

Media and Arts Law Review (MALR)
Volume 24 Part 2
(articles included in this part are linked to the LexisNexis platform)

CONTENTS

Articles

[Free speech norms and the regulation of internet intermediaries: Economic consequences in Australia and the United States](#)

— *Sam Alexander*

79

This article explores whether Australia's relative lack of success in developing internet businesses is, to some extent, due to the muted normative role of free speech in Australian legal and political culture. Specifically, this article argues that First Amendment culture partially underpins the success of Silicon Valley, whereas the absence of a similar or equivalent normative background has seen Australia fail to develop a regulatory response as favourable towards internet businesses, in particular, internet intermediaries. This article also investigates potential challenges to this argument and the future development of internet regulation in Australia and the United States.

[The cost of a rebel: A review of aggravated damages awards in Australian defamation proceedings \(2017–20\)](#)

— *Ronald Mizen*

109

In 2017, Dixon J in the Victorian Supreme Court rejected the prevailing 'upper limit' interpretation for the statutory cap on non-economic damages in the National Uniform Defamation Law and adopted an interpretation which freed plaintiffs from the cap in circumstances which warranted an award of aggravated damages. After that decision, Dixon J's interpretation was widely adopted by Australian courts, including the Federal Court, resulting in a series of record non-economic damages awards in defamation proceedings. While Dixon J's decision has effectively been legislatively overturned in most states and territories, the purpose of this article is to assist in the easy identification of conduct which Australian courts have accepted as aggravating, and to draw attention to any inconsistencies and unintended consequences that may have flowed from defamation judgments in recent years.

[Entertainment and the laws of war: The role of States in their interactions with the entertainment industry in order to ensure respect for international humanitarian law](#)

— *Eve Massingham*

130

When the entertainment industry does not call out violations of the law for what they are, they undermine the project of international law which seeks to ensure accountability for such conduct. That the entertainment industry has an enormous influence on all facets of our lives has long been recognised by militaries. Indeed, militaries around the world have very deliberate engagement strategies with the entertainment industry in order to capitalise on this. This article argues that more can be done through engagement with the entertainment industry to improve respect for international

humanitarian law. There is no specific legal obligation on the industry itself, but there is a legal obligation on States to ensure that private actors are respecting and ensuring respect for international humanitarian law. This legal obligation is found in Common art 1 of the Geneva Conventions of August 1949 and their Additional Protocols I and III. This article argues that the very close relationship between the State and the entertainment industry — when it comes to military themes and stories — places an obligation on States to ensure that their support of this industry is not in violation of their legal obligations under Common art 1. The article suggests some of the ways in which governments, and the industry, can ensure better respect for the laws of war.