

Curriculum Vitæ: Kimberlee Weatherall

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The University of Sydney
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DOB 21 October 1974

Qualifications

2001 Master of Laws (Yale Law School, Yale University)

2000 Bachelor of Civil Law (with Distinction) (Oxford University)

1998 Bachelor of Laws (First Class Honours) (University of Sydney)

1995 Bachelor of Arts (University of Sydney)

Professional Status

Admitted as a solicitor of the Supreme Court of NSW (1999)

Academic Appointments

2012- Associate Professor
Sydney Law School, The University of Sydney

2007-2011 Senior Lecturer
TC Beirne School of Law, The University of Queensland

2006 Senior Lecturer
Faculty of Law, The University of Melbourne
Associate Director (Law)
Intellectual Property Research Institute of Australia

2006 Distinguished International Visiting Lecturer
School of Law, Case Western Reserve University, US (August 2006)

2003-2006 Lecturer
Faculty of Law, The University of Melbourne
Associate Director (Law)
Intellectual Property Research Institute of Australia

2001-2003 Sesqui Lecturer in Commercial Law
Faculty of Law, The University of Sydney

Awards and Honours

- 2001 Wedderburn Prize for the Best Article in the Modern Law Review, 2001
- 2001 Nathan Burkan Prize for the Best Paper on Copyright, Yale Law School
- 1999–2000 James Fairfax Oxford–Australia Fund Scholarship and University of Sydney Travelling Scholarship

Research

Published and accepted refereed journal articles

- 2011 ‘Providing Services to Copyright Infringers – *iiNet* in the High Court’ (2011) 33(4) *Sydney Law Review* 801-830
- ‘Patent Opposition in Australia: The Facts’ (2011) 34(1) *University of NSW Law Journal* 93-135 (with A. Christie, F. Rotstein, C. Dent)
- ‘Politics, Compromise, Text, and the Failures of the Anti-Counterfeiting Trade Agreement’ (2011) 33 *Sydney Law Review* 229-263
- ‘ACTA as a New Kind of International Lawmaking’ (2011) 26 *American University Journal of International Law* 839-901
- ‘Stories of Copyright Policy: The Shift to an Innovation Agenda and What It Might Mean’ (2011) 61 (1) *Telecommunications Journal of Australia* 11.1-11.16
- 2010 ‘Patent Infringement in Australia: Results from a Survey’ (2010) 38 (1) *Federal Law Review* 21–70 (with E. Webster)
- 2009 ‘Interfering busybodies? The need for clear thinking about the role of third parties in addressing patent validity’ (2009) 12(5) *Journal of World Intellectual Property* 500–523
- 2008 ‘Exporting Controversy? Reactions to the Copyright Provisions of the US-Australia Free Trade Agreement: Lessons for US Trade Policy’ (2008) (2) *University of Illinois Journal of Law, Technology and Policy* 259–319 (with R. Burrell)
- ‘In the Shadow of the China-Australia FTA Negotiations: What Australian Business Thinks about IP’ (2008) 27 (1) *Economic Papers* 1–18 (with A. Leahy; D. MacLaren, Donald; D. Morgan; E. Webster; J. Yong)
- 2007 ‘Of Copyright Bureaucracies and Incoherence: Stepping Back from Australia’s Recent Copyright Reforms’ (2007) 31 *Melbourne University Law Review* 967–1016
- ‘Filing and Settlement of Patent Disputes in the Federal Court 1995-2005’ (2007) 68 *IP Forum* 65–74 (with F. Rotstein)

- 2006 'Trade Mark and Counterfeit Litigation in Australia' [2006] *Intellectual Property Quarterly* 347–377 (with J. Bosland, P. Jensen)
- 'Can Substantive Law Harmonisation and Technology Provide Genuine Alternatives to Conflicts Rules in Intellectual Property?' (2006) 11(4) *Media and Arts Law Review* 393–417
- 'Lawyers Decisions in Australian Patent Dispute Settlements: An Empirical Perspective' (2006) 17(4) *Australian Intellectual Property Journal* 255–276 (with C. Dent)
- 2005 'An Empirical Investigation into Patent Enforcement in Australian Courts' (2005) 33(2) *Federal Law Review* 239–286 (with P. Jensen)
- 2004 'On Technology Locks and the Proper Scope of Digital Copyright – Sony in the High Court' (2004) 26 *Sydney Law Review*, 613–638
- 2002 'Beyond Napster: Using Antitrust Law to Advance and Enhance Online Music Distribution' (2002) 8 *Boston University Journal of Science and Technology Law* 451–573 (with F. Pasquale III, M. Fagin)
- 2001 'Culture, Autonomy and *Djulibinyamurr*: Individual and Community in the Construction of Rights to Traditional Designs' (2001) 64 *Modern Law Review* 215–242
- 1999 'An End to Private Communications in Copyright? The Expansion of Rights to Communicate Works to the Public' [1999] *European Intellectual Property Review* 21(8) 398–409; 21(7) 342–353

