

Oxford Intellectual Property Research Centre

Annual Report for Academic Year 2022-2023

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The Oxford Intellectual Property Research Centre (OIPRC) acts as a focal point for research, whilst showcasing the law faculty's diverse strengths across Intellectual Property law. This report provides an overview of the collective intellectual life as well as professional achievements of the IP community at Oxford, over this past academic year.

Graduate and Early Career Research Community

Over this past year, Professors Robert Burrell and Dev Gangjee continued to actively support our graduate students with their own research projects, commencing with the regular annual workshop on identifying research trends and related publication advice in October 2022. Following this, students were provided with written feedback on drafts of their papers, leading to several successful publications in leading intellectual property journals. These included articles by Yang Xiao, Sarah Mathew, Ataul Karim, Li Liu and Katarina Foss-Solbrekk. Professor Gangjee also acted as a discussant at the Kings College London SLS Early Career Research workshop (May 2023), where researchers – including Oxford DPhil candidate Caoimhe Ring – were given feedback on works in progress. This was followed by an international outreach event – [Planning and Placing for Publication: Guidance for IP Scholars \(15 June 2023\)](#) – co-hosted by Professors Ilanah Fhima of the UCL Institute of Brands and Innovation Law and Dev Gangjee of the OIPRC. This free online webinar attracted over 110 attendees, consisting of doctoral or early career IP scholars, from around the world. Leading IP scholars from Cambridge, Cardiff, Glasgow, KCL, Oxford, Queen Mary and UCL candidly shared insights on publishing in generalist law journals versus targeting specialist IP journals; the process of submitting a monograph proposal; the specific commitments involved when engaging in interdisciplinary research; the open access agenda; a recruiter's perspective and the relevance of the REF to publication decisions. The very appreciative feedback for this event has encouraged us to develop a follow-up session in 2023-2024, on interdisciplinary IP research. In 2023 Professor Burrell also supported a successful Marie Skłodowska Curie Action (MSCA) Fellowship, which brings Dr. Ozgur Arikan to the Law Faculty in 2023-2024, to explore whether Roman Law concepts of property have lessons for whether AI algorithms can gain recognised legal status, such that claims to AI-generated creations and inventions are facilitated. Dr. Arikan, currently an Assistant Professor in IP Law at Boğaziçi University, will join the OIPRC research community via this project.

The Oxford IP graduate community disseminated their research widely this past year, including the following highlights: Lauren Crais analysed the modes in which intangible cultural heritage migrates, at the annual, interdisciplinary [International Society for the History and Theory of IP \(ISHTIP\)](#) (Tel Aviv, June 2023). Janewa Osei-Tutu has presented widely on the legal protection of traditional cultural expressions across US law schools and most recently (September 2023) at the [Queen Mary Annual Conference in London](#). Katarina Foss-Solbrekk was felicitated for winning a European Policy for

Intellectual Property (EPIP) Young Scholar Award for her research on divisional patent applications in Kraków (September 2023).

Katarina wins EPIP Young Scholar Award



Anupriya Dhonchak was a research consultant for a report by the National Law University, Delhi on creating a legal framework for Non-Personal Data (NPD) Governance in India. She conducted interviews with Indian Government officials from the Ministry of Electronics and IT, as well as leading technology lawyers, competition regulators and other policymakers. Anupriya has also presented her MPhil research on 'A Feminist Approach to Publicity Rights in India' at Oxford, with forthcoming workshops in the US (November 2023).

Ataul Karim (text & data mining exceptions for machine learning) and Sarath Mathew (copyright aspects of e-Sports) presented their research in Geneva at the IP Researchers Conference Europe, co-hosted by the World Trade Organisation, the UN's World Intellectual Property Organisation and the University of Geneva (June 2023). Sarath's panel was chaired by the OIPRC's very own Professor Robert Burrell.

