

# Publications for Kimberlee Weatherall

## 2018

Weatherall, K. (2018). The Emergence and Development of Intellectual Property Law in Australia and New Zealand. In Rochelle Dreyfuss, Justine Pila (Eds.), *The Oxford Handbook of Intellectual Property Law*, (pp. 291-314). United Kingdom: Oxford University Press. <a href="http://dx.doi.org/10.1093/oxfordhb/9780198758457.013.17">[More Information]</a>

## 2017

Giblin, R., Weatherall, K. (2017). A collection of impossible ideas. In Rebecca Giblin, Kimberlee Weatherall (Eds.), *What if we could Reimagine Copyright?*, (pp. 315-332). Acton: ANU Press.

Weatherall, K. (2017). A reimagined approach to copyright enforcement from a regulator's perspective. In Rebecca Giblin, Kimberlee Weatherall (Eds.), *What if we could Reimagine Copyright?*, (pp. 281-313). Acton: ANU Press.

Burt, J., McFarlane, K., Kelly, S., Humphreys, M., Weatherall, K., Burrell, R. (2017). Brand Name Confusion: Subjective and Objective Measures of Orthographic Similarity. *Journal of Experimental Psychology: Applied*, 23(3), 320-335. <a href="http://dx.doi.org/10.1037/xap0000127">[More Information]</a>

Goggin, G., Vromen, A., Weatherall, K., Martin, F., Webb, A., Sunman, L., Bailo, F. (2017). *Digital Rights in Australia*. <a href="http://digitalrightsusyd.net/research/digital-rights-in-australia-report/">[More Information]</a>

Humphreys, M., McFarlane, K., Burt, J., Kelly, S., Weatherall, K., Burrell, R. (2017). How Important is the Name in Predicting False Recognition for Lookalike Brands? *Psychology, Public Policy, and Law*, 23(3), 381-395. <a href="http://dx.doi.org/10.1037/law0000133">[More Information]</a>

Giblin, R., Weatherall, K. (2017). If we redesigned copyright from scratch, what might it look like? In Rebecca Giblin, Kimberlee Weatherall (Eds.), *What if we could Reimagine Copyright?*, (pp. 1-23). Acton: ANU Press.

Humphreys, M., McFarlane, K., Burt, J., Kelly, S., Weatherall, K., Burrell, R. (2017). Recognition in context: Implications for trade mark law. *Psychonomic Bulletin and Review*, 24(4), 1665-1672. <a href="http://dx.doi.org/10.3758/s13423-017-1235-6">[More Information]</a>

Weatherall, K. (2017). The Consumer as the Empirical Measure of Trade Mark Law. *The Modern Law Review*, 80(1), 57-87. <a href="http://dx.doi.org/10.1111/1468-2230.12242">[More Information]</a>

Giblin, R., Weatherall, K. (2017). *What if we could Reimagine Copyright?*. Acton: ANU Press.

## 2016

Weatherall, K. (2016). Intellectual Property in the TPP: Not 'The New TRIPS'. *Melbourne Journal of International Law*, 17(2), 1-29.

Giblin, R., Weatherall, K. (2016). Making Sense of "the Public Interest" in Copyright. In Christophe Geiger (Eds.), *Intellectual Property and Access to Science and Culture: Convergence or Conflict?*, (pp. 66-78). Switzerland: CEIPI/ICTSD.

Giblin, R., Weatherall, K. (2016). Making Sense of "the Public Interest" in Copyright - in Intellectual Property and Access to Science and Culture: Convergence or Conflict? *Global Perspectives and Challenges for the Intellectual Property System*, 3, 66-78.

Weatherall, K. (2016). Safeguards for Defendant Rights and Interests in International Intellectual Property Enforcement Treaties. *American University International Law Review*, 32(1), 211-281.

## 2015

Giblin, R., Weatherall, K. (2015). At the intersection of public service and the market: Libraries and the future of lending. *Australian Intellectual Property Journal*, 26(1), 4-26.

Bowrey, K., Handler, M., Nicol, D., Weatherall, K. (2015). *Australian Intellectual Property: Commentary, Law and Practice - Second Edition*. Australia: Oxford University Press.

