Editors' Note

As 2017 begins to wind down, and with the silly season well underway, it is worthwhile to reflect on the fascinating year that has been. Since the last edition (only in October!) industry has been kept busy with many big developments.

West Indies' cricket star, **Chris Gayle**, won his defamation claim against **Fairfax Media**, which published allegations that he flashed a female masseuse in the dressing room during a training session at the 2015 World Cup. Fairfax indicated its intention to appeal, publicly stating that it did not believe it received a fair trial. The editor of *Junkee*, **Osman Faruqi** is suing **Mark Latham** for defamation. **Stan** and **Village** have written a trade mark letter of demand against a group of men who racially abused **Sam Dastyari**, over the use of the name 'Romper Stomper'. **George Miller**, the director of **Mad Max: Fury Road** is suing **Warner Bros** in Sydney over unpaid earnings. And that's about the least scandalous thing happening right now in the entertainment industry.

Telstra is compensating 42,000 customers for slow **NBN** speeds and, speaking of broadband, the sending of intimate pictures without consent saw Richmond Tigers' premiership player **Nathan Broad** banned for 3 weeks at the beginning of the 2018 AFL season, with state "revenge porn" laws getting a fair amount of coverage.

The **ACCC** released its draft report on the communications sector and recommended that the Government "consider whether NBN Co should continue to be obliged to recover its full cost of investment through its prices." ACCC Commissioner, **Rod Sims**, who spoke at a CAMLA event a few weeks ago (see inside), has indicated that the ACCC is about to commence a study into the impact of the new digital environment on media prior to 1 December 2017. It's been action-packed at the ACCC in our space, with the Commission also recently succeeding in its Federal Court claim against **Meriton Serviced Apartments**, alleging that Meriton prevented people who it believed would write negative reviews, from using **TripAdvisor**. Apart from the upcoming ACCC inquiry, there are two other significant inquiries underway: a **House of Reps** inquiry into the TV and film industry and a **Communications Department** inquiry into children's screen content. The first studies on **piracy** in Australia since the Government's **site-blocking laws** came into effect suggests that piracy in Australia has dropped 20% year-on-year. On 5 November, **Bitcoin** was valued at $165 billion, or 1.4 times the total market capitalisation of Australia's listed property. **Canada** has a new law to protect sources. And the **USA** is considering its own media ownership regulatory reforms.

This edition, we have two interviews. The first is with **Peter Harris AO,** Chair of the Productivity Commission, discussing three recent CAMLA-relevant inquiries: into Australia's IP arrangements, the Telecommunications Universal Service Offering; and data availability. The second interview is with Emeritus Professor **Ron McCallum AO**, regarding the disability access changes to the *Copyright Act*. The ACMA's **Katherine Sessions** profiles NBCUniversal International's VP of Legal and Business Affairs **Damian McGregor** about his role. Norton Rose Fulbright's **Martyn Taylor** and **Lillie Storey** take us through the changes to the *Competition and Consumer Act*, and **Nick Abrahams** updates us on blockchain in Australia. Sydney University's **Michael Douglas** discusses the recent global injunction against Twitter issued by the Supreme Court of NSW. We have Banki Haddock Fiora's **Peter Knight** on the changes that have just been made to the *Copyright Act*, and CAMLA essay competition finalist, **Felicity Young**, talking about further changes she would like to see made to that legislation. Ashurst's **Sophie Dawson** and **Rachel Baker** walk us through law reforms regarding media content and ownership. And **Rod Sims** comments on the ACCC's regulation of the media and communications industries.

If that's not enough, we also advertise the **CAMLA AGM**, the **2018 Essay Competition**, report on the Young Lawyers' **speed-mentoring event**, and invite young lawyers to express interest in joining the CAMLA **Young Lawyers Committee**.

Lastly, we thank **Immy Yates**, editorial assistant, for her excellent contribution to the CLB this year, and bid farewell and wish good luck to all our readers for 2017. See you in 2018!

