

Media & Arts Law Review (MALR)

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(speech, commentary, articles and media and arts law event included in this part are linked to the LexisNexis platform)

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- [Riding towards inclusion in the film industry: Quotas and special measures under Australian discrimination law](#)
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Diversity has long been a problem in the film industry, whether for actors, directors, or crew members. Various groups are under-represented in film, particularly women, persons with a disability, LGBTI+ persons, and those from diverse racial, cultural and linguistic backgrounds. To address this, Academy Award winner Frances McDormand used her 2018 Oscars acceptance speech to draw attention to inclusion riders. An inclusion rider is a clause that actors can incorporate into their contracts with film companies to require the film company to hire a more diverse range of candidates both on- and off-screen in a way that reflects the demography of a film's setting. Various actors and film companies have since flagged their plans to implement inclusion riders, yet their lawfulness remains largely unexamined. We consider how Australian discrimination law would apply to inclusion riders, focusing particularly on the 'special measures' provisions found in the four federal discrimination Acts. These provisions exempt otherwise unlawful discriminatory acts where they seek to further the opportunities of historically disadvantaged groups, thereby allowing for the use of quotas and other positive action in certain circumstances. We argue that inclusion riders would likely be lawful under these provisions, but that the inconsistency and complexity of special measures provisions in Australia renders further reform necessary in order to encourage and empower actors and film companies to take up inclusion riders.

- [Provenance and distributed ledger technology](#)
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The practice of recording artworks' provenance (their history of ownership) began in 18th century France. However, the use of 'provenance' in this sense was not recorded in English until the 1860s. Nevertheless, by the end of the 19th century, establishing provenance had become a critical activity

underpinning the trans-Atlantic trade in artworks. In the 20th century, restitution of artworks looted or otherwise unconscionably acquired during the Nazi period or under the conditions of colonialism, became dependent on establishing provenance. Despite its importance to the art world, gaps in accurate information necessarily challenge establishing authoritative provenance. Two recent developments in the art world have accentuated the importance of provenance. The first is the emergence of digital technology. Because two-dimensional artworks, such as photographs, are eminently copiable through digitisation, maintaining control over them is challenging. Artists may also create works using binary code. Potential collectors cannot be sure what it means to own such digital artworks, and issues around provenance are, in particular, unresolved. The second development is the financialisation of art, including securitisation and fractional ownership, and artworks being treated as a quasi-currency by wealthy collectors. In this context, proof of title and previous ownership, perhaps by a notable person, should influence, if not determine, an artwork's value. Distributed ledger technology of which blockchain is the best-known example, is commonly proposed as the solution to the problems of provenance. This article engages with the question whether distributed ledger technology-based provenance platforms, as currently proposed, are likely to solve provenance problems, as their proponents claim.

Freeing speech: Protecting the modern media defendant through the defence of qualified privilege

— *Patrick Hall*

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The defence of qualified privilege has failed to provide protection to media defendants and should be the subject of reform in the current push for change to the defamation landscape. This article proposes appropriate reforms from either the legislature or the courts. The current judicial approach in interpreting s 30 of the Defamation Act 2005 (NSW) in effect asks the defendant to justify his/her mistake and is flawed. This article proposes either the development of a common law defence of public interest (following the recent New Zealand Court of Appeal decision of *Durie v Gardiner*), statutory modification, or a marked change in interpretation of reasonableness to the existing statutory regime. Such a change would have a considerable impact, as the reasonableness requirement pervades both the constitutional and statutory defences and could provide greater support to the contemporary and traditional Australian journalist.

Regulating Philippine internet hate speech

— *Gemmo Bautista Fernandez*

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This article proposes the adoption of the approach of the United Nations Human Rights Committee and the European Court of Human Rights in dealing with online hate speech cases in the Philippines. The article considers the proliferation of hate speech in the Philippines and the approach of the Philippine courts in dealing with freedom of expression. The article then explores the rationale for the Philippine approach, which is that of the United States. The article considers the three-part test which is the approach adopted by the European Court of Human Rights and the United Nations Human Rights Committee in hate speech cases.

Media and Arts Law Event

Save the date: Media Law & IP Conference,
5–6 December 2019

— *Centre for Media and Communications Law and
Intellectual Property Research Institute of Australia*

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