



AUSTRALIAN
DIGITAL ALLIANCE

ADA Copyright Forum 2017

Fair Use, Flexibility and Exceptions for Creativity

24 February, National Library of Australia

Program

8:30 **Registration, National Library of Australia**

9:00 **Welcome & Opening**

Derek Whitehead OAM, Chair of Australian Digital Alliance

9:15 **What is Fair?**

Karen Chester - Deputy Chair and Commissioner, Productivity Commission

10:00 **Morning Tea**

10:30 **Diffusing fair use - the global trend and what it means for Australia**

Chair: **Professor Kimberlee Weatherall** - Professor,
Sydney Law School, The University of Sydney

Panelists: **Professor Sean Flynn** - Associate Director, Program on
Information Justice and Intellectual Property Professorial
Lecturer in Residence, American University
Professor Michael Geist - Chair of Internet & E-commerce Law,
University of Ottawa
Professor Peter Jaszi - Glushko-Samuelson Intellectual Property
Clinic, American University
Professor Sang Jo Jong - Professor of Law,
Seoul National University
Bill Patry - Senior Copyright Counsel, Google

12:30 **Lunch**

13:30 **Copyright 2016**

Jessica Coates - Executive Officer, Australian Digital Alliance

13:40 **Counting the Cost: Copyright Compliance**

Margaret Warren - Coordinator of Discovery Services,
State Library of Queensland

13:50 E-lending: its legal and social impact

Dr Rebecca Giblin – Associate Professor, Monash University
Professor Kimberlee Weatherall – Professor, Sydney Law School,
The University of Sydney

14:20 Creative Commons: the New Global Network Strategy

Dr Nicolas Suzor – Affiliate Lead, Creative Commons Australia

14:30 Afternoon tea

15:00 Flexible Exceptions for Creativity and Culture: American Creators and Fair Use

Professor Patricia Aufderheide, University Professor, School of
Communication, American University and Fulbright Scholar 2017

15:45 Copying as part of Creativity and Culture in Australia: the Creators' Experience

Chair: **Dr Nicholas Suzor** – Associate Professor and Principal Research
Fellow, Intellectual Property and Innovation Law Research
Program, Queensland University of Technology

Panelists: **Andrew Garton** – Filmmaker, writer, producer, Secession/Films
Simon Groth – Writer, editor, director of if:book Australia
Dr Kylie Pappalardo – Intellectual Property and Innovation Law
Research Program, Queensland University of Technology

16:50 Close

Speakers

Professor Patricia Aufderheide

University Professor, School of Communication,
American University and Fulbright Scholar 2017



Patricia Aufderheide is a 2017 Fulbright Scholar at Queensland University of Technology, and University Professor in the School of Communication at American University in Washington, D.C. The founder of the Center for Media & Social Impact, she is the co-author with Peter Jaszi of *Reclaiming Fair Use: How to Put Balance Back in Copyright* (University of Chicago Press, July 2011), and author of, among others, *Documentary: A Very Short Introduction* (Oxford, 2007). She has previously been a John Simon Guggenheim fellow, has served as a juror at the Sundance Film Festival and has received numerous journalism and scholarly awards, including a career achievement award in 2008 from the International Digital Media and Arts Association, the Woman of Vision Award from Women in Film and Video (DC) in 2010, and the Documentary award from the University Film and Video Association in 2015. Aufderheide serves on the board of directors of the Independent Television Service, which produces innovative television programming for underserved audiences. She served on the board of directors of Kartemquin Films, a leading independent social documentary production company, and on the film advisory board of the National Gallery of Art. She is on the editorial board of a variety of publications, including *Communication Law and Policy* and *In These Times* newspaper. She received her Ph.D. in history from the University of Minnesota.

Karen Chester

Deputy Chair and Commissioner, Productivity Commission



Karen Chester is the Deputy Chair and a Commissioner with the Productivity Commission. Prior to her appointment in 2014, Karen was a Partner and Global Head of Infrastructure at Mercer. Before joining Mercer, Karen was a Partner at Access Capital Advisers and the CEO of its predecessor, Access Economics. Before her move to the private sector, Karen held senior economic policy roles in the Commonwealth Treasury and the Department of Prime Minister and Cabinet. Karen has a first class honours degree in economics from the University of Queensland and is a graduate of the AICD. Karen has held directorships on several Australian infrastructure company boards. In 2015, the Australian Government appointed Karen to Chair an Expert Panel to undertake a capability review of ASIC.