Victoria and Eli

However, it is unclear if the existing framework is best placed to achieve these goals, since the shake-up of the media landscape brought about by the entrance of streaming services, subscription video on demand and user generated video. Free-to-air broadcasters are also offering their programs on-demand. All of these changes make it difficult to measure the effectiveness of local content rules. The review is being conducted by the Australian Government, the Australian Communications and Media Authority (**ACMA**) and Screen Australia, and will seek to find the most efficient and effective support mechanisms to ensure the ongoing viability of Australian content, regardless of the platform on which it is broadcast.

The Review sought submissions from anyone with an interest in the creation, distribution and consumption of Australian content. It is considering:

(a) the economic and social value of Australian screen content to the Australian community;

(b) the current and likely future market for Australian screen content production and distribution;

(c) whether the Australian Government's current policy settings:

  (i) are relevant to current industry practice;

  (ii) appropriately target content that requires intervention;

  (iii) ensure an approach that works across a diversity of platforms;

(iv) promote a sustainable production and distribution sector; and

(v) are able to support Australian content on any platform into the future.

The regulation of local content for regional television and regional radio is outside the scope of the review.

2.2 Global competition for production work

There are aspects of media which are inherently local, like news. The market for entertainment content is however largely global and seems likely to become more so as time goes on.

From the point of view of Australian producers, audiences and regulators, it is desirable for Australia to become (or remain):

- the venue of choice for producers regardless of the nature of that content (and whether it has an Australian or other focus), as this will drive employment and nourish the local industry;
- the source of stories which are produced in Australia and also all over the world (the HBO production Big Little Lies based on Liane Moriarty's book is a recent example); and
- the home of companies and people who are successful in telling Australian and others' stories and who produce them not only in Australia but also elsewhere.

2.3 Is intervention justified?

Some might argue that subsidising or otherwise supporting local content will not promote efficiency, and that instead the market should decide where content is made.

There is some logic in this suggestion: that Australian consumers should be able to decide what content they wish to consume and how much they pay for it, which will in turn drive the decisions by suppliers as to what to produce, and how much to spend on it. This would ordinarily mean that the market would produce an efficient amount of local content.

However, this argument overlooks the benefits other than efficiency that are achieved through production of local content. These are referred to by economists as "positive externalities": benefits which accrue to people other than those who consume (and pay for) content.[2] The positive externalities are significant. Great Australian stories not only build our national sense of identity, they also build our reputation and our tourism industry and provide local jobs.

That said, there are of course many competing and worthy causes on which to spend taxpayers' money. It is therefore important to find the right size and combination of tax breaks, subsidies and other measures to give the right amount of support to television production. And, as was recognised by the Minister for Communication and the Arts,[3] it is important to ensure that support measures are efficient in the sense that they result in the production of content that consumers want to watch, and which delivers positive externalities in the right measure. Moreover, these difficult regulatory objectives must ideally be achieved without the Government obtaining control over content in any way that compromises the independence or creativity of writers and producers.

2.4 Current local content rules

Local content is regulated by the *Broadcasting Services Act* 1992 (BSA), *Australian Content Standard* (ACS) and *Television Program Standard 23 - Australian Content in Advertising*.

The BSA requires all commercial free-to-air television licensees to broadcast an annual minimum transmission quota of 55 per cent Australian programming between 6am and midnight on their primary channel.[4] They are also required to provide at least 1460 hours of Australian programming on their non-primary channels during the same time.[5] This requirement includes sub-quotas for drama, documentary and children's content. Other measures include:

(a) a minimum expenditure requirement for each subscription drama channel;

(b) requirement that 80% of advertising be Australian produced;

(c) requiring the ABC and SBS to promote a sense of national identity and a multicultural society;

(d) funding from Screen Australia, state and territory funding agencies, and in some cases from the Australian Television Foundation for drama, documentary and children's content distributed theatrically, on television or online; and

(e) the Producer Offset, administered by Screen Australia which supports feature films (40% rebate) and non-feature documentaries, dramas or animations (20%). This does not extend to reality television, news or current affairs programs or game or variety shows.

2.5 News and current affairs

The content review does not cover news but, coincidentally, additional support for local news was secured as part of negotiations to secure the passage through the Senate of media law reforms (see below).

2 For more detail on this concept: https://www.khanacademy.org/economics-finance-domain/microeconomics/consumer-producer-surplus/externalities-topic/v/positive-externalities.

