

## ARTICLE

# Exploring Entertainment Law's Boundaries: Applying a Transdisciplinary Approach

Steve Greenfield

University of Westminster, UK

S.Greenfield@westminster.ac.uk

This piece sets out the challenges faced by the entertainment industry and the parallel altered role of law. What amounts to entertainment and how it is created, produced, distributed and consumed is at the centre of the inquiry. The second part of the equation is to consider what the legal dimension to the subject is or could consist of and most importantly the disciplinary context. This forms the framework for teaching and research. It argues that the nature of the industry is such that the analysis needs to move beyond the rigid and limited doctrinal perspective provided by a single discipline. Thus, the learning strategy needs to be brought into line with a movement away from law as the sole dimension. It tries to create a holistic view as to what the curriculum encompasses and how it can be delivered drawing upon the broad concept of transdisciplinarity.

**Keywords:** entertainment law; transdisciplinarity; entertainment industry; curriculum

## Introduction

Defining what is within and what is outside the scope of Entertainment law has become increasingly problematic. The rise of new technologies, from the crucial landmarks of the Home Video Cassette Recorder and the Sony Walkman through to the development of Web 2.0 have dramatically reshaped the industry itself and the key relationships within it. Consequently, new powerful multimedia companies such as Apple, Amazon and Google have emerged. Their origins are interesting and diverse, Apple as a computer manufacturer, Amazon as an online store, and Google as an internet search engine. All three now offer both hardware devices and increasingly content. Alongside Microsoft these tech companies have developed digital dominance (Moore and Tambini 2018). Perhaps most significantly, the nature of consumption and the role of the consumer have seemingly shifted 'control' towards the audience. Similarly, traditional regulatory frameworks that controlled content have been bypassed by new methods of distribution via the internet. New areas of entertainment have emerged, most notably the computer games industry, which has in turn created e-sports (Hallman and Giel 2018). Garon, in a detailed and considered analysis exploring the development of regulation, argues that the state has three identifiable goals; 'health and safety concerns; content and cultural control; and monopoly power restrictions on those who control the media' (2020: 3). The first two areas have become far more problematic as the industry has fractured both in terms of the site of production and the method of distribution. The third goal provides an ongoing challenge with an increased emphasis on the power of social media.

Contemporaneously English higher education and more specifically legal education has been subject to structural changes which have been driven by ideological and political considerations rather than purely technology. The COVID pandemic provided a significant rationale for technological innovation in the provision of university education, though it is not clear whether this will produce a more restricted and conservative approach to the curriculum and assessment. The marketisation of higher education has been driven by a form of consumerism rooted in a transactional relationship. The rise of the 'student as consumer' mirrors the greater authority wielded by consumers within the entertainment industry. Just as consumerism has disrupted the traditional and longstanding entertainment organisations, universities are disrupted not least by fear of complaints and the intervention of the Office of the Independent Adjudicator for Higher Education.<sup>1</sup> Consumerism may produce unrealistic expectations in terms of both experience and outcome for students (Nixon et al. 2018). But just as Web 2.0 has permitted interactivity in terms of entertainment, the concept of co-creation has also been developed within Higher Education though not without its critics (Nixon et al. 2018). Just as the entertainment consumer now expects an 'on demand' model delivered through streaming services the student consumer 'demands' downloadable recorded lectures. The new model of learning is not without concerns from all parties (O'Callaghan et al. 2017). Just as the music industry struggled to address the downloading and exchange of MP3 files the downloaded lecture may also be exchanged and even sold which has raised concerns over control of the 'product'.

Universities and lecturing staff will have to resolve issues around intellectual property ownership of recording and the underlying material with likely conflicts arising. The lecturer as recording artist rather than live performer has been pushed to the fore by COVID - 19.

### **The challenges to and for legal education**

Legal education and the legal profession are facing a new set of challenges, which writers have described as another 'crisis' (Bowyer 2019; Davies and Woo 2018). The formal relationship between academia and the legal profession is becoming increasingly marginalised, accelerated by the introduction of the Solicitors Qualifying Examination (SQE). Astonishingly, a law degree will no longer be a prerequisite to train and qualify as a solicitor (Davies 2018). Ironically, a Qualifying Law Degree (or Graduate Diploma in Law) will still be required for qualification as a barrister, which creates a fresh division between the two branches that had been moving increasingly closer together. The removal of the requirement for a QLD opens the potential for the traditional law curriculum to be adapted and revised if university law schools have the appetite. An alternative approach will be to effectively batten down the hatches and restate the importance of the traditional curriculum based on the core subjects though the inclusion of EU law could be seen as an anomaly post Brexit. For those working in legal education for the past 30 years, numerous crises have come and gone, and many cynics will doubt that this situation is genuinely any different. Concentration on graduate skills and employability, driven by marketisation, may prove a more significant catalyst than the uncoupling of the QLD from the profession. Legal publishers who deliver the lucrative textbook model will undoubtedly be enthusiastic partners in promoting the central core. Outside of the core subjects, which always seem to resist radical change, the question is the theoretical or pedagogical framework that is aligned to the content.

An obvious possibility is to embrace a socio-legal studies approach, however that is interpreted. Collier, drawing on the work of Tony Bradney, described the liberal law school as an 'institution marked by methodological and epistemological diversity; a commitment to a distinctive academic (as opposed to vocational) stage of legal education; a less deferential relation to the legal profession and legal hierarchy than has existed in the past; and, importantly, an institutional acceptance of original, often interdisciplinary, legal research.' (2004: 519). It is not clear though why the interdisciplinary aspect should be reserved for research and not encompass teaching and learning. There are also alternatives to a purely vocational or academic strategy even if the latter has a socio-legal hue. Parts of Entertainment Law have been sculpted from a broader Law and Popular Culture agenda.<sup>2</sup> The case for Law and Popular Culture is eloquently presented by David Fraser, who sets out a bold opening criticism of the status quo: 'Much of what passes for legal scholarship these days continues to be, quite simply, boring. More important, however, than its distinct lack of aesthetic appeal, is its continuing irrelevance' (Fraser 2004: 15). As he notes, the relationship between law and popular culture creates an opportunity to learn about both elements from the opposite field and the amalgam of the two. Edward Grayson, a pioneer of the Sports Law (or is it Sport and the Law?) movement also saw a link, albeit a much more limited one, to two concepts: 'justice in the Rule of law and Fair Play in sport are not only the twin sides of the same coin: alongside Britain's constitution they are also part of the nation's unwritten heritage' (1988: viii). A course or module covering Law and Popular Culture is relatively straightforward; there is no shortage of material (Asimow and Silbey 2020). Similarly, a traditional Entertainment Law course can draw upon numerous practitioner-based texts, whether general (Biederman et al. 2007) or more specific to one sector (Harrison 2017). This piece draws from both areas but seeks to strike out in a new direction by setting a different agenda. There are clear similarities between entertainment and education consumers which provides a stimulus for considering what a relevant teaching and research agenda in the field of Entertainment Law could now encompass. There needs to be a more thoughtful analysis of the potential boundaries to construct a holistic view of the subject and consider the interaction with other disciplines and legal practice in all its forms. A critical account of the subject needs to also recognise some of the external constraints most obviously the changed face of higher education and the ongoing upheaval within legal education.

