LITERATURE REVIEW*


A 1993 survey on the innovative activities of Europe's industrial firms obtained useable results on patenting activities for 604 respondents. The data are used to calculate the sales-weighted propensity rates for 19 industries. The propensity rates equal the percentage of innovations for which a patent application is made. The propensity rates for product innovations average 35.98, varying between 8.18 in textiles and 79.28 in pharmaceuticals. The average for process innovations is 24.88, varying from 8.18 in textiles to 46.88 for precision instruments. Only four sectors have patent propensity rates, for both product and process innovations combined, that exceed 508: pharmaceuticals, chemicals, machinery, and precision instruments. Regression results that control for the effect of industry sector show that patent propensity rates increase with firm size and are higher among firms that find patents to be an important protection method for product innovations are less likely to patent, as expected, but secrecy has little effect on the propensity to patent process innovations. The R&D intensity of the firm has no effect on patent propensity rates for both product and process innovations. The sector of activity has a strong influence on product patent propensities but very little effect on process patent propensities, after controlling for the effect of other factors.


The Human Genome Diversity Project (HGDP) has raised some significant ethical and methodological issues for anthropologists, particularly in light of the recent patenting of a cell-line from a Papua New Guinea man. Through a discussion of the HGDP, this article explores the 'locatedness' of the anthropologist in light of two significant trends: the globalization of the economy (particularly in the areas of intellectual property rights and biotechnology patents) and the creation of a new global context for political activism. The article concludes by

* Data provided by NISTADS Library.
discussing the concept of collaboration as a politically-embedded practice that has become critical to the pursuit of contemporary anthropological knowledge.


It has been recently observed that in the light of concepts like lean management, shortening of development times, business reengineering or shareholder value, companies have substantially cut down their expenditures for research. Since research is by definition primarily aimed at the broadening of technological knowledge rather than the development of products or processes which find immediate commercial applications, the benefits of research appears to be unjustified. Based on data from 25 European and Japanese electronics companies, we examined the relationship between corporate spending on research and patenting output. Since patent applications only measure the overall level of R&D activity, they were differentiated according to their quality in order to assess the technological and commercial impact of R&D activities. It is found that those companies, which spend a high share of their R&D expenditures on research, hold patents of relatively higher quality. Furthermore, differences between European and Japanese companies with respect to research spending and patent positions are identified. The results lead to the conclusion that research obviously serves as a base for those inventions which are of higher technological and commercial importance. Thus, the investment in research appears to be of great value for the competitiveness and should therefore not be neglected.


Advances in computer technology, in combination with the resources of the Internet, afford the educator an unprecedented array of options for facilitating instruction. At the same time, this technology introduces numerous ways of inadvertently or intentionally violating federal copyright law and guidelines. Copyright law, the principles of fair use, and guidelines for reproduction of text and off-air broadcast media will be discussed, with specific reference to the development of multimedia programs and Internet-based applications.


The increasing prospects of digital piracy has prompted the perceived need by electronic publishers to adopt technical systems of protection, and governments to reform their copyright laws. This article is a preliminary study of the management of intellectual property by electronic publishers, defined as those involved in the production of online databases, and CD-ROMs. It focuses on three main issues: (1) how electronic publishers view the increasing threat of piracy; (2) the methods of protection employed to protect intellectual property in digital format; and (3) the importance of technological protection of intellectual property in electronic publications. The analysis is based on a sample of 23 UK electronic publishers. The interviews revealed an interesting assortment of protection methods and did not show that technological protection was a
preferred way. Instead, the means of protection, in addition to copyright law, comprised niche markets, pricing, trust, bad publicity, and nontechnical and technical means.


What do changes to Canada's Copyright Act mean for scholars and publishers! After decades of wrangling between all sectors, the Canadian Parliament passed a new copyright bill last year. Early reviews suggest that the effects may not be as dramatic as once feared.