Weatherall, K. (2015). Provocations and challenges concerning enforcement and civil procedure in IP. In Graeme B. Dinwoodie (Eds.), *Intellectual Property And General Legal Principles: Is IP a Lex Specialis?*, (pp. 181-205). Cheltenham: Edward Elgar Publishing. <a href="http://dx.doi.org/10.4337/9781784714956.00014">[More Information]</a>

Weatherall, K. (2015). The Australia-US free trade agreement's impact on Australia's copyright trade policy. *Australian Journal of International Affairs*, 69(5), 538-558. <a href="http://dx.doi.org/10.1080/10357718.2015.1048778">[More Information]</a>

Weatherall, K. (2015). What Was Left Out of ACTA. In Pedro Roffe, Xavier Seuba (Eds.), *The ACTA and the Plurilateral Enforcement Agenda: Genesis and Aftermath*, (pp. 338-344). New York, United States: Cambridge University Press. <a href="http://dx.doi.org/10.1017/CBO9781107707207.031">[More Information]</a>

## 2014

Weatherall, K. (2014). All Tied Up: Australia's Inexplicable International IP Policy. *Sydney Law School - National University of Singapore Symposium 2014*, Sydney, NSW: Presentation.

Alexander, I., Burrell, R., Handler, M., Hudson, E., Weatherall, K. (2014). *Attorney-General's Department and Department of Communications: Submission in response to Online Copyright Infringement Discussion Paper*.

Weatherall, K. (2014). Australia's Copyright Trade Policy. *Academy of the Social Sciences in Australia (ASSA) 2014 Workshop: Ten years after the Australia-US free trade agreement - Where to for Australia's trade policy?*, Kensington, NSW: Presentation.

Weatherall, K. (2014). Culture clash: The Australian Law Reform Commission's discussion of retransmission and the world of broadcast. *Australian Intellectual Property Journal*, 24(4), 202-217.

Weatherall, K. (2014). Enforcement in the Public Interest. *Copyright and the Public Interest Workshop 2014: Center for International Intellectual Property Studies*, Strasbourg, France:

Presentation.

Weatherall, K. (2014). First sack all the lawyers: on the damage a lawyerly approach is doing to international innovation policy. *5th Asia-Pacific Innovation Conference (APIC) 2014*, Sydney, NSW: Presentation.

Weatherall, K. (2014). Ignoring the science: What we know about patents suggests dire consequences from ACTA and the TPPA. In Bryan Mercurio, Kuei-Jung Ni (Eds.), *Science and Technology in International Economic Law: Balancing Competing Interests*, (pp. 211-228). London, UK: Routledge. <a href="http://dx.doi.org/10.4324/9780203381700">[More Information]</a>

Weatherall, K., Webster, E. (2014). Patent Enforcement: A Review of the Literature. *Journal of Economic Surveys*, 28(2), 312-343. <a href="http://dx.doi.org/10.1111/joes.12009">[More Information]</a>

Weatherall, K. (2014), *Submission to the Joint Standing Committee on Treaties and to the Senate Standing Committee on Foreign Affairs, Defence and Trade References, Commonwealth of Australia, Inquiry into the Korea-Australia Free Trade Agreement (June 2014)*.

Weatherall, K. (2014), *Submission to the Joint Standing Committee on Treaties, Commonwealth of Australia, Inquiry into the Japan-Australia Economic Partnership Agreement (August 2014)*.

Weatherall, K. (2014), *Submission to the Senate Standing Committee on Foreign Affairs, Defence and Trade, Commonwealth of Australia, Inquiry into the Trade and Foreign Investment (Protecting the Public Interest) Bill 2014 (April 2014)*.

Weatherall, K. (2014). The interaction between investor-state dispute settlement and IP. *International Trade Law Symposium 2014: International Law Section of the Law Council of Australia*, Canberra, ACT: Presentation.

## 2013

Weatherall, K. (2013). The Constitutional Implications of Regulating Intellectual Property: The Case of Australia's Tobacco Plain Packaging Legislation. *Geneva-Harvard-Renmin-Sydney Law Faculty Conference (2013)*, Geneva: Latsis Foundation.

Weatherall, K. (2013). The Impact of ACTA. *32d Annual Congress of the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP)*, Pretoria, South Africa: International Association for the Advancement of Teaching and Research in Intellectual Property.