This piece sets out the challenges faced by the entertainment industry and the parallel altered role of law. What amounts to entertainment and how it is created, produced, distributed, and consumed is at the centre of the inquiry. The second half of the equation is to consider what the legal dimension to the subject is or could consist of and most importantly the disciplinary context. This forms the framework for teaching and research. It argues that the nature of the industry is such that the analysis needs to move beyond the rigid and limited doctrinal perspective provided by a single discipline. Thus, the learning strategy needs to be brought into line with a movement away from law as the sole dimension. It offers a holistic view as to what the curriculum encompasses and how it can be delivered drawing upon the broad concept of transdisciplinarity.

### **A Reconfigured Concept of Entertainment (Law)**

Defining 'entertainment' itself is not now a straightforward task. One of the great attractions is the sheer volume and diversity of the subject matter and the old boundaries of high and low culture are no longer sufficient to categorise material as a participatory culture has developed. There is a lack of a precise stable definition of 'entertainment' as the industry has become reconfigured largely through technological change. There is enormous flexibility and diversity with, for example, the meteoric rise of YouTube influencers who have sidestepped the original regulatory framework on

advertising (MacRury 2020). The concept of what entertainment can be has altered the legal dimension and has become similarly uncertain. Entertainment law is no longer, if it ever was, a coherent stable subject with an agreed-upon content. A simple original starting point was the legal dimension to the entertainment businesses, which was originally fixed around the hugely influential and American-dominated industries of literature, theatre, film, TV and music publishing and recording. Settled business structures were coupled with a static consumption model; consumers visited the cinema, concerts, and the theatre, watched television broadcasts, read books, and listened to the radio and music largely at home but also on the move post Walkman (Bull 2006). This coupled with fixed ideas about copyright created the opportunity for a business-based law programme encompassing the fundamentals of licensing and copyright and a wide variety of contracts with many standard industry agreements. In the UK the gap between the two Copyright Acts was over 30 years, from 1956 to 1988 reflecting a period of relative stability.

Entertainment Law is bordered by the ever-expanding Intellectual Property Law on one side (Bainbridge 2018) and Sports Law on the other (James 2017), both of which encroach onto its natural territory. There is also the relevance of Media Law to consider, though the content of this area itself is problematic with the convergence of social media. Indeed, social media itself is becoming a form of entertainment in its own right (Cunningham and Craig 2019). At some points the different areas combine most obviously with the litigation over the protection of sports broadcasting rights, *Football Association Premier League Ltd v British Communications Plc*. Is this to be classified an intellectual property case, a sports law dispute, or an entertainment law issue? Distribution of access to unlawfully streamed matches was primarily via social media. Arguably the key words in the header (blocking injunctions; copyright; football matches; infringement; Internet service providers; proportionality; streaming media) locate it within all areas. In the global digital world, intellectual property is debatably too large and complex to be considered one holistic subject, and there is a clear case for splitting it into its constituent parts: copyright, designs, and patents as the title of the 1988 law outlined. Copyright as a concept is becoming increasingly problematic; with new methods of creation, application, and distribution, there are simply too many grey areas appearing; fan fiction has emerged as a novel area where existing literary copyright is deliberately reused to create new material (Tushnet 1997). There exists the first novel written by artificial intelligence, *I The Road*, and collaborations with the production of music between AI and humans. The creation of entertainment products is no longer just due to human endeavour and the artificial input is steadily progressing. The changing nature of the entertainment industry and most importantly its dynamic nature requires a constant re-evaluation of its parameters but more importantly a recognition that law, on its own, can only offer a limited understanding of the problems and potential solutions.

In order to try and construct some useful boundaries to the subject, this section explores four threads. First, the colossal impact of technology that has forced radical change especially post analogue though technology has always been a key driver for both the film and music industry. Second, the nature of the content itself and the regulation by both the state and/or industry-based organisations and increasingly hosting platforms. Third, the process of the creation and exploitation of works encompassing copyright and contractual problems. Lastly, the changed nature of consumption and the altered role of the consumer. For each of these elements the aim is to sketch out the fundamentals of the framework and the relevance of law but also the limitations of law as a single discipline in evaluating the issues.

### **(i) Technological Innovation**

The entire landscape has become turbulent as technology has disrupted established production, distribution and consumption models causing a new range of legal problems. The rise of digitalisation and internet distribution has caused havoc amongst existing business models. It is the scale, breadth, and speed of change that has brought business and legal confusion. For example, the innovation of the cassette tape alongside twin tape machines enabled consumers to (quickly) reproduce both pre-recorded tapes and copy songs from radio broadcasts. This provoked an unsuccessful legal response from the music industry (*CBS Songs v Amstrad*) in the same way that the launch of the home video recorder had exorcised the film industry into failed litigation (*Sony Corp. v. Universal Studios*). Both advancements did though create new marketing opportunities for the industries through pre-recorded video and music tapes. The double-edged nature of technology is aptly illustrated by the development of compact discs (CDs) that permitted an economic wind-fall through the repackaging and sale of existing recordings but contemporaneously heralded the move towards ripping and sharing. The cases referred to above can be placed in a line of copyright cases where new technology has enabled infringement.

A key problem has been that the creation and marketing of new technologies is not within the control of the industry:

These technological developments cannot be understood independently of their economic, social and organisational contexts. A key context here is that such innovations have been primarily driven by the telecommunications and software industries. These represent rival sectors of capital to the cultural industries, who are involved in the production of primarily symbolic, aesthetic, less utilitarian 'content' (Hesmondhalgh 2009: 59).

