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# In Conversation with Professor Graeme Austin

Fiona Phillips

Late in 2019, Fiona Phillips interviewed Professor Graeme Austin about his career and his views on intellectual property in Australia and New Zealand. What followed was a wide-ranging discussion which highlighted the importance of collaboration in Professor Austin's career and the importance of the law in effecting social change.



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Professor Graeme Austin

**Q:** What made you want to study law?

**A:** I do not come from a legal background and I was the first in my family to get a tertiary degree. When I was about 22, I was at drama school at the Victoria College of the Arts in Melbourne. I soon discovered that it was not for me. So, I took myself to Melbourne University's bookstore and I bought some books about other possible areas of study. One of the books I bought was Lloyd's *Introduction to Jurisprudence*. I sat down and read it, and I thought "this is pretty interesting". I went home to New Zealand and enrolled in Law at the University of Wellington. Very quickly, I was hooked.

**Q:** And what drew you to intellectual property ("IP") law? Was it your background in acting?

**A:** Not really, although I've always been interested in the relationship between law and creative work. I was teaching at the University of Auckland and had become interested in private international law. The implications of the internet for cross-border IP issues were just surfacing. I began to do research in that area.

On the strength of that work, Jane Ginsburg accepted me into the doctoral program at Columbia University, and she gave me a fellowship, which made it affordable. Jane was, and continues to be, a wonderful mentor: generous, rigorous and very patient. She opened up the whole area of IP for me, particularly copyright and trade marks. I didn't look back after that.

**Q:** You took leave from the University for a while and worked as a solicitor in a large commercial firm. Why did you ultimately decide to make your career as an academic?

**A:** It was a hard decision. I enjoyed private practice. The quality of the work was very high, and I enjoyed the law firm environment. But at exactly the point when

I had to decide whether to stay in practice, I was offered a professorship at the University of Arizona. That changed my life. If that hadn't come up, I don't know where I would be now.

**Q:** You were a tenured professor in the United States of America ("USA") for nearly a decade before returning to Australasia. Tell us about your experience in the USA?

**A:** I was very lucky. Out of the blue I was offered a job at a terrific law school, in a beautiful part of the USA. For a New Zealander, being somewhere where the "the great outdoors" was all around made it a very good place to land. I had wonderful students and my academic colleagues were extraordinary. I was also fortunate to have a brilliant and gifted Dean, Toni Massaro: one of those truly inspiring role models who change one's life in profound ways. A leading constitutional law scholar herself, Toni encouraged all of us to achieve that crucial synergy between scholarship, teaching, and public service.

Toni wanted me to develop the IP program. At about the same time, we also appointed a young scholar, David Adelman (who is now at the University of Texas) in the IP area. David and I had a seamless collaborative relationship and we became very good friends. David is also one of the smartest people I know: I learned a huge amount from him. We were given what we needed to develop a very strong IP program. I was especially proud of one course we developed: on entrepreneurship and the law. We enrolled law, business and science students and put them together in the same room. A key aim was to help the students form life-long professional relationships. This was a very positive time for me.

**Q:** Your scholarship spans many subjects. I note that one of your current research interests is the intersection of privacy and copyright. Tell us about that.

**A:** I have always been interested in the relationship between human dignity and law. It's also reflected in the work I've done on the interface between international human rights law and IP. Privacy can enhance human dignity. Privacy also intersects with creativity because it is in those private moments that we can genuinely experiment with new ideas. What we want from copyright are artistic productions of all kinds that are expressions of the individual human creator. And so, we need to think about how to encourage people to produce work that is genuinely reflects who they are. Privacy achieves many things, but one of them is to give people the freedom to be themselves, and to be genuinely creative.

**Q:** What, in your view, are the other big issues in IP right now?

**A:** I think that's the wrong question. Instead, we should be focusing on what the big issues are for society – and then thinking about how IP can contribute.

