simon Uthmeyer (DLA Phillips Piper).

Offered in 2012

Group A

Defamation Law
Privacy Law

Group B

Behavioural Law and Economics
Competition Law and Intellectual Property
Copyright Law
Film and Television Law: Production, Financing and Distribution
Freedom of Information
Hate Speech
Information Technology Contracting Law
Internet Law
Law and Economics of Access Regulation



Visiting Scholars

Research Visitors Program

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. Fellows are generally provided with accommodation near the Melbourne Law School, as well as having the use of the Law School's research facilities.

2011:

Lisa Ramsey
University of San Diego, USA

Shaun Larcom
University College London, UK

Dr Jianqiang Nie
Wuhan University

2012:

Chris Marsden
University of Essex School of Law, UK

Karin Clark
Allens Arthur Robinson

Dan Hunter
New York Law School, USA

Associate Professor Elizabeth Adeney
Deakin University

Kim Gould
University of Technology, Sydney



Public Seminars 2011

New Models for Book Publishing

A free public seminar in Melbourne proudly presented by IPRIA in association with the Centre for Media and Communications Law (CMCL), Melbourne Business School (MBS) and the Publishing and Communications Program at the University of Melbourne.

The book publishing business seems to be changing irrevocably in the digital age. How will traditional book publishers and book stores cope with new modes of production and distribution in the 21st century? What new business models are being tried by book publishers, retailers and authors? Will the way we read books change entirely, and how might this affect the shape of the industry? These questions were examined by a distinguished panel of book publishers, sellers and authors, chaired by Emmett Stinson of the Publishing & Communications Program at the University of Melbourne.

9 Feb 2011- Melbourne Business School

Inter-faculty Workshop on Law and Non-Communicable Diseases

Speakers:

- Andrew Kenyon, Melbourne Law School
- Rob Moodie, Nossal Institute for Global Health
- David Studdert, Melbourne School of Population Health, Melbourne Law School
- Paula O'Brien, Melbourne Law School

NCDs—especially, cancer, heart disease, diabetes and chronic respiratory disease—are a major threat to population health and to development in the 21st century. In 2005, they caused an estimated 35 million deaths globally, 60% of all deaths.

The Melbourne Law School, the Nossal Institute for Global Health, the Melbourne School of Population Health and Cancer Council Victoria convened a day-long planning session in July 2010. The initiative was supported by the Provost's office. Participants included many internationally-recognised experts in law, NCDs or both. The goal was to identify priorities for research and capacity building in this area. There was a strong emphasis on inter-disciplinary ideas and projects with the potential to draw together expertise from a wide range of fields (business, economics, medicine, health sciences, public health, politics, sociology, psychology, org. behaviour and law).

24 February 2011- Melbourne Law School

Brandjacking on Social Networks: Trademark Infringement by Impersonation of Markholders

Speaker:

- Lisa P. Ramsey, Professor of Law, University of San Diego

Should trademark infringement law apply to the unauthorized use of trademarked brand names in expression on Facebook, Twitter, and other social network sites? If a third party impersonates a brand on these sites, this can cause harm to the markholder and the public even where the imposter is not advertising or selling goods or services. For example, a Facebook user with the alias "Nine West Shoes" set up a fake Nine West-Model Auditions group page and convinced hundreds of women and teenage girls interested in model auditions to send the imposter their contact information and photographs of their faces, bodies, and toes. A competitor of the public relations firm Tanner Friedman allegedly impersonated the company on Twitter and sent out embarrassing posts purportedly written by employees of the firm.

This Article argues that these types of unauthorized uses of trademarks on social network sites can and should be actionable infringement where (1) the mark is used to impersonate the markholder and falsely suggest the markholder is the author of the third party's expression, (2) reasonable people believe the imposter's false statements of identity and authorship, and (3) the content of the social network site page does not dispel the confusion regarding the source of the expression. On the other hand, where the mark is being used in parody, satire, criticism, comparative advertising, news reporting, and other commentary on the social network site and there is no confusion about the source of this expression, this expressive use of the mark should be outside of the scope of the trademark infringement laws.