OIPRC in Geneva



Our research graduates continue to be recognised externally for the quality of their research and teaching in this field. Caoimhe Ring was appointed to a tenure-track [Lectureship in Intellectual Property](#) at the University of Bristol, while Marie White continues as a law lecturer for both Nottingham-Trent and UCL. We also celebrated the successful appointment of our IP Career Development Fellow, Dr. Van Anh Le, as a tenure-track Assistant Professor in Intellectual Property at Durham Law School. Amidst all this admirable food for thought, there was time for the occasional pizza and more sociable interaction as well.

Pizzas (and Intellectual Provocation...)



Research

The **(1) OIPRC invited speaker seminar series** and **(2) Intellectual Property Discussion Group seminars**, with an early career focus, continued to showcase research by leading scholars across the academic year. There were unfortunately some cancellations due to ongoing industrial action by academic staff across UK universities. Despite this, the OIPRC invited speaker seminars for 2022-2023 covered a wide range of topics and debates:

- ‘Trade Secrets in the Data Economy’ by Prof. Tanya Aplin, Dickson Poon School of Law, Kings College London
- ‘Intellectual Property & Sustainable Development: How Sustainable is IP?’ by Prof. Jaques de Werra, University of Geneva
- ‘An Empirical Test of Patent Hold-Out Theory: Evidence from Litigation of Standard Essential Patents’ by Prof. Christian Helmers, Santa Clara University
- ‘IP without creativity: the Investment-Driven Nature of IP monopolies’ by Dr. Patrick Goold and Dr. Enrico Bonadio, City University
- ‘Transparent AI: What do we Expect from it?’ by Dr Ulla Maija Mylly, Hanken School of Economics, Helsinki
- ‘Cancelling Dr Seuss (& Editing Roald Dahl)’ by Prof. Cathay Smith, University of Montana
- ‘A Pig in Wolf’s Clothing? *Peppa Pig v Wolfoo Cartoon* – the Story of a Global IP Dispute’ by Niall Trainor, Entertainment One

OIPRC Seminars by Prof. Werra (L) and Dr. Mylly (R)



At the initiative of Thais Gadotti, a specialist IP practitioner and Oxford MSc student, the OIPRC hosted an expert panel discussion on the use of alternative dispute resolution methods, including mediation and arbitration, for the settlement of Intellectual Property Disputes (November 2022). The online panel, [‘Alternative Dispute Resolution Methods for Intellectual Property Disputes: An International Perspective’](#) consisted of Prof. Gangjee from the OIPRC, Chiara Accornero (WIPO), Professor Wayne Stacy (UC Berkeley), and Alejandro Garcia (Stewarts). Prof. Gangjee presented the findings of an [empirical study he co-authored for WIPO](#) on the use of alternative dispute resolution mechanisms for digital copyright disputes.

The OIPRC also hosted the Trademark Scholars Roundtable (June 2022), an annual event which brings together some of the world's leading scholars on trade mark law and brands. Each year, the roundtable focuses on a combination of evergreen issues and topical challenges. The two issues selected were (1) as copyright and trade mark collide, whether the ornamental or decorative nature of a claimed mark ought to affect its registrability or subsequent scope of protection; and (2) the implications of abandoning a trade mark, for its previous owner and subsequent adopters. Attendees included IP Professors from Boston, Cambridge, Indiana Bloomington, Florida State, Glasgow, Harvard, KCL, NYU, UCLA and UCL.

TMSR 2022



This was also a year of significant institutional collaborations. As Centre Director, Professor Gangjee signed a memorandum of understanding on research collaboration with the [Centre for Technology, Robotics, Artificial Intelligence & the Law \(TRAIL\)](#), National University of Singapore (March 2023). This is part of a wider web of intellectual partnerships between the Oxford and NUS Law Faculties, complementing established collaborations between other private law colleagues. Professors Burrell and Gangjee have submitted chapters to a volume edited by Professor David Tan (NUS) on intellectual property in the fashion industry, while further avenues of collaboration continue to be developed.