Jessica Coates

Executive Officer, Australian Digital Alliance

Jessica Coates is a copyright and communications policy expert with 15 years of experience working in Australia and overseas. She comes to the ADA directly from working as the Global Network Manager of Creative Commons. In this role she worked out of their San Francisco HQ to support the activities of its international community and represent CC in discussions globally. Prior to joining CC, Jessica spent time as the Project Manager of Creative Commons Australia and the Creative Commons Clinic, a research program at the Queensland University of Technology. She has also had stints working as a copyright and broadcasting policy adviser for the Australian government (DCITA) and Australia's commercial television broadcasters (FreeTV), as well as an academic, lecturer and educator. She has a Master of Laws from the University of Melbourne and both a Bachelor of Laws and a Bachelor of Arts (English Hons) from the Australian National University.

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Professor Sean Flynn

Associate Director, Program on Information Justice and Intellectual Property
Professorial Lecturer in Residence, American University

Professor Flynn teaches courses on the intersection of intellectual property, trade law, and human rights and is the Associate Director of the Program on Information Justice and Intellectual Property (PIJIP). At PIJIP, Professor Flynn designs and manages a wide variety of research and advocacy projects that promote public interests in intellectual property and information law and coordinates PIJIP's academic program. Professor Flynn is currently directing a multi-disciplinary research project on the social and economic impact of copyright user rights.

Prior to joining WCL, Professor Flynn completed clerkships with Chief Justice Arthur Chaskalson on the South African Constitutional Court and Judge Raymond Fisher on the U.S. Court of Appeals for the Ninth Circuit and taught Constitutional Law at the University of Witwaterstrand, South Africa.



Andrew Garton

Filmmaker, writer, producer, Seccession/Films



Andrew Garton is a filmmaker, creative producer, musician and writer with a history in community media and pre-internet computer networks. His work spans the genres of non-fiction film-making, short-format documentary, non-linear radio documentary drama, projected video and sound installations. In recent years Andrew has collaborated on short films and sound works with the last forest communities of Borneo (Sarawak Gone <http://www.sarawakgone.cc/>), an extensive media arts project with young people from refugee backgrounds (Bamiyarra <http://bamiyarra.agarton.org>) and bush fire affected communities (Forged from Fire <http://seccessionfilms.com/films/forged-from-fire/>).

Andrew co-founded the online media arts collective, Toy Satellite, creating unique and collaborative works for festivals, broadcasters and cultural institutions across Asia, Europe and Australia. He was the inaugural Program Director for Open Channel, Producer and Operations Manager for EngageMedia (<http://engagemedia.org>) and had been a long-term board member of the international Association for Progressive Communications (<http://apc.org>).

Andrew is presently working on the feature documentaries Ocean in a Drop (<http://seccessionfilms.com/films/ocean-in-a-drop/>) in association with the Dehli based Digital Empowerment Foundation and Forged from Fire (<http://seccessionfilms.com/films/forged-from-fire/>) in collaboration with bush fire affected communities in north east of Melbourne.

Seccession/Films (<https://seccessionfilms.com/>) - Blog and portfolio (<http://agarton.org/>)

Professor Michael Geist

Chair of Internet & E-commerce Law, University of Ottawa



Dr. Michael Geist is a law professor at the University of Ottawa where he holds the Canada Research Chair in Internet and E-commerce Law. He has been a visiting professor at universities around the world including the University of Haifa, Hong Kong University, and Tel Aviv University. He has obtained a Bachelor of Laws (LL.B.) degree from Osgoode Hall Law School in Toronto, Master of Laws (LL.M.) degrees from Cambridge University in the UK and Columbia Law School in New York, and a Doctorate in Law (J.S.D.) from Columbia Law School. Dr. Geist is the editor of many books including *Law, Privacy and Surveillance in Canada in the Post-Snowden Era* (2015, University of Ottawa Press), *The Copyright Pentalogy: How the Supreme Court of Canada Shook the Foundations of Canadian Copyright Law* (2013, University of Ottawa Press), *From “Radical Extremism” to “Balanced Copyright”: Canadian Copyright and the Digital Agenda* (2010, Irwin Law) and *In the Public Interest: The Future of Canadian Copyright Law* (2005, Irwin Law). He is also the editor of several monthly technology law publications, and the author of a popular blog on Internet and intellectual property law issues.