Book chapters

- 2012 'The Use of Survey Evidence in Australian Trade Mark and Passing Off Cases', in A. Kenyon, N. Wee Loon and M. Richardson (eds) *Law of Reputation and Brands in the Asia Pacific Region* (forthcoming Cambridge University Press 2012) (with V. Huang and E. Webster)
- 2011 'IP in a Changing Environment', in K. Bowrey, M. Handler and D. Nicol (eds) *Emerging Challenges in Intellectual Property* (Oxford University Press 2011), 1–29
- 'The politics of linkages in U.S. preferential trade agreements', in T. Brode, M. Busch, A. Porges (eds) *The Politics of International Economic Law* (Cambridge University Press 2011), 40–61
- 2009 'Intellectual Property in a Possible China-Australia Free Trade Agreement' in Sisira Jayasuriya, Donald MacLaren and Gary Magee (eds), *Negotiating a Preferential Trading Agreement* (Edward Elgar 2009), 155–169
- 2007 'Exporting the DMCA through Free Trade Agreements', in Christopher Heath and Anselm Kamperman Sanders (eds) *Intellectual Property and Free*

Trade Agreements (Hart Publishing 2008), 211–223 (with A. Christie and S. Waller)

‘The Impact of Copyright Treaties on Broadcast Policy’, in A. Kenyon (ed) *TV Futures* (Melbourne University Press 2007), 242–273

- 2006 ‘Pretend-y Rights: On the Insanely Complicated New Regime for Performers’ Rights in Australia, and how Australian Performers got Ripped Off’ in F. MacMillan and K. Bowrey (eds), *New Directions in Copyright Law Vol 3* (Edward Elgar 2006), 171–197

Non-refereed journal publications

- 2007 ‘Response: The elusive ‘link’ to infringement in the Copyright Amendment Bill 2006: now you see it, now you don’t’ (2007) 19 *Intellectual Property Law Bulletin* 145–146
- 2006 ‘Casenote: *The Panel case*’ (2006) *IIC: International Review of Intellectual Property and Competition Law* 356–357
- 2005 ‘Australia–US Free Trade Agreement – circumventing the rationale for anti-circumvention?’ (2005) 7 *Internet Law Bulletin* 121–126 (with E. Caine)
- 2005 ‘Internet Cultures – Not an Oxymoron’ (2005) 27 *Sydney Law Review*, 753–760 (Book Review: K. Bowrey, *Law and Internet Cultures* (Cambridge University Press, 2005))
- 2004 ‘Locked In: Australia Gets a Bad Intellectual Property Deal’ (2004) 20 *Policy: a journal of public policy and ideas* 18–24
- 2003 ‘A very dynamic issue: international developments in privacy in the last 12 months’ (2003) 38 *AIAL Forum* 81–91
- ‘Dow Jones v Gutnik: “Sturm und Drang” or storm in a teacup?’ (2003) 6 *Internet Law Bulletin* 7–11, 18–22 (with D. Rolph)

Research Grants (Competitive)

- 2011 ARC Linkage Application (Round 1) (submitted): *Testing trade mark law’s image of the consumer*
- (Chief Investigator, with Associate Professor Robert Burrell (UQ, Law), Emeritus Professor Michael Humphreys (UQ, Psychology), Associate Professor Jennifer Burt (UQ, Psychology), Dr Sarah Kelly (UQ, Marketing) and Professor Megan Richardson (University of Melbourne, Law))
- Industry partners: IP Australia; Federal Court of Australia; Foster’s Group

- 2010 UQ Collaboration and Industry Engagement Fund Grant, 2010, *Testing Trade Mark Law's Image of the Consumer*
(Chief Investigator with Associate Professor Robert Burrell (UQ, Law), Emeritus Professor Michael Humphreys (UQ, Psychology), Associate Professor Jennifer Burt (UQ, Psychology), Dr Sarah Kelly (UQ, Marketing)) (\$48,000)
- 2008–2009 UQ Early Career Research Grant: *The Bureaucratisation of Copyright* (\$12,000)
- 2008 Fulbright Commission Symposium 2009, *The Australia-US Free Trade Agreement, Five Years On* (co-convenor with Robert Burrell) (\$30,000)
- 2006–2009 ARC Discovery Grant, '*...And by opposing, end them*': *A comparative examination of opposition processes in patent law*
(Chief Investigator with Professor Andrew Christie) (\$289,967)
- 2005 University of Melbourne Early Career Researcher Grant, *An empirical study of settled patent litigation* (\$9,900)