Evidence from patents and patent citations on the impact of NASA and other federal labs on commercial innovation, Jaffe AB, Fogarty MS and Banks BA, *Journal of Industrial Economics*, 46 (2) 1998, 183-205.

Federal lab commercialization is explored: (1) by analyzing US government patents, and (2) in a qualitative analysis of one NASA lab's patents. Tests apply to three distinct sets of patents, 1963-94: NASA, all other US government, and a random sample of all US inventors' patents. The federal patenting rate plummeted in the 1970s. Consistent with increasing commercialization, both NASA's and other federal agencies' rates recovered in the 1980s. The case study finds citations to be a valid but noisy measure of technology spillovers. Excluding 'spurious' cites, two-thirds of cites to patents of NASA-Lewis' Electro-Physics Branch were evaluated as involving spillovers.


Trade secret law is an anomaly in intellectual property. It focuses on relationally specific duties and imposes Liability only when the means of appropriation is wrongful, where wrongfulness is mainly determined by reference to independent legal norms. This article provides an explanation for these anomalies and discusses some of the implications for trade secret reform. Simply put, the thesis is that there is no such thing as a normatively autonomous body of trade secret law; that trade secret law is mainly just a collection of other legal norms. Nothing in the idea of a trade secret as such—neither the fact that it is information nor the fact that it is secret—provides a convincing reason to impose! Liability in the way modern trade secret law does. To support this thesis, the author surveys the history of trade secret law and then critically examines the various policy justifications offered by courts and commentators. He concludes that the formalistic roots of the doctrine offer no support for its application today, and that modern policy arguments fail to make a convincing case except possibly in a few limited situations. As a result, trade secret liability should be governed mainly by contract principles.


Using a dynamic general equilibrium model of the international product cycle we found that the effects of strengthening intellectual property rights protection (IPP) in South depend critically on the channel of production transfer from North to South. Stronger IPP in South increases the rate of product innovation, production transfer and Southern relative wage if foreign direct investment (FDI) is the channel of production transfer, but has opposite effects if production is transferred through imitation. Stronger IPP can be more broadly interpreted as any in-
centive given by South to encourage Northern FDI.


Considerable controversy has recently arisen regarding the patenting of medical and surgical processes in the United States. One such patent, viz. for a "chevron" incision used in ophthalmologic surgery, has especially occasioned heated response including a major, condemnatory ethics policy statement from the American Medical Association as well as federal legislation denying patent protection for most uses of a patented medical or surgical procedure. This article identifies and discusses the major legal, ethical and public policy considerations offered by proponents and opponents of such patents. The existing literature divides up into those who favour such patents essentially without qualification, and those who condemn and wish to outlaw them. We advance a compromise position where administrative and legislative action is called for to provide more specific guidelines regarding the patentability of such processes by the Patent and Trademark Office. Our position, in sum, will be that too much is at stake in this complicated area for either the blanket prohibition, or wholesale, uncritical acceptance, of the patenting of medical and surgical processes or techniques.


We review intellectual property rights in agriculture and outline a modelling framework that accounts for relevant institutional features of agricultural R& D. The analysis emphasizes vertical market linkages whereby agricultural innovations adopted by farmers are produced upstream by input suppliers. It is argued that the conventional assumption of competitive pricing cannot hold when new technologies are produced by private firms because such innovations are typically protected by intellectual property rights (such as patents) that confer (limited) monopoly rights to discoverers. The implications of intellectual property rights for the welfare evaluation of agricultural R&D are derived, and it is shown that conventional methods usually over estimate the welfare gains from agricultural innovations.


What will become of the existing concept of "fair use" in the emerging digital environment known as the "information superhighway?" This article will discuss the perspective of various constituencies within higher education—some producers property, some consumers, and some that are both.


