



Oxford Intellectual Property Research Centre Annual Report 2023-2024

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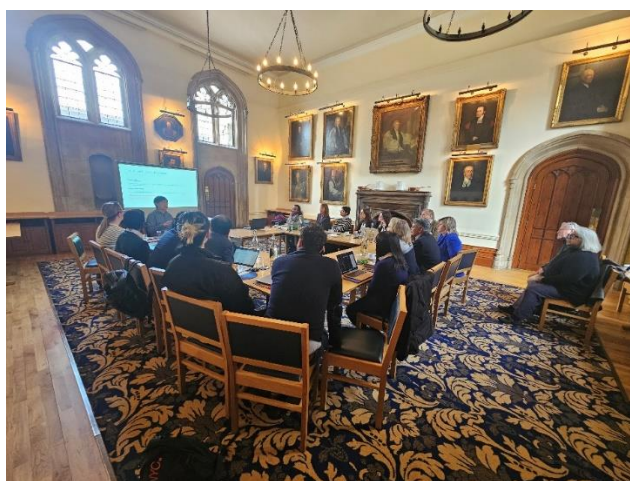
Annual Report for Academic Year 2023-2024

Prof. Dev S. Gangjee & Prof. Robert Burrell

The Oxford Intellectual Property Research Centre (OIPRC) acts as a focal point for IP research, showcasing the law faculty's diverse strengths across Intellectual Property law. This report provides an overview of the collective intellectual life, synergies as well as professional achievements of the IP community at Oxford, over this past academic year. This year, we were delighted to welcome Professor Emily Hudson to the IP research community at Oxford. Emily returns to Oxford as a Professor of Law and Fellow at Queen's College, having previously held posts at the University of Queensland (2009-2012), University of Oxford (2012-2015) and King's College London (2015-2023).

Graduate and Early Career Research Community

We are fortunate to have an active graduate research community, working across a range of IP issues of contemporary importance. On 20 October 2023, Professors Burrell, Gangjee and Hudson met with this group for a seminar on research priorities and practicalities. Over this past year, two day-long events were organised, enabling our graduates to present their current research and obtain feedback. The first was the joint **Stockholm-Oxford Research Student workshop** at Christchurch College on 25 April 2024, led by Dr. Branka Marusic, a research visitor at Oxford for 2023-24. Our graduates received valuable feedback from Stockholm IP colleagues (Prof. Frantzeska Papadopolou, Prof. Jonas Nordell and Prof. Lydia Lundstedt), while Profs. Hudson and Gangjee reciprocated with responses to the Stockholm Research students' presentations. Topics included the comparative protection of trade secrets; licensing technology on Fair, Reasonable and Non-Discriminatory (FRAND) Terms; how to assess music copyright infringement; and the extent to which an allegation of bad faith in trade mark law can prevent cluttered registers. Lele Xu, Ataul Karim, Max Wong and Li Liu presented their work-in-progress while (Phoebe) Chor Woo, Sarath Mathews, Shaffan Mohammed and Marie White were all in attendance. Later in the academic year, our graduate research students travelled to Cambridge to present their work at the student-led **Oxford-Cambridge IP Research Forum**.



Stockholm-Oxford Research Conference 2023



Oxford-Cambridge IP Research Forum 2024

The Oxford IP graduate community disseminated their research widely this past year, including the following highlights: Lauren Crais co-authored “An Unusual Cartography: Theoretical Migrations of Heritage” [2025] IPQ [forthcoming]. Li Liu published [‘Patent Quality: A Critique of the State of the Discussion’](#) [2024] IIC 499. Max Wong [reviewed](#) Enrico Bonadio and Chen Wei Zhu (eds), *Music Borrowing and Copyright Law: A Genre-by-Genre Analysis* (2023) in (2024) 87 Modern Law Review 1058. Sarath Mathews continued to work with the Centre for Technology, Entertainment, and Sports Law (CTESL) at the West Bengal National University of Juridical Sciences, to evolve a policy framework for regulating online gaming in India. Katarina Foss-Solbrekk presented on the misuse of divisional patent applications in the pharmaceutical sector at a Competition Law in the Pharma Sector conference organised by Informa Connect (December 2023). In attendance were major pharmaceutical companies and law firms, as well as members of the European Commission Competition Unit.



