

SCRIPT Centre for IP and Technology Law Report to School of Law, 2014-15



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Cover of SCRIPT-ed

Background:

SCRIPT is a Research Centre for IP and Technology Law. In its first incarnation, it started life as SCRIPT (the Shepherd and Wedderburn Centre for Research in Intellectual Property and Technology) in 1998 as a centre of excellence in the disciplines of intellectual property law (IP) and information technology law (IT). From 2002 to 2012, it was generously supported by two consecutive grants by the Arts and Humanities Research Council. It is currently a founding member of the RCUK funded CREATE network on copyright in the creative industries.

Membership News

Featured:

Jamil Ammar joined us as a visiting research fellow. .Jamil is an Assistant Professor in Law, with teaching interests in intellectual property, particularly trade marks; e-commerce and business law. From 2012-14, he was appointed Head of Management Department in the School of Business Administration at the AIU. Previously, Dr.Jamil was involved in several projects both nationally and internationally including the United Nations Development Programme in Syria (projects covered: E Government, Regional Planning and the WTO). As the founder of the Syrian Strategic Think Tank, www.syrianstrategicctt.com/, jamil was an invited participant in the Smarter Regulation for Small and Medium-Size Enterprise report by the World Bank Group- 2013-15.

Jamil's research focuses on intellectual property and information technology law from European and international perspectives with emphasis on the interface between intellectual property and changing technologies. His work explores ways in which the law may be better calibrated to meet the needs of stakeholders. At present, Jamil is involved in a research project to address the legal and economic implications of 3D printing (also known as additive manufacturing) on trade mark law.

Jamil completed his LLB and LLM from the University of Damascus, LLM from the University of Wales Swansea and PhD from the University of Edinburgh where he was also the book review editor of the SCRIPTed Law and Technology Centre, 2009-10.

As previously announced, Dr Paolo Cavaliere joined us in September 2014 as the new lecturer in the Law of Digital Media & IT Law.

To both of them a very warm welcome!

Other membership news

Yolande Stolte passed her PhD Viva on the protection of journalists during armed conflicts. Many Congratulations!

Current Membership:

Edinburgh members: Burkhard Schafer (Director), Smita Kheria (Co-director IP), Jane Cornwell, Roya Ghafele, Judith Rauhofer (Co-Director IT), Rachel Craufurd Smith (Co-director Media) , Richard Jones, Graeme Laurie, Gerard Porter, Shawn Harmon, Yolande Stolte, Nayha Sethi, Hector MacQueen, Andrew Black, Laurence Diver, Nicholas Jondet, Paolo Cavaliere, Jamil Ammar

External members: Daithí Mac Síthigh, Wiebke Abel

Postgraduate Research Students:

Yianna Dannidou, Leslie Stevens, Evgenia Kanellopoulou, X. Hernandez, Jack Beattie, David Komouves, Jesus Niebla, Daniel Torres Goncalves Narondeck Srukhsit Nazli Ismail Nawang, You-Hung Lin Michael Morris, Nevena Kostova; Jiahong Chen

Funding news

Featured: ‘Citizen Science and Crowdsourced Data and Evidence Network‘

Members of the centre were part of a successful application for a new cross-university initiative that will explore the role of citizen science This new network will bring together colleagues across Schools and disciplines with a shared interest or involvement in Citizen Science (CS), the Crowdsourcing of Evidence, and public participation in scientific, medical, humanities and policy research.

It will be an interdisciplinary and University-wide network: two initial meetings held to gauge interest gathered around 50 participants from the three Colleges and support services, from social history to protein science, from academic to technical/IT and management staff, from established scholars to PhD students and early career researchers. The Network is led by Eugénia Rodrigues in Science Technology and Innovation Studies. It is another example of the close links of SCRIPT to research centres and networks across the university, in this case our close institutional links to SKAPE, the Centre for Science, Knowledge and Policy at SPS. Burkhard Schafer is a founding member of this centre and member of its steering committee.

Other funding related activities

'Jane Cornwell was awarded a grant from the School's SIF fund to provide support for a literature review and scoping exercise for proposed empirical research into the effectiveness and deterrent impact of IP rightholder enforcement activities. The aim is to use this support to permit preparation of a draft bid for submission to an appropriate external funder in 2015/16.

Centre members played a key role in setting up the new Centre for Advanced Studies in Cyber Security and Privacy and participated in its application to achieve ACE status from RCUK. The decision was still pending at the time of writing this report, should it be successful then in addition to a small annual grant, the Centre would join the elite club of 12 similar centers across the UK that are the preferred partner for all publicly funded cybersecurity related research.