Authors who wish to dedicate their works to the public may think they have no need for copyright or other intellectual property rights. However, if subsequent authors make contributions to an original author's work, those subsequent authors might be entitled to assert proprietary rights in their contributions, thereby defeating the intent of the original author to dedicate his work to the public. The GNU Project is a worldwide
collaborative effort to develop high quality software and make it available to the general public. To ensure unrestricted public access, the GNU Project licenses its software under the GNU General Public Licence ("GPL"), which prevents users from establishing proprietary rights in either the works themselves or subsequent versions thereof. Richard Stallman, the founder of the GNU Project, refers to this type of agreement as "copyleft." In this note, Ira Heffan analyzes the enforceability of the GNU GPL by analogy to shrinkwrap and shareware licence agreements. He describes and analyzes the GNU GPL and concludes that it is enforceable. He contends that copyleft is useful for other collaborative works distributed electronically because copyleft assures the works' continued availability to the public.


I present evidence on the private value of patent rights in France for different technology fields and nationalities of ownership, using nonparametric techniques and a parametric model of patent renewal. The distribution of the value of patent rights is highly skewed, patent protection is a significant but not the major source of private returns to R&D and these characteristics vary across technology fields. I compute the R&D cash subsidy that is equivalent to the value of patent rights, measure the variations in value over time, technology fields, and nationalities, and show that these differences are correlated with patent grant rates.


The digital revolution has dramatically increased the ability of individuals and corporations to appropriate and profit from the cultural knowledge of indigenous peoples, which is largely unprotected by existing intellectual property law. In response, legal scholars, anthropologists, and native activists now propose new legal regimes designed to defend indigenous cultures by radically expanding the notion of copyright. Unfortunately, these proposals are often informed by romantic assumptions that ignore the broader crisis of intellectual property and the already imperiled status of the public domain. This essay offers a skeptical assessment of legal schemes to control cultural appropriation—in particular, proposals that indigenous peoples should be permitted to copyright ideas rather than their tangible expression and that such protection should exist in perpetuity. Also examined is the pronounced tendency of intellectual property debate to preempt urgently needed reflection on the political viability of special-rights regimes in pluralist democracies and on the appropriateness of using copyright law to enforce respect for other cultures.


Copyright doctrine provides that copyright is available for expressive works not for functional works. There is a significant category of works composed of functional expression, the availability of copyright for which is problematic. In this article, Professor Weinreb argues that the current uncertainty about copyright for computer programs and the user interface of programs brings the issue of copyright for functional expression into sharp focus and raises fundamental questions about copyright generally traced to their source, the doctrines in question rest on nothing more than a conventional understanding that works of certain types are
copyrightable. The justifications of copyright as an author's "natural right" and as a means of furthering the production and dissemination of authorial works are similarly dependent on the convention, which they purport to explain.


This essay argues that we need a politics, or perhaps a political economy, of intellectual property. Using the controversy over copyright on the Internet as a case study and the history of the environmental movement as a comparison, it offers a couple of modest proposals about what such a politics might look like—what theoretical ideas it might draw upon, and what constituencies it might unite.


The purpose of this article is to discuss responsible library service when using patent search resources in light of the unauthorized practice of law. This issue is significant, but also very unsettled. Because patents document legal rights, libraries that provide patent search services should be cautious when assisting the public, much as libraries that provide assistance with legal resources should be. Activities that could be construed as the unauthorized practice of law are examined closely and distinguished from good information services practices. Recommendations for library policies and practices are outlined. Selected aspects of patent law, relevant to information needs of patent search patrons, are also discussed.


In L'Anza Research International, Inc. vs Quality King Distributors, the Ninth Circuit held that a copyright owner's right to bar imports is, not limited by the first sale doctrine, which ordinarily prohibits a copyright owner from controlling the further distribution of copies after the copyright owner has consented to their sale. This note examines the importation right in light of the purposes of the Copyright Act's distribution and first sale provisions, congressional intent behind the importation right, and the underlying purposes of copyright law. The note argues that the first sale doctrine properly limits a copyright owner's right to bar imports, and that withholding from copyright owners the power to bar importation of copies first sold within the United States is an appropriate way to limit the importation right.