Weatherall, K. (2013). The Relationship between User-generated Content and Commerce. In D Hunter, R Lobato, M Richardson and J Thomas (Eds.), *Amateur Media: Social, Cultural and Legal Perspectives*, (pp. 59-69). Oxon, United Kingdom: Routledge. <a href="http://dx.doi.org/10.4324/9780203112021">[More Information]</a>

Weatherall, K. (2013). The TPP as a case study of changing dynamics for international intellectual property negotiations. In Tania Voon (Eds.), *Trade Liberalisation and International Co-operation: A Legal Analysis of the Trans-Pacific Partnership Agreement*, (pp. 50-74). Cheltenham, United Kingdom: Edward Elgar Publishing. <a href="http://dx.doi.org/10.4337/9781782546788.0000">[More Information]</a>

Weatherall, K. (2013). Three provocations regarding IP's special status in civil procedure. *32d Annual Congress of the*

*International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP)*, Pretoria, South Africa: International Association for the Advancement of Teaching and Research in Intellectual Property.

## 2012

Burrell, R., Handler, M., Hudson, E., Weatherall, K. (2012). *ALRC Inquiry into Copyright and the Digital Economy*, Issues Paper No. 42, (pp. 1 - 76). Canberra, Australia: Australian Law Reform Commission.

Weatherall, K. (2012). Copyright and the Digital Economy: So Many issues, so little time. *Copyright and the Digital Economy: So Many Issues, So Little Time*.

Weatherall, K. (2012). Evaluating SOPA: Who Should Enforce IP Online? *Telecommunication Journal of Australia*, 62(4), 59.1-59.13.

Weatherall, K. (2012). Optus TV Now Decision. *Optus TV Now Seminar*, Sydney: Communications and Media Law Association inc.

Weatherall, K. (2012), *Submission to the Joint Standing Committee on Treaties Inquiry into the Anti-Counterfeiting Trade Agreement*: self-published.

Weatherall, K. (2012). The Lessons of ACTA and its Aftermath. *Suffolk University Transnational Law Review 2012 Symposium*.

Weatherall, K. (2012). The New (Old) War on Copyright Infringement, and How Context is Opening New Regulatory Possibilities. *Media International Australia*, May 2012(143), 110-121. <a href="http://dx.doi.org/10.1177/1329878x1214300113">[More Information]</a>

Weatherall, K. (2012). The Trans-Pacific Partnership. *2012 Australian Digital Alliance Copyright Forum*, National Library of Australia, Canberra: Australian Digital Alliance.

Huang, V., Weatherall, K., Webster, E. (2012). The Use of Survey Evidence in Australian Trade Mark and Passing Off Cases. In A Kenyon, N Wee Loon, M Richardson (Eds.), *The Law of Reputation and Brands in the Asia Pacific*, (pp. 181-202). Cambridge: Cambridge University Press. <a href="http://dx.doi.org/10.1017/CBO9781139084604.016">[More Information]</a>

Weatherall, K. (2012). Three Lessons from ACTA and its Political Aftermath. *Suffolk Transnational Law Review*, 35(3), 575-603.

## 2011

Weatherall, K. (2011). ACTA and the TPP a new breed of international IP agreements and what they tell us about international law-making. *Trade, Science, Technology and Justice Conference*.

Weatherall, K. (2011). ACTA as a New Kind of International IP Lawmaking. *American University International Law Review*, 26(3), 839-901.

Weatherall, K. (2011). *An Australian Analysis of the February 2011 Leaked US TPPA IP Chapter Text - copyright and enforcement*, (pp. 1 - 68). , Australia: self-published.

Weatherall, K. (2011). Copyright: A time traveller's perspective. *15th Biennale Copyright Law and Practice Symposium 2011*, Australia: Australian Copyright Council.

Weatherall, K. (2011). IP in a Changing Environment. In Kathy Bowrey, Michael Handler and Dianne Nicol (Eds.), *Emerging Challenges in Intellectual Property*, (pp. 1-29). Oxon: Oxford University Press.

Weatherall, K., Rotstein, F., Dent, C., Christie, A. (2011). Patent Oppositions in Australia: The Facts. *UNSW Law Journal*, 34(1), 93-135.