Our close connection with the Centre for Research into Information, Surveillance and Privacy (CRISP) at SPS continues to bear fruit. Together with other CRISP members within and outside the school of law, we prepared a bid for an AHRC seminar series on “Memories of Conflict: archives and the city”. Decision on this grant is pending at the time of writing.

Together with colleagues from the Mason Institute, we are also part of a large (£10m) Leverhulme funding application let by Sarah Whatley, Professor of Dance, at Coventry University the University, to set up a Leverhulme Centre for the Interdisciplinary Study of the Body in Performance. If successful Edinburgh would be one of 14 nodes in this network, coordinated by Shawn Hammond (Mason Institute and SCRIPT) with participation by Burkhard Schafer

Smita Kheria was Co-Investigator on a one year pilot project, led by Professor Charlotte Waelde at the University of Exeter and commissioned by the AHRC to evaluate the copyright challenges faced by arts and humanities researchers as they seek to develop and make available publicly funded research content. The project investigated a range of AHRC-funded research projects as case studies and as completed in December 2014. A report titled “Copyright and Publicly-Funded Arts and Humanities Research Identifying and Developing Sustainable Exploitation Models in the Digital Economy” was submitted to the AHRC in January 2015.

Knowledge Transfer and external impact

Featured:

Burkhard Schafer addressed a session of the Technology and Economic Development committee of the Washington State House of Representatives on December 4th, 2014 on the regulation of civilian drones

The committee had in the past proposed a far reaching and innovative legislative amendment to regulate civilian drone use, but failed to gather enough support. Burkhard reported about the European approach to regulating drones and suggested how a resubmission might benefit from the European experience.

Other KT activities

Smita Kheria was a visiting scholar at a three week artists-in-residence program at the Atlantic Center for the Arts, a non-profit, interdisciplinary artists' community and arts education facility based in Florida, USA.

Smita Kheria was invited to be network member of 'Ubiquitous Commons' an artist led, interdisciplinary and international network focussed on understanding the transformation of data, information and knowledge in the age of ubiquitous technologies

Burkhard Schafer was appointed member of the Ethics working group on the use of Big Data in public service delivery, chaired by the Cabinet Office.

Burkhard Schafer was appointed member of the ethics advisory committee of IMI- EMIF, the European Medical Information Framework of the Innovative Medicine Initiative

Burkhard Schafer was appointed member of the ethics advisory committee of CloudTeams, a Horizon 2020 project on cloud computing infrastructures.

Judith Rauhofer advises the Open Rights Group ORG on their intervention in the Tom Watson/David Davies DRIPA case that is pending before the High

Judith Rauhofer participated at a panel on "Ethics in policing" organised by ACPO

Burkhard Schafer co-authored a response to the 'The European Commission's Public Consultation on the Review of EU Copyright Rules', with CREATE colleagues (Kretschmer, Martin and Deazley, Ronan; Edwards, Lilian; Erickson, Kris; Zizzo; Daniel John) which was also published in (2014) *European Intellectual Property Review* 547-553

Publications by Centre members

Featured:

Important added value is created by the SCRIPT centre through fostering of collaborative projects. This year saw several papers published where centre members created new synergies, by bringing together their individual perspectives in jointly written publications.

The first of these papers, written jointly by CREATE PhD students and research assistants under the guidance of Burkhard Schafer, won third place at the Lexis Nexis Best Paper award at the International Rechtsinformatik Konferenz IRIS in Salzburg:

David Komuves, Jesus Niebla Burkhard Schafer, Laurence Diver, 'Monkeying Around with Copyright - Animals, AIS and Authorship in Law' in E Schweighofer, F Kummer, W Hoetzendorfer (eds) *Co-operation* (OCG, 2015) 651-660

Another “crossover” paper also highlighted our collective contribution to the referendum debate:

Gillian Black, Rachael Craufurd Smith, Smita Kheria, Gerard Porter 'Scotland the Brand - Marketing the Myth?' (2015) *Scottish Affairs* 47-77

Finally, an IP/jurisprudence crossover saw the publication of

Burkhard Schafer, Jane Cornwell 'Law's Fictions, Legal Fictions and Copyright Law' in Max del Mar, William Twining (eds) *Legal Fictions in Theory and Practice* (Springer, 2015) 175-195

Other publications by centre members include:

Rachael Craufurd Smith 'Article 22' in Peers, S., Hervey, T., Kenner, J., and Ward, A. (eds.) *The EU Charter of Fundamental Rights, A Commentary* (Hart Publishing, 2014), 604-631, an authoritative new guide to the Charter.