Katarina Presenting at CompLaw 2023

The IP research community also tested the waters with some contemplative punting in Trinity Term 2024. We launched the expedition from St Hilda's, sustained by the good wishes of two very junior members of the community, Ludovic-Franz (in the carrier) and an equally enthusiastic Hugo-Caspian, who remained safely ashore with their parents Max and Sally.

Punting in Hilary Term 2024



Indicating the number of longstanding IP debates resolved while punting...

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. The OIPRC invited speaker seminars for 2023-2024 hosted the following researchers and topics:

- ‘Generative AI and Copyright: Protection and Infringement of Inputs to and Outputs from the “Black Box” by Dr Chris Mammen, Managing Partner of Womble Bond Dickinson, San Francisco
- “Is the copyright era over? A view from the 18th century” by Professor Isabella Alexander, University of Technology, Sydney
- “The Use and Abuse of Copyright Levy Systems” by Prof. Cyrill Rigamonti, University of Geneva
- “30 years of the TRIPS Agreement: An Unwa(i)vering Balance?” by Mr. Wolf Meier-Ewert, Counsellor in the Intellectual Property Division, World Trade Organisation
- “Constructing a Complexity Framework for Traditional Knowledge” by Prof. Uma Suthersanen (Queen Mary) and Prof. Graham Dutfield (University of Leeds)

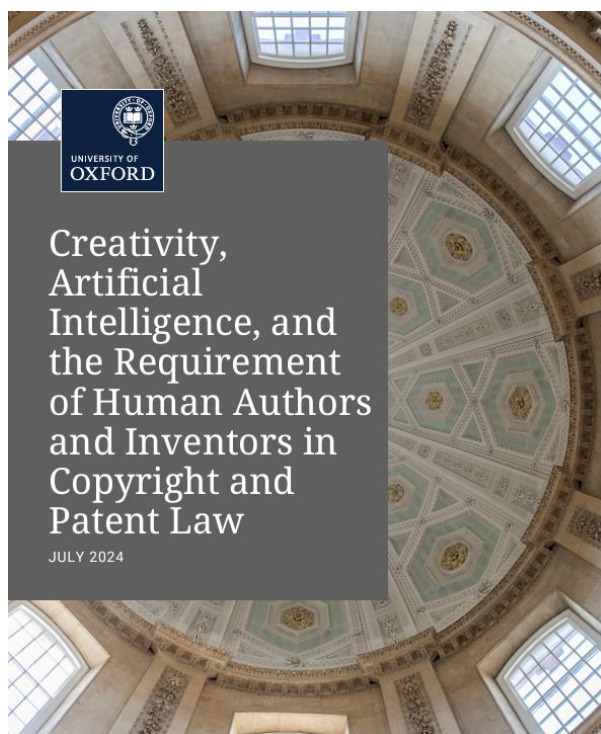
OIPRC Seminar by Prof. Rigamonti



This was complemented by the IP Discussion Group's roster of diverse and interesting presentations, including the following:

- "The Role of Copyright in Helping Build a Just and Inclusive Society" by Professor Graham Reynolds, University of British Columbia
- "Limitations of IP Jurisprudence in Protecting Intangible Cultural Heritages of Adivasis" by Abhijeet Kumar, Queen Mary UL
- "Copyright and Academic Publications" by Dr Christina Angelopoulos, University of Cambridge
- "Intellectual property protection for video games -- An MDA framework-based analysis" by Dr Angela Jia Wang, Durham University
- "Bridging the Digital Divide through Mobile Communication Standards: Intellectual Property and Economic Growth in the Global South" by Wayne Chinembiri, TU München

Dr Mammen (one of our invited speakers above) returned to Oxford on sabbatical in 2024 and established a multi-disciplinary working group on Artificial Intelligence and Intellectual Property Law, which included Professor Gangjee. A key rationale underlying the requirement of the human author or inventor recognised by IP law is that there is **something special and important about human creativity**. As generative AI becomes more capable of producing outputs that look like they could have been human-created, it has been argued that AI-generated outputs should be afforded copyright and patent protection, on the same basis as artefacts made by human authors and inventors. The group examined the concept of creativity from a multidisciplinary perspective and identified three conceptually distinct components, all of which are necessary for a complete account of creativity. Building on this enriched understanding the group concluded that IP law values not only the creativity of the artefact, but also (to varying extents) the subjective investment, discursive flows and social context leading up to its creation. So not just *what* is made but *how* it's made. AI creations do not engage with these pro-social reasons why we value creativity. The White Paper produced by the group is freely [available online](#).