Developments in law have kept pace with those in the field of biotechnology. However, the various judicial bodies which have been called upon to address the issue have not ventured to look at the issue objectively and examine the moral, ethical and environmental dimensions. As a result, judicial process has often recognised undesirable standards incompatible with the larger social needs.


The DNA-sequencing blitz, made possible in the early 1980s by improved genetic technology, has descended on the patent office in the form of thousands of patent applications
for sequences. Controversy over the obviousness of certain sequences has led to a string of recent cases in the United States Court of Appeals for the Federal Circuit (CAFC). In each of three opinions, the court held that DNA sequences are nonobvious, and therefore patentable. Due to a mysterious aversion by the court to apply the standard analyses for obviousness, coupled with a lack of scientific prowess, the CAFC's decisions lack both legal and technical coherence. Also, due to the time lag between invention, application, and appeal, much of the judicial rationale has been based on a level of technology a decade old—primitive by today's standards. A careful application of the obviousness standard in light of today's technology demonstrates that obviousness may yet pose a threat to biotechnologists.


A unification of more than one million non-patent references (NPR's) on the front pages of US and EPO patents has been carried out, with a subsequent match to the Science Citation Index (SCI), in order to investigate the citation linkage between patented technology and the scientific research literature. The US system shows an extremely rapid increase in linkage, with citations from US patents to US authored papers increasing more than three-fold over the last decade. The EPO system does not show any increase; the occurrence of non-patent references appears to be relatively constant in the EPO system over the last decade. In both systems the cited papers are in relatively basic journals, especially in biomedicine. In the US system approximately 75 per cent of the cited papers originate in public science institutions, showing large dependence of patented industrial technology on public science. We expect to find similar result in the EPO system.


The strategies of rent appropriation and industry structure are inter-dependent. How firms use patents depends upon industry structure, and in turn, affects industry structure. In the 19th century, market leaders in the chemical industry combined patents and secrecy to deter entry. Within cartels, patents were used to stabilize patents and organize technology licensing. The role of patents changed in the less concentrated post World War II markets. In bulk organic chemicals and petrochemicals, chemical producers use licensing as an important means of generating revenue from process innovations. The increased importance of technology licensing is closely related to the emergence of a class of specialized process design and engineering firms, that have played an important role in the development and diffusion of process innovations.


Empirical estimates of the private value of patent protection are derived for four technology areas — computers, textiles, combustion engines, and pharmaceuticals — using new patent data for West Germany, 1953-1988. Patentees must pay renewal fees to keep their patents in force as well as legal expenses in order to enforce them. A dynamic stochastic discrete choice model of optimal renewal decisions is developed incorporating both learning and depreciation as well as the potential need to prosecute
Copyright infringement. The evolution of the distribution of returns over the life of a group of patents is calculated for each technology using a minimum distance simulation estimator. Results indicate that the aggregate value of protection generated per year is on the order of 10% of related R&D expenditure.


The United States Constitution in Article I, section 8 gives Congress the power to promote science and the arts by giving authors and inventors exclusive rights over their works for a given period of time. Out of this constitutional power has risen the laws of copyrights, patent, and trademark. Through copyright laws, authors of a vast array of works from books to toys to abstract art receive protection of their expressions. Copyright infringement law, however, often finds itself at the crossroads between two public policy factors. On the one hand, the law seeks to encourage new authors by protecting their works. On the other hand, the law does not want to give any one authors a monopoly over an idea so as to foreclose future authors from building on that idea. As a result, copyright infringement law continually strives towards the correct balance between protecting an author’s expression of an idea and promoting the idea itself.

The above balancing occurs most often in copyright infringement cases when courts are trying to determine whether substantial similarity exists between the works in questions. Over the years, courts have attempted to develop many different tests for determining whether there is enough substantial similarity between works to find infringement. Each of these tests, however, has faults, and none seem to really explain how the courts are deciding substantial similarity. As a result, copyright infringement decisions often seem ad hoc and unpredictable.