3 At https://www.communications.gov.au/sites/g/files/net301/f/factsheet_australian_and_childrens_content_review.pdf.

4 *Broadcasting Services Act 1992* (Cth) section 121G(1).

5 Ibid, section 121G(2).

There is also a Senate inquiry underway into the Future of Public Interest Journalism, which will examine and report on:

- the state of public interest journalism in Australia and around the world, including the role of government in ensuring a viable, independent and diverse service;
- the adequacy of current competition and consumer laws to deal with the market power and practices of search engines, social media aggregators and content aggregators, and their impact on the Australian media landscape;
- the impact on public interest journalism of search engines and social media internet service providers circulating "fake news", and an examination of counter measures directed at online advertisers, "click-bait" generators and other parties who benefit from disinformation;
- the future of public and community broadcasters in delivering public interest journalism, particularly in underserviced markets like regional Australia, and culturally and linguistically diverse communities;
- examination of "fake news", propaganda, and public disinformation, including sources and motivation of fake news in Australia, overseas, and the international response; and
- any related matters.[6]

The inquiry has received 71 submissions and held public hearings in Melbourne and Sydney. It is due to report by 7 December 2017.

The essential role played by journalists and the media has been recognised by the law over centuries. The principle of open justice, that courts must be open to the public and journalists free to report on proceedings, is recognised as being of constitutional significance. Exceptions are made only where necessary for the administration of justice. The reasons for this are well documented in decided court cases. Courts have observed that:

> *"Whatever (the media's) motives in reporting, their opportunity to do so arises out of a principle that is fundamental to our society and method of government: except in extraordinary circumstances, the courts of the land are open to the public. This principle arises out of the belief that exposure to the public scrutiny is the surest safeguard against any risk of the court's abusing their considerable powers."*[7]

And that:

> *"Without the publication of reports of court proceedings, the public would be ignorant of the workings of the courts whose proceedings would inevitably become the subject of the rumours, misunderstandings, exaggerations and falsehoods that are so often associated with secret decision making. The publication of fair and accurate reports of court proceedings is therefore vital to the proper working of an open and democratic society and to the maintenance of public confidence in the administration of justice."*[8]

Freedom of speech in relation to Government and political matters has been found to be constitutionally protected for the same reasons.

The importance to our system of open justice is so great that courts have found these principles to be constitutionally protected, such that they trump any inconsistent laws.[9] The benefits extend beyond social factors: it is widely accepted amongst economists that the rule of law (of which open justice is an element) is an important contributor to economic growth, and has an effect on the wealth of countries.[10]

The media watch over our governments, institutions and courts. Private citizens do not generally have the time, sophistication or resources to make the freedom of information requests, do the research, speak to the sources and to understand what is or may be happening that investigative journalists have.

Recent events in the US and in France, and particularly the alleged Russian interference in the US election, demonstrate that social media and citizen's journalism are not adequate substitutes for quality, reputable investigative journalism. Without it, the democracy that underpins our society is at risk.

3. Legislative reforms

3.1 Media ownership

The reforms are contained in two bills: the *Broadcasting Legislation Amendment (Broadcasting Reform) Bill* (**Broadcasting Reform Bill**) and the *Commercial Broadcasting (Tax) Bill* (**Commercial Broadcasting Tax Bill**) which have both been passed by the Senate and the House of Representatives.

As part of the Broadcasting Reform Bill, the '75 per cent audience reach rule' in the *Broadcasting Services Act 1992* (Cth) (BSA) will be repealed. This rule prevents any person controlling commercial television licences in areas whose combined population exceeds 75 percent of the population of Australia. Repealing it will, subject to competition and other laws, allow mergers between metropolitan and regional broadcasters, providing for greater scale in operations and letting broadcasters compete more readily with online streaming services.

The 2 out of 3 cross-media control rule in the BSA will also be repealed.

6 https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Future_of_Public_Interest_Journalism/PublicInterestJournalism/Terms_of_Reference

7 R v Davis (1995) 57 FCR 512 at 513-514

8 John Fairfax & Sons Ltd v Police Tribunal (NSW) (1986) 5 NSWLR 465 at 481.

9 *McCloy v NSW* [2015) HCA 34, *Russell v Russell* (1976) 134 CLR 495.