Open Access White Paper on AI and Creativity

Senior members of the OIPRC were also actively engaged in research projects over the course of the year. Along with his co-author Professor Michael Handler, Professor Robert Burrell launched the third edition of [Australian Trade Mark Law](#) (3rd ed, Lexis Nexis, 2024). Valued for its comprehensiveness as well as critical perspectives, this treatise is steadily becoming the primary reference point for practitioners, courts and the trade mark registry, having been cited in several decisions during this period.¹



Prof. Burrell launches the latest edition of Australian Trade Mark Law

Both co-authors also published a major historical investigation into a narrow-but-potent model of registered trade mark protection: '[The garden path and the road not taken: the Australian approach to trade mark ownership and its connection with a lost model of trade mark registration](#)' in L. Bently and R. Bone (eds), *Research Handbook on the History of Trademark Law* (Edward Elgar 2024) 191. Prof. Burrell presented a public lecture on '[Intellectual Property and Innovation Policy Pluralism](#)', to mark the opening of the School of School of Global Governance, Nanjing Audit University. Robert co-organised and presented at a roundtable to mark the 400th Anniversary of the Statute of Monopolies 1623. Titled *Four Hundred Years of the Statute of Monopolies and its Progeny – Historical Paths and Future Prospects for Patent Law* (29 May 2024, Washington D.C.), the roundtable was co-hosted by the OIPRC, Loyola Marymount University, and George Washington University.

¹ *Roberts-Smith v Fairfax Media Publications Pty Limited* (No 41) [2023] FCA 555 (1 June 2023); *L'Oreal v Provendex Pty Ltd* [2023] ATMO 81 (22 June 2023); *Cantarella Bros Pty Ltd v Lavazza Australia Pty Ltd* (No 3) [2023] FCA 1258 (20 Oct 2023); *Limited Edition Surf Hardware Pty Ltd v TackX International Pty Ltd* [2023] ATMO 169 (30 Oct 2023); *Proven Associated Services Pty Ltd and Amandeep Nagpal v Global Car Group Pte Ltd* [2023] ATMO 207 (13 Dec 2023); *Taylor v Killer Queen, LLC* (No 5) [2023] FCA 364 (21 April 2023); *Natures Farmacy Pty Ltd v Greenteam Holdings Ltd* [2024] ATMO 15 (30 Jan 2024); *Comite Interprofessionnel du Vin de Champagne v Network Nutrition Pty Ltd* [2024] FCA 780 (11 July 2024); *Killer Queen, LLC v Taylor* [2024] FCAFC 149 (22 November 2024)



Roundtable participants with the 400th birthday cake for the Statute

The Statute of Monopolies 1624 enjoys a unique place in the origin story of intellectual property. It is widely said that the Statute laid the foundation of patent law throughout the common law world, providing a framework for thinking about patents that persists to this day. To mark the Statute's quadricentennial anniversary, Robert Burrell collaborated with Justin Hughes (Loyola Marymount University) and Bob Brauneis (George Washington University) to organise a workshop in Washington DC to reflect on the Statute and its continuing influence.