In this Comment, Jeannette Busek suggests a new way of viewing copyright infringement cases. Instead of trying to fit the cases into various tests, she argues that it makes more sense to consider the type of work in question, using it as a base for the standard of substantial similarity. This new approach, Busek concludes, can make the body of copyright infringement law more predictable and understandable.


A rapid survey of the key current issues and changes in the copyright and licensing environment. Briefly discusses the reasons why there is so much change, and in particular the changing attitudes of both authors and customers towards publishers. Surveys the new contractual problems confronting publishers; the requirements for doing business electronically in future; major legal changes; and developments in licensing. Concludes by considering how publishers can influence what happens.


Outlines the copyright clearance difficulties faced by librarians in the development of the Electronic Library and states the need for an electronic copyright management system (ECMS) to log the clearance process and to protect electronic documents. Reports the absence of a suitably priced commercially available ECMS for the academic sector and describes the design process for the eLib

Today's conventional wisdom is that strong patent rights are conducive to economic progress. Yet not long ago students of the patent system took a more nuanced position, arguing that often strong patents were not necessary to induce invention, and entailed significant economic costs. Several empirical studies have supported this position. However, the current advocacy invokes theories of the positive benefits of patents that were repressed in the earlier more negative analyses. This essay reviews these theories, and the empirical evidence that might bear on them. The authors conclude that there is reason for concern that the present movement towards stronger patent protection may hinder rather than stimulate technological and economic progress.


Reports the findings of research carried out by Project ACORN (Access to Course Readings Across Networks), an eLib-funded experimental electronic short-loan services project, based at Loughborough University. Project ACORN staff conducted a postal survey of the 84 publishers approached for permission to digitise articles for the first phase of the service. The purpose of the survey was to elicit the views of publishers on various issues associated with electronic short-loan collections and the policies and procedures followed by publishers for granting electronic copyright clearance. The survey was followed up by four in-depth interviews with individual publishers. The findings show that there is little consensus in the policies and views of publishers, especially with regard to procedures followed by them for granting electronic copyright clearance or methods of charging. This makes seeking copyright permission time-consuming and complex for higher education libraries. However, most publishers look more favourably on requests from educational institutions. Publishers are wary of the electronic environment and there is some degree of conflict between publishers and libraries that wish to use new technology to deliver services. There has recently been same cooperation between publishers and the higher education community in working towards solutions, and publishers have shown a degree of enthusiasm for an intermediary working on behalf of libraries in electronic copyright clearance.


The paper develops a model in which the spillover of R&D is a consequence of a rational investment in imitation. The model incorporates the innovator's choice between patenting and secrecy as a protection device. The analysis demonstrates that an increase in patent breadth always discourages resorting to secrecy, whereas the influence of increased patent life is the opposite with large spillovers. An increase in patent life can also reduce innovative activity with large spil-
lovers. Under endogenous imitation, short patents are socially optimal.


This paper finds that royalty licensing can be superior to fixed-fee licensing for the patent-holding firm when the cost-reducing innovation is non-drastic. The reason for this result is that the patent-holding firm enjoys a cost advantage over the licensee under royalty licensing while the two firms compete on equal footing under fixed-fee licensing.


Over the past two decades, an economic interpretation of copyright law's fair-use doctrine has taken hold in court decisions and academic discourse. This interpretation posits that fair use exists in large part to counteract economic imperfections that prevent smooth functioning of the copyright marketplace. Recently, commentators focusing on this type of analysis have predicted a drastically reduced future for fair use in digital media such as the Internet. The Clinton Administration's task force on digital issues, adopting these commentators' logic, has suggested that fair use may be unnecessary when an owner can license uses. This conclusion rests on the idea that if an owner can license the use, then the market is free of imperfections, and thus fair use is unnecessary. The author agrees that the Internet will markedly reduce many types of market imperfections. The Internet grants owners the ability to reach most users at very little cost. However, the author argues that important sources of market imperfection will continue to implicate the core values that animate fair-use policy. At base, the copyright frame-work must always serve to maximize the public benefit from expressive works. In the face of lingering bargaining casts, externalities, or anti-dissemination motives, the new medium does nothing to ensure that the parties to a given bargain will act with the public's best interest in mind. The author focuses on one type of copying activity central to everyday use of the Internet: fragmented literal copying of very small chunks of content. The author concludes that, notwithstanding copyright owners' ostensible ability to license these uses cheaply, fair use remains an essential tool to allow fragmented uses that will further copyright's major policy goals.