15 March 2011- Baker & McKenzie, Melbourne

17 March 2011- Baker & McKenzie, Sydney

Human Rights and Intellectual Property: Mapping the Global Interface

A free public seminar in Melbourne and Sydney proudly presented by IPRIA in association with the Centre for Media and Communications Law (CMCL) , Institute for International Law and the Humanities (iILaH)

Speakers:

- Professor Larry R Helfer , Harry R. Chadwick, Sr. Professor of Law, Duke University, School of Law (USA)
- Professor Graeme W Austin , Professor of Law, Victoria University of Wellington (New Zealand) and The University of Melbourne

Commentators:

- Associate Professor Shaun McVeigh , Programme Director, Jurisdictions of the South, iILaH (Melbourne)
- Professor Kathy Bowrey , Associate Dean - Research, Faculty of Law, UNSW (Sydney)

Chairs:

- Professor Megan Richardson , Director, Centre for Media and Communications Law and Associate Director (IPRIA) , The University of Melbourne (Melbourne)
- Professor Jill McKeough , Dean, Faculty of Law, UTS (Sydney)

The relationship between intellectual property and human rights has captured the attention of governments, policymakers, and activist communities in a diverse array of international and domestic venues. These actors often raise human rights arguments as counterweights to the expansion of intellectual property in areas such as freedom of expression, public health, education, privacy, agriculture, and the rights of indigenous peoples. At the same time, creators and owners of intellectual property are asserting a human rights justification for the expansion of legal protections. Drawing from their recently published book, *Human Rights and Intellectual Property: Mapping the Global Interface* (Cambridge University Press, 2011), Professors Larry Helfer and Graeme Austin explored some of the conflicts and the possibilities for coexistence between these two areas of domestic and international law and policy.

11 May 2011- Melbourne Law School

16 May 2011- University of Technology Sydney

The Final Cut: Film Censorship and Judicial Review in Malaysia, Hong Kong and Australia

Presentation:

- PhD Candidate Tiong Guan Saw, Melbourne Law School
- ### Supervisors:
- Andrew Kenyon, Melbourne Law School
 - Amanda Whiting, Melbourne Law School

Film censorship has always been a controversial matter particularly in jurisdictions with restrictive state-based censorship systems. This thesis sets out to review the film censorship system in Malaysia by comparing it with the Hong Kong and Australian systems. It identifies the key issues that arise from the system by examining the censorship laws, guidelines and processes; evaluates film practitioners' and censors' opinion of, and experience in, dealing with those issues; and finally, develops reform proposals for the film censorship system. The research suggests that the Malaysian film censorship system has adverse effects on the country's film industry and practitioners, and also unreasonably limits the experiences of Malaysian audiences. Therefore, reforms to the system that appear likely to promote the artistic vibrancy and commercial viability of the film industry are warranted.

20 May 2011- Melbourne Law School

Enforcement, Enforcement, What Enforcement?

Speaker:

- Professor Peter K Yu- Kern Family Chair in Intellectual Property and Director, Intellectual Property Law Center , Drake University Law School , USA

Intellectual property piracy and counterfeiting remains rampant in China, countries in southeast Asia, as well as other developing countries. Yet, these countries continue to disagree with developed countries over international intellectual property enforcement standards. What types of standards exist today? Why can't countries agree on harmonizing their standards? Can the new Anti-Counterfeiting Trade Agreement and the growing number of free trade agreements strengthen intellectual property enforcement in the developing world? What do we need to do to provide intellectual property rights holders with meaningful and sustainable protection?

27 May 2011- Blake Dawson Melbourne

1 June 2011- Blake Dawson Sydney

Public Seminars 2011

The CMCL Medal 2011: New Voices in Media Law

Finalists:

- Roxanne Burd, 'To Suppress, Or Not to Suppress; Protecting the Right to a Fair Trial in the Twenty-First Century'
- Sara Phung, 'Function Not Form: Protecting Sources of Bloggers'
- Jessica Goulburn, 'Straw, Sticks or Bricks- How to Stop the Big Bad Wolf from Piggybacking'

The CMCL Medal seeks succinct, innovative analyses of contemporary issues in media law. Eligibility - 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 made a short presentation of their paper before a judging panel chaired by the Honourable Justice Whelan, over a dinner for legal and industry professionals, academics and students in Melbourne.