Professor Gangjee was on sabbatical for the first two terms of 2023-2024. During this period, he was a Visiting Professor at the University of Bern (Sep, Nov 2024) and a Visiting Researcher at the Max Planck Institute for Innovation and Competition in Munich (Feb 2024). Research presentations during this period included: [‘The Permissibility of Pre-Loved: Repair, Refurbishment and Upcycling in Trade Mark Law’](#), Queen Mary IP Research Institute Annual Conference 2023, University of London (15 Sep 2023); [‘A Quotidian Revolution? Artificial Intelligence and Trade Mark Law’](#), CIPIL Seminar, University of Cambridge (26 Oct 2023); [‘A Distinctive Absence: Registrable Trade Marks in 1875’](#), CREATE Trade Mark History Seminar, University of Glasgow (22 Nov 2023); [‘ARIA’s IP-Shaped Hole: A New Approach to Public Innovation Funding’](#), CREATE Public Lecture, University of Glasgow (31 Jan 2024); [‘“Does it Spark Joy?” Decluttering via Bad Faith’](#), UCL Annual Brand Seminar 2024 (7 Feb 2024); [‘Pantoptic Brand Protection: Machine Learning and Online Marketplaces’](#), Trademark Law Institute, Maastricht (June 2024).



Prof. Gangjee on the TLI Trade Marks and AI panel

During this period, Dev completed an original historical analysis of the UK's first trade mark registration system in [‘A Distinctive Absence: Registrable Trade Marks in 1875’](#) in Lionel Bently and Robert Bone (eds), *Research Handbook on the History of Trade Mark Law* (Edward Elgar, 2024) 17. He published two analyses of national unfair competition regimes for a special issue of the Journal of IP Law and Practice: [‘Law\(s\) against unfair competition: the legitimacy of the UK approach’](#) (2024) 19(2) JIPLP 90; [‘The incremental growth of unfair competition law in India’](#) (2024) 19(2) JIPLP 119. A new strand of his research investigates how online marketplaces such as eBay, Amazon and AliExpress use automated algorithms to detect and respond to trade mark infringement, establishing a parallel, privatised quasi-judicial structure: [‘Panoptic Brand Protection? Algorithmic Ascendancy in Online Marketplaces’](#) [2024] 46(7) EIPR 448. Rounding off the sabbatical was a chapter on how sustainability priorities can be embedded within the regulation of traditional fabrics and textiles sold under a geographical indications logo (Banaras saris or Harris Tweed), as a counterweight to fast fashion: [‘Threads that Last: Geographical Indications for Textiles’](#) in David Tan, Jeanne C Fromer and Dev S Gangjee (eds), *Fashion and Intellectual Property* (Cambridge University Press, 2024) [Forthcoming]. In June 2024, he acted as a legal consultant for an overseas government challenging the registration of a geographical indication before the European Commission, assisting with formulating the basis for the legal challenge.

In 2023, Professor Gangjee's monograph on [Geographical Indications Protection](#) was translated into Mandarin, by a team of Chinese IP experts led by Dr Jing Li, Associate Professor at Jinan University, Guangzhou. During a visit to the UK, Prof. Li visited Oxford to present Prof. Gangjee with a copy of the translated monograph.



Prof. Gangjee's monograph on GIs was translated into Mandarin in 2023

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:

- Professor Cyrill Rigamonti, University of Bern who was researching aspects of remedies in IP law, the use and abuse of copyright levies and the emergence of the Unitary Patent Courts system.
- Professor Uma Suthersanen, QMUL who was developing a complexity theory lens with which to analyse the lengthy and politically contentious international negotiations around the protection of traditional knowledge.
- Professor Juan Antonio Vives-Valles, University of the Balearic Islands (UIB) who was collaborating with Professor Gangjee on evaluating how New Genetic Technology, including CRISPR-Cas gene editing, is being applied in the field of viticulture and its implications for introducing innovations into traditional wine GIs. A co-authored paper has been submitted to a leading international IP journal and a decision is awaited.
- Professor Isabella Alexander, UT Sydney who was conducting archival research on artistic statutory copyright in the early 18th century.

Moot

The annual Oxford Intellectual Property is arguably the best-known global IP moot. For this 21st iteration of the moot, we welcomed teams from Australia, Brazil, Cambodia, Canada, China, France, Germany, India, Iran, Singapore, Ukraine, the US, and the UK. We also welcomed judges from the UK Supreme Court, Court of Appeal, leading specialist IP barristers as well as solicitors and colleagues from other universities.

OIPRC Moot Finals Winners: University of Ottawa



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 2024 was the University of Ottawa. A full list of the results is available [here](#).

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 Justice Birss 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 exceptional moot experience.