Dr. Geist serves on many boards, including the Canadian Internet Registration Authority Board of Directors, Internet Archive Canada Board of Directors, and the Electronic Frontier Foundation Advisory Board. He has received numerous awards for his work including the University of Ottawa Open Access Award in 2016, Kroeger Award for Policy Leadership and the Public Knowledge IP3 Award in 2010, the Les Fowlie Award for Intellectual Freedom from the Ontario Library Association in 2009, the Electronic Frontier Foundation’s Pioneer Award in 2008, Canarie’s IWAY Public Leadership Award for his contribution to the development of the Internet in Canada and he was named one of Canada’s Top 40 Under 40 in 2003. In 2010, *Managing Intellectual Property* named him on the 50 most influential people on intellectual property in the world and *Canadian Lawyer* named him one of the 25 most influential lawyers in Canada in 2011, 2012 and 2013. More information can be obtained at <http://www.michaelgeist.ca>.

Dr Rebecca Giblin

Associate Professor, Monash University

Dr Rebecca Giblin, a Associate Professor within Monash University's law faculty, is an expert on issues relating to access to knowledge (A2K), copyright law and regulation of emerging technologies. During 2011 Rebecca was the Kernochan Visiting International Intellectual Property Scholar at Columbia Law School in New York, and in 2013 a Senior Visiting Scholar in residence at Berkeley Law School. She is the lead Chief Investigator on an ARC linkage grant investigating the legal and social impacts as libraries switch to e-lending, author of the monograph 'Code Wars' and editor of the provocative new book 'What if we could reimagine copyright?' She tweets on A2K, tech, IP & more @rgibli <<https://twitter.com/rgibli>>.



Simon Groth

Writer, editor, director of if:book Australia

Simon Groth is a writer and editor whose books include Concentrate and Off The Record: 25 Years of Music Street Press. His first two novels were shortlisted in the Queensland Premier's Literary Awards and his short fiction has been published in Australia and the United States. Simon is director of if:book Australia, a leading developer of experimental publishing and exploration. His work and reporting on digital publishing has seen him travel the globe to discuss and explore the challenges and opportunities for writers and readers in a digital world.



Professor Peter Jaszi

Glushko-Samuelson Intellectual Property Clinic, American University

Peter Jaszi is a Professor Emeritus at American University Washington College of Law who writes and lectures about copyright law in historical and cultural contexts. He was a founder of the Glushko-Samuelson Intellectual Property Law Clinic and the Program on Intellectual Property and Information Justice. Having served as a Trustee of the Copyright Society of the U.S.A., Professor Jaszi remains a member of its journal editorial board. Since 2005, he has been working with Prof. Patricia Aufderheide to help creative communities develop fair use guidance documents that reflect their particular problems and practices. In 2007, he received the American Library Association's L. Ray Patterson Copyright Award.



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Professor Sang Jo Jong

Professor of Law, Seoul National University

Professor Jong graduated from Seoul National University (SNU) and undertook his Ph.D. studies at the London School of Economics. His doctoral degree was awarded in 1991 for his thesis titled “The Legal Protection of Computer Programs with particular reference to U.K., U.S., Japan & Korea.” His research and teaching mostly centers around intellectual property, unfair competition, antitrust, and internet laws. He taught Korean Law at Harvard Law School in 2015 and at University of Washington School of Law in 2014 and also taught comparative intellectual property laws at Georgetown University Law Center in 2007 and at Duke Law School in 2003. He has served as the Dean of SNU School of Law, a civilian member of the Presidential Council of Intellectual Property, the President of Korea Game Law & Policy Society, the Director of the SNU Center for Law & Technology, and a Panel Member of the WIPO Arbitration and Mediation Center. His publications include various topics ranging from “Property versus Misappropriation: Legal Protection for Databases in Korea, 8 Washington University Journal of Law & Policy 75 (2002),” to “Fair Use: A Tale of Two Cities, Intellectual Property in Common Law and Civil Law (Edward Elgar, Northampton, 2013).”