10 See, for example: "Economics and the Rule of Law: Order in the Jungle", *The Economist,* 13 March 2008 available at http://www.economist.com/node/10849115, and

This rule prevents any individual controlling two out of three platforms (radio, television and print) in one licence area. The rule does not take into account online services, which are significant players in the media landscape.

To ensure the new rules do not reduce local content in regional areas, television broadcasters in large regional areas will be required to show extra local content if there is a change in ownership or control such that it is part of a group that reaches more than 75 percent of the Australian population. Broadcasters in smaller markets (which do not currently have local content obligations) will also be required to screen some local material.

3.2 Merger guidelines

Following the passage of the bills, the Australian Competition and Consumer Commission (**ACCC**) released updated Media Merger Guidelines. The guidelines identify the following issues which will be considered when the ACCC assesses media mergers under section 50 of the *Competition and Consumer Act 2010*:

- Competition and diversity: one important factor in competition and diversity is concentration of media ownership. A merger between media outlets which increases an entity's market share is likely to increase concentration and reduce diversity.
- Technological change: technology can introduce new competitors, increase closeness of competition and affect barriers to entry.
- Access to key content: a merger may be problematic if it increases an entity's holding or ability to acquire "key content" (ie content that draws large audiences, such as live sporting events and popular reality shows).
- Two-sided markets and network effects: these can entrench a powerful player's position in the market and create barriers to entry.
- Bundling and foreclosure: bundling refers to offering complementary products as a package. Foreclosure refers to an entity limiting access or raising prices for a product that is an input for a competitor. The ACCC is only concerned where these strategies are likely to substantially lessen competition.

3.3 Anti-siphoning

Anti-siphoning rules will be relaxed, giving subscription television and multi-channels a greater ability to broadcast listed events. The anti-siphoning scheme in the BSA allows the Minister for Communications to specify a list of events that should be available on free-to-air television, and prevents a subscription broadcaster acquiring a right to televise an event until a free-to-air broadcaster has had a chance to obtain that right. Currently, an event is delisted 12 weeks before it happens, because free-to-air broadcasters would be taken not to be interested in acquiring a right if they have not done so by then. This period will be extended to 26 weeks. Another restriction, known as the 'multi-channelling rule', will be removed. This rule prevents a free-to-air broadcaster premiering a listed event on a multichannel (eg ONE, GEM, 7Mate). This rule aimed to prevent viewers with analog television being disenfranchised but, following the digital switchover in 2013, this rule is now redundant.

3.4 Licence fees and taxes

The Commercial Broadcasting Tax Bill will permanently abolish broadcasting licence fees, datacasting charges and apparatus licence fees. It is argued by broadcasters that these fees are no longer warranted or sustainable, particularly given that online and on-demand services face no such fees.

A new transmitter licence tax will instead be introduced. The amount of the tax will be determined by the Communications Minister, but must not exceed the cap specified in the Bill. The government says the new tax will more accurately reflect the use of broadcast spectrum.

The Bill requires the ACMA to review broadcasting pricing arrangements by 2022.

3.5 Amendments

Passage through the Senate was secured after the Government reached a deal with Senator Nick Xenophon, who agreed to vote for the reforms in exchange for increased support for regional and small media companies and their recruits. An innovation fund, worth $60 million over three years, will provide grants to help publishers who produce "civic journalism" (ie journalism with a focus on public interest issues) transition, innovate and compete. There will also be 200 journalism cadetships and 60 journalism scholarships, to encourage young people to train and work in regional media.

The Government reached a deal with One Nation, in exchange for its support for the Bills, to force the Australian Broadcasting Corporation and Special Broadcasting Corporation to publish the wages of employees earning more than $200,000, and legislative changes requiring that the ABC be "fair and balanced". These changes will require amendment to the ABC Act. Other parties including the Nick Xenophon team have indicated they will not support the changes. One Nation also negotiated a $12 million subsidy for community radio.

The Broadcasting Reform and Commercial Broadcasting Tax Bills were opposed by the Opposition and the Greens.

