SSRN tomorrow's research today

LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES
VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

Vol. 7, No. 33: Oct 13, 2017

NINA OPACIC, ASSISTANT EDITOR
Victoria University of Wellington - Faculty of Law
nina.opacic@live.com

JOHN PREBBLE QC, EDITOR
Professor of Law, Victoria University of Wellington - Faculty of Law, Gastprofessor, Institut für Österreichisches und Internationales Steuerrecht, Wirtschaftsuniversität Wien, Adjunct Professor of Law, University of Notre Dame Australia - School of Law
john.prebble@vuw.ac.nz

Announcements

Intellectual Property Law - Papers by Graeme Austin, Chair in Private Law and Professor of Law, Victoria University of Wellington

Table of Contents

Human Rights and Intellectual Property: Mapping the Global Interface
Laurence R. Helfer, Duke University School of Law, iCourts: Center of Excellence for International Courts
Graeme W. Austin, Victoria University of Wellington

Copyright's Modest Ontology - Theory and Pragmatism in Eldred v. Ashcroft
Graeme W. Austin, Victoria University of Wellington

Authors' Human Rights and Copyright Policy
Graeme W. Austin, Victoria University of Wellington

The Concept of 'Justiciability' in Foreign Copyright Infringement Cases
Graeme W. Austin, Victoria University of Wellington

The Story of Steele v. Bulova: Trademarks on the Line
Graeme W. Austin, Victoria University of Wellington

^top

LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"Human Rights and Intellectual Property: Mapping the Global Interface"

Cambridge University Press, 2011
Arizona Legal Studies Discussion Paper No. 10-18
Victoria University of Wellington Legal Research Paper No. 134/2017

LAURENCE R. HELFER, Duke University School of Law, iCourts: Center of Excellence for International Courts
Email: helfer@law.duke.edu
GRAEME W. AUSTIN, Victoria University of Wellington
Email: graeme.austin@vuw.ac.nz

'Human Rights and Intellectual Property: Mapping the Global Interface' explores the intersections between intellectual property and human rights law and policy. The relationship between these two fields has captured the attention of governments, policymakers, and activist communities in a diverse array of international and domestic political and judicial venues. These actors often raise human rights arguments as counterweights to the expansion of intellectual property in areas including freedom of expression, public health, education, privacy, agriculture, and the rights of indigenous peoples. At the

same time, the creators and owners of intellectual property are asserting a human rights justification for the expansion of legal protections.

The book explores the legal, institutional, and political implications of these competing claims in three ways: (1) by offering a framework for exploring the connections and divergences between these subjects; (2) by identifying the pathways along which jurisprudence, policy, and political discourse are likely to evolve; and (3) by serving as a teaching and learning resource for scholars, activists, and students. This excerpt contains the book's table of contents, preface, and concluding chapter.

"Copyright's Modest Ontology - Theory and Pragmatism in Eldred v. Ashcroft"

Canadian Journal of Law and Jurisprudence, Vol. 16, No. 2, pp. 163-178, July 2003
Victoria University of Wellington Legal Research Paper No. 135/2017

GRAEME W. AUSTIN, Victoria University of Wellington
Email: graeme.austin@vuw.ac.nz

Focusing on the recent U.S. Supreme Court decision, Eldred v. Ashcroft, which held that the U.S. Congress acted constitutionally when it extended copyright terms by twenty years, this article argues that copyright law in the United States for the most part responds to pragmatic imperatives. The article examines the theoretic/pragmatic distinction at an institutional level and argues that intellectual property lawmaking is at its most pragmatic in the legislative realm. While there is greater potential for theoretical concerns to influence intellectual property law-making in the judicial review context, in Eldred v. Ashcroft the Court declined to allow grand intellectual property theories to dictate the freedom Congress enjoys to craft copyright legislation in the light of its rational view of the best (pragmatic) cultural and economic policies. The article concludes that in Eldred v. Ashcroft there can be detected an ontological approach to the Copyright Clause in the U.S. Constitution. The Court's role is to ensure that Congress acts consistently with what copyright is; that is, a vehicle for motivating the creative spark of authorship. Congress has relatively free rein to determine what copyright should do. Moreover, any limitations on what copyright is meant to achieve are certainly not to be determined by theoretical concerns. Even the Court's ontological approach to copyright law should be regarded as modest, however, given the Court's general deference to the policy and cultural choices legislators make in the copyright field.

"Authors' Human Rights and Copyright Policy"

Columbia Journal of Law & the Arts, Vol. 40, No. 4, 2017
Victoria University of Wellington Legal Research Paper No. 136/2017

GRAEME W. AUSTIN, Victoria University of Wellington
Email: graeme.austin@vuw.ac.nz

This article discusses opportunities for taking account of authors' human rights guarantees in domestic copyright policy, arguing that human rights law should be regarded as one of the sources of international law making that should influence domestic policy issues. Using these ideas as a springboard, it discusses a recent UK copyright case involving the exercise of the copyright termination right (provided under US law) by former members of the pop group Duran Duran.

