

# Editors' Note

Dear readers

Happy new year to one and all! As we kick off 2024, we would like to reflect on the massive year that was 2023 for CAMLA lawyers.

Defamation litigation was especially high-profile. **Justice Besanko** handed down his judgment in the defamation law “trial of the century”, with **Ben Roberts-Smith** losing his defamation claim against **Nine** and three of its journalists, **Nick McKenzie**, **Chris Masters** and **David Wroe**. Roberts-Smith is appealing the Federal Court’s decision. The **Bruce Lehrmann** claim against **Network Ten** and **Lisa Wilkinson** is concluding at the time of this edition’s publication. Elsewhere, our new defamation laws have been tested, with courts having provided some guidance about the **public interest defence** and **serious harm test**, as well as the new **choice of laws** issues created by the non-uniform adoption of the 2021 amendments to the Model Defamation Provisions, to name only a few.

Copyright litigation went all the way to the Supreme Court of the US, in the high-profile **Andy Warhol** case, and all the way to the High Court of Australia in the recent **Real Estate Tool Box v Campaigntrack** case. The latter case provided some important answers about authorisation by indifference.

**Privacy** and **cybersecurity** law continue their run of the last few years of being one of the areas of law most scrutinised and most rapidly evolving. The **Privacy Act** is undergoing its most significant reform process at least since the APPs were implemented, and perhaps ever. The **scope** and **application** of the Act are likely to change, with the types of data governed by the Privacy Act to be expanded, and various **exceptions** being narrowed or abolished entirely. There may be significantly enhanced protections, including through new **individual rights**, plus a new requirement for the processing of data to be objectively “**fair and reasonable**”. The way companies govern their data practices will likely need to change significantly, with new requirements for consent, notices, record-keeping, and privacy officers. For media companies, great attention was placed on changes to the **journalism exemption** and to the introduction of a **statutory tort for serious invasions of privacy**.

2023 was also a watershed year for content creation and distribution, with **prominence** reforms ensuring that FTA broadcasting services are more discoverable on smart TVs, and that the **anti-siphoning scheme** includes online services and subscription television broadcasting licensees. Although the legislation has been deferred until next year, the industry worked hard throughout 2023 on the Government’s proposed reforms to introduce **local content obligations** for international streamers. All the while, Hollywood experienced a “double strike” for the second time ever, and the first time since 1960, with writers and actors calling a strike for significant portions of 2023.

What unites all these areas of CAMLA interest – defamation, copyright, privacy, content creation and distribution – and others, such as misinformation, IT, news reporting, digital platforms and online safety is a collective struggle to grapple with developments in **Artificial Intelligence**. If Time Magazine gets to select a *Person of the Year* annually, and People Magazine nominates an annual *Sexiest Man Alive*, then surely generative AI and its most prominent standard-bearer, ChatGPT, have been the CLB’s legal development of the year (a selection made, most assuredly, by the CLB’s still-human authors).



Ashleigh Fehrenbach



Eli Fisher

As always (if we say so ourselves), this edition is replete with insightful and topical contributions from the CAMLA community. Following the recent Optus outage, our friends at **Bird & Bird**, **Thomas Jones**, **Matthew Bovaird** and **Patrick Cordwell**, talk us through what Australian law says about **telecom outages** and **network resilience**. **Nadia Tymkiw** of **RPC** in London dispels some of the myths around the **UK’s Online Safety Act 2023**. The brilliant team at **Ashurst** provide a blueprint for **privacy reform**, with a focus on the media industry. **Marlia Saunders** and **Natasya Currie** of **Thomson Geer** discuss the first test of the **public interest defence** in defamation litigation, following the decision of *Russell v ABC*. **Lindsey Cregan**, **Dom Keenan** and **Helen Park** of **Clayton Utz** provide their thoughts on the *Selkirk v Hocking* judgment, being the first time the FCA considered the **serious harm** test in defamation litigation. And **Michael McCagh** of **KPMG Law** discusses the future of generative AI regulation, in light of the EU’s **AI Act** and the UK’s policy paper *A Pro-Innovation Approach to AI Regulation*.

We also feature an interview with **Professor David Rolph**, author of (among all the very many other things) the new text, **Contempt**. Thanks to our CLB editorial assistants, **Alana Callus** of **G+T** and **Lewis Graham** of **Allens**, for conducting the interview and for a year full of assistance in publishing the CLB.

Inside this edition are event reports from the recent **Live Performance Law 101** seminar held at **Canva** and the **Online Safety** fireside chat at **Thomson Geer**. We also feature an event report from the eminently successful **2023 CAMLA Oration**, delivered by **Nick McKenzie** in November. We also publish the end-of-year wrap-ups from the President of CAMLA, **Rebecca Dunn**, and the Chair of the Young Lawyers Committee, **Belyndy Rowe**, both of which shed some light on how much CAMLA has done in 2023. It is true to refer to CAMLA in that phrase, of course, but it should not conceal the fact that behind each of the events, seminars and Bulletins are devoted contributors who volunteer their effort and expertise for the enjoyment and enrichment of the entire community.

And with that, we sign off for another year with immense thanks to you all. Thanks in particular to **Michael Ritchie** of **MKR Productions** for his godly talent (and godly patience) in putting together our CLBs. Thanks to **Bec Dunn** and **Beck Lindhout** for their colossal work behind the scenes. And thanks to all the many writers, interviewers, interviewees, panellists, event reporters and photographers, other contributors – and of course our readers. We wish you all a new year that is joyous, successful, fascinating and peaceful. Here’s to 2024 and another action-packed year!

**Ash & Eli**