Conclusion

There will no doubt be disagreement about the merit and effectiveness of the various measures taken as part of these law reforms and reviews but, after a decade of rapid change in the industry, it is likely that many players and consumers will welcome the fact that regulation has changed. The reforms will not remove the need for media organisations to compete in an open market, but may allow companies greater freedom to navigate through the dynamic and highly competitive landscape.

Interview: Emeritus Professor Ron McCallum AO

Eli Fisher, co-editor, sits down with Emeritus Professor Ron McCallum AO, former Dean of Sydney Law School and consultant to HWL Ebsworth, to discuss Australia's implementation of the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled* in the *Copyright Act* (Marrakesh Treaty), by way of the *Copyright Amendment (Disability Access and Other Measures) Act 2017* (Amendment Act).

Professor McCallum, who lost his eyesight at birth, has been a fierce advocate for the rights of people with disabilities for many decades. He is an expert in labour law and among the most acclaimed legal academics in Australia. He is the first totally blind person to be appointed to a full professorship in any subject at any university in Australia or New Zealand, and was also the first to become a Dean of Law in those countries. Professor McCallum was an inaugural member of the UN Committee on the Rights of Persons with Disabilities from 2009 to 2014, and he served as its Chair from 2010 to 2013. The Committee, which meets in Geneva, monitors signatory nations' compliance with the *Convention on the Rights of Persons with Disabilities.* Ron served on the Board of Vision Australia from 2006 to 2015, and he is a current member of the Board of Ability First Australia. He has also been a Don't DIS my ABILITY ambassador since 2010. In 2011, Professor McCallum was named the Senior Australian of the Year.

ELI FISHER: Ron, on behalf of our readers, thank you so much for your time discussing the recent amendments to the *Copyright Act* and the other work in which you have recently been involved. The *Copyright Act* was amended in June this year, following the passage of the Amendment Act. The Amendment Act came about following Australia's ratification of the Marrakesh Treaty on 10 December 2015. Can you tell us about your involvement?

RON McCALLUM: My work on the UN Committee better exposed me to the plight of people with disabilities around the world, which obviously is in many respects different from the plight of people with disabilities in Sydney. Most people with print disabilities are poor and live in developing countries. Even in Australia, we still need to do a great deal to increase the workforce participation of people with disabilities. But most people in developing countries don't have access to books or basic education. In 2016, the World Blind Union estimated that less than 10% of published works are made into accessible formats in developed countries, noting that "millions of people, including children and students, are being denied access to books and printed materials". But the situation is even worse in developing countries, where less than 1% of books are ever made into accessible formats. As the World Blind Union noted: "In places like India, the country with the highest number of people who are blind or partially sighted, over half of all children with a visual disability are out of school. This global lack of accessible published materials is known as the 'book famine'."

There are, according to World Health Organization estimates, 253 million people living with vision impairment in the world, 36 million of whom are blind. Of those living with vision impairment, 19 million are children - that is, under the age of 15. Keeping in mind that 80% of vision impairment can be prevented or cured, much of the prevalence of vision impairment takes place in the developing world. When we talked to governments from the developing world, they would often say that they have enough trouble catering for the able-bodied, and they considered that people with disabilities are most appropriately left to the domain of charity.

Our UN committee was and is a strong supporter of the Marrakesh Treaty. When countries would report to us about their compliance with the *Convention on the Rights of Persons with Disabilities*, we made an effort to question them about whether they intended to support the Marrakesh Treaty. The UN Committee argued in written submissions and in its constructive dialogues with reporting countries, for all nations to ratify the Marrakesh Treaty. I am delighted that Australia has now done so, and has implemented corresponding legislation.

I'm quite fortunate, to live where I live and in my circumstances I can take advantage of various technological resources that are not available to everyone. But more can be done for people with vision impairments in Australia and *much* more can be done for those with vision impairment in the developing world - and the Marrakesh Treaty is a great example of this.

FISHER: So, talk us through the issue. Where does copyright come into the picture?

