

SCRIPT Centre for IP and Technology Law Report to School of Law, 2015-16

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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 founding member of the RCUK funded CREATE network on copyright in the creative industries.

Membership News

Featured:

Emmanuel Oke, currently at University College Cork, will be joining SCRIPT in summer 2016. He obtained his LLB from the University of Lagos in 2007, and his Master's Degree in Intellectual Property and Technology Law from the National University of Singapore in 2011. Emmanuel is a qualified legal practitioner in Nigeria. He is interested in International Patent Law and Policy and he is particularly interested in how developing countries can optimally utilize patent laws to stimulate innovation and technological development. His PhD thesis analyzed how developing countries can effectively balance their patent laws to encourage innovation as well as address public health challenges.

A very warm welcome to Oke, who will fill our gap in expertise in the field of international intellectual property law, and the intersection between Human rights law and IP.

Other membership news

Yianna Dannidou successfully defended her PhD on the legal regulation of trusted computing in May 2016. Her new job at the European University of Cyprus will see her in a leading role to establish a new Cyprus Cybercrime Center of Excellence (3CE), which undoubtedly will mean we haven't seen the last of her in Edinburgh, as a collaborator and colleague. Many congratulations to her

Current Membership:

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

External members: Daithí Mac Síthigh, Wiebke Abel, Jamil Ammar, Yolande Stolte

Postgraduate Research Students:

Leslie Stevens, Evgenia Kanellopoulou, X. Hernandez, Jack Beattie, David Komouves, Jesus Niebla, Daniel Torres Goncalves Narondeck, You-Hung Lin, Michael Morris, Nevena Kostova; Laurence Diver, Matt Jewell, Jiahong Chen,

Wenlong Li, Humberto Carrasco

Funding news

Featured: “The Whole Truth – completeness quantifiers in philosophy, science and law.”

Burkhard Schafer is Co-I on this AHRC funded project that explores the logic and metaphysics of the “whole truth” operator, iconically used in the witness oath, it also is of central importance in the theory of science. This joint project with the Philosophy departments of Edinburgh and Glasgow, was funded by AHRC for 18 months with £ 245000. It will explore how the “whole truth” differs from mere “truth”, with the legal stream of the project looking at specific doctrinal issues such as the law of perjury, defamation and data breach notification duties, while trying to embed them in a broader theory of a general jurisprudence as a theory of communication duties.

Other funding related activities

The Centre is partner in a Dundee-led application to Nordforsk, the funding council of the Nordic Council of Ministers, for a project on “Taking surveillance apart?: Accountability and Legitimacy of Internet Surveillance and Expanded Investigatory Powers” which will explore these issues with partners in Denmark, Norway, Sweden and Finland.

Rachael Craufurd Smith is part of an expert group run by Panteia, which won special status in 2015 to bid for EU Commission projects in the field of culture.

Knowledge Transfer, public talks and external impact

Featured: SCRIPT invited participant at UN committee meeting

Judith Rauhofer represented SCRIPT at a meeting organised by the United Nations Counter Terrorism Committee with Member States and international and regional organizations on “Preventing Terrorists from Exploiting the Internet and Social Media to Recruit Terrorists and Incite Terrorist Acts, while Respecting Human Rights and Fundamental Freedoms”.

Featured: Paolo Cavaliere co-authors report for Council of Europe;

The study, with Irion, K. Pavli, D. 2015, is a comparative study of best European practices of online content regulation. Law and policy of online content regulation, in particular defamation online, in the light of Albanian legislative proposals.

Featured: R. Craufurd Smith and Yolande Stole cited by Council of Europe Parliamentary Committee

In April 2015 the Council of Europe Parliamentary Committee (Culture, Science, Education, Media) Rapporteur, Ms Gülsün Bilgehan, acknowledged in her report on

'Increasing Transparency of Media Ownership' the value of the up-dated report on the transparency of media ownership in the European Union and neighbouring States prepared by Rachael Craufurd Smith and Yolande Stolte for the OSF. Ms. Bilgehan's report led to the adoption in June 2015 of Parliamentary Assembly Resolution 2065 on Increasing Transparency of Media Ownership and accompanying Recommendation 2074.