Monday 5 September 2011- The University of Melbourne

Bringing Open Justice to a New Level: Film Footage, Open Justice and the Media in England

Speaker:

- John Battle, Head of Compliance, Independent Television News, UK

This seminar was dedicated to recent developments in open justice in the courts in England and Wales. The first session focused on a Protocol from the Crown Prosecution Service that now allows disclosure to the media of material shown in court to the jury - such as CCTV footage or photographs - on the same day the material is shown in court. This Protocol has transformed court reporting and means television and newspaper reports can broadcast and publish what was seen in court that day.

The second session focused on developments in contempt of court in 2011 and related issues - the resurgence of the laws of contempt of court, the present position on suppression orders and the topical issue of super-injunctions.

Wednesday 2 November, 2011- Corrs Chamber Westgarth, Sydney

Thursday 3 November, 2011- Melbourne Law School



CMCL Medal finalists Jessica Goulburn, Roxanne Burd and Sara Phung



CMCL Medal judges The Honourable Justice Whelan, Dr Melissa de Zwart and Richard Leder



CMCL Medal judges with winner,
Roxanne Burd



CMCL Medal dinner

Brands and the Challenges of Grey Markets

Speakers:

- Owen Malone, Intellectual Property for Treasury Wine Estates Limited
- Don O'Sullivan, Melbourne Business School
- Susy Frankel, Victoria University of Wellington
- Vicki Huang, Deakin University

Chair:

- Janice Luck, Melbourne Law School

Brand owners have traditionally been able to control the geographical markets in which their products were sold. But now looser regulation of parallel imports, the internet's seamless distribution channels and the high Australian dollar have all combined to make generally cheaper-priced 'grey' (ie unauthorised but legitimately labelled) branded goods an attractive option for Australian consumers. How are brand owners and their local licensees handling the challenges of these alternative modes of distribution of their branded products? What new business models are being tried by grey marketers and how might these affect the shape of the retail sector in Australia? Should the law be changed to regulate grey markets? These questions were examined by a panel of business, marketing and legal experts as well as grey market consumers, chaired by Janice Luck of the Melbourne Law School.

Wednesday 26 October 2011, Melbourne Business School

Keeping Secrets in Times of Weak Law

Keynote Speakers:

- Professor Dan Hunter, Professor of Law, Director of the Institute for Information Law & Policy, New York Law School
- Dr Philip Williams, Chair, Frontier Economics, Melbourne
- The Honorable Michael Kirby, AC CMG

A one-day conference targeted at IP and media professionals, business managers, patent attorneys and policy analysts, academics and students. The conference discussed cybersecurity (morning session), trade/commercial secrecy (afternoon session) and privacy (evening session).

Friday 25 November 2011, Melbourne Law School

Public Seminars 2012

Net Neutrality: European and Comparative Approaches

Speaker:

- Dr Chris Marsden, University of Essex School of Law

Net neutrality is a growing policy controversy, which must be traced in its policy history, examined and defined, and its two elements separated: the present net neutrality 'lite' debate and the emerging net neutrality 'heavy' concerned with fibre access networks in the future. In this talk, Dr Marsden explained its past, explored the legislation and regulation of its present, and explained that economics and human rights both play a part in its future. There are net neutrality laws in the Netherlands, Chile and Finland, regulation in the United States and Canada, co-regulation in Norway, and self-regulation in Japan, the United Kingdom and many other European countries. It is a debate which has existed for at least twelve years, and service quality increases with the demand on the network for more attractive fixed and mobile/wireless services.

Tuesday 13th March 2012- Melbourne Law School

Thursday 22nd March 2012- Corrs Chamber Westgarth, Sydney

Tweets, Beaks and Hacks: Court Reporting and the Law in the Age of New Media Journalism

Speaker:

- Mark Stephens, Howard-KennedyFsi

Mark Stephens is one of the world's most prominent media lawyers. He is known as former counsel to WikiLeaks founder Julian Assange, the late author Christopher Hitchens and the evolutionary biologist Richard Dawkins. He has defended Dow Jones (against Australian Joseph Gutnick), Wall Street Journal and the Guardian (in the 'Alphabet Soup' Case) and made a number of interventions in the European Court of Human Rights in free speech cases. He was also a victim of phone hacking by News of the World. In conversation with Centre for Advanced Journalism's Margaret Simons, Mark reflected on the limits of freedom of speech, and how journalists should operate in the murky area of unauthorised disclosure. Mark Stephens has specialised in media law and intellectual property for the past 27 years and has a multinational practice which has included some of the most high profile cases in this field. He has been a legal commentator for Sky TV, The Times and the Guardian, appeared on BBC Radio and in 2010 named among the Evening Standard's 1000 most influential people in London.