Selected International and National Conference Presentations

- 2011 'ACTA and the TPP: a new breed of international IP agreements, and what they tell us about international IP law-making', at the Trade, Science, Technology, and Justice Conference, hosted by National Chiao Tung University, November 2011 (Taiwan)
- 'The Trans-Pacific Partnership: Concerns about Intellectual Property', Seminar presented to Members of the Japanese Parliament, 26 October 2011.
- 'Copyright: A Time Traveller's Perspective', at the Biennial Copyright Symposium, October 2011 (Sydney Australia)
- 'Why Developed Countries should be interested in the Development Agenda', at the Global Congress on Public Interest Intellectual Property Law, August 2011 (Washington DC)
- 'The Impact of ACTA', at the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP) Conference, July 2011 (Singapore)
- Panellist: *Developments in American Copyright Law*, Fordham Intellectual Property Conference, April 2011 (New York)
- 2010 'Telling Stories in Copyright Policy', paper at the 2010 Conference of the Centre for Media and Communications Law, November 2010 (Melbourne)

- 'The Future of Copyright Law in Australia and The Role of ISPs', *High Tech Crime Conference*, September 2010, hosted by the Australian Federal Police and the University of Technology, Sydney (Sydney)
- 'The Anti-Counterfeiting Trade Agreement and Australia', at American University, June 2010 (Washington DC)
- 2009 'Copyright and Architecture', at the *UQ-Cambridge IP History Roundtable*, April 2009 (Cambridge, UK)
- 2008 'As others see us: The political costs of expanding the issues in US Bilateral Trade Policy'; *American Society of International Law*, International Economic Law Interest Group 2008 Biennial Conference: The Politics of International Economic Law: The Next Four Years, November 2008 (Washington DC)
- 'Interfering busybodies? The role of third parties in challenging the validity of patents', at *The New Zealand Centre for International Economic Law*, 2008 (Wellington, New Zealand)
- 2007 'The OzDMCA and what it means for FOSS', *linux.conf.au*, January 2007 (Sydney) (leading technical conference for open source software)
- 2006 'Would you ever recommend Creative Commons licenses?', *UNSW Unlocking IP Conference*, July 2006 (Sydney)
- 'Intellectual Property in the Australia-China Free Trade Agreement', June 2006 (Shenzen, China)
- 'Legislating the OzDMCA', *ACIPA Copyright Conference*, February 2006 (Brisbane)
- 2005 'Copyright and Creative Commons Licensing', *University of Ottawa Canada – Australia IP and Cyberlaw Conference*, October 2005 (Canada)
- 'Pretend-y Rights: On the Insanely Complicated New Regime for Performers' Rights in Australia, and how Australian Performers got Gyped', *UK AHRC Copyright Research Network Workshop on Rights Neighbouring to Copyright*, March 2005 (Sydney)
- 2004 'Creative Commons Licensing and the Public Domain', 'Unlocking IP', *Cyberspace Law and Policy Centre*, UNSW, November 2004 (Sydney)

Contributions to Teaching and Learning

Subjects Taught

Undergraduate:

Copyright Law	The University of Queensland, 2007–2011
Patent and Trade Mark Law	The University of Queensland, 2007–2011

Trade Mark Law	The University of Melbourne, 2003–2006
Intellectual Property	The University of Sydney, 2001–2003
Internet Law	The University of Melbourne, 2004–2005 The University of Sydney, 2001–2003
Corporate Law	The University of Queensland, 2007–2011 The University of Melbourne 2003–2006 The University of Sydney, 2002–2003

Postgraduate:

Australian Copyright Law	The University of Queensland, 2007–2011 The University of Melbourne, 2006–present
International IP Law	Case Western Reserve School of Law, 2006
Information Law	The University of Queensland, 2011
Patent Law	The University of Queensland, 2011 (contributor)

Teaching awards

UQ Excellence in teaching in a Masters Subject (Copyright Law) (2009)

Service to the university and engagement with the broader community*University Appointments*

2009-2010	Co-coordinator, Research Seminar Series, TC Beirne School of Law
2008-2009	Member, Staffing Advisory Committee, TC Beirne School of Law
2003-2006	Associate Director (Law), Intellectual Property Research Institute of Australia, The University of Melbourne.