Burkhard Schafer, D-waste: Data disposal as challenge for waste management in the Internet of Things' (2015) *International Review for Information Ethics* 100-106 22(1)

Burkhard Schafer "'Theirs' not to make reply, Theirs' not to reason why"- a report on Big Data, forensic reasoning and the trial' (2014) *SCRIPTed* 145-152

Burkhard Schafer, Maksymilian Del Mar 'Of Empires and Revolutionaries' in Burkhard Schafer, Maksymilian Del Mar (eds) *Legal Theory and the Natural Sciences* (Ashgate, 2014) xi-xxx

Burkhard Schafer 'Information Quality and Evidence Law: a new role for social media, digital publishing and copyright law?' in Luciano Floridi, Phyllis Illari (eds) *The Philosophy of Information Quality* (Springer, 2014) 217-239

Burkhard Schafer, Maksymilian Del Mar (eds) *Legal Theory and the Natural Sciences* (Ashgate, 2014)

Richard Jones, David Wright, Rowena Rodrigues, Charles Raab, et al. 'Questioning surveillance' (2015) *Computer Law & Security Review* 31(2) 280-292

Richard Jones 'The electronic monitoring of offenders: penal moderation or penal excess?' (2014) *Crime, Law and Social Change* 62(4) 475-488

Richard Jones 'The Electronic Monitoring of Serious Offenders: Is there a rehabilitative potential?' (2014) *Monatsschrift für Kriminologie und Strafrechtsreform* Vol 97(1) 85-92

Richard Jones, Charles Raab 'Good practice in privacy design: some examples' in David Wright and Reinhard Kreissl (eds) *Surveillance in Europe* (Routledge, 2014) p.293

Judith Rauhofer (2015) "Of Men and Mice: Should the EU Data Protection Authorities' Reaction to Google's New Privacy Policy Raise Concern for the Future of the Purpose Limitation Principle?", *European Data Protection Law Review*, Vol. 1 Issues 1

Cavaliere, Paolo. "The pursuit of happiness reloaded. From measures to policymaking, holistic well-being as a global political goal in contemporary constitutionalism." *The Journal of Legal Pluralism and Unofficial Law* ahead-of-print (2015): 1-20.

Judith Rauhofer, Graham Smith: 'Mandatory communications data retention lives on in the UK - or does it?', *Practical Law*, 21 August 2014 (<http://uk.practicallaw.com/8-577-6488>)

Rauhofer, J., Abel, W., & Brown, I. (2014). A First Look at the Constitutional and Legal Implications of the Data Retention and Investigatory Powers Act 2014. *SCRIPTed*, 11(3), 320-328. 10.2966/scrip.110314.320

Invited speakers and seminar series organised by the Centre

Featured:

This year saw the launch of a student-led seminar series, the IP, Media and IT discussion group, chaired currently by Nevena Kostova and David Komuves. <http://www.ipdg.law.ed.ac.uk>

Speakers this year included:

David Komuves, Edinburgh: "Privacy and Accessibility of Information Online: Discussing the Implications of the CJEU Ruling on the 'Right to be Forgotten'"

Nevena Kostova (Edinburgh): 'Is copyright law *fitter for the digital age* after the introduction of the private copying exception? A consideration of whether the right of reproduction can remain at the heart of copyright in contemporary society'

Daithi Mac Sithigh (Newcastle): Copyright, freedom of expression and the search for the public interest'

Edina Harbinja (Herefordshire) 'Emails, property, law and death: where are we?'

Andrea Zappalaglio, (Oxford) The history of the protection of Geographical Indications. Where have we been, where are we going?

Kristofer Erickson, (Glasgow) Investigating the prod-user relationship in unauthorised fan creativity: formal legal structures, informal community norms

Jamil Ammar (Edinburgh) 'Essential Function' Doctrine to Combat Infringement via 3D printing: Any good?

Other guests at the Centre

Keiran Hardy, Research Fellow, Faculty of Law, UNSW : Counter-Terrorism, Cybersecurity, and the Law: The Difficulties and Dangers of Keeping Pace with Technology

Workshops and conferences organised by the Centre

Workshops are an important vehicle to join up the work of SCRIPT with other research centres within and outside Edinburgh

Examples of this type of collaborative, cross centre research include:

Together with the Global Justice Academy and the Edinburgh Data Science Initiative, Elisa Morgera and Burkhard Schafer organised a workshop on ICT in a changing climate: ICT for environmental regulation as a global justice and development issue

Together with the Bell Centre and the School of Mathematics, Burkhard Schafer and Colin Aitken organised a workshop on "Big data and the future of forensic science at trial" with participants from the Netherlands and the UK

Together with colleagues from ISSTI, we organised a workshop on "Knowledge on Trial" that explored the changing nature of expert evidence in fire investigations.