Friday 30 March 2012- Melbourne Law School

Election Talk: Issues in Election Communications Law and Practice in Australia, the United Kingdom and the United States

Speaker:

- Dr Murray Green, University of Technology, Sydney

A joint seminar with Electoral Regulation Research Network

This presentation examined the response of three jurisdictions to these issues and from the perspective of deliberative democracy advocates a five element framework for the development of election communications law. Several superior court cases from each jurisdiction were assessed and the practice of election lawyers and regulators from across the three jurisdictions provided the basis of a socio-legal analysis of how election communications law is devised and practised.

Dr Murray Green is a Research Associate at the Communications Law Centre, University of Technology, Sydney. Until March this year he was Director International at the Australian Broadcasting Corporation where he had responsibility for Australian Network television, Radio Australia and ABC International Development. Murray was for ten years also responsible for the monitoring for accuracy and fairness in ABC election coverage of federal, state and territory elections. The topic of the seminar was his doctoral thesis at the Melbourne Law School. He is also a graduate in law from the University of New England and the Australian National University.

Murray's interests include legal and regulatory issues in a converged media environment as well as the development of media regulation in Asia and the Pacific.

Wednesday 9 th May 2012- Melbourne Law School

Village Roadshow v iiNet: The decision and its ramifications for copyright owners and ISPs

Speakers:

- Mr Neil Gane , Managing Director, Australian Federation Against Copyright Theft (AFACT)
- Mr John Stanton , Chief Executive Officer, Communications Alliance
- Dr David Lindsay , Associate Professor, Faculty of Law, Monash University

A free public seminar in Melbourne, proudly presented by IPRIA in association with the Centre for Media and Communications Law.

Village Roadshow v iiNet: The decision and its ramifications for copyright owners and ISPs

In April 2012 the High Court found that iiNet was not liable for authorising infringements undertaken on BitTorrent peer-to-peer networks and through the use of some of its customers' internet connections. (This was in the context of iiNet having received notices about those infringements from rights holders.) The High Court decision was, in part, based on a finding that iiNet had 'no direct technical power at its disposal to prevent a customer from using the BitTorrent system'.

The decision arrives at a delicate time when the Commonwealth Attorney-General's Department is hosting negotiations between peak players in the content and communications industries. A key objective of those negotiations is to develop a code of conduct to address the issue of unlawful peer-to-peer distribution.

This public seminar brought together several authoritative voices to explain the decision and to discuss its ramifications.

Thursday 31 May 2012- Melbourne Law School

New Models for Copyright Law Reform

Speakers:

- Professor Dan Hunter, Institute for Information Law & Policy, New York Law School (USA)
- Professor Julian Thomas, Institute for Social Research, Swinburne University
- Professor Jill McKeough, Australian Law Reform Commission

A free public seminar in Sydney, proudly presented by IPRIA in association with the Centre for Media and Communications Law and the Faculty of Law, University of Technology, Sydney.

Vilfredo Pareto once observed that 'elites do not last ... the history of man is the history of the continuous replacement of certain elites: as one ascends, another declines' (The Rise and Fall of Elites, 1901). Is this what we are seeing in the copyright sphere in 2012? First, in January, the SOPA and PIPA copyright bills were withdrawn from the US Congress after massive internet protests including a temporary blackout by Wikipedia. Subsequently, the secretly-negotiated ACTA agreement has been subject to worldwide attack with the prospect of widespread ratification now in question. Is Pareto being proved right? In other words, is it a matter of new internet businesses which benefit from minimal (or limited) copyright protection effectively challenging the older entertainment industries which rely on strong copyright protection? Or is it rather that, as some commentators say, the anti-SOPA, -PIPA and -ACTA movements mark the beginning of a new more democratic phase of copyright law reform? The fate of the latest OPEN copyright bill in the US and the Australian Law Reform Commission's current copyright reference will each be interesting in pointing out any possibilities for new democratic models for copyright law reform to emerge.