The article identifies the restrictive effects of intellectual property laws relating to copyright, patents and confidential information on the dissemination of marine scientific research data, samples and results, and argues that the 1982 Laws of the Sea Convention regime for MSR favors to address these restrictions. Comparisons are drawn between the LOSC regime, major international treaties and bilateral agreements dealing with scientific research. It is concluded that a more formal bilateral approach to MSR clearance-agreements under the 1982 LOSC could result in a more equitable distribution of benefits, commercial or otherwise, between researching and coastal State interests.


The WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS) will
usher in a markedly stronger global system of defining and protecting intellectual property rights (IPR). This paper first discusses the concept of intellectual property and the need for its protection and regulation. It presents evidence on the wide variations in IPR across countries and discusses how TRIPS will affect these differences. Theoretical predictions about how this stronger system will influence global trade, investment, and technology innovation and diffusion are ambiguous, but limited empirical evidence suggests a modest positive effect overall. However, the distribution of costs and benefits will vary.


Guidelines for gene patenting: In the light of recent court cases, the USPTO issues more instructions.


In this note, the author explores the implications of emerging technologies for intellectual property law, arguing that the conventional wisdom is incorrect. The advent of digital technology will not result in the wholesale pirating of protected works. Instead, technologies such as trusted systems will enable copyright owners to exercise an unprecedented degree of control over their intangible property. Technological methods of intellectual property protection are so powerful that they threaten to supplant law where digital works are concerned, undermining the utilitarian balance of copyright and threatening free expression. If this result is to be avoided, trusted system must be regulated in the public interest.


The paper will investigate how the management of intellectual property rights will affect the shaping of the newly emerging global and digital market place. The relevant question to be dealt with is: how can we understand the transformation in the content/copyright industries (as a consequence of technical change, sectoral convergence, and international deregulation) and the newly emerging patterns of competition in the digital/global era? Besides giving an overview of the traditional organization of the copyright industry (from creation and collective administration of rights to content production companies, and usage) the paper will discuss the major technological, economic, political-institutional, and international challenges creators, collecting societies and 'content companies' face now and in the near future. Finally, the coordination problems between creators, collecting societies, publishers and users, and the strategic opportunities and responses of the major stakeholders in the competitive copyright industries will be analyzed. Although the discussion focuses on the development of advanced industrial economies, the impact of these developments will have implications for economies that are less 'digitally' developed.

Count-data models are used to analyze the relationship between patents and research and development spending at the firm level, accounting for overdispersion using a finite mixed Poisson regression model with covariates in both Poisson rates and mixing probabilities. Maximum likelihood estimation using the EM and quasi-Newton algorithms is discussed. Monte Carlo studies suggest that: (a) penalized likelihood criteria are a reliable basis for model selection and can be used to determine whether continuous or finite support for the mixing distribution is more appropriate, and (b) when the mixing distribution is incorrectly specified, parameter estimates remain unbiased but have inflated variances.


This paper presents an index of patent rights for 110 countries for the period 1960-1990. The index is used to examine what factors or characteristics or economies determine how strongly patent rights will be protected. The evidence does indicate that more developed countries tend to provide stronger protection, but the underlying factors which influence patent protection levels are the country's level of research and development (R&D) activity, market environment, and international integration, which are correlated with its level of development. The results qualify, however, that R&D activity influences patent protection levels after a nation's research sector reaches a critical size. An implication of this is that to raise patent protection levels in weakly protecting countries and thereby create incentives for protecting patent rights.