Weatherall, K. (2011). Politics, Compromise, Text and the Failures of the Anti-Counterfeiting Trade Agreement. *Sydney Law Review*, 33(2), 229-263.

Burrell, R., Weatherall, K. (2011). Providing Services to Copyright Infringers: Roadshow Films Pty Ltd v iiNet Ltd. *Sydney Law Review*, 33(4), 801-830.

Weatherall, K. (2011). So Call Me a Copyright Radical. *Copyright Reporter*, 29(4), 123-133.

Weatherall, K. (2011). Stories of Copyright Policy: The shift to an innovation agenda and what it might mean. *Telecommunication Journal of Australia*, 61(1), 11.1-11.16.

Weatherall, K. (2011). The Politics of Linkages in U.S. Preferential Trade Agreements. In Tomer Broude, Marc L. Busch, Amelia Porges (Eds.), *The Politics of International Economic Law*, (pp. 40-63). Cambridge, UK: Cambridge University Press.

Weatherall, K. (2011). The Trans-pacific partnership: Concerns about Intellectual Property. *Seminar to Members of Japanese Parliament*.

Weatherall, K. (2011). Why Developed Countries should be interested in the development Agenda. *Global Congress on Public Interest Intellectual Property Law*.

## 2010

Weatherall, K. (2010). *ACTA - Australian Section by Section Analysis*, (pp. 1 - 66). Brisbane, Australia: self-published.

Weatherall, K., Webster, E. (2010). Patent Infringement in Australia: Results from a Survey. *Federal Law Review*, 38(1), 21-70.

Weatherall, K. (2010). Telling Stories in Copyright Policy. *Conference of the Centre for Media and Communications Law*.

Weatherall, K. (2010). The Anti-Counterfeiting Trade Agreement and Australia. *The Anti-counterfeiting trade agreement and Australia*.

Weatherall, K. (2010). The Future of Copyright Law in Australia and the Role of ISPs. *High Tech Crime Conference*.

## 2009

Weatherall, K. (2009). Copyright and Architecture. *UQ-Cambridge IP History Roundtable*.

Weatherall, K. (2009). Intellectual Property in a Possible China-Australia Free Trade Agreement. In Sisira Jayasuriya, Donald Maclaren and Gary Bryan Magee (Eds.), *Negotiating a Preferential Trading Agreement: Issues, Constraints and Practical Options*, (pp. 155-169). Cheltenham: Edward Elgar Publishing.

Weatherall, K., Webster, E., Bently, L. (2009). *IP Enforcement in the UK and Beyond: A Literature Review*, SABIP Report (Number EC001), (pp. 5 - 77). London, United Kingdom: The Strategic Advisory Board for Intellectual Property Policy.

Weatherall, K. (2009). IP in the Trans-Pacific Partnership. *Workshop on the Trans-Pacific*.

Weatherall, K. (2009). It's Not Just Competitors: Acknowledging and Accommodating "Interfering Busybodies" and their Challenges to Patent Validity. *The Journal of World Intellectual Property*, 12(5), 500-523. <a href="http://dx.doi.org/10.1111/j.1747-

1796.2009.00372.x">[More Information]</a>

## 2008

Burrell, R., Weatherall, K. (2008). Exporting Controversy? Reactions to the Copyright Provision of the U.S. - Australia Free Trade Agreement: Lessons for U.S. Trade Policy. *University of Illinois Journal of Law, Technology and Policy*, 2008 (2), 259-319.

Leahy, A., Maclaren, D., Morgan, D., Weatherall, K., Webster, E., Yong, J. (2008). In the Shadow of the China-Australia FTA Negotiations: What Australian Business Thinks About IP. *Economic Papers*, 27(1), 1-18. <a href="http://dx.doi.org/10.1111/j.1759-3441.2008.tb01022.x">[More Information]</a>

Weatherall, K. (2008). Interfering Busybodies? The role of third parties in challenging the validity of patents. *The New Zealand Centre for International Law*.

Weatherall, K. (2008). As Others See Us™: The Political Costs of Expanding the Issues in US Bilateral Trade Policy. *2008 Biennale Interest Group Conference*, Washington D.C.: American Society of International Law.