Professor Gangjee hosted a visiting delegation of six academics from the [Centre for Studies of Intellectual Property Rights, Zhongnan University of Economics and Law](#), China (September 2023). The delegation included a senior Chinese scholar and Director of CSIPR, Professor Handong Wu, who has been closely involved with recent legislative revisions across key fields of Chinese Intellectual Property Law. CSIPR has proposed specific research collaborations in the next academic year, which are under consideration.

Visiting Delegation from Zhongnan



The Centre also collaborated with the University of Warsaw to organise *the Conference Modern challenges of IP law: Conference in memory of Prof. William Cornish* held at the University of Warsaw in September 2022. Speakers included current and former Advocates General at the Court of Justice of the EU as well as leading scholars from around Europe: [IP conference - British Law Centre](#).

Senior members of the centre continue to be productively involved in cutting-edge research. In 2022, Professors Gangjee and Burrell joined four other trade mark scholars to submit an academic intervention to the UK Supreme Court, requesting that it grant leave to appeal to the defendants in the [SkyKick](#) dispute. This relates to whether a tactical trade mark application, covering broadly defined products but for which the mark is very unlikely to be commercially used, amounts to bad faith, resulting in the mark being invalidated. Leave was granted and the UKSC decision is imminent. The impact of OIPRC research also continues to be seen in judicial citations. For example, in the past 12-months Professor Burrell's research was cited by the High Court of Australia (*Self Care IP Holdings Pty Ltd v Allergan Australia Pty Ltd* [2023] HCA 8); Federal Court of Australia (*Taylor v Killer Queen, LLC* (No 5) [2023] FCA 364); Australian trade mark office tribunal (*L'Oreal v Provendex Pty Ltd* [2023] ATMO 81); and High Court of Singapore (*Nippon Shinyaku Co, Ltd v Registrar of Patents* [2022] SGHC 164).

Professor Robert Burrell also continued his work on two longstanding projects. The first project concerns the notions of 'use' and 'non-use' in trade mark law. This project led to the publication of a book chapter on the nature of the right to control use in advertising in Beebe and Sun (eds.), *Charting Limitations on Trademark Rights* (OUP 2023). He also presented a paper on non-use to examiners and Hearing Officers at the Intellectual Property Office of Singapore in January 2023. The second project is concerned with 'crisis innovation'. It led to the publication of an article in late 2022 in the *Vanderbilt Journal of Entertainment & Technology Law* with Professor Catherine Kelly. It also led to Professor Burrell securing €45,000 funding from Deutsche Gesellschaft für Internationale Zusammenarbeit (the German Development agency) exploring whether patent waivers might help spread the dissemination of green technologies. Other members of the project team were Caoimhe Ring (DPhil student and now lecturer in law at Bristol University), Dr Su Jung Jee (Assistant Professor of Technology Management & Analytics at the Bradford School of Management) and Dr Kirstin Hotte (researcher in the Finance and Economics Programme at The Alan Turing Institute). Professor Burrell additionally presented papers on the theme of crisis innovation at the University of Haifa (May 2023) and the University of Sheffield (June 2023). In the first half of 2023, Professor Burrell secured a fellowship from the Intellectual

Property Institute of Japan (the research arm of the Japanese Patent Office) to spend eight weeks in Tokyo working on *Trade Mark Opposition Proceedings: Possibilities for and Barriers to Harmonization* ([available here](#)).

Professor Dev Gangjee is finalising an empirically informed report on Trade Marks and AI, co-authored with Professor Anke Moerland of Maastricht University. Dev and Anke have interviewed examiners, technologists and other officials from several leading trade mark registries over the past year, including the EUIPO, UKIPO, USPTO, BoIP and IP Australia. Their project is mapping various forms of machine learning being adopted into everyday registry practice, while analysing their implications for legal doctrine. A related issue is the extent to which legal standards are being incorporated into this new technology. For example, Google Images would assess the similarity of two logos notably differently from a trade mark examiner, so bespoke AI models are being developed. The open access report will be published in late 2023, in the OIPRC name.