Vertical integration of hardware with entertainment products was undertaken by Sony with the acquisition of CBS Records in 1988 and Columbia Pictures in 1989 (Inoue 2003) and there have been numerous mergers and acquisitions of media companies (Schéré 2018). What is apparent is that technological progress cannot be resisted either practically

or legally even if there are some individual 'victories' along the way. The developments within the various cases might well have helped shape the industry and its offerings but not necessarily the internal legal framework though obviously contract terms such as royalties have been impacted. CDs, through their quality and longevity, raised a new issue of resale rights (Platkin 1995). Digitalisation also demonstrated the global dimension to infringement and distribution. It is the development of Web2.0 and new social media platforms, especially YouTube, that has reshaped the industry its content and internal legal content. Areas of entertainment that were previously located in specific physical places (adult entertainment and gambling) are now also available through online platforms altering the dynamics of consumption. These spaces were previously under the direct control of Local Authorities through their statutory licensing functions (Kolvin 2013). Similarly, activities such as computer gaming that originated in private spaces have also become capable of existing as both an individual and collective online experience. This has created an opportunity for widespread interactivity (Cole and Griffith 2007). The COVID-19 pandemic has led to a shifting of performance spaces from the physical to the digital which may lead to forms of integration within theatre performance:

What started as an experiment has developed into a radical pivot in our work, against a backdrop of what has at times felt like cultural meltdown we have perversely flourished. Digital work has provided a rich and exciting new medium to explore which will remain embedded in our work for the future (Askew and Seaton cited in Aebischer and Nicholas 2020: 1).

This shift demonstrates the flexibility of both the hardware and software when allied to creativity and the vital importance of broadband connectivity. The online environment also raises significant issues over the nature of the content and the effectiveness of regulation. The advances made with digital broadcasts of performances, born out of the crisis, can be adapted to create hybrid models post pandemic. It has once again demonstrated the symbiotic relationship between the development of the entertainment industry and technology.

### **(ii) Regulating Content**

Broad legal questions may also arise with respect to the 'suitability' of the subject matter of the entertainment itself. There is a long history of political and moral censorship of theatre, books, magazines, art, films and occasionally music. Whilst concerns around the sexual content have greatly diminished since events such as the obscenity trial of DH Lawrence's *Lady Chatterley's Lover* in *R v Penguin Books* there is still a controversial degree of regulation in areas such as film through the British Board of Film Classification (Kapka 2017). There are several organisations involved with video game regulation (PEGI, ESRB, IARC) where age suitability was the primary issue. Of greater concern now is the problem of loot boxes with the link to gambling (McCaffrey 2019). It has been argued that a 'labelling system' can create the idea of 'forbidden fruit' for those below the required age (Bijvank et al. 2009). Parental advisory stickers on CDs were adopted in 1985 by the Recording Industry Association of America on a voluntary basis after high level political pressure (Chastagner 1999). Just as music was confronting attempts to restrict access to it visual art was also the subject of political controversy (Helms 1990; Meyer 2003)

The controversy over Andres Serrano's so-called 'art' had hardly begun when it was disclosed that the National Endowment for the Arts also had paid a Pennsylvania gallery to assemble an exhibition of Robert Mapplethorpe photographs which included photos of men engaged in sexual or excretory acts (Helms 1990: 318).

Serra argued this was an attempt to censor and impose a certain moral position rooted in homophobia and that art could not be so restricted; 'ideas, images, descriptions of realities that are part of every-day language cannot be forbidden from entering into the discourse of art' (Serra 1991: 580). Indeed, it was exhibitions of Mapplethorpe's photographs that attracted the real ire of the conservatives who sought to restrict public funding for work considered 'obscene'. The controversy over Mapplethorpe's work was also seen in the UK with the seizure of a book containing his photographs from the University of Central England's library; however, no prosecution ensued (Meyer 2001). Those very photographs that caused such controversy can now be accessed at the click of a button from anywhere in the world.<sup>3</sup>

This suggests that access to 'controversial' material has been transformed and the debate is over as online galleries or sites openly host material that was deemed 'revolting, decadent, or repulsive' (Helms 1990: 320). However, censorship may take different forms and within the music industry there are examples of self-censorship by artists and a level of corporate censorship by the record companies themselves. Somewhat surprisingly, self-censorship is still a relevant consideration despite the shift to online distribution and may be supranational in nature moving from America. Nielsen and Krogh refer to 'spillover censorship' as 'a pervasive cultural and commercial phenomenon demanding attention' (2017: 357). Aside from the concept the research methodology, through a longitudinal single case study of the distribution of a hip-hop song *Purple Pills/Purple Hills* by American rap group D12, points towards a fruitful line of enquiry. Self-regulation/censorship, at different levels, may have replaced or be working in cahoots with direct state intervention and its application, in whatever medium, merits analysis. A prominent example of the relationship between the state and social media platforms with the aim of restricting the distribution of material can be seen with attempts by the Metropolitan Police Service to remove drill videos from YouTube.<sup>4</sup> Drill videos have also been introduced in evidence in criminal cases to demonstrate 'evidence of gang association in joint enterprise prosecutions' (Justice 2021: 33).

The controversy has attracted both academic investigation (Ilan 2020; Kleinberg and McFarlane 2020) and more popular analysis (Halls 2018). The visible legal dimension is the use of videos and lyrics as evidence in criminal trials but that only covers a small part of the issue. There is a policing dimension and most fundamentally the cultural dimension to the music and lyrics. This brings in aspects from both criminology, cultural studies, and even psychology to add to the legal question concerning the rules of evidence. A theoretical framework of moral panics may help inform the analysis. But beyond the criminal justice question is the impact of the policing on artists and venues and social media sites. Direct censorship and self-censorship relating to access to social media platforms need to be considered as well as the impact on live concerts. Understanding how venues and social media sites view Drill music helps to create a holistic portrayal and the views of artists and those in the music industry provide a different perspective. The consumer view is also relevant. This is just a continuation of previous attempts to regulate areas of culture through the use of Form 696 (Talbot 2011). There is also evidence of the online environment being used to host gang rivalries using rap videos (Johnson and Schell-Busey 2016). These latter examples indicate the need to consider the sociological and cultural dimension to regulatory and licensing practices. Access by minors to online pornography, violent material, and gambling has led to attempts (unsuccessful in the UK) to establish an effective age verification system. Previous moral concerns about an underage purchaser getting access to a CD with violent lyrics seem now to be so utterly insignificant given what may now be accessed instantaneously by a mobile device. Online access by minors, to inappropriate material, is an ongoing problem and one that is likely to increase especially in the area of gaming and gambling.