Dr Kylie Pappalardo

Intellectual Property and Innovation Law Research Program,
Queensland University of Technology

Dr Kylie Pappalardo researches in intellectual property and innovation law, focusing primarily on the intersection between copyright and creativity and the rights of copyright users. She is a Lecturer in the Law School at the Queensland University of Technology (QUT) in Brisbane, Australia, where she leads the research program on copyright law and creative communities. Kylie's PhD thesis explored the regulation of ISPs and other internet intermediaries for online copyright infringement. She holds degrees in Law and Creative Writing from QUT and a Masters of Law from Georgetown University in Washington D.C. Kylie has been a senior researcher with the Open Access to Knowledge (OAK) Law Project and with Creative Commons Australia. She has also worked with the Arts Law Centre of Queensland and served on the board of Youth Arts Queensland.



Bill Patry

Senior Copyright Counsel, Google

Bill Patry is proudly a Californian. He has been Senior Copyright Counsel at Google since October 2006 when he joined as the company's first copyright lawyer. He has been a copyright lawyer since 1982 and before joining Google, he served for seven years in the US legislative branch, serving as Copyright Counsel to the US House of Representatives Committee on the Judiciary, and as Policy Planning Advisor to the Register of Copyrights US Copyright Office.

He was a full-time law professor from 1995 to 2000, and a private lawyer litigating copyright cases from 1982-1988, and again from 2000-2006. As a litigator, he tried fair use cases at the trial level and on appeal, and advised clients on a wide range of copyright issues. He is the author of many books on copyright, including *Patry on Copyright* (an 8,000 page, multivolume work), and *Patry on Fair Use* which has been in print continuously since its first publication in 1985. His writings on copyright have been cited well over 300 times by US courts at all levels, including 11 times by the US Supreme Court, and twice by the Australian High Court.



Dr Nicolas Suzor

Associate Professor and Principal Research Fellow,
Intellectual Property and Innovation Law Research Program,
Queensland University of Technology

Associate Professor Nicolas Suzor researches the regulation of networked society. He is a Senior Research Fellow in the Law School at Queensland University of Technology in Brisbane, Australia, and a Chief Investigator of QUT's Digital Media Research Centre, where he leads a program of research on the regulation and governance of the internet and social media. Nic is an ARC DECRA research fellow, studying the regulation of internet intermediaries and social media platforms. His research examines the peer economy, the governance of social networks, digital copyright, and knowledge commons. Nic is also the Legal Lead of the Creative Commons Australia project and the deputy chair of Digital Rights Watch, an Australian non-profit organisation whose mission is to ensure that Australian citizens are equipped, empowered and enabled to uphold their digital rights.



Margaret Warren

Coordinator of Discovery Services, State Library of Queensland

Margaret Warren is the Coordinator of Discovery Services at the State Library of Queensland. Her role is dedicated to improving discovery and access to the library's content, wherever people are, and looking at new ways to discover and interact with digital collections. Her experience also includes digitisation projects, standards development, and strategic planning. She is passionate about open access to collections, fair use, and Creative Commons. In her free time she is a food blogger, music lover and avid reader. Find her on Twitter @mawarre



Professor Kimberlee Weatherall

Sydney Law School, University of Sydney

Kimberlee Weatherall is a Professor of Law at the University of Sydney Law School specialising in intellectual property law, including copyright as it interacts with digital technologies. She is a member of the Law Council of Australia's IP Subcommittee and the Board of the Australian Digital Alliance, and a former member of the Board of the Arts Law Centre of Australia, the Commonwealth of Australia's Advisory Council on Intellectual Property, and the consultative committee associated with the Australian Law Reform Commission's Inquiry into Copyright and the Digital Economy. Her new collection of essays co-edited with Dr Rebecca Giblin, What if we could reimagine copyright, is published with the ANU Press and available at <https://press.anu.edu.au/publications/what-if-we-could-reimagine-copyright>