Obviously, environmental issues are critically important. How is IP connected to the big questions for our survival on the planet? What are the IP levers that will encourage the development and transfer of green technology? How do we balance incentives against the dangers of monopolies? Our survival depends on getting this right.

David Adelman and I recently published some work we did together on how trade mark law can contribute to positive environmental outcomes. Here, certification standards – key vehicles for private governance – are key. Trade marks are crucial for connecting consumers to ethical sources of products and services. It's very important that these standards are rigorous, and that sloppy trade mark law does not encourage races to the bottom in environmental standard setting. The “right to repair” is another area of interest.

And we're also seeing IP issues come up in the context of the algorithms that increasingly control our lives – what we read, the ideas to which we're exposed, the products that are recommended to us. We're just beginning to see how IP has a role in developing accountability standards.

In the copyright area, and returning to the dignity theme, we have some hard choices in front of us. For example, are we committed to ensuring that creative workers have dignified lives and are able to earn a living, or are we going to accept the current drive towards amateurism?

The deeper point behind this is that IP must serve positive social outcomes. I think we need to look beyond the prevalent preoccupation with the role of IP in achieving marketplace efficiency. That's important, but for me, the real question is: what are the big issues we're confronting now – as a society, on this planet – and how can IP contribute to solving them?

**Q:** In addition to your Chair at Victoria University of Wellington, you also have a position at Melbourne University, and teach in the Masters program there. Are there any major differences in how Australia and New Zealand approach IP?

**A:** The University of Melbourne has a very strong law program. I have been teaching there for over 15 years. It has great students, and, as in Wellington, I have very inspiring colleagues there.

Australia and New Zealand are closely connected marketplace economies. There is much in common in the IP area. There are, however, some important differences. It is disappointing, for example, that the Australian *Copyright Act* 1968 (Cth) and the New Zealand *Copyright Act* 1994 are so different from each other. There could be greater emphasis on aligning these laws in the interests of the trans-Tasman market.

An area where there is an important difference is New Zealand's commitment to achieving a partnership between the government and Māori. Partnership practices and partnership aspirations influence policy, law, and policy debates in ways that could be surprising, and, I hope, encouraging, to Australians.

And perhaps because of its small size, debates around IP in New Zealand are very civil. In a small society, there is a sense that we're in it together. When we are developing IP policy, we must get along.

**Q:** You have now been teaching for two decades. What do you think is important in training future generations of IP professionals?

**A:** The same things that are important in all areas of the law and legal practice: a combination of technical proficiency, insight, knowledge, a service ethic, and an appreciation of the bigger picture. Interdisciplinarity is also increasingly important. We need to understand more about the application of IP laws in context.

**Q:** Your University profile states that you are the University of Wellington's first out gay law professor. Why was it important for you to include that fact in your profile?

**A:** Many reasons, but I guess the main one is to try to encourage richer discussions of diversity questions in institutional and legal contexts.

New Zealand's *Homosexual Law Reform Act* came into force in 1986. I started my law degree at around the time that my country decided that I was no longer a criminal. Being treated as a criminal by your own country really does draw attention to a lot of questions about the law and its impacts on people's lives – in highly personal ways.

And when I started out there were no gay role models in any senior positions in the legal profession: virtually nobody in practice, policy or academia. Much has changed for this generation of course, but there are still issues for younger people. So visibility remains important. And for many international students, it

could be the first time that they've seen anyone, – not just a law professor, *anyone* – comfortable enough about the legal regime where they live to put “gay” in their biography.

We have come a long way, but there is still a lot of work to do to fully accommodate LGBTQI+ people in many areas of life.

**Q:** Do you have any hobbies?

**A:** At the moment, I'm doing a lot of singing. I go up to the New Zealand School of Music every week where a leading singing teacher, Margaret Medlyn, has bravely taken me on as a student. I'm not very good – but I enjoy it. And I am relieved that Mozart, Puccini, and Donizetti don't have any enforceable moral rights!