Other KT activities

Jane Cornwell was invited to join Scottish Committee of the Licensing Executives Society (Great Britain & Ireland)

Smita Kheria was invited to be Section Editor: Law & Legal Studies, for the [Open Library of Humanities](#)

Rachael Craufurd Smith submitted and presented a substantial background report on 'Media Ethics and Responsibility in a Changing Media Environment' to the Council of Europe Parliamentary Committee (Culture, Science, Education, Media) in Strasbourg, January 2015. This report was used by the Rapporteur for the Committee, Mr. Arieu, in drafting his own report on 'Media Ethics and Responsibility in a Changing Media Environment' (AS/Cult (2015) 33), which formed the basis for Recommendation 2075 (2015) and Resolution 2066 (2015) on 'Media Ethics and Responsibility in a Changing Environment' by the Council of Europe Parliamentary Assembly

Burkhard Schafer submitted a response to the Royal Society consultation on "Regulation of machine learning".

Burkhard Schafer: "Copyright, law and ethics of machine co-production" at British Library public event, and participation in panel discussion as part of their "The machine as young artist" series, London, February 2016

Burkhard Schafer: Talk at NESTA public event and participation at panel discussion on Algorithmic Rule on discrimination and big data in government decision making. Authoring of a blog post for NESTA <http://www.nesta.org.uk/blog/shadow-smart-machine-potential-and-dangers-governments-using-machine-learning> ; London February 2016

Burkhard Schafer: Talk "The only way about me is the way I walk - fair data handling for an age of robotics" and panel discussion at public event in Edinburgh, organised by British Computing Association, "How will robots reshape our future in the next two decades."

Burkhard Schafer: Talk: "AI and the future of the legal profession" given to the IT Leaders Forum, Gleneagles March 2016

Burkhard Schafer: Talk: "AI and the future of legal publishing", given to the LexisNexis Group, UK, London March 2016

Burkhard Schafer:: Westworld, Robots and the Law. Talk given at public film screening event organized by the British Science Association and the Sceptics Society, Edinburgh May 2016

Publications by Centre members

Featured:

Important added value is created by the SCRIPT centre through fostering of collaborative projects of Centre members. This year saw the publication of the 4th edition of our flagship monograph, Charlotte Waelde, Abbe Brown, Smita Kheria & Jane Cornwell, 'Contemporary Intellectual Property: Law and Policy', 4th edn (OUP), which brought together past and current members of the Centre.

Another task of the Centre is to initiate, sustain and develop international collaboration and networks. The IT law group at the university of Vienna has a long established connection with the Centre, through mutual visits and joint funding applications. The offshoot of one such funding collaboration, a joint paper by B. Schafer and F Hoetzendorfer, won Lexis Nexis Best Paper Award the IRIS International conference in Salzburg

Other publications by centre members include:

Cavaliere, Paolo, Irion, K., and Pavli, D. 2015. *Comparative study of best European practices of online content regulation. Law and policy of online content regulation, in particular defamation online, in the light of Albanian legislative proposals*. Study commissioned by the Council of Europe, Amsterdam/ Edinburgh/ Tirana, August 2015.

Cavaliere, Paolo Measuring Government Performance and Happiness: The End of Public Opinion as We Know It? in *La médiatisation de l'évaluation / Evaluation in the Media*. Bouchard, J., Candel, E., Cardy, H. & Gomez-Mejia, G. (eds.). Bern, Berlin, Bruxelles, Frankfurt am Main, New York, Oxford, Wien: Peter Lang, p. 149-171

Cavaliere, Paolo: The pursuit of happiness reloaded. From measures to policymaking, holistic well-being as a global political goal in contemporary constitutionalism
In : *The Journal of Legal Pluralism and Unofficial Law*. 47, 1, p. 56-75

Cornwell, Jane, 'Under-referred, under-reasoned, under-resourced? Re-examining EU design law before the Court of Justice and General Court', accepted for *Intellectual Property Quarterly*, forthcoming summer/autumn 2016

Craufurd-Smith, R.: Bright Line Versus Responsive Regulation: Some Thoughts from the United Kingdom' Aug 2015 *Media Pluralism and Diversity: Concepts Risks and Global Trends*. Sukosd, M., Picard, R. & Valcke, P. (eds.). Palgrave Macmillan, p. 310-324 (Palgrave Global Media Policy and Business Series

Craufurd-Smith, R.: *The Cultural Logic of Economic Integration*

Aug 2015 Cultural Governance and the European Union: Protecting and Promoting Cultural Diversity in Europe. Psychogiopoulou, E. (ed.). Palgrave Macmillan, p. 7-24 (Palgrave Studies in European Union Politics)

Craufurd Smith, R 'Article 167 and the European Union's Competence in the Cultural Field' in C. Romainville (ed.), *European Law and Cultural Policies* (P.L.E. Peter Lang, Brussels, 2015), 59-81