Jane Cornwell and Burkhard Schafer participated as speakers at the Legal Theory Spring Workshop on Legal Interpretation organised by the Legal Theory Reading Group. Burkhard Schafer spoke about: "Stolen whisky, a bilingual Convention and expansive construction – *James Buchanan & Co. Ltd v. Babco Forwarding & Shipping (UK) Ltd.*, Jane Cornwell on the "Ever-decreasing circles: justification and legislative intent in the interpretation of EU design law – *Grupo Promer Mon Graphic SA v Office for Harmonisation in the Internal Market (OHIM); PepsiCo Inc (Intervener)*"

Burkhard Schafer organised the third international workshop on AI and IP law, AIIP, as part of the IRIS annual Conference in Salzburg.

Burkhard Schafer was member of the Presidium of the IRIS conference series, which held its 18th annual conference in Salzburg, and chaired its "Legal Information System" stream.

SCRIPTed

We continue to be the home of SCRIPTed, the student lead, peer reviewed journal for law and technology.

<http://script-ed.org/>

Now in its 12th year, 3 new volumes were published in 2014/15,

Special highlights this year included an article by Professor Svantesson, Co-Director, Centre for Commercial Law, Faculty of Law, Bond University (Australia) and Researcher, Swedish Law & Informatics Research Institute, Stockholm University (Sweden).

Selected invited talks and conference papers given by Centre members

Featured:

In 2014/15, members of the Centre were invited to give papers in Europe, North and South America and Asia, demonstrating its international voice

Dr Paolo Cavaliere, was invited by the Council of Europe to deliver a keynote speech at an Albanian government workshop on the topic of 'Digital Communication: Maximising the Use of Spectrum'.

The workshop brought together experts from business, government, regulatory bodies and non-governmental organisations to discuss the benefits of the digital switchover process, review current status and challenges and discuss ways to move forward. The objective of the workshop was to help the Albanian government take forward its programme of consolidation of the digital infrastructure in the Eastern European country.

Judith Rauhofer gave an invited paper "Big Data, small government and the balance of power in the information age" at the 11th Annual International Conference "Legal Issues and Challenges in the Age of Big Data" in Waikiki, organized by the Seoul National University Centre for Law & Public Utilities (CeLPU)

Burkhard Schafer gave the Invited keynote Lecture 'Jhering revisited: how to teach civil law students to fight for what's right' presented at Segundo Congreso Internacional de Pedagogía Universitaria y Didáctica del Derecho, UNAM Mexico City, 2014 This conference also saw the launch of a new international initiative to increase the profile of research into legal education. Burkhard will be the UK co-ordinator for this new international and comparative Network.

Other talks given by Centre staff

Burkhard Schafer, Invited Keynote 'Philosophy of Information - foundation for a new theory of law?' presented at Jornadas Internacionales de Filosofía del Derecho, UNAM, Mexico City, 2014

Burkhard Schafer Invited paper 'Extending the Legal Mind - On an Intersection between forensic Neuroscience and Computer Forensics' presented at Neuroscience and the Law, Swansea, 2014

Burkhard Schafer, invited paper "'You Don't Have the Right to Remain Silent": Explanation-Aware Computing and the Management of Criminal Liability in Machines' presented at Trusting Human Safety to Software, Center for Information Technology Policy, Princeton University, 2014

Burkhard Schafer was panelist on "Using ICT for environmental regulation: at the CPDP conference in Brussels.

Burkhard Schafer 'Playing God(s) - Virtual World Creation, Online Spirituality and the Law' presented at The Crag workshop series, University of Edinburgh, 2015

Burkhard Schafer Expert Evidence and the Wisdom of the Crowds. Paper given at 'Knowledge on Trial' workshop, Edinburgh 2015

Burkhard Schafer "Of Harry Potter and Tanja Grotter: Copyright law, fan fiction and the identity of the fictional object " paper given at the Future of Identity Network workshop London 2014

Burkhard Schafer Monkeying around with Copyright, presented at IRIS, Salzburg, 2015

Burkhard Schafer #'("copyright" "law") at:2 put: "code" Computer juridism, copyright law and the juridification debate' presented at IVR-UK Annual Conference, London, 2014

Smita Kheria with colleagues from University of Exeter, Professor Charlotte Waelde and Dr Nadine Levin, titled 'Investigating the "Value" of the Arts and Humanities through Copyright' presented at AHRC Knowledge Exchange Hubs Conference, Lancaster, 2014.