The death of copyright: Enforceability of shrinkwrap licensing agreements, Mi-


The mass marketing of computer software has forced software producers and vendors to replace negotiated contracts with shrinkwrap licensing agreements. The modern trend in the law has been to enforce these licenses as contracts under the Uniform Commercial Code. The increased application of scarce contract law to sales of computer software raises important questions concerning federal copyright law preemption. In June 1996, the Seventh Circuit, in ProCD, Inc. v. Zeidenberg, held that a shrinkwrap licensing agreement was enforceable. The court stated that the rights granted to a licensor under a contract are not equivalent to the exclusive rights within the general scope of copyright. Thus, the court held that the licensing agreement at issue was not preempted by federal copyright law. In this Comment, Apik Minassian criticizes the Seventh Circuit's overbroad approach to the copyright preemption issue and suggests that the court's reasoning and direction justify a decreased role for copyright law in the protection of computer software programs.


In this paper we develop a simple theoretical model to focus on the debate related to the granting of product patents in the developing countries. We discuss conditions under which "sleeping patents" might emerge. We argue that, for "poor" countries, allowing product patents cannot be justified on pure economic grounds.

When is enough enough? Reduction to practice and summary judgement during patent priority disputes, Bradley R D,

This Note examines the current U S Patent and Trademark Office standards for determining patent priority in an interference proceeding. In particular, this Note reviews and criticizes the procedural rules governing the implementation of summary judgment in an interference. In Schendel v. Curtis, the U.S. Court of Appeal for the Federal Circuit had the opportunity to articulate a clear analytical framework to guide Administrative Patent Judges in the determination of what experimental evidence, and how much of it, a party must present to establish a prima facie showing of reduction to practice. This Note argues that, in an interference proceeding, once a party has argued with particularity that certain evidence is sufficient to establish reduction to practice of the invention in dispute, then the Administrative Patent Judge should explicitly state for the record why that evidence is insufficient. In addition, Administrative Patent Judges use in deciding whether to impose summary judgment against a non-moving party: all inferences drawn from underlying facts should be viewed in the light most favourable to the party against whom summary judgment is being applied.


Marketing professionals, in their quests to find new ways to distinguish products, now seek trademark protection for a wide array of product attributes, such as colours, odours, sounds, and shapes. Public policy, nakers have been willing to expand trademark protection to these real, ns, but unfortunately without formulating a coherent

philosophical approach to guide their decisions. The author provides a conceptual model that enables marketers to predict how the Patent and Trademark Office and the courts will resolve specific questions regarding the applicability of trademark protection for product characteristics.


Reports the results of a study undertaken to consider the issues relating to the clearance of rights by British high education institutions for the digitisation of materials published in print. Current licensing models frequently involve prices which librarians find daunting and have no mechanisms for recovering from users. There is also considerable variation in pricing of materials. The authors believe that a ‘one-stop shop’ for the clearance of digitisation rights would be a highly desirable development. However, negotiability of rates may be made impossible by the introduction of ‘one-stop shopping’ through a centralized agency. Electronic copyright management system (ECMS) technology for solving the many problems of managing licences for digitised content is not yet proven. Not having ECMS, a strong ‘compliance culture’ will be essential.

Users and rights owners want straightforward, simple and, above all, brief contracts for licensing. There is therefore a need for a shared, unambiguous licence vocabulary. The paper suggests a set of definitions of uses and user types. Using these definitions, a matrix of use and users is proposed to show types of activities for which a library may seek to licence materials from a publisher and for which a publisher may grant a licence. Many of the problems could be re-
solved if the suggested ‘one-stop shop’ central agency acted on behalf of publishers in granting digital rights (or acting as a clearing house for requests).


This paper examines the impact of intellectual property rights (IPR) on biodiversity in general and specifically on the objectives of the Convention on Biological Diversity (CBD). It also addresses the broader issue of the relationship between the GATT/WTO Agreement and the CBD. It then reflects on the choices available to ensure that the objectives of the CBD are not undermined.