Craufurd Smith, R 'EU Media Law: Cultural Policy or Business as Usual?' in V. Vadi and B. de Witte (eds.), *Culture and International Economic Law* (Routledge, Abingdon, 2015), 208-228

Jamil Ammar with Rachael Craufurd Smith, 'When a Trade mark is Not a Trade mark use: a 3D Perspective', (2015) 1/1 *International Journal of law and Interdisciplinary Studies* 4-12

Richard Jones, Charles Raab, Ivan Szekely 'Surveillance and Resilience in Theory and Practice' (2015) *Media and Communication* 3(2) 21-41

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

Rauhofer, J. : 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? 2015 In : *European Data Protection Law Review*. 1, p. 5-15

Schafer, B and F Hoetzendorfer: The play's the thing wherein I'll catch the conscience of the King: Religious and Political. Affiliation in Online Games as Data Protection Issue In: Schweighofer, E., Kummer, F., Hoetzendorfer, W., Borges (eds), *G.Netzwerke - Networks Place of publication: Vienna, OCG 2016*

Schafer, B., Taks, E. & Rull, (2015) A.Creating CoReO, the Computer Assisted Copyright Reform Observatory In: *Logic in the Theory and Practice of Lawmaking*. Araszkievicz, M. & Pleszka, K. (eds.). Springer, p. 479-511

Schafer, B., Komuves, D., Zatarain, J. N. & Diver, L: A fourth law of robotics?: Copyright and the law and ethics of machine co-production: *Artificial Intelligence and Law*. 23, 3, p. 217-240

Schafer, B. An ID database for post-referendum Scotland? A legal-contextual analysis In : *Datenschutz und Datensicherheit*. (2015) 39, 611-616

Invited speakers and seminar series organised by the Centre

SCRIPT continues to support the student-led seminar series, the IP, Media and IT discussion group, chaired currently by Nevena Kostova and Jiahong Chen.

<http://www.ipdg.law.ed.ac.uk>

Speakers this year included:

Bianca Hanuz from University of Liverpool; Exploring the efficiency of blocking injunctions in online copyright enforcement

Dr Orla Lynskey from London School of Economics: ‘Platform Power’: A Regulatory Riddle

Dr Maria Helen Murphy from Maynooth University Algorithmic Surveillance: The Collection Conundrum

Andelka Phillips, DPhil candidate from University of Oxford, Wake Up and Smell the Coffee! A FLE5SH approach to past, extant, emerging and new technologies ... beyond Responsible Research and Innovation

Professor Schafer ‘We are the victim here – Data breach notification duties and the duties of victims in the criminal law of democratic states’

Mary Gani, PhD Candidate at Queen Mary University of London, ‘Copyright Theory and Reality: Trading Creative Autonomy in the Popular Music industry’

Meryem Horasan, PhD Candidate at the University of Strathclyde ‘Jurisdictional Challenges of the Internet: An Analysis of the Recent CJEU Case Law on Infringement of Intellectual Property Rights Online’

Evgenia Kanellopoulou, Law Lecturer at the University of Salford (and PhD Candidate at the University of Edinburgh), ‘Reasonable network management, the new old net neutrality’

Other guests and events at the Centre

Christoph Sorge, Juris Professor of Legal Informatics at the Universität des Saarlandes, “Legal obstacles for data privacy researchers”

Jurgen Ensthaler visited the Centre in May 2015 as a MacCormick Fellow

Workshops and conferences

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 Bell Centre at the School of Mathematics, and the Edinburgh Data Science Initiative, Burkhard Schafer and Colin Aitken organised a workshop on “Forensic Statistics in International Criminal cases”.

Together with CREATE, Burkhard Schafer organised the Fifth International workshop on Artificial Intelligence and Intellectual Property law AIIP in Braga, Portugal. Speakers

from Germany, Finland, the UK, Italy and the US brought together commercial developers and academics.

Together with Arianna Andreangeli and the Europa Institute, Rachel Craufurd Smith organized the workshop 'Sport and Film Rights in the European Internal Market: The Legacy of Murphy'

Members of SCRIPT also serve the wider academic community by serving on programme committees for conferences and workshops. This year, Centre members served on the programme committees of Jurix 2015, ICAIL 2015, RuleML 2016, FTVI 2016, ECAI 2016, IRIS 2016

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 11th year, we took the first volume of 2015 to reflect on a decade of SCRIPTed, with editorials by Graeme Laurie and Burkhard Schafer

Selected invited talks and conference papers given by Centre members

Featured:

A key task of the Centre is the support of early career and doctoral researchers. We were therefore particularly delighted that Laurence Diver won the Google Award for Best Postgraduate Paper for "The Lawyer in the Machine: Towards the Automation of Privacy by Design". This award was given at the BILETA conference, held at the University of Hertfordshire.