## 2007

Rotstein, F., Weatherall, K. (2007). Filing and Settlement of Patent Disputes in the Federal Court: 1995-2005. *Intellectual Property Forum*, 68(March 2007), 65-74.

Christie, A., Waller, A., Weatherall, K. (2007). Intellectual Property & Free Trade Agreements. In Christopher Heath and Anselm Kamperman Sanders (Eds.), *Intellectual Property and Free Trade Agreements*, (pp. 211-223). Oxford, UK: Hart Publishing.

Weatherall, K. (2007). Of Copyright Bureaucracies and Incoherence: Stepping Back From Australia's Recent Copyright Reforms. *Melbourne University Law Review*, 31(3), 967-1016.

Weatherall, K. (2007). Pretend-y Rights: On the Insanely Complicated New Regime for Performers Rights in Australia, and how Australian Performers got Ripped Off. In Fiona Macmillan and Kathy Bowrey (Eds.), *New Directions In Copyright Law, Volume 3*, (pp. 171-197). Surrey, UK: Edward Elgar Publishing.

Weatherall, K. (2007). Response to Dale Clapperton's Article. *Australian Intellectual Property Law Bulletin*, 19(9), 145-146.

Weatherall, K. (2007). *Submission: Draft Guidelines on the Infringement Notices and Forfeiture of Infringing Copies and Devices Scheme, Copyright Amendment Regulations 2006*.

Weatherall, K. (2007). The Impact of Copyright Treaties on Broadcast Policy. In Andrew T Kenyon (Eds.), *TV Futures: Digital Television Policy in Australia*, (pp. 242-273). Australia: Melbourne University Press.

Weatherall, K. (2007). The OzDMCA: what it means for FOSS. *linux.conf.au Sydney 2007*, Sydney: Seven.

## 2006

Weatherall, K. (2006). Can Substantive Law Harmonisation and Technology Provide Genuine Alternatives to Conflicts Rules in Intellectual Property. *Media and Arts Law Review*, 11(4), 393-417.

Weatherall, K., Dent, C. (2006). *Copyright, the Arts and Artists in Australia: A Review*.

Weatherall, K. (2006). Infringement of copyright in television broadcast -What constitutes "substantial" portion of original broadcast - Substantiality depends on quality not quantity - Copyright Act 1968 (Cth), Secs. 10, 87, 91 - [2005] FCAFC 53 -

TCN Channel Nine Pty Limited v. Network Ten Pty Limited (No. 3) - "The Panel". *IIC - International Review of Intellectual Property and Competition Law*, 73(3), 356-357.

Dent, C., Weatherall, K. (2006). Lawyers'™ decisions in Australian patent dispute settlements: An empirical perspective. *Australian Intellectual Property Journal*, 17(4), 255-276.

Weatherall, K., Hudson, E., Newell, A. (2006). *Open Licensing and the State Library of Victoria: A Consideration of Copyright Strategies for the Digital Dissemination of Certain Library Publications*.

Weatherall, K. (2006). *Submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Copyright Amendment Bill 2006*.

Bosland, J., Weatherall, K., Jensen, P. (2006). Trade Mark and Counterfeit Litigation in Australia. *Intellectual Property Quarterly*, 4(2006), 347-377.

Weatherall, K., Hudson, E., Rotstein, F. (2006). *Use of Creative Commons and Similar Licensing Mechanisms by Governmental and Public Institutions*.

Weatherall, K. (2006). Would you ever recommend a Creative Commons license? *Unlocking IP 2006 Conference*, Sydney: Australasian Legal Information Institute.

## 2005

Weatherall, K. (2005). 'Pretend-Y Rights.' on the Insanely Complicated New Regime for Performers' Rights in Australia, and How Australian Performers Got Gyped. *Copyright Research Network Workshop on Rights Neighbouring to Copyright (2005)*, Sydney: AHRC Copyright Research Network.

Weatherall, K., Jensen, P. (2005). An Empirical Investigation into Patent Enforcement in Australian Courts. *Federal Law Review*, 33(2), 239-286.

Weatherall, K. (2005). Australia-US Free Trade Agreement-circumventing the rationale for anti-circumvention? *Internet Law Bulletin*, 7(9), 121-126.