Tuesday 12th June 2012- University of Technology, Sydney

Public Seminars 2012

Copyright, Creators and Collecting Institutions: 2012 Update

Speakers:

- Susan Corbett, Victoria University of Wellington
- Emily Hudson, University of Oxford
- Robin Wright, Swinburne University of Technology

The Centre for Media and Communications Law presented an update on copyright issues for collecting institutions, drawing from ARC Linkage Projects in the sector and similar New Zealand research.

Thursday 23rd August 2012- Melbourne Law School

Melbourne Law School Student Art Competition

Judges:

- Dr Chris McAuliffe, Ian Potter Museum of Art at University of Melbourne
- Andrew Kenyon, Melbourne Law School

Theme: Bohemian Rhapsody

Thursday 16 August 2012- Melbourne Law School



Art Competition Winner:
By Katherine Stewart 'Is This Just Fantasy'

Amateur Media: Social, cultural and legal perspectives Book Launch

Speakers:

- Megan Richardson, Melbourne Law School
- Julian Thomas, Institute for Social Research, Swinburne University
- Ramon Lobato, Centre of Excellence in Creative Industries and Innovation

An event to celebrate the launch of this new book published by Routledge and edited by Dan Hunter, Ramon Lobato, Megan Richardson and Julian Thomas. This edited collection provides a interdisciplinary contextualisation of amateur media before and after Web 2.0. Surveying the institutional, economic and legal construction of the amateur media producer via a series of case studies, it features contributions from experts in the fields of law, economics and media studies based in the UK, Europe, the US and Singapore.

Tuesday 4 September 2012- Melbourne Law School

Copyright and the Digital Economy Issues Paper

Speakers:

- Justine Clarke, Australian Law Reform Commission
- Dr Emily Hudson, University of Oxford
- Andrew Stewart, Baker & McKenzie

The Centre for Media and Communications Law (CMCL) presents an update on copyright issues in response to the Australian Law Reform Commission (ALRC) Issues Paper on Copyright and the Digital Economy (2012). This Issues Paper is the first formal publication of the ALRC review, intended to help frame discussion and encourage public consultation at an early stage. This public seminar brought together several respected voices to explain the ALRC's process and to respond to some of the issues raised by the Issues Paper.

Thursday 13 September 2012- Baker & McKenzie, Sydney

Research

In 2011 and 2012, staff associated with CMCL were involved in five major research projects and one research infrastructure projects:

ARC Discovery Project - The Media and ASEAN Transitions: Defamation Law, Journalism and Public Debate in Indonesia, Malaysia and Singapore

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

ARC Discovery Project- Amateur Hour: The Sociolegal Construction of Amateur Media

ARC Centre of Excellence in Creative Industries and Innovation, Content Control and the Future of Television

ARC Linkage Project: 2012-2014 Testing Trade Mark Law's Image of the Consumer

ARC Linkage Infrastructure Equipment and Facilities Project: Australian Social Science Data Archive: Provision of Advanced Research Infrastructure and Collaborative environment

In addition, a successful application was made for a further infrastructure project:

ARC Linkage Infrastructure Equipment and Facilities Project: The Australian Legal Scholarship Library: Enhancing Research Infrastructure for Australian Law

Further details about selected projects are provided here.

ARC Discovery Project

Andrew Kenyon 2009-2013 Defamation and Privacy: Law, Media and Public Speech

This project investigates important recent legal changes in defamation and privacy, laws which can considerably limit public speech. It addresses the need in law for a more sophisticated understanding and evaluation of the practices of media professionals. It will assist lawyers and judges apply the changed laws, contribute to scheduled reviews of legislation, assist publications and journalists deal with risks of legal liability, develop critical academic and legal debates about the media, and clarify the parameters of lawful public speech. It promotes better legal understanding of popular media forms, which have key roles in contemporary economies and public debate.