Smita Kheria was panel convenor and a member (along with new media artists) on the panel 'Copyright and Digital Media Art' at ISEA, 2014: The 20th International Symposium on Electronic Art, Dubai, 2014.

Judith Rauhofer – Invited paper "Data sovereignty in the cloud: Data protection and data security in a cloud environment" at the Society for Computers and Law's 2015 Annual Conference in London.

Judith Rauhofer – Invited paper "Code, Law and Privacy by Design" at the Horizon Workshop "Privacy, Trust and the Digital Economy" in Nottingham.

Judith Rauhofer – Invited paper "Smart devices, dumb humans: The privacy impacts of ubiquitous computing" at the CREATE-funded conference "Designing Smart Cities Conference: Opportunities and Regulatory Challenges" in Glasgow.

Judith Rauhofer – Invited paper "Potential long-term impacts of everyday surveillance" at the "#PostSnowden Workshop" at the University of Sussex

Judith Rauhofer – Invited discussant at the Microsoft-funded closed-door working session on "Transnational Law Enforcement Access to Data: Legal Issues and Challenges for Mutual Legal Assistance, Personal Data Protection and Cloud

Computing” in Brussels, organized by the Centre for European Policy Studies (CEPS)

Judith Rauhofer – Opening speech at the workshop “International Data Export: EU-US Data Transfers” in Brussels

Judith Rauhofer — Our Bodies, Ourselves 2.0: The Role of Informational Self-Determination in the Prevention of Physical Harm from Code-Based Devices. Invited talk, Trusting Human Safety to Software, Center for Information Technology Policy, Princeton University, 2014

Contribution to Press, Newspapers and other Media

Burkhard Schafer was member of an expert panel in the BBC Radio 4 series “unreliable evidence”, where he talked about the regulation of Artificial Intelligence.

Judith Rauhofer and Burkhard Schafer were co-signatories of an open letter by concerned academics on the DRIP legislation, published inter alia in the Guardian.

Judith Rauhofer was interviewed by the Good Morning Scotland program on online privacy protection strategies

Burkhard Schafer was interviewed by Rose Eveleth for the BBC Futures website on criminal law and robotics

Centre initiatives for innovative teaching

SCRIPT conquers space, the final frontier:

For the first time ever, students from our LLM in Innovation Technology and the Law participated with organisational and financial support from SCRIPT, and intellectual input from the Scottish Centre for International Law, at the European Round of the Manfred Lachs Space Moot competition, held this year in Belgrade. Since its inception by the International Institute of Space Law (IISL) in 1992, the Manfred Lachs Space Law Moot Court Competition has grown to cover four world regions: North America, Europe, Asia Pacific and Africa. More than 60 teams participate yearly in this competition. The Edinburgh team was only stopped in the finals, and won in the “Best Newcomer” category. Many congratulations to Laura Keogh and Colin Severin.

Success at the nomination competition for the Universitas 21 Graduate Research Conference in Shanghai Jiao Tong University, China.

Laura Keogh, LLM student in the Innovation Technology program, was successful in the highly competitive call for nominations to the Universitas 21 Graduate Research Conference in Shanghai Jiao Tong University, in China.

Edinburgh can nominate 3 students, and Laura will be the first law student representing Edinburgh at a U21 conference, talking about her LLM dissertation on microsatellites and data protection.

Freedom of Expression Clinic

Paolo Cavaliere started a new initiative on the protection of freedom of expression. Together with the Media Legal Defence Initiative, Garden Court Chambers, and the University of Zagreb, the aim is to create and deliver a Law Clinic focused on freedom of expression as part of our Honours teaching. The purpose of the Clinic is to increase the pool of skilled lawyers that can take on human rights/free speech cases, and to inspire participants to pursue this type of work in their future careers.

Other news

SCRIPT played a key role in the launch of the new Edinburgh Data Science Initiative, an attempt to help to coordinate all Data Science related activities in Edinburgh, enable cross-college collaboration, ensure Edinburgh students on all degree levels receive appropriate training in data science, ensure that legal and ethical best practice guidance in data collection, analysis and storage is observed and influence political developments on the use of Data Science. Members of SCRIPT are active in the Ethics and Policy and the Education working groups of this major new initiative.