McCALLUM: People with print disabilities need to be able to access content that is usually stored in print form in order to participate in society to the fullest extent possible. Ordinarily, copyright will prevent a person from taking text and making copies of it, or adapting it, without permission. Often, therefore, copyright restrictions can mean that people with print disabilities have difficulty obtaining texts in a format that is accessible to them. So, quite helpfully, there have for

many years been exceptions in the Copyright Act to allow organisations like Vision Australia to reproduce books in accessible formats, such as in braille or in digital formats. There is a format-shifting exception that allows a book, photo or video to be copied into another format, such as an accessible format digital file, subject to various restrictions. There is an exception at section 200AB(4) that provided that individuals with disabilities, and people who assist them, do not infringe copyright in certain circumstances. That provision will be replaced a broader fair dealing provision on 22 December 2017. There was a statutory licence, which permitted declared institutions assisting people with a print disability to reproduce and communicate literary and dramatic works in other accessible formats. A specifically licensed radio station is entitled to broadcast certain copyright works, including newspaper articles or scripts from plays.

Those exceptions operate within the boundaries of Australia. And similar exceptions exist in Britain and the United States. But there were no exceptions to allow an accessible format copy that has been prepared, for example, in the United States to be used by blind people in Australia. That means that when a book such as the Harry Potter books were put in accessible formats, there had to be separate accessible format copies created in Canada, Britain, Australia and the United States - which is terribly wasteful of resources, especially in circumstances where resources can be put to better and more efficient use. Personally, there are accessible format copies of law books by foreign publishers, which are available in the United States, but which I cannot access legally in Australia. This applies also in respect of recent novels, which were not available on Kindle in Australia, but were in American blind libraries. There are a couple of book libraries, for example Bookshare in the United States, which has put (at current figures) almost 580,000 titles into an accessible format. In Australia, I can only gain access to a quarter of those books, because there were no provisions for such works crossing borders.

But this challenge is far more pronounced in the developing world, and it is here where the importance of the Marrakesh Treaty is most keenly felt. Particularly in the developing world, there is no way to allow books created in Australia to go overseas. And we are able to be of great assistance to the developing world in exporting English-language books. Another example is Spain, which has quite a large Spanish-language library of accessible works, but which cannot get content across to parts of South America without infringing copyright law. To allow this sort of exchange countries had to amend their laws.

FISHER: So what did the Treaty seek to achieve?

McCALLUM: Essentially, the Treaty required signatories to legislate for exceptions to their national copyright law that permitted people with a print disability and certain organisations that assist people with print disabilities to make accessible format copies, and transfer accessible format copies between other signatory countries without the permission of the rights holder. It removes that obstacle to access. It should be noted that the obligations in the Treaty apply not only in respect of blind people, but those who have a visual impairment or a perceptual or reading disability which cannot be improved but which means that the person cannot read printed works to the same degree as a person without such an impairment, and also to those who are unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading. The Amendment Act takes it even further: "a person with a disability" means a person with an impairment that causes the person difficulty in reading, viewing, hearing or comprehending material in a particular form. Thus, it applies as much for those with hearing and other impairments as those with vision impairments, which was the focus of the Marrakesh Treaty.

There is an important exception to this provision. The Treaty provides that at the domestic level countries are entitled to limit the protection so that it does not extend to dealings with works that can be "obtained commercially under reasonable terms for beneficiary persons in that market." That is, one can only rely on the protection if there is no commercially available accessible format copy already in existence. And this is what Australia has done. The new fair dealing exception at section 113E of the Act provides that a *fair* dealing with copyright material does not infringe copyright in the material if the dealing is for the purpose of one or more persons with a disability having access to copyright material. The matters to which regard must be had in determining whether the dealing is a fair dealing for the purposes of that provision include the purpose and character of the dealing, the nature of the copyright material, the effect of the dealing on the potential market for, or value of, the material and the amount and substantiality of the part dealt with. Likewise, the provision at section 113F which provides organisations assisting persons with a disability with protection from infringement, does so only where the organisation is satisfied that the material cannot be obtained in that format within a reasonable time at an ordinary commercial price.

Last month, Nigeria and Costa Rica ratified the Treaty, taking the number of countries that have ratified the Treaty to 34, following many others in the developing world, including Burkina Faso, Malawi, Kenya, Kyrgyzstan, Honduras, Panama, Liberia, Sri Lanka, Botswana, Tunisia, Saint Vincent and the Grenadines, Guatemala, Ecuador and El Salvador. India, which was referred to specifically in the World Blind Union quote earlier, was the first to ratify the treaty. Developed

countries, such as Australia, Canada, Israel, Argentina and South Korea have also ratified the treaty - but we are eagerly hoping for the UK and the US to ratify the treaty, as that will free up a lot of works, especially in the English language.