Jensen, P., Morgan, O., Weatherall, K., Webster, E. (2005). *Factors Affecting the Use of Intellectual Property (IP) Protection by Small and Medium Enterprises (SMEs) in Australia - Volume 1 (Executive Summary & Findings)*.

Weatherall, K. (2005). Internet Cultures "Not an Oxymoron" Kathy Bowrey, Law and Internet Cultures (2005). *Sydney Law Review*, 27(4), 753-760.

Weatherall, K. (2005). *Response to Attorney-General's™ Department Part V Division 2AA of the Copyright Act 1968 (Cth) Limitation on Remedies Available against Carriage Service Providers: Does the Scheme need to be Expanded?*.

Weatherall, K., Hudson, E. (2005). *Response to the Issues Paper: Fair Use and Other Copyright Exceptions in the Digital Age*.

Weatherall, K., Bosland, J. (2005). *Submission on the Advisory Council on Intellectual Property's Final Report on the Review of Trade Mark Enforcement*.

Weatherall, K., Waller, S. (2005), *Submission to the Advisory Council on Intellectual Property Options Paper on Patents and Experimental Use*.

Weatherall, K. (2005), *Submission to the House of Representatives Legal and Constitutional Affairs Committee: Inquiry into technological protection measures exceptions*.

Weatherall, K. (2005), *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the provisions of*

*the Copyright Amendment (Film Directors' Rights) Bill 2005*.

## 2004

Weatherall, K. (2004). Before the High Court: On Technology Locks and the Proper Scope of Digital Copyright Laws - Sony in the High Court. *Sydney Law Review*, 26, 613-638.

Weatherall, K. (2004). Locked In: Australia Gets a Bad Intellectual Property Deal. *Policy*, 20(4), 18-24.

Weatherall, K. (2004). Public Culture/Private Culture: Copyright law, Creative Commons and the Elusive Role of the Public Domain. *Unlocking IP Conference (2004)*, Sydney: Cyberspace Law and Policy Centre.

Waller, S., Elkman, S., Weatherall, K., Christie, A. (2004). *Senate Select Committee on the Australia-United States Free Trade Agreement: Gene Patenting and Human Health*.

Waller, S., Elkman, S., Weatherall, K., Christie, A. (2004), *Submission to the Australian Law Reform Commission in response to its Discussion Paper 68: Gene Patenting and Human Health*.

Weatherall, K. (2004). *Submission to the Joint Standing Committee on Treaties Hearing on the Australia-United States Free Trade Agreement*.

Weatherall, K. (2004). *Submission to the Senate Select Committee on the Australia-United States Free Trade Agreement*.

Weatherall, K. (2004). *Supplementary Submission to the Senate Select Committee on the Australia-United States Free Trade Agreement*.

## 2003

Weatherall, K., Adal, Y., Elkman, S., Moritz, S. (2003). *A Study of Funding for Major Research Infrastructure and University Sector Research in Six Countries*.

Weatherall, K. (2003). A Very Dynamic Issue: International Developments in Privacy in the Last 12 Months. *AIAL Forum*, 38(2003), 81-91.

Weatherall, K., Rolph, D. (2003). Dow Jones v Gutnick: Strum und Drang or Storm in a teacup? - Part 1. *Internet Law Bulletin*, 6(1), 7-11.

Weatherall, K., Rolph, D. (2003). Dow Jones v Gutnick: Strum und Drang or Storm in a teacup? - Part 2. *Internet Law Bulletin*, 6(2), 18-22.

## 2002

Weatherall, K. (2002). Beyond Napster: Using Antitrust Law to advance and enhance online music distribution. *Boston University Journal of Science and Technology Law*, 8(2), 451-573.

## 2001

Weatherall, K. (2001). Culture, Autonomy and Djulibinyamurr: Individual and Community in the Construction of Rights to Traditional Designs. *The Modern Law Review*, 64(2), 215-242.

## 1999

Weatherall, K. (1999). An End to Private Communications in Copyright?: The Expansion of Rights to Communicate Works to the Public - Part 1. *European Intellectual Property Review*, 21(7), 342-353.

Weatherall, K. (1999). An End to Private Communications in Copyright?: The Expansion of Rights to Communicate Works to the Public - Part 2. *European Intellectual Property Review*,