### **(iii) Creativity**

After technology and content issues the next point to explore is the creative process which may commence in different points in the production cycle. Some work may be directly commissioned for a specific project following the pitching of a treatment. Other material may already be in existence and adapted, such as a book that is subsequently transformed into a television series or film. Work can be part of a longer arrangement, a second album or film sequel or a second series/season of a television work. Some work will already be owned through an exclusive contract where all output produced is assigned regardless of quality or immediate demand. This creation and production bring forth a myriad of contracts with a range of negotiations and parties. This creates a series of potential tensions most notably between creativity and authorship on one hand and commercial exploitation on the other. This dynamic is reflected in the legal construction of copyright that allocates original ownership with a provision permitting formal assignment for the work to be exploited. The law itself recognises a distinction between authorship and ownership and the existence of copyright in a sound recording as distinct to the literary and musical works. The development of technology led to the recognition of mechanical rights and incorporation into law alongside compulsory licensing (Dubin 1952). Alongside contractual rights and obligations lies a licensing regime including collecting societies that have an international dimension. This permits the commercial exploitation of successful works to be realised though it may be extremely complex and not without disputes (*Elton John and Others v Richard Leon James and Others*).

A fundamental quandary is that the financial success of many entertainment industry 'products' is unpredictable, and the cost of the flops has to be compensated by the revenue generated by the hits. This problematic business model is determined by consumer reaction: 'Just a few hits dominate the industry's revenues and profit. Nobody knows which films these will be until the audience tells them' (De Vany 2003). This uncertainty leads to the need for contract flexibility; 'adaptive contracts':

This adaptive response is encoded in industry contracts and institutions; it is the mechanism that lets supply follow path-dependent demand sequences to capture box office revenues and make the highly irregular distributions we reported here. The industry's market institutions and sophisticated contracts promote the information dynamics that discover extraordinary motion pictures and let supply and pricing adapt to capture the strongly increasing returns they create (De Vany and Walls 1996: 1513).

Whilst De Vany's analysis was concerned with the distribution contracts within the motion picture industry the same principles can be seen at work with contracts for creative talent. Market uncertainty produces contractual arrangements that have to cater for both commercial failure, which can occur at any time, and unprecedented success. Added to this is the allure of stardom for creative artists with a huge numeric chasm between those who aspire to be signed and those who are offered contracts. As Judge Humphries wryly noted:

In the music world these days there are many groups who would like to achieve national and international popularity with the rewards that can arise therefrom. Many are called but few are chosen (*Silverstone Records Limited* 1993: 155–6).

This imbalance in supply and demand coupled with the unpredictability of success creates a skewed bargaining process. On one side the artists who are largely young and inexperienced and on the other companies for whom the process is routine business, the repeat players. As Humphries explained:

The company was not short of financial resources. On the other hand, the Stone Roses themselves were not highly educated, had no legal experience, little or no business experience, and were very much under the experience of Mr Evans. They had little or no income. Some indeed I think were on social security (*Silverstone Records Limited* 1993: 162).

Once contracts become established vehicles there is little incentive for the industry to alter its practices even if the consumer demand dynamics have altered. The control such contracts provide may be hard to relinquish and whilst successful artists may receive an increasing share of the revenue contentious disputes can still arise. See for example George Michael, Elton John, Gilbert O' Sullivan and most publicly Prince (Osborn and Greenfield 2007). These disputes may be caused by a complex range of factors as with the case of Prince and Warner Bros. (Perry 2018). Financial rewards in themselves may not be that significant a feature of the conflict as opposed to the rigid contractual requirements. It may be more of a fundamental clash between creativity and commercial exploitation as Prince indicated:

The music, for me, doesn't come on a schedule, I don't know when it's going to come, and when it does, I want it out. Music was created to uplift the soul and to help people make the best of a bad situation. When you sit down to write something, there should be no guidelines. The main idea is not supposed to be, 'How many different ways can we sell it?' That's so far away from the true spirit of what music is. Music starts free, with just a spark of inspiration. When limits are set by another party that walks into the ball game afterward, that's fighting inspiration (Pareles 1996a,b).

These disputes provide a rich source of information about the contractual terms of superstar artists and often their initial formation. Despite some judicial attempts to look beyond the narrow confines of the paper contract a legal analysis is often limited and only provides one part of the picture. As both the George Michael and Prince disputes demonstrate there may be a wide range of socio-cultural features as well as individual personality issues, and the legal issue can become part of a broader analysis of the artist (Perry 2018; Perry 2019). Concentrating on merely the contract terms often presents an incomplete and even misleading picture of the nature of the dispute and its fundamental causes. A true understanding of the contractual term outcomes cannot be understood just through a legal analysis as the traditional contract principles have little or no application. Interestingly a significant body of work, largely by American law academics, from the 1960s onwards, has explored the limits of contract law both in terms of its construction and litigation (Galanter 1974). It has considered not only the process itself but also the underlying behaviours (Macaulay 2003; Macneil 1999). If contract itself is the 'law of leftovers' (Freidman 1965, cited in Macaulay 2001) music contracts do not make the menu as they have so little in common with other commercial agreements due to the unique cultural and economic factors. The negotiation and construction of these agreements can only be understood from a cross disciplinary perspective. Relational contract theory developed by Macneil provides an ideological framework of contract to develop a more inclusive explanation of music contracts specifically and entertainment agreements more generally (Osborn and Greenfield 2007). The limited range of work, focussed on music contract analysis, has either been based on practice concerns by lawyers (Harrison 2017; Passman 2019) or originated from legal academics through case analysis (Greenfield and Osborn 1998) both demonstrating the limitations of a single disciplinary approach. To properly comprehend entertainment contracts and the very specific and indeed peculiar clauses requires both knowledge of conventional contract law doctrines and understanding of economic and psychological issues. Indeed, just applying a traditional contract perspective would stumble over the very idea of *consensus ad idem* – how can there be any authentic agreement in what is often an extremely imbalanced relationship? Whilst some steps were made to incorporate elements of contractual theory (Greenfield and Osborn 2007) overall the work generally lacked an empirical dimension nor did it explore the wider cultural dynamics of the industry, which limited its impact. The cultural norms of the film industry were a key dimension to the *MeToo* scandal that engulfed Hollywood and beyond and exploring existing and developing norms and practices are key elements to understanding both legal outcomes and the potential for law to be effective. Determining a range of cross disciplinary issues impacting on the creation and ownership of material is the precursor to evaluating a radically different model of distribution, consumption, and indeed consumer authority.

