



30 May 2019

NSW Law Reform Commission
GPO Box 31
Sydney NSW 2001
By Email: nsw-lrc@justice.nsw.gov.au

To Whom It May Concern

Preliminary Submission: Open Justice Review

I write to make a preliminary submission on the following aspect of the terms of reference, 'Whether, and to what extent, suppression and non-publication orders can remain effective in the digital environment, and whether there are any appropriate alternatives'. In doing so, I note that the purpose of this call for preliminary submissions is to help frame the issues that would be addressed in later consultations.

As a person who no longer lives in New South Wales, the outcome of this law reform process may still affect me, and millions of other Australians outside of your State. Where a court purports to make orders departing from open justice in general (or global) terms with a view to impacting the dissemination of information on the internet, those orders may be felt outside of the geographical jurisdiction over which the court would naturally exercise its authority to decide.¹

There is a private international law aspect to orders which purport to restrain the publication of information on the internet which warrants detailed consideration. Moreover, the proper scope of State powers to regulate dissemination of information throughout the Commonwealth has an obvious constitutional dimension. I encourage the NSW Law Reform Commission to have regard to those matters as it proceeds with this project.

I **attach** a list of some of my relevant work on point. Thank you for your consideration.

Yours faithfully



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¹ The Equity lawyers' claim that injunctions cannot operate truly extraterritorially is an absurd fiction. See Michael Douglas, 'Extraterritorial Injunctions Affecting the Internet' (2018) 12 *Journal of Equity* 34, 36.

Relevant work

- [Michael Douglas, 'A Global Injunction against Google' \(2018\) 134 *Law Quarterly Review* 181](#)
- [Michael Douglas, 'Extraterritorial Injunctions Affecting the Internet' \(2018\) 12 *Journal of Equity* 34](#)
- [Michael Douglas, 'The Media's Standing to Challenge Departures from Open Justice' \(2016\) 37\(1\) *Adelaide Law Review* 69](#)

Also:

- [Michael Douglas and Jason Bosland, 'We knew George Pell was guilty of child sex abuse. Why couldn't we say it until now?', *The Conversation* \(online\), 26 February 2019](#)
 - [Michael Douglas, 'The futility of media suppression in the digital era', *Gazette of Law & Journalism* \(online\), 14 January 2019](#)
 - [Michael Douglas, 'Google challenges the Supreme Court of Canada's global injunction in the United States', *Gazette of Law & Journalism* \(online\), 29 November 2017](#)
 - [Michael Douglas, 'The exorbitant injunction in *X v Twitter*' \(2017\) 36\(4\) *Communications Law Bulletin* 5 \(originally published in the *Gazette of Law & Journalism*\)](#)
 - [Michael Douglas, 'Disrupted Justice: How Technological Change is Expanding Open Justice' \(2017\) 139 *Precedent* 10](#)
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