Announcements

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

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'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
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"

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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"

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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"

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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 jurisdictional 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"

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Graeme Austin "The Concept of "Justiciability" in Foreign Copyright Infringement Cases" (2009) IIC 393

Graeme W. Austin, The Story of Steele v Bulova, in Intellectual Property Stories (Ginsburg & Dreyfuss eds., 2006)
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 formally 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.
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