#### **(iv) Consumer power**

The primary challenge for the film and music industry in the post digital era was the loss of control over the distribution of products. In his testimony to the House of Representatives on Home Recordings Jack Valenti the President of the Motion Picture Association of America Inc. painted a bleak future for the security of copyright on which the industry depended:

But now we are facing a very new and a very troubling assault on our fiscal security, on our very economic life and we are facing it from a thing called the video cassette recorder and its necessary companion called the blank tape. And it is like a great tidal wave just off the shore. This video cassette recorder and the blank tape threaten profoundly the life-sustaining protection, I guess you would call it, on which copyright owners depend, on which film people depend, on which television people depend and it is called copyright (House of Representatives 1982: 6).<sup>5</sup>

The desire to protect (and indeed strengthen) copyright at any means even at the expense of technological advancement is a key theme that can be traced through the litigation whether the offender is a hardware manufacturer (*Sony*, *CBS*), a website (*Napster*) or more recently a designer of computer software (*Grokster*). Attempting to enforce copyright by litigating against infringement has had very limited overall long-term success despite winning individual cases. Immediately after the *Grokster* case Fred Goldring noted the frank comments from Hilary Rosen, the then CEO of the Recording Industry Association of America (RIAA):

Hilary Rosen spoiled the party, pointing out that while the ruling 'maybe [sic] important psychologically, it just won't really matter in the marketplace.' She clarified that 'knowing we were right legally really still isn't the same thing as being right in the real world' (Goldring 2005).

A key issue at stake in all the litigation was the extent to which the new technologies ceded power to the consumer to control what they would watch and listen to and when, regardless of the lawfulness of the means in acquiring the product. As litigation failed to stem the flow of copyright infringement technological solutions were sought to regain control over unmitigated consumer use:

As a general preventive measure against copyright infringements through digital technologies including P2P, copyright owners often use digital rights management (DRM) techniques to encrypt content or otherwise restrict access. Depending on the access or compensation arrangement, content owners may differentiate prices and limit use by the number of plays, duration of access, temporary or partial uses, lending rights, and the number of devices on which the file may be accessed. In this regard, the potential level of use control may go beyond the expectations of consumers accustomed to a broader range of uses enabled by analog technology. Consequently, many advocates now contend that DRM is harmful to consumers because it tilts the balance of control in favor of copyright holders (Einhorn and Rosenblatt 2004: 239).

This appeared to provide a solution for copyright owners but there was a clear danger in restricting consumer use. If paid content was less flexible than material that could be freely obtained DRM was a disincentive for some consumers and might push them towards the unlawful Peer to Peer (P2P) route. There was also the potential for a significant abuse of technology by the copyright owners which occurred with Sony BMG uploading software onto CDs and subsequently onto consumers computers which ended in a settled legal action (Dalsen 2009). The ubiquitous spread of technology and the development of Web 2.0 and new hosting platforms such as YouTube have transformed the entertainment landscape. Technology has not just enabled creation outside of the traditional industry structures, but also the ability to make that content available.

### **A revised learning, teaching and research agenda**

There are number of fundamental questions that need to be addressed when setting out how a subject is to be taught, assessed, and investigated. Research informed/led teaching is often identified as a desirable goal linking together different aspects that were often kept apart. Furthermore, the role of the students – the learning dimension to teaching and learning- needs to be reconsidered with an agenda of self-determination and co-creation. It is certainly no longer just about the relevance and coherence of the curriculum. Some of these questions are bound up with new pedagogical ideas and others institutional requirements. A revised glossary of language has appeared so assessment needs to not just test the learning objectives but must also be 'authentic'. This is part of the move to integrate graduate skills firmly into the syllabus. Principles of Equality, Diversity and Inclusivity are being applied to 'decolonise the curriculum'. A reflective reconsideration of any subject is to be welcomed and is essentially what has driven this article. Joining up the different elements does, it seems to me, require a fairly radical review rather than tinkering with the old model. The starting point is to consider Entertainment Law within the context of law as a discipline in itself.

If many law academics are now apparently 'socio-legal' in outlook that suggests a ride into the interdisciplinary sunset has already taken place with the incorporation of aspects of 'sociology' into law. Ignoring claims as to whether this applies to teaching as well as research (even if the latter can be defined and substantiated) this is an apparent example of some form of boundary shifting. An alternative explanation looking at the curriculum, is that the breadth has changed with 'new' subjects added (such as Environmental Law?) rather than the integration of other disciplines into law to provide a more thorough interrogation. This may be an overly critical view and there are signs of aspects of criminology and even psychology being incorporated though again an easier option is to add the two subjects together under an umbrella degree. Law, because of the link to the profession and the prescribed curriculum (and assessment) was able to sidestep the moves supporting an interdisciplinarity approach that took place in social science from the 1970s. The problem for law and many law teachers is the predominance of doctrinal law within the traditional subjects that pays little attention to even context but firmly concentrates on the core legal principles – exploring what they are and how they are applied rather than even considering why they might exist. Whilst undergraduate teaching has been rather left behind there are new challenges to break open disciplinary boundaries when it comes to research. The

terminology of a more expansive approach has several versions namely interdisciplinary, multidisciplinary, crossdisciplinarity and transdisciplinary. These have different contextual interpretations though the variations are not always apparent. Interdisciplinary studies or even an interdisciplinary approach to a recognised subject is now seen as desirable even if it creates logistical and pedagogical issues. Klein draws out an interesting point with respect to the rationale for disciplines:

Standard models accentuate stability and natural order, consistent realities, boundary formation and maintenance, normative social values, and homogeneity, with companion images of structure, foundation, compartmentalization, and autonomous territorial regimes (Klein 2006: 11).

Add in law's professional dimension and with it the origins of legal study and there is not only a formidable barrier to embracing interdisciplinarity but an innate conservatism towards the existing subject matter. Homogeneity perhaps being a lauded attribute. New areas of law can take time to be established whether they emerge out of practice such as housing law or from another discipline such as the grouping of subjects around law and (popular) culture. Scholars such as Redhead attempted to create a new area of exploration beyond a module or two (Redhead 1995). This seemed to provide an alternative cross disciplinary opportunity to set some area of law in a broader cultural context. This field or area accurately represented the characteristics of a freer, less rigid subject not constrained by its history, largely because it had little identifiable history. This provided a freedom to draw in ideas and materials with little restriction:

Other models, especially newer ones, accentuate historical change and dynamism, with companion images of networks, webs, and systems. They call attention to boundary crossing and blurring, integration and collaboration, cross fertilization, and interdependence in epistemological and social environments characterized increasingly by complexity, nonlinearity, and heterogeneity. The current heterogeneity associated with the growth of knowledge has profound implications for the taxonomy of fields (Klein 2006: 11).