ARC Linkage Project

Megan Richardson (and Robert Burrell, Michael Humphreys, Kimberlee Weatherall, Sarah Kelly, Jennifer Burt) 2012-2014 Testing Trade Mark Law's Image of the Consumer

An effective trade mark law is vital both to protect consumers and to allow businesses to build brand recognition. This project seeks to put Australian trade mark law on a firmer empirical footing by bringing together experts from psychology, law and marketing to test the law's assumptions against actual consumer responses.



Publications 2011

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Bosland, J and Richardson, M, 'Competing Discourses of 'Rights' and 'Harms' in Trade Mark Law' in K Bowrey, M Handler and D Nicol (eds), *Emerging Challenges in Intellectual Property*, Oxford University Press, Australia (2011), 103-125

Butt, S and Lindsey, T, 'Judicial Mafia: The Courts and State Illegality in Indonesia' in E Aspinall and G Van Klinken (eds), *The State and Illegality in Indonesia*, KITLV Press, Netherlands (2011), 189-213

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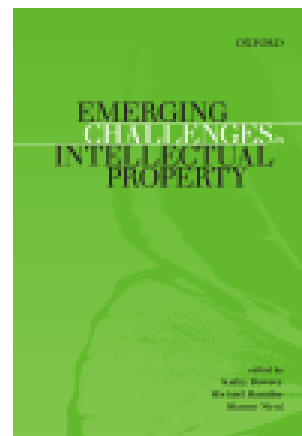
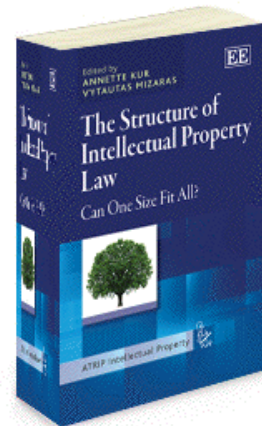
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Richard Garnett, Substance and Procedure in Private International Law, Oxford University Press (2012)

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Tim Lindsey and Kerstin Steiner, Islam, Law and the State in Southeast Asia -Volume III: Malaysia and Brunei, IB Taurus (2012)

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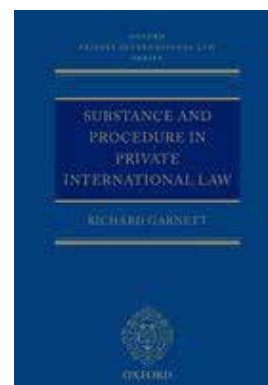
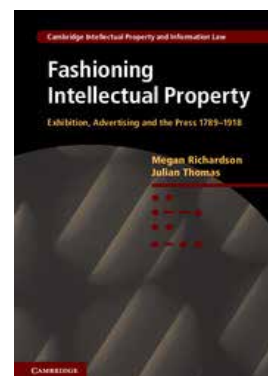
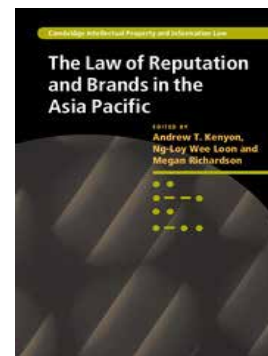
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Brennan, D and Fraser, M, 'Use of Subject Matter with Missing Owners - Australian Copyright Policy Options' (2012) 23 *Australian Intellectual Property Journal* 4-18

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Richardson, M, 'Before the High Court: Why Policy Matters: *Google Inc v Australian Competition and Consumer Commission*' (2012) 34 *Sydney Law Review* 587-598

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Media & 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 Editors in 2011 and 2012 were:

Jason Bosland
Kathy Bowrey
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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, Singapore, South Africa, Hong Kong, the European Union, New Zealand and Australia. The MALR is online in full text through LexisNexisAU. Issues from 2000-2005 are available in full-text from the CMCL website.