Other talks given by Centre staff

Smita Kheria, 'Life on other Worlds: Copyright, creators, and a clash of civilizations?', Law and Society Association Annual Meeting, New Orleans (forthcoming June 2016)

Smita Kheria, Invited Speaker, 'Copyright and creators' livelihoods: voices from the field', Creative Industries Conference, University of Edinburgh Business School, 2016 (forthcoming July 2016)

Smita Kheria (with non-presenting co-authors Charlotte Waelde and Nadine Levin), 'Copyright and Publicly-Funded Arts and Humanities Research: Identifying and Developing Sustainable Exploitation Models in the Digital Economy' Socio-Legal Studies Association Annual Conference, Lancaster, 2016

Smita Kheria, 'It feels like I am always hustling, constantly hustling!: Creators, copyright and business models'; and, organiser (on behalf of CREATE) of the panel 'Emerging and existing business models in the creative industries', Global Congress on Intellectual Property & The Public Interest, New Delhi, 2015

Smita Kheria, Invited Speaker, 'Creators and copyright: Voices from the field', Friction and Fiction: IP, Copyright and Digital Futures, Victoria & Albert Museum, London, 2015

Smita Kheria, 'Life on other Worlds: Creators and Copyright', Gikll, Berlin, 2015

Smita Kheria, 'Copyright and Individual Creators: Preliminary Findings from an Empirical Study', Law and Society Association Annual Meeting, Seattle, 2015

Cornwell, Jane. 'Between the formal and the informal: enforcing IP rights - an empirical investigation', Socio-Legal Studies Association, Annual Conference, Lancaster, 5 April 2016

Cornwell, J. 'IP Enforcement in Scotland', CREATE Litigation Workshop / Knowledge Exchange Workshop, QMUL, London, 13 April 2016

Jondet Nicolas 'A soft stick and a bitter carrot? Assessing France's graduated response scheme against piracy and state interventionism in the marketplace for copyrighted content', IPSC Stanford Law School (Forthcoming August 2016)

Jondet Nicolas 'A soft stick and a bitter carrot? Assessing France's two-pronged strategy against copyright piracy', BILETA University of Hertfordshire (April 2016)

Jondet Nicolas (Invited Paper) 'Réforme du droit d'auteur européen', JINOV Paris (February 2016)

Jondet Nicolas (Invited Paper) 'Context, Avenues and Roadblocks to the EU Reform Agenda for Copyright Exceptions', University of Bournemouth (November 2015)

Jondet Nicolas (Invited Paper) 'The Reform of EU Copyright law', The MAPPING FGA conference Hanover (September 2015)

Jondet Nicolas (Invited Paper) "Corporate social responsibility and the private copying exception", Plymouth University (August 2015)

Burkhard Schafer "The law, the whole law and nothing but the law? What legal positivism can learn from the theory of science" Invited Keynote speech, IV Jornadas Internacionales de Filosofía del Derecho, Mexico City, November 2015

Burkhard Schafer 'Data – antsubordination – a doctrine whose time has come?' talk given at the ICT in a Changing Climate: ICT for Environmental Regulation as a Global Justice Issue even, organised by SCRIPT and the Global Justice Academy , Edinburgh June 2015

Burkhard Schafer My mind to your mind... my thoughts to your thoughts – copyright and privacy implications of brain-to-brain emails, paper given at 10th Gikii Conference on Law, Technology and Popular Culture, Berlin, September 2015

Burkhard Schafer "A Fourth Law of Robotics? Enforcing Ethical Copyright Compliance in a World Shared with Automata" paper given at 10th European Policy for Intellectual Property conference EPIP, Glasgow September 2015

Burkhard Schafer: We are the victim here - Data breach notification duties and the duties of victims in the criminal law of democratic states, given at Understanding the Responsibilities of Online Service Providers in Information Societies workshop, Oxford Internet Institute, October 2015

Burkhard Schafer "Sailing under false flags in heavy clouds: cloud robotics, military and international humanitarian mission and the law" International Workshop on Managing Identity in Cloud and Big Data, October 2015, Bristol

Burkhard Schafer IP for resilience: data spills and the ethics of information ownership, paper given at the Ethics of Data Science The Landscape for the Alan Turing Institute workshop, Oxford November 2015