One reviewer of *Unpopular Cultures* however reconstructed the two parts into a discipline which consisted of; 'three main foci: governance, transgression and disappearance' (Howes 1996: 293). With conservatism as the essence of core legal studies popular culture seemed to offer the possibility of an exciting alternative drawing ideas, theory, and practice from other disciplines wherever they existed. It also promoted the opportunities for empirical research including participant observation and football fandom/hooliganism is a prime example of the value of such an approach (Pearson 2009). An obvious question, if this is such a potentially rich area to explore, why the growth appears to have been limited certainly in terms of outputs. There is the possibility that those working within the area in their eagerness overstated the potential or perhaps it just wasn't that interesting to that many legal academics. The most obvious answer is that within a broad and ill-defined field, scholars pursue their narrower interests rather than any grander project. It was defined by lawyers interested in popular culture rather than those coming in the other direction. Law is an unforgiving discipline with numerous barriers to entry not least the language and specialist materials. One of the unsaid attractions of the law and popular culture agenda (one hesitates to call it a movement) was the severance of any link to legal practice and by association the core tenets of legal study. It was rebellious in nature defined as much by what it expressly wasn't and tied into the generally nonconformity of popular culture and especially its myriad sub-cultures (Tsitsos 1999). This begs the question as to whether entertainment law has similar inherent restrictions that will limit its development and attractiveness.

### **Creating a market niche**

New courses and modules undoubtedly need strong academic justification, *market worth* is a key requirement as universities have developed as commercial organisations (Brown and Carasso 2013). Marketisation can create conflicting principles concerning the aim of a university education: 'At its heart, the tension is between the conception of HE as a financial investment and those who believe it ought to be understood in terms of intellectual development' (Molesworth et al. 2009: 285). In this environment to survive and prosper a course must be attractive to incoming students and demonstrate positive outcomes notably employability. This business model undoubtedly contributes to the marginalisation of the law and popular culture intersection, so the subject has retreated into specific modules, such as law and culture or law and film. Law and popular culture offered new opportunities and was rooted within law drawing from sociology, criminology, and cultural studies, but it has failed to blossom for numerous reasons. This would seem to suggest that expanding a taught subject through a broad cross disciplinary approach to create a fusion of interests may be difficult. It is of course easier to conduct research in this way as the organisational limitations and perceptions as to its validity are reduced and there are some innovative examples of pushing the traditional law and literature boundaries to encompass television (Bradney 2011; Nicol 2018) in addition to the large volume of work on law and film from across the globe (Greenfield et al. 2010). So, the research has thrived and expanded through individual and collaborative projects driven by the popular culture interests of the researchers.



Entertainment law has a huge initial advantage in that it is not a 'law and' subject and it has a direct link to both an industry and an identifiable area of legal practice. It is also a subject that students can directly relate to and has both internal and external validity. The question is how it can be configured to make the most of the potential it offers. If we move away from the cross-disciplinary approach of law and popular culture and agree some rough boundaries to the subject matter the issue is how can this be effectively explored. Or rather how best do we understand the issues and problems thrown up by the entertainment industry, and where does law feature in that understanding? A narrow legal analysis provides only a set of answers to legal questions but leaves a huge amount unexplored and unanswered. A simple example of the unauthorised streaming of sport outlined in *Football Association Premier League Ltd v British Communications Plc*, provides a good example of the unknown dimension. There is a narrow legal argument concerning copyright infringement of streamed matches and the viability of an order with some background as to how the infringement is carried out. There is though no discussion as to the broader cause of the problem within the context of the market for televised Premier League football. Whether a court hearing is the right place for this type of analysis is a moot point though arguably understanding the cause goes directly to the efficiency of the remedy sought. The 'battle' against unlawful streaming has all the hallmarks of the ill-fated war waged, by the copyright owners, against the music and film file sharers from *Napster* onwards. In addition to suing businesses who enabled file sharing the RIAA also launched actions against individual file sharers, a move that was widely derided. Not understanding the different motivations of those involved in the activity and making assumptions led to a damaging and ultimately pointless strategy. If high-quality streams are readily available, via social media, it is crucial to understand what is leading consumers away from the legitimate providers. There is a danger that the assumption is that it is 'free' content that drives the activity dominates the thinking. In the music industry one clear attraction was that file sharing permitted enthusiastic consumers to sample new bands and genres. The context for football is the diversification of the television market for Premier League football. Sky has been involved since the outset, but other players have entered the market, firstly BT and later Amazon, which then means three subscriptions are required to see all the games that are available. Furthermore, accessing a stream from another jurisdiction permits the viewer to watch games that are not available in the home market because of broadcasting restrictions. That the football authorities do not always understand their customers is aptly demonstrated by the failed attempt during the pandemic to make some games pay per view, a move that generated a fan backlash. The proposal was swiftly abandoned.<sup>6</sup>

Though it is not the accepted role of courts to look beyond the legal arguments some judges have often proved themselves adept at setting the law in its context. Lord Denning was an arch exponent of this approach see for example his judgments in both *Lloyds Bank v Bundy* and *Miller v Jackson*. Judge Humphries in *The Stone Roses* case set out the background to the nature of the music industry and noted: 'In the music world these days there are many groups who would like to achieve national and international popularity with the rewards that can arise therefrom. Many are called but few are chosen' (*Silverstone Records Limited* 1993: 156). An understanding of this simple dynamic explains the imbalance in bargaining power, the lack of any serious negotiation and the reason for the flawed contractual outcome. The causal relationship between this background understanding and the legal remedy is not always apparent but demonstrates the importance of context. It is of course possible to ringfence the legal analysis and not enquire any further beyond the legal instrument whether a contract, will, lease or a statute.<sup>7</sup> Academic research may also probe behind a case to create a more rounded account, see for example Simpson's masterful explanation of the infamous case of *Carlill v Carbolic Smoke Ball Company* that involved an investigation into not just the facts and the parties but the pharmaceutical industry, product advertising and marketing and quack medicine.<sup>8</sup> If some judges and academics see the value in exploring and understanding the different factors that contribute in some way to the problem at hand why not apply the principle to law students? This ties in directly to the promotion of graduate skills and employability. Such an approach is not at the expense of legal knowledge but rather it seeks to complement and develop that knowledge and understand how it may be used. The question is what pedagogical framework can deliver what is, after all, a bold aim.