As regards publications, the 6th edition of the UK's leading [Intellectual Property Law](#) textbook (OUP) was issued in October 2022. Professor Dev Gangjee co-authors the text along with Professors Lionel Bently (Cambridge), Brad Sherman (University of Queensland) and Phillip Johnson (Cardiff). In 2022 Dev has also published chapters on [intellectual property claims to machine generated data](#) (CUP) as well as [artificial intelligence implications for trade mark law](#) (Edward Elgar). He has recently completed a [detailed historical reconstruction of the first British trade mark registration system](#) of 1875 for Lionel Bently and Robert Bone (eds), *Research Handbook on the History of Trademark Law* (Edward Elgar, Forthcoming 2023).

Dev was invited to present his research by way of a Keynote Speech on '[ARIA: Funding High Risk, High Reward Innovation](#)' to the IPR Nanhu Forum in Qingdao (April 2023), a leading annual IP conference in China, now in its 20th year. He also delivered a public lecture on [Trade Mark Law and Artificial Intelligence](#) as the Lionel A. Sherridan Visiting Professor at NUS Singapore (August 2022). In terms of policy engagement, Dev appeared as an expert for the European Commission in a dialogue on [EU and China Geographical Indications Law Reform](#) (September 2023). As a commissioned expert, Dev contributed the United Kingdom and India chapters to WIPO's [Status Report on the Protection Against Unfair Competition in WIPO Member States](#) (2022). With other colleagues from across the EU, he co-authored a published [Opinion on the European Commission's Proposals for Broader Protection of Geographical Indications](#) (EIPR, 2023) seeking to make critical interventions in an imbalanced EU proposal.

Visiting Professors

Each year the centre hosts visiting scholars from around the world. Our research community benefits from their experience and participation. They often provide informal mentoring and feedback to our graduate researchers. Over the past academic year, our visitors were:

- Dr. Jingjing Hu, Lecturer in IP Law, Southwest University of Political Science and Law, China. Dr Hu was working on various projects relating to intermediary and online platform liability, analysed from a comparative law perspective.
- Professor Cathay Smith, University of Montana, whose current research examines racist (and sexist) content embedded in classic children's works, the different actions authors, copyright owners, and publishers have taken to remedy those works, and the potential legal and policy implications of those actions under copyright, moral rights, and free speech. Cathay

participated in many OIPRC activities over the year, including helping with judging the annual IP Moot.

- Dr Titilayo Adebola, University of Aberdeen, whose research interests in international and comparative Geographical Indications protection overlap with Professor Gangjee's. Collaborating on a future research proposal was discussed alongside the provision of feedback on current projects of Dr Adebola.
- Dr Xiaoren Wang, University of Dundee, who adopts empirical methods to test hypotheses derived from the law and economics tradition on various aspects of registered trade mark law. Dr Wang's current research focuses on whether the availability of colours for branding purposes is being 'depleted', since they are increasingly claimed as registered marks.

Moot

The annual Oxford Intellectual Property is arguably the best-known global IP moot. Whilst celebrating the 20th edition of the moot, we welcomed teams from Australia, Brazil, Canada, China, Germany, Hong Kong, India, Singapore, Switzerland, Ukraine and the United Kingdom. We also welcomed judges from the UK Supreme Court, Court of Appeal, top barristers' chambers, law firms and other universities.

OIPRC Moot Finals Winners and Judges



After seven rounds of intense competition litigating a moot case concerning copyright and pastiche in the context of movies, the Allen & Overy Winner of the Oral Proceedings 2023 was the University of Ottawa.

The Moot is a central feature of the IP landscape at Oxford. Each year, it introduces a cohort of some of the best law students from around the world to law at Oxford. A significant number return to Oxford for the BCL/MJur, while some embark on an IP career and return as moot judges in subsequent years. This event allows us to build enduring links with the IP bar and judiciary, which complements the IP solicitor networks that have grown up around the Oxford IP Diploma. This year, Lord Kitchin of the UK Supreme Court and Lord Justice Arnold of the Court of Appeal joined Professor Burrell in judging the grand finals. We remain grateful to Professor Emily Hudson, the Mistress of the Moot, for yet another enjoyable and thought-provoking moot experience.