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2011



Media & Arts Law Review
Volume 17
2012

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Free speech, media access and the limitations of the
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Nancy C Cornwell

A case for economic incentives to promote 'parallel'
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Arpan Banerjee

Singapore Media Law Update
David Tan

South African Media Law Update
Jonathan Griffiths

The Courts' Scandal: Scandalising the courts in Australia
Eli Fisher

Considering *Hyperion v Sawkins* and the protection of
faithful reproductions under Australian copyright law
Oscar O'Bryan

Independent games development: Open vs closed source
models
Cam Rogers

Book Review: *Virtual Justice: The New Laws of Online
Worlds*, by Greg Lastowka
Reviewed by Melissa de Zwart

Issue 2

Compensation and/or correcting the record: A framework
for the regulation of (defamatory) speech
Chris Dent

From shorthand to cyberspace: Journalists' interview
records as evidence
Mark Pearson and Jasmine Griffiths

The problem of orphan works - A critical analysis of
possible solutions for New Zealand
Torsten Schmitz

Singapore Media Law Update
David Tan

United Kingdom Media Law Update
Alastair Mullis and Andrew Scott

Book Review: *Australian Trademark Law*, by Robert
Burrell and Michael Handler
Lisa P Ramsay

Book Review: *The Offensive Internet: Speech, Privacy
and Reputation*, by Saul Levmore and Martha C Nussbaum
(Eds)
Reviewed by Melissa de Zwart

Issue 3

The pillory effect: Media, the courts and the punitive role of public shaming in Australia
Lisa Waller and Kristy Hess

Statutory qualified privilege succeeds, but too early for the media to go 'dancing in the streets'
Kim Gould

Defamation, Libel Tourism and the SPEECH Act of 2010: The First Amendment Colliding with the Common Law by Harry Melkonian
Dr Matt Collins

Issue 4

Five years on: A report card on Australia's national scheme defamation laws
Dr Matt Collins

Balancing the rights of copyright holders, internet users and ISPs in an internet age: Recent developments in ISP liability in Australia, Canada and New Zealand
Anna Spies

What do judges know about contemporary art?: Richard Prince and reimagining the Fair Use Test in Copyright Law
David Tan

In Praise of Copying by Marcus Boon
Dr Catherine Bond

Wikileaks and the Age of Transparency by Micah Sifry
Jake Goldenfein

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Articles published in 2012, Volume 17 included:

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Playing in Contested Zones: norms, laws and rules in MMOGs
Melissa de Zwart and Sal Humphreys

Can Droit de Suite be Characterised as a Right Pertaining to Copyright? Discussions of the Necessity of s 11 of the Resale Royalty Right for Visual Artists Act 2009 (Cth)
Justine Clarke

Defamation 2.0: Facebook and Twitter
Jennifer Ireland

Goo Goo Gaga: The Chilling Effect of the Trade Mark
Monster
David Tan

Conference Proceedings:

Centre for Media and Communications Law- Media Law
Media 2011
Jason Bosland

Is There a Case for Suppression Orders in an Online
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Roxanne Burd

Function Not Form: Protecting Sources of Bloggers
Sara Phung

Straw, Sticks or Bricks-- How to Stop the Big Bad Wolf
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Jessica Goulburn

Issue 2

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Responsible communication on matters of public interest:
An analysis of the modification to qualified privilege
Jordan R D Lester

Irreconcilable differences? Interlocutory injunctions and
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Dr David Rolph

Conference Proceedings:

Introduction
Megan Richardson

Publication privacy: Action at last?
The Hon. Michael Kirby

Michael Kirby: Privacy pioneer
Raymond Wacks

A statutory privacy tort
Peter Bartlett

Investment and returns: Public policy and intellectual
property
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A short argument in favour of all-proceeds remedies for
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David Brennan

WikiLeaks and secrecy
Associate Professor David Lindsay

Forced transparency: Should we keep secrets in times of
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UK Media Law Update
Refining the Reynolds recipe for media freedom: Flood v
Times Newspaper Ltd
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The internet imaginary and the problem of privacy
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The performance of visual art
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No laughing matter: Satire's place in Australia defamation
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NZ Media Law Update
Ursula Cheer

UK Media Law Update
Sara Jackson

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Emily Minter

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Breaking news: An assessment of the Finkelstein Report's
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Daniel Ward

Let the press and government grapple: The constitutional
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Matt Meir

Immunity protection for loaned cultural objects in
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Vivien Campbell

Book review

Copyright Law by Jane C Ginsburg and Robert A Gorman
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