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(articles and case note included in this part are linked to the two LexisNexis platforms)

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Articles

The art of crime: The application of literary proceeds of crime confiscation legislation to visual art
— *Natalie Skead and Jani McCutcheon* 253

Lexis Advance

Proceeds of crime legislation in every Australian jurisdiction includes, albeit in varying terms, provisions targeting the benefits derived from the commercialisation of crime, frequently referred to as 'literary proceeds'. There is little doubt that these provisions extend to the confiscation of benefits derived from the depiction of crime in written art forms and film. This article considers the novel question of whether Australian proceeds of crime legislation also captures benefits generated from the commercialisation of visual art. In doing so, we build on the emerging scholarship on the confiscation of the literary proceeds of crime. We explore a host of questions relevant to this form of criminal confiscation: What does it mean to 'exploit' criminal notoriety, particularly in the practice and commercialisation of 'criminal art'? When are benefits 'derived' from this exploitation? What is the cause of criminal notoriety, and how are criminal notoriety and artistic reputation reconciled? Is the commercialisation of visual art in this context unique? To fall within the scope of the legislation, must the art depict the criminal exploit, or is it sufficient that the notoriety of the criminal conduct confers an advantage on the artist that facilitates the commercial exploitation of the artwork? What if the artwork only partially depicts the criminal exploit? The analysis of these issues is relevant beyond the particular context of visual art and contributes to the scholarship on the confiscation of literary proceeds more generally.

Toward a proprietary interest in personal information
— *Eli Fisher* 274

Lexis Advance

Privacy law in Australia has failed to protect individuals' personal information for three main reasons: a lack of transparency over how personal information is used, especially at the point of consent; the impracticability of monitoring for compliance; and a level of enforcement that does not disincentivise violation. But the law has dealt with these issues before — and far more effectively. Copyright and privacy law share similar challenges in the digital era. Digital technology has democratised infringement, making it significantly easier and less costly for more people to violate copyright and privacy than ever before, and to do so with impunity. Yet, copyright has largely withstood the digital assault, and privacy law is in a state of crisis. This article proposes a new infrastructure for privacy law, which substantially reproduces the framework developed over many years to protect and regulate copyright rightsholders and consumers. It argues that by adopting a proprietary paradigm to personal information, the law can better give effect to the stated objectives of data protection.

Politics of community radio: The violation of the right to freedom of expression by the Botswana Government
— *Letshwiti Batlhalefi B Tutwane* 293

Lexis Advance

This article acknowledges community radio as an important tool in any democratic set up. The article locates community radio within the rubric of freedom of expression. Freedom of expression is a fundamental human right recognised by the United Nations and Botswana's own Bill of Rights. It naturally fits into the Western concept of liberal democracy. The article argues that community radio promotes citizenship and fosters national unity as opposed to division. In this context, the article criticises the Botswana Government's opposition to community radio as out of step with its democratic credentials. This is contrasted with other African countries such as Kenya and the Democratic Republic of Congo which are not historically known to be models of democracy, and newer democracies such as Namibia and South Africa. These countries are commended for their acceptance of community radio. The article argues that Botswana has to re-examine their position on the issue of community radio. Finally, the article argues that one option left for aspirant community radio operators such as institutions of learning is private enforcement of the law.

Data retention and its implications for journalists and Their sources: A way forward
— *Madeleine Wall* 315

Lexis Advance

Introduced in 2015, Australia's mandatory data retention regime has been controversial from the beginning. Public debate about privacy, data security, and the cost of the scheme continues. The concept of metadata appears to remain poorly understood, including by the government, with the regime's requirement for metadata to be retained in a context where it receives minimal safeguards premised on the false argument that metadata is not significantly privacy intrusive. Despite the late introduction of a warrant regime to cover journalists' metadata, the regime poses particularly significant problems for journalists, whose ability to protect the confidentiality of their sources is placed at significant risk. Journalists occupy a unique role in democratic society — a role that is recognised in human rights jurisprudence. Using the International Covenant on Civil and Political Rights as a benchmark, this article critiques the adequacy of the protections provided to journalists, in a context where there is increasing creation of metadata, which paints an increasingly detailed picture of the person's life. Ultimately concluding that the regime in its current form poses unacceptable risk for journalists, options for reform are proposed, which seek to provide greater protection for journalists and their sources, leading to a more proportionate scheme overall.

Case Note

Rebel without a cause of action:
Bauer Media Pty Ltd v Wilson [No 2]
— *Hope Williams* 350

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