Burkhard Schafer We are the victim here – Data breach notification duties and the duties of victims in the criminal law of democratic states. Talk given at Edinburgh IP/IT/Media Law Discussion Group December 2015

Burkhard Schafer The play's the thing wherein I'll catch the conscience of the King: Religious and Political. Affiliation in Online Games as Data Protection Issue. Paper given at the 27th Internationale Informatikkonferenz Salzburg IRIS, Salzburg February 2016

Burkhard Schafer Collaborative approaches to cyber resilience and IT Law, talk given at the Building a Scottish Cyber Resilience Research Community workshop, Tuulliallan, March 2016

Burkhard Schafer Exhibit A - Algorithms as evidence in legal fact finding. Talk given at the Algorithmic Governance workshop, Galway March 2016

Burkhard Schafer: Algotokratie – Die Macht der Daten und die Ohnmacht des Gesetzes, Invited talk at the 3 Länder Konferenz, Hamburg June 2016

Burkhard Schafer "Lost in Translation? The potential of visualisation for teaching law to science students" Invited Keynote speech at Congreso internacional sobre Investigación en Pedagogía y Didáctica del Derecho, Mexico City November 2015

Paolo Cavaliere: Freedom of expression on social networking websites, Bocconi University 2016

Paolo Cavaliere : Standards and obligations coming from the case law of the European Court of Human Rights on licencing of audiovisual content. Council of Europe workshop on Digital Communication: Maximizing Spectrum Usage; Opportunities and Challenges, Tirana 2015

Jesus Niebla "Ciberespacio y Robotica: Inteligencia Artificial como Agente de Cambio para la Regulación de los Derechos de Autor en Internet" (Cyberspace and Robotics: Artificial Intelligence as a Change Agent to Enforce Copyright on the Internet) International Congress "Law and Knowledge Society", 25, 26 y 27 November 2015 at Escuela Libre de Derecho. México, DF.

Jesus Niebla "The Role of Automated Devices in the Creation of Copyright Works: Artificial Intelligence and its Relation with Copyright." In Strathclyde Postgraduate Conference 2015. November 5th 2015. Strathclyde University, Glasgow Scotland.

Jesus Niebla "Artificial Intelligence as a Challenging Element on Intellectual Property Law" dentro del XIII Symposium of Mexican Students and Studies, University College London. Londres Inglaterra, 23 al 25 de julio de 2015.

Jesus Niebla "Copyright Enforcement and AI: An Automated Approach". Dentro del Marco de Computing Science Mini-workshop "Student and Faculty Research on Law and Computing Science" el 29 de abril de 2015 llevado a cabo en la Universidad de Aberdeen. Aberdeen Escocia, Reino Unido.

Jesus Niebla "Time to Take a Risk? Copyright Compliance and the Value of Automation". Dentro del Marco del British and Irish Law Education and Technology Association 2015 (BILETA) el 8 y 9 de abril del 2015, Bristol, Inglaterra. Llevado a cabo en la University of West England.

Contribution to Press, newspapers and other media

Smita Kheria was invited to provide an expert literature review for CopyrightEvidence.org, an online resource aimed at cataloguing a body of evidence on copyright that allows better navigation in a contested policy field.

Other News from 2015/16

SCRIPT conquers space, the final frontier:

After the success of last year, SCRIPT was once again able to support a moot team for 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 that this year will take place in Glasgow – we wish our "Astronauts" the best of luck!

SCRIPT supports LLM Debate:

LLM students debate responsibility of Internet Service providers at SCRIPT Centre event. On Friday 27 November, Edinburgh Law School's SCRIPT Centre hosted a debate for LLM students on the motion "This House believes that Internet Service Providers should be responsible for unlawful file sharing on the Internet".

The debate was organised and led by the class representatives on the 'Intellectual Property Law: copyright and related rights' course (Angela Ndambuki, Christopher Thordson, Giacomo Pizzolon and Jennifer Ching). It was aimed at enhancing the students' understanding of the diversity of issues at stake in regulation of content-sharing in the digital environment.

Speaking in favour of the motion, the students argued for a sophisticated regime of blocking websites that distribute copyright infringing content. Arguing against the motion, the students highlighted various human rights issues and potential abuses that may result from an extensive website-blocking regime. Both teams argued passionately while demonstrating a nuanced grasp of the topic, but the team opposing the motion secured a clear victory.

The debate was chaired by Dr Smita Kheria, Lecturer in Intellectual Property Law, who awarded two best speaker prizes to Giacomo Pizzolon (LLM in Intellectual Property Law) and Penny Wright (LLM in Innovation, Technology and the Law).