### Beyond law's domain

The examples above indicate that a better understanding of the issue goes well beyond the single discipline of law. So, the question is where do we head to if a legal analysis is too prescriptive? Interdisciplinarity, multidisciplinary, and pluridisciplinarity occur when two or more disciplines are linked together to pursue a given project, with the contributions from the various disciplines being essential to revealing and addressing the different aspects of the problem. Each version is different, related in large part to the degree of interaction between the disciplines. Among the different forms of interdisciplinary engagement, transdisciplinarity is perhaps the easiest to distinguish. Transdisciplinarity applies when disciplines mesh together to fully identify, construct, grasp, and comprehend a specific object of inquiry. It requires a perspective that goes beyond individual scientific disciplines and even the subject of the research, to better grasp its scope and consequences. Transdisciplinarity does not recognize any boundaries to the problem studied and promotes a holistic approach:

Transdisciplinarity is a new form of learning and problem solving involving cooperation among different parts of society and academia in order to meet complex challenges of society. Transdisciplinary research starts from tangible, real-world problems (Klein et al. 2001: 7).

The essence is to first determine the concrete issue or challenge that requires this level of cooperative engagement. It is important to see beyond the disciplinary boundary, so the problem is not solely a legal one. Law or more broadly regulatory issues are one of the issues to be explored. At the outset we may have a prejudiced view about the importance of law privileging it above other subjects. Thinking beyond a discipline is part of the learning process and is a desired goal. This is allied to identifying what 'knowledge' needs to be acquired and where it is located:

Solutions are devised in collaboration with multiple stakeholders. A practice-oriented approach, transdisciplinarity is not confined to a closed circle of scientific experts, professional journals and academic departments where knowledge is produced. Ideally, everyone who has something to say about a particular problem and is willing to participate can play a role (Klein et al. 2001: 7).

This process of identifying and organising the different stakeholders is more difficult within the constraints of an educational setting than in a funded real world research project but perhaps the most restrictive element is the limitations on time. Hours per week and the number of weeks available are predetermined. However, that is not to say that information and knowledge cannot be gathered by applying a creative methodology.

Through mutual learning, the knowledge of all participants is enhanced, including local knowledge, scientific knowledge, and the knowledges of concerned industries, businesses, and non-governmental organizations (NGOs). The sum of this knowledge will be greater than the knowledge of any single partner. In the process, the bias of each perspective will also be minimized (Klein et al. 2001: 7).

A transdisciplinary approach is normally brought to bear on large complex public issues that require new thinking and a collaborative approach beyond disciplines see for example Purdue University's *Our Big Idea*.<sup>9</sup> If the thrust is to resolve 'critical global questions' it seems trite to consider applying such grand ideas to seemingly minor issues within one area of society. However, the key principle of transdisciplinarity can be identified as 'mutual learning without boundaries.' It goes beyond academia and can bring into the circle of understanding a different range of perspectives. There doesn't seem to be any clear reason why this approach can't be harnessed at a much simpler level with far less ambitious aims. Transdisciplinarity is a flexible concept with the parameters open to interpretation by the researchers themselves (Lawrence and Despres 2004). There are several common principles of a transdisciplinary method and some additional elements dependent on the context. For example, Lawrence's work on housing and the relationship to ill health has a professional practice dimension which provides a useful analogy for some legal projects. He notes the complex nature of both health and housing and how they transcend normal disciplinary boundaries which requires a broader and deeper analysis to deliver a holistic understanding:

Therefore housing and health ought to be considered in terms of the multiple factors that influence both, as well as the interrelations between them. An ecological perspective recognises that behavioural, biological, cultural, economic, social, physical and political factors need to be considered if a comprehensive understanding of housing and health is to complement disciplinary and sectoral interpretations (Lawrence 2004: 500).

Bringing different practitioner perspectives is more complex, with wider aims than an academic exercise though Balsiger provides an example of a graduate teaching exercise on sustainable development but at the outset notes the challenges to involving a transdisciplinary approach:

Since teaching transdisciplinary research skills should add interactions beyond the academic world to the interdisciplinary curriculum, costs are even higher (Balsiger 2015: 186).

Law teaching is characterised by its cost effectiveness particularly in the core subjects with large lecture groups, inevitably small group work is more expensive. The proposed method doesn't fit into a neat model of predetermined timetabled hours as it is essentially organic and driven by the students themselves. It primarily involves identification of what knowledge can contribute to an understanding of the issue and where it is located.<sup>10</sup> If the aims are reduced the level of interaction can be managed and we can also draw upon a network of contacts including alumni:

Like interdisciplinarity, the sound teaching of transdisciplinary research may necessitate proficiency in a range of theoretical, methodological, and practical skills, which may require team-teaching (Balsiger 2015: 186).

The delivery of research skills is problematic for law undergraduates with little time in the curriculum devoted to their teaching.<sup>11</sup> That is unsurprising given the nature of the crowded curriculum and the assessment though students taking a dissertation may have specific research classes. Students would benefit from a greater exposure to different skills, and these can be tailored accordingly. Newly acquired skills can feed into the assessment strategy.

Furthermore, the development, implementation, monitoring, and evaluation of transdisciplinary research in concrete settings entails participation by a wide range of stakeholders. Extensive time is required to establish relations, convince external actors of the benefits of a transdisciplinary research project, and make themselves available at all stages of knowledge co-production (Balsiger 2015: 186).

The involvement of a range of 'stakeholders' is at the heart of a transdisciplinary approach and will be a time-consuming exercise. However, with clear boundaries and limited aims and with the use of technology collaboration can be successfully integrated into the project.

Finally, regardless of the research setting, efforts dedicated to research management tasks such as logistics and coordination are typically demanding (Balsiger 2015: 186).

Organisation and administration of the project are key elements and the larger the project the greater the burden. With a small group of students and a tight structure the project management can be carried out by the students themselves contributing to the development of new skills. The key is to preserve the advantages of a transdisciplinary approach but scaled down to the point where realistic aims are achievable within the understandable limitations. The two key elements are integration and collaboration, and these can be preserved, and made central to the whole endeavour, though will represent the 'softest' or 'weakest' end of a transdisciplinary approach (Balsinger 2015). The classroom-based method also differs in that the knowledge and non-academic information is largely brought in from outside by the students not offered independently though there are ways to provide more direct input.<sup>12</sup> On the other hand input from other disciplines should be easier to organise from inside an institution. The starting point is to identify suitable areas that have the capacity to be explored utilising a transdisciplinary approach; they need to be complex enough but with realisable aims. Students will be unfamiliar with the approach, and it is important they feel comfortable in embarking on a new methodological approach in an unfamiliar area. As noted above the entertainment industry is complex and dynamic and throwing up new issues and concerns. Even traditional areas of the industry such as music contracts can be explored in a different way by adopting a 360-degree approach that actually mirrors the shift in recording agreements (Marshall 2013). The analysis would involve exploring the route to the negotiation, the bargaining process itself as well as the outcome though this material may be more difficult to access. It is normally just the outcome that explored from a legal perspective and only when a dispute arises. What permeates many of the determined cases is the naivety of the artists and the imbalance in bargaining power between the two parties. This inevitably leads to the one-sided contract that in turn becomes the subject of the conflict. There is a wide range of areas, encompassing civil and criminal law issues, that could be explored in a transdisciplinary way that could provide a valuable learning experience. The process of identifying the issues and setting the parameters itself promotes creative and critical thinking.