Professional Appointments

2010–present	Director, Arts Law Centre of Australia
2008–2010	Member, Intellectual Property and Privacy in Technology Advisory Group (Advising the Australian Ministerial Council on Education, Employment, Training, and Youth Affairs)
2006–present	Member, Law Council of Australia, Business Law Section, Intellectual Property Committee
2005–present	Director, Australian Digital Alliance

Law Reform Submissions (in addition to contributions to Law Council submissions)

Selected law reform submissions are available at my bepress site:

<http://works.bepress.com/kimweatherall/>

- 2010 'ACTA – Australian Section-by-Section Analysis', Working Paper and Submission to the Department of Foreign Affairs and Trade (May 2010) (66 pages)
- 2007 'Submission to the Attorney-General's Department on the Draft Guidelines on the Infringement Notices and Forfeiture of Infringing Copies and Devices Scheme, Copyright Amendment Regulations 2006' (October 2007) (16 pages)
- 2006 'Submission and Supplementary Submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Copyright Amendment Bill 2006' (October 2007) (20 pages) (invited to give oral evidence; submission referenced in final report)
- 2005 'Submission to the House of Representatives Legal and Constitutional Affairs Committee Inquiry into Technological Protection Measures Exceptions' (October 2005) (35 pages) (invited to give oral evidence; submission extensively referenced in final report)
- 'Response to Issues Paper: Part V Division 2AA of the Copyright Act 1968 (Cth) Limitation on Remedies Available against Carriage Service Providers: Does the Scheme need to be Expanded?' (Attorney-General's Department, October 2005) (9 pages)
- 'Response to the Issues Paper: Fair Use and Other Copyright Exceptions in the Digital Age' (Attorney-General's Department, July 2005) (43 pages) (with E. Hudson)
- 'Submission to the Senate Legal and Constitutional Affairs Committee, Inquiry into the provisions of the *Copyright Amendment (Film Directors' Rights Bill 2005* (July 2005) (6 pages) (submission referenced in final report)
- 'Submission to the Advisory Council on Intellectual Property in response to its Options Paper on Patents and Experimental Use' (March 2005) (12 pages) (with S. Waller)
- 'Submission on the Advisory Council on Intellectual Property's Final Report on the Review of Trade Mark Enforcement' (February 2005) (6 pages) (with J. Bosland)
- 2004 'Submission to the Senate Select Committee on the Australia-United States Free Trade Agreement' (May 2004) (32 pages) (submission referenced in final report)
- 'Supplementary Submission to the Senate Select Committee on the Australia-United States Free Trade Agreement' (July 2004) (13 pages)
- 'Submission to the JSCOT Hearing on the Australia-United States Free Trade Agreement' (April 2004) (22 pages) (submission referenced in final report)

'Submission to the Australian Law Reform Commission in Response to its Discussion Paper 68: Gene Patenting and Human Health' (April 2004) (37 pages) (with A. Christie, S. Waller, S. Elkman)

Commissioned Work and Consultative Work

Commissioned Research Reports

- 2009 *IP Enforcement in the UK and Beyond: A Review of the Literature*. A report completed for the Strategic Advisory Board on Intellectual Property. Lead author, with E. Webster (Melbourne Institute of Applied Economic and Social Research) and L. Bently (Cambridge) (80+x pages) Available at <http://www.sabip.org.uk/home.htm>
- 2006 *Open Licensing and the State Library of Victoria: A Consideration of Copyright Strategies for the Digital Dissemination of Certain Library Publications*, Report for the State Library of Victoria (17 pages) (with E. Hudson, A. Newell)
- Use of Creative Commons and Similar Licensing Mechanisms by Governmental and Public Institutions*, Report for the State Government of Victoria, Department of Innovation, Industry and Regional Development (99 pages/40,000 words) (with E. Hudson, F. Rotstein)
- Copyright, the Arts and Artists in Australia: A Review*, Report for the Australia Council for the Arts, 2006 (93 pages) (with C. Dent)
- 2004 *Factors Affecting the Use of Intellectual Property Protection by Small and Medium Enterprises in Australia*, Report for the Commonwealth Department of Industry, Tourism and Resources (136 pages) (with P. Jensen, O. Morgan, E. Webster, R. M. Casselman, J. Gans, and E. Gay)
- 2003 *A Study of Funding for Major Research Infrastructure and University Sector Research in Six Countries*, Report for the Commonwealth Department of Education, Science and Training (155 pages/52,000 words) (with Y. Adal, S. Elkman and S. Moritz)