FISHER: Do you consider that there is, or should be, a human right to access information?

I don't think that there is a human right to access all information for free. I write, and so I consider copyright to be very valuable. But equally, I think that the law should not discriminate against the print handicapped. In that sense, you can understand why the provisions of the Treaty which permit an accessible format copy to be made are very important, but you can also understand why the exception regarding commercial availability is there too.

These provisions are not about people with disabilities not having to pay to access works like other people would, or publishers giving charity to the print-handicapped. They are really about fair access. The idea is to increase the amount of the accessible books available.

FISHER: Changes to copyright legislation can sometimes be fraught. Was there significant resistance to the changes, either at an international level, or locally?

McCALLUM: I wasn't involved in the negotiations directly. Much commendation should go to the head of the World Intellectual Property Organisation - Frances Gurry, an Australian of whom we should be very proud - for the manner in which he handled the negotiations. There was a lot of understanding and goodwill from the West - US, Canada, Australia - when it came to exceptions for accessibility. There was generally a level of comfort among rights holders about agreeing to reasonable exceptions for assisting the print handicapped. These countries had exceptions already in place. But this was about moving these arrangements from a national level to an international level. This was a big step, and there were complicated negotiations. Publishers said, at some point, that they were prepared to provide access on a voluntary basis, and consult with various organisations as to the most appropriate way to do so, for example the Canadian National Institute for the Blind and Vision Australia. But the developing nations pushed for a treaty, which was understandable.

I am loath to put book publishers in a bad light, as they have always been very decent and accommodating in respect of accessibility. Personally, my experiences with publishers have been very positive. Many law book publishers have provided me with accessible resources upon request, and they should be commended. But we want to make more and more books accessible. Why can't all print books be made accessible on programs such as EPUB, using whatever protection methods deemed necessary, to make books accessible to people with print disabilities?

If I seem a bit soft on publishers, you have to keep in mind that publishing in Australia is a difficult business. And we add significantly to their cost. They have to compete with international online services, such as Amazon. And it is a tough industry. But we can find a way to encourage better access.

I also note that publishers, authors and other members of the rights holder community are actively engaged in ongoing fruitful discussions with disability associations, government and accessible format providers, through the Marrakesh Treaty Forum, to exchange ideas about how to make published material accessible to people with print disabilities. One of the projects of the Marrakesh Treaty Forum is to develop "Born Accessible" Australian standards and pitch those standards to the Accessible Book Consortium. Born accessible books are books that are usable directly from the publisher both by people with print disabilities and those without print disabilities. The Accessible Book Consortium is another initiative being led by WIPO, and includes organisations such as the World Blind Union, libraries for the blind and the publishing community.

FISHER: Did the changes go far enough, or is there more yet to do?

McCALLUM: The Treaty does not force publishers to make books accessible; it only gives organisations rights to make accessible copies, and for accessible copies to go across borders. But beyond the Treaty, we should be thinking within our own domestic framework how to encourage publishers to make texts accessible as a matter of course. Not free of charge, but virtually automatically. My intention would not be to impose upon publishers; but we should be looking for ways to help publishers enable better access for people with disabilities - say, by way of a subsidy or some other legal encouragement - particularly for textbooks for students beginning at kindergarten and going all the way through to university.

Some younger advocates for people with disabilities think that there should be laws forcing automatic accessibility. I'm not so fervent. I want to continue dialogue with publishers and government. There is a lot of goodwill there. Marrakesh is a good example of what can be achieved when people get together and each community - those with print disabilities, publishers, etc - understands the difficulties that the other faces.

FISHER: You recently launched your latest book, *The Legal Protection of Refugees with Disabilities,* with your co-authors Professor Mary Crock, Professor Ben Saul and Laura Smith-Kahn. The book follows the investigative field work the four of you undertook over three years to explore the intersection between the Convention on the Rights of Persons with Disabilities and the Convention relating to the Status of Refugees.