"The Concept of 'Justiciability' in Foreign Copyright Infringement Cases"

Victoria University of Wellington Legal Research Paper No. 137/2017
Graeme Austin "The Concept of "Justiciability" in Foreign Copyright Infringement Cases" (2009) IIC 393

GRAEME W. AUSTIN, Victoria University of Wellington
Email: graeme.austin@vuw.ac.nz

Written immediately after the first instance decision of the High Court (Eng.) in Lucas Film v Ainsworth, this paper explores the concept of justiciability in cases of foreign copyright infringement. It argues that the distinction drawn in English international private law cases between cases that implicate the "validity" of an intellectual property right and those that concern (merely) their infringement has exhausted its utility. Advocating a more robust approach to forum non conveniens in this context (rather than a jurisdicitonal prohibition) this analysis may be particular relevance for jurisdictions in which Owusu does not govern.

"The Story of Steele v. Bulova: Trademarks on the Line"

Victoria University of Wellington Legal Research Paper No. 138/2017
Graeme W. Austin, The Story of Steele v Bulova, in Intellectual Property Stories (Ginsburg & Dreyfuss eds., 2006)

GRAEME W. AUSTIN, Victoria University of Wellington
Email: graeme.austin@vuw.ac.nz

This paper discusses the story behind the leading U.S. Supreme Court case, Steele v Bulova Watch Co., 344 U.S. 280 (1952). In Steele, the Supreme Court decided that in limited circumstances rights under the U.S. Lanham Act (the U.S. federal trademark statute) could reach conduct beyond the U.S. borders – in this case, passing off in Mexico. The case has spawned a complex jurisprudence in circuit courts as to the extraterritorial reach of domestic U.S. trademark law. This paper traces the history of the case, drawing on memoirs of the counsel involved and the transcripts of the trial. As the paper discusses, the dispute exposed a fundamental tension in trademark doctrines. While trademark rights are formalistically territorial, the strength and salience of trademarks depend on consumers' impressions, and neither consumers themselves nor the stimuli that generate their impressions of brands are tethered within domestic borders. In the late 1940s and early 1950s, when Bulova was litigated, this was especially true of the area around San Antonio, Texas, where the defendant started a business that expanded into Mexico – a business that the Bulova Watch company alleged infringed its valuable trademarks on both sides of the border. These tensions continue to arise today as a result of cross-border networks that enable firms instantly to reach consumers across the globe.

^top

About this eJournal

Victoria University of Wellington Legal Research Papers Series primarily contains scholarly papers by members of the **Faculty of Law at Victoria University of Wellington**. Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachussetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

Submissions

To submit your research to SSRN, sign in to the **SSRN User HeadQuarters**, click the My Papers link on left menu and then the Start New Submission button at top of page.

Distribution Services

If your organization is interested in increasing readership for its research by starting a Research Paper Series, or sponsoring a Subject Matter eJournal, please email: **RPS@SSRN.com**

Distributed by

Legal Scholarship Network (LSN), a division of Social Science Electronic Publishing (SSEP) and Social Science Research Network (SSRN)

Directors

LAW SCHOOL RESEARCH PAPERS - LEGAL STUDIES

BERNARD S. BLACK
Northwestern University - Pritzker School of Law, Northwestern University - Kellogg School of Management, European Corporate Governance Institute (ECGI)
Email: **bblack@northwestern.edu**

RONALD J. GILSON
Stanford Law School, Columbia Law School, European Corporate Governance Institute (ECGI)
Email: **rgilson@leland.stanford.edu**

Please contact us at the above addresses with your comments, questions or suggestions for LSN-LEG.

^top

English & American Literature Research Network

Philosophy Research Network

If your institution or department is not listed as a site, we would be happy to work with you to set one up. Please contact **site@ssrn.com** for more information.

Individual Membership **(for those not covered by a site subscription)**

Join a site subscription, request a trial subscription, or purchase a subscription within the SSRN User HeadQuarters: **https://hq.ssrn.com/Subscriptions.cfm**

Financial Hardship

If you are undergoing financial hardship and believe you cannot pay for an eJournal, please send a detailed explanation to **Subscribe@SSRN.com**

^top

To ensure delivery of this eJournal, please add **LSN@publish.ssrn.com (Opacic/Prebble)** to your email contact list. If you are missing an issue or are having any problems with your subscription, please Email Support@ssrn.com or call 877-SSRNHELP (877.777.6435 or 585.442.8170).

FORWARDING & REDISTRIBUTION

Subscriptions to the journal are for single users. You may forward a particular eJournal issue, or an excerpt from an issue, to an individual or individuals who might be interested in it. It is a violation of copyright to redistribute this eJournal on a recurring basis to another person or persons, without the permission of Social Science Electronic Publishing, Inc. For information about individual subscriptions and site subscriptions, please contact us at **Site@SSRN.com**

^top