## Conclusion

The peculiarities and specificities of the entertainment industry have always merited a transdisciplinary approach to enable a more thorough and holistic understanding. However, the changes outlined above have heightened this as the industry has grown and developed, driven by seemingly inexhaustible technological change. Creation, distribution, and consumption have altered, and new areas and platforms have emerged that have irrevocably changed the landscape whilst the traditional industries have struggled, at times to adapt. Within legal practice, the task is to keep abreast of a rapidly changing environment alongside the general challenge to the profession from 'data analytics' (Talley 2017). For entertainment lawyers the creative dimension within parts of the industry and the unpredictable nature of market success may provide resistance to automated practice though other parts that are rooted within technology may be more vulnerable to colonisation. In academia the primary question is how to reshape teaching and learning to reflect these changes. The other interlinked element is the research agenda. Higher education has been transformed by both technology and the understanding that there needs to be much more than knowledge acquisition for today's nimble graduates. Skills and attributes need to reflect and deliver an employability agenda. Legal education is also in flux providing a Bermuda triangle of instability. This though represents an ideal opportunity to rethink what we do and strike out in a new direction and embrace sweeping changes.<sup>13</sup> Entertainment Law can, if it adopts a radical approach, provide an ideal area for law students and indeed students from other disciplines to develop vital skills in critical thinking and complex problem solving. Flexibility is key and whilst there is no right answer at the end a different and exciting journey beckons for those prepared to take a risk.

## Notes

<sup>1</sup> See <https://www.oiahe.org.uk/>. It seems possible that some of the pedagogical gains of shifting large traditional lectures online in subjects such as Law may be lost as concern about the reduction in face-to-face contact hours and the relationship to fee income arises. Large lectures are of course extremely cost effective.

<sup>2</sup> I appreciate I may well be overstating the case here for a link between law and popular culture and entertainment law. My own experience of teaching and researching for over 30 years has seen the link wax and wane though the

research centre I co-founded with Guy Osborn in 1995 provides a broad church for both areas to blossom across teaching and research and encompasses legal practice. It also spawned a book series, one of which addressed law and popular culture (Greenfield and Osborn 2007).

<sup>3</sup> <http://www.artnet.com/artists/robert-mapplethorpe/>.

<sup>4</sup> The Metropolitan Police Service request that social media sites remove drill videos, with as many as 110 such requests in 2019. <https://www.london.gov.uk/questions/2020/2170>

<sup>5</sup> Valenti infamously said: 'I say to you that the VCR is to the American film producer and the American public as the Boston strangler is to the woman home alone' (House of Representatives 1982: 8).

<sup>6</sup> There was a widespread fan backlash that led to the abandonment. <https://www.theguardian.com/football/2020/nov/05/premier-leagues-pay-per-view-model-likely-to-be-scrapped-after-this-weekend>.

<sup>7</sup> Denning, in *Davis v Johnson*, infamously admitted to consulting Parliamentary debates to better understand the Statute and aid his interpretation despite the fact this was impermissible.

'I could wish that in those club cases we had been referred to it. It might have saved us from the error which the House afterwards held we had fallen into. And it is obvious that there is nothing to prevent a judge looking at these debates himself privately and getting some guidance from them. Although it may shock the purists, I may as well confess that I have sometimes done it. I have done it in this very case. It has thrown a flood of light on the position' (1978: 192–3).

<sup>8</sup> Simpson noted; 'Carlill v. Carbolic Smoke Ball can, however, be looked at in a completely different way, not as an incident in the doctrinal history of contract law, but rather as an incident in the shocking history of advertising and quack medicine' (1985: 379).

<sup>9</sup> The aim was to:

'find new ways to impact some of the most wicked global challenges society faces today, and change the world for the better in the process. We understood the power of convergence, and believed that an approach that coupled research in traditionally siloed STEM disciplines with novel digital technologies and data-based approaches, could provide new insights to confront and tackle many of these grand challenges, particularly when augmented by research and insights from the social sciences and the humanities.

In an effort to capitalize on this idea, and catalyze the type of transdisciplinary research that would bring truly wholistic approaches to solving wicked social problems, we launched a new program: The Discovery Park Big Idea Challenge. Our goal was to harness the strengths of Purdue University, and to provide resources to transdisciplinary teams of Purdue faculty and students pursuing new, bold and innovative ideas with the potential for transformative impact on society.'

(<https://www.purdue.edu/discoverypark/initiatives/big-idea-challenge/our-big-idea.php>).

The winning proposals can be seen at <https://www.youtube.com/watch?v=r1KWUx125WY>.

<sup>10</sup> There is insufficient space here to outline the specifics, though, for example, trying to understand the issues of creative artists' wellbeing could encompass exploring personality issues (Cross et al. 1967) as well as neuroscience (Vartanian et al. 2013). The legal dimension is both the duty of care owed to the artists and the contractual clauses that may 'cause' distress.

<sup>11</sup> The legal skills 'revolution' focussed on practical legal skills though this did include practical legal research (Jones 2019).

<sup>12</sup> The University of Westminster is located in Central London and the location enables us to make full use of outside speakers which is a feature of both our LLB Entertainment Law module and the LLM Entertainment Law Course.

<sup>13</sup> There have been attempts to deliver *Law in Context* and this has been developed in a book series by Cambridge University press. Whilst this is to be welcomed as an alternative to a legal rules based method it is still limited to a critical approach to understanding law, utilising other disciplines, rather than a problem solving methodology. As the publisher's blurb notes: 'Since 1970, the Law in Context series has been at the forefront of a movement to broaden the study of law. The series is a vehicle for the publication of innovative monographs and texts that treat law and legal phenomena critically in their cultural, social, political, technological, environmental and economic contexts. A contextual approach involves treating legal subjects broadly, using materials from other humanities and social sciences, and from any other discipline that helps to explain the operation in practice of the particular legal field or legal phenomena under investigation.'

<https://www.cambridge.org/core/series/law-in-context/387EA14AA111E65AB0120DA893AFAFCB#>

The understanding of legal rules and their application may have an important role in a transdisciplinary approach, this is a key part of what lawyers bring to the project. This type of work avoids the previous rather sterile either/or debate about black letter law versus context.

## Competing Interests

The author has no competing interests to declare.

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