

Editors' Note

Dear readers,

Happy new year, happy new decade, and (most momentarily) happy new edition of the CLB!

We hope you are staying safe in these uncertain times.

We are pretty sure that the new decade has already used up its quota of horrible, and it's only March 2020. We hope that you are all keeping safe and sound, and that this edition helps to alleviate the isolation. Worst case, it may help to alleviate the toilet paper shortages.

This will pass. And before too long, we will be back together meeting at seminars and cocktail parties and being whatever the opposite is of socially distant ("antisocially intimate"?).

Speaking of the new decade, this new edition has a special 'new decade' theme. We have procured for you a range of thought leaders (and also Eli) to discuss the previous decade in relation to a specific body of law, and suggest an agenda for the new decade. For older CAMLA members, this might be a really nice stroll down memory lane as you reflect on a decade's worth of matters on which you worked, judgments you read, and fascinating CAMLA seminars you attended. For younger CAMLA members, this is a really great way to catch up on what was taking place before you joined the scene, and provide some helpful context for the matters you're thinking about and working on today. And if you're reading CLB, you're hopefully self-isolating responsibly and not converging on Bondi Beach.

We have our friends at Gilbert + Tobin, **Bec Dunn, Natalie Zwar and Caitlin Meade**, take us through copyright law. Everyone's favourite **Emma Johnsen**, of Marque Lawyers, walks us through eSports. Telco experts **Joel von Thien and Jono Selby**, from Clayton Utz, discuss telecommunications.

Minters' **Katherine Giles** describes the decade in contempt law, suppression orders and open justice. **Patrick Fair** of Patrick Fair Associates provides an overview of national security law as it relates to technology. **Maddie James and Jim Micallef** from Corrs tell us what's been (not) happening in the privacy tort space over the last decade, and what might yet be to come in the 20s. **Sophie Dawson** and **Phil Gwyn** from Bird & Bird summarise the previous decade in defamation law. And Baker McKenzie's **Eli Fisher** has a look at data privacy law.

But wait, you want more? CAMLA Young Lawyer, **Claire Roberts**, of counsel, profiles **Associate Professor Jason Bosland**, media law expert at Melbourne University to chat about his career and some of his thoughts on defamation and suppression orders across the decades.

CAMLA kept us in touch throughout the 2010s. In touch with the law. In touch with key industry developments. In touch with each other. Our confident prediction for the coming decade, especially these very strange, chaotic, WFH times, is that CAMLA will play an identical - if more important - role.

To that end, check out the ad within for the **webinar on Coronavirus, Contracts and Cancellations in the Tech-Media space**, hosted by Baker McKenzie's TMT team on **8 April 2020**. Please don't stockpile tickets. There's enough to go around.

We also report on the magnificent **CAMLA Young Lawyers networking event** at Clayton Utz.

There's a lot going on in our space, and the next edition - shortly to follow - will cover these developments. In the meantime, stay safe and look after each other. (And don't send in angry letters to the editor about whether, technically, the new decade starts on 1 January 2021. We're not interested.)

Ash and Eli

The judgments proceeded via very different reasoning but reached the same outcome, reversing the decision of the Full Federal Court and finding in IceTV's favour that its television guides did not infringe Nine's copyright in its own television guides. In doing so, the High Court reset the test for originality, essential for subsistence of copyright and relevant to whether a substantial part of a work has been infringed.

Despite the fact that copyright in the relevant works was admitted by IceTV at trial, each of the judgments of the High Court treated the individual parts of the work as lacking sufficient originality to be

protected by copyright. The French decision described such individual parts of the information in relation to a given program as "not a form of expression which requires any particular mental effort"⁵ whose arrangement in chronological order was "obvious and prosaic, and plainly lacks the requisite degree of originality"⁶. The Gummow judgment went further finding that final steps in the creation of the relevant works involved "extremely modest skill and labour"⁷ even though copyright had been admitted. Additionally, the Gummow judgment in particular took a fresh look at authorship, casting doubt on whether works will be protected by

copyright where detailed evidence of authorship cannot be provided, or where the number of authors, or steps involved to identify them, make gathering that evidence impractical or impossible.

Phone Directories

Against the backdrop of the *IceTV* case, one of the earliest copyright judgments delivered in the 2010s was the first instance decision in *Telstra Corporation Limited v Phone Directories Company Pty Ltd* [2010] FCA 44 (the **Phone Directories case**). The case was subsequently appealed to the Full Federal Court and the decision of the trial judge (Justice Gordon) upheld.⁸

5 *IceTV* at [42].

6 *IceTV* at [43].

7 *IceTV* at [168].

8 *Telstra Corporation Limited v Phone Directories Company Pty Ltd* [2010] FCAFC 149 (*Phone Directories Full Federal Court*).