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Victoria University of Wellington Student and Alumni Subseries Issue IX: Law in the Digital Age

Law in the Digital Age is the first in 2016 of several issues of the Student and Alumni sub-Series of the VUW Legal Research Papers. The Student and Alumni sub-Series was launched in 2015. It publishes a selection of honours and postgraduate papers from Victoria University of Wellington Law School. The sub-Series includes both general and thematic issues.

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

"Writing Fan Fiction and Copyright Infringement Under New Zealand Law"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 1/2016

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It may seem straightforward to show that writing fan fiction constitutes copyright infringement, because fan fiction authors copy the fictional characters and worlds of copyright owners to write fictional stories, and it is an infringement of copyright to make an unauthorised copy of a substantial part of a copyright work. The paper seeks to rebut that proposition in two ways using a case study. The case study assesses whether a particular Harry Potter fan fiction infringes JK Rowling's copyright in one of her Harry Potter books. Firstly, the copyright infringement analysis can be complicated when the fan fiction is derivative of several copyright works, because copyright infringement only looks at whether one work is infringed. Secondly, even if that fan fiction is infringing, there is a good case to argue that

the author has done fair dealing for the purposes of criticism and review, and so is a permitted act.

"Anonymous Online Speech: Striking a Balance between Accountability and the Right to Freedom of Expression"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 2/2016

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The Internet enables individuals to speak anonymously with unprecedented ease. As a result there has been a global increase of anonymous online speakers which raises unique legal regulatory challenges. For the purpose of ensuring anonymous online speakers are held accountable for harmful speech, the Harmful Digital Communications Act 2015 in New Zealand introduces a remedial measure which empowers the District Court to order the disclosure of an anonymous online user's identity. This paper seeks to draw attention to issues concerning an individual's use of anonymity online to exercise their right to freedom of expression. The paper concludes by providing recommendations on how the courts can effectively balance this right against the principle of accountability which guides the disclosure orders in a manner which is compliant with the Bill of Rights.

"Should There Be a Right to Be Forgotten (The Right to Make Search Engines Hide Information About You) in New Zealand? An Analysis of Google v Spain"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 3/2016

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This paper uses a New Zealand perspective to evaluate the recently established "right to be forgotten" formed by the Court of Justice of the European Union in the case of Google Spain. The right to be forgotten gives individuals the right to have the link to prejudicial personal information deleted from a search engine's list of results following a search of their name. This paper uses the Google Spain judgment as an avenue to explore how this right was construed based on the European legislation. It then illustrates the current shape of this right by evaluating the principles emerging out of the decisions since its creation. The validity and practicality of the right is then assessed through a discussion of the advantages and disadvantages, which are used to decide that it is desirable to have a right to be forgotten in New Zealand. Finally by analysing the existing legal tools in New Zealand, this paper concludes that there is scope for a right to be forgotten to exist in New Zealand under s 12 of the Harmful Digital Communications Act 2015.

"Criminalising 'Revenge Porn': Did the Harmful Digital Communications Act Get It Right?"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 4/2016

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This essay examines the problem of revenge pornography ("revenge porn") in New Zealand. It argues that the Harmful Digital Communications Act 2015 provides an insufficient remedy due to its broad wording, and that the intention and harm requirements of the offence are problematic. This essay advocates for the introduction of a specific revenge porn offence to be inserted into the New Zealand Crimes Act 1961. It begins by exploring revenge porn's impact on victims, and discusses the current legal remedies available here and in comparative jurisdictions. It then proposes a new offence that would focus on the elements of the revenge porn act itself, rather than requiring that the perpetrator intends to cause harm and that the victim actually suffers harm. This essay argues that the introduction of such an offence would provide an effective deterrent for initial and subsequent disclosers of revenge porn alike, and clarify the scope of revenge porn in New Zealand for victims, perpetrators, and the courts. Further, such an offence would place a reasonable limit on freedom of expression and send a clear social message as to revenge porn's criminal nature.

"Defining a Right of Reply: An Examination of the Law Commission's Proposals to Use a Right of Reply to Regulate Online Conduct"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 5/2016

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This paper examines the Law Commission's proposals to use a right of reply as a remedy within a new regime to combat harmful digital communications on the Internet in its Ministerial Briefing Paper,

Harmful Digital Communications: The Adequacy of Current Sanctions and Remedies. It seeks to determine whether a right of reply is a suitable tool to use in an online context against ordinary citizens, when it has typically been an offline remedy for use against the media. It also considers the best form for a right of reply under this new regulatory regime, in order for it to constitute a proportional limit on a defendant's right to freedom of expression. It concludes that a right of reply could be a suitable remedy under the regime, and it could constitute a proportional limit on a defendant's freedom of expression, but a Court should carefully balance the harms a right of reply might pose against the values of free speech implicated in each circumstance, on a case-by-case basis, in order to ensure the limitations a right of reply might pose on freedom of expression are always proportional and justified.

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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 Massachusetts 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.

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