In particular, you were looking at the treatment of refugees with disabilities in six countries hosting refugees in a variety of contexts - Malaysia, Indonesia, Pakistan, Uganda, Jordan and Turkey. What are some of the key findings of your work?

McCALLUM: The most important aspect of our findings was debunking myths that had been allowed to exist and, in some respects, hinder the development of appropriate national policies. There was a big myth that refugees did not have disabilities, because it was perceived that disabled people could not travel. For example, we were initially told that UNHCR had oversight of more than 100,000 refugees in Malaysia, but that UNHCR had identified only 202 as having any form of disability. We began questioning the refugees, using the Washington Group approach to identifying disability using 'functionality' questions. And sure enough we found the prevalence of disability in the refugee community roughly mirrored that of the non-refugee community: about 15%. If you ask a refugee whether they are disabled, we found that they tend to deny that label. But you have to ask the right questions: Do you have trouble seeing? Do you have what you need to correct your poor vision?

Blind people are pretty conspicuous. Those who are confined to a wheelchair are also pretty obviously disabled. But with people with hearing difficulties, for example, it can be difficult to determine just from looking. Their appearance does not necessarily give you any indication. So you have to ask functional questions. Do you need a hearing aid? Do you have a hearing aid? Disability is not just about impairment. It is about the obstacles created for people with impairments that prevent their participation in society. Likewise, mental illness will only become apparent if questions are asked about cognitive functioning. Of course PTSD is common among refugees.

In many countries, where refugees are not allowed to work - Malaysia and Indonesia are examples - they end up working, but doing degrading and dangerous jobs. There is quite a high prevalence of refugees *becoming* disabled as a result of injuries related to their displacement.

One of our key findings was that we need to develop new ways of identifying and managing disabilities within refugee camps. In Uganda we came across a settlement where people with disabilities were all housed together. But this was problematic, for two reasons. First, where people with disabilities live within the general population of a camp, their able-bodied neighbours can assist with various aspects of their daily activities. The concentration of disabled people threw the burden of care and accommodation on to the camp authorities (including UNHCR). There needs to be a workable ratio of disabled people to those without disabilities living together so to assist those with disabilities. Second, we found that women with disabilities, including cognitive disabilities, were particularly susceptible to sexual assault. Again, in Uganda we found examples of good practice where this reality was recognised in the careful placement of particularly vulnerable women and children. So we were able to make recommendations based on the negative things we saw, but also based on the many positive things we observed.

FISHER: Your upcoming memoir, *Born at the Right Time,* tells of some of the difficulties you have faced in your life, but also how certain challenges have been overcome in recent years with various technological developments. Could you give us some examples, and tell us how certain technologies may have been stifled by an intellectual property law not sensitive to the needs of people with disabilities?

McCALLUM: A lot of technologies have worked amazingly well, and I am lucky to be able to use them - hence the name of the memoir. There is a constant battle to get accessible books, because I am often looking for rare and esoteric books. Additionally, blind people would like to be able to *borrow* accessible format copies from vision impaired libraries, as opposed to purchasing them, in the way that those without vision impairment can borrow ordinary books from a local library. But apart from access to printed works - particularly in countries where provisions for people with disabilities did or do not exist - intellectual property law has not had a significant stifling effect in regards to technologies assisting people with disabilities, to my knowledge.

Some examples that come to mind in respect of technologies that have assisted people with disabilities, and me in particular, are audible traffic lights, which came into use in Australia in the 1990s. You have no idea the stress that that has taken out of my life. It was like playing Russian roulette each time I crossed the road. There are ATMs with braille, which have made things much easier for me (and relieved my children from having to take me to use an ATM). These days, if you look closely at an ATM, you'll see an earphone jack. I often carry earphones with me, and I plug it in and the machine talks me through the transaction.

The blind community is now very concerned by silent electric cars. We have been arguing at the UN level about regulating electric cars to have a noise, to avoid unfortunate accidents. I have been an avid radio listener since I was in diapers, and podcasts have become an exhilarating new medium for the spoken-word format, one that I hadn't anticipated.

Other areas, like films, have become and are becoming more accessible to people with disabilities. All films have to have Audio Description in the United States - essentially an audio narration of what the characters on the screen are doing, that visually impaired members of the