LITERATURE REVIEW

IPR—General


Incentives to innovate are a central element of innovation theory. In the private-investment model, innovators privately fund innovation and then use intellectual property protection mechanisms to appropriate returns from these investments. In the collective-action model, public subsidy funds public goods innovations, characterized by non-rivalry and non-exclusivity in using these innovations. Recently, these models have been compounded in the private-collective innovation model where innovators privately fund public goods innovations. Private-collective innovation is illustrated in the case of open source software development. This paper contributes to the work on this model by investigating incentives that motivate innovators to share their knowledge in an initial situation, before there is a community to support the innovation process. The game theory is used to predict knowledge sharing behavior in private-collective innovation, and test these predictions in a laboratory setting. The results show that knowledge sharing is a coordination game with multiple equilibria, reflecting the fragility of knowledge sharing between innovators with conflicting interests. The experimental results demonstrate important asymmetries in the fragility of knowledge sharing and, in some situations, more knowledge sharing than theoretically predicted. A behavioural analysis suggests that knowledge sharing in private-collective innovation is not only affected by material incentives, but also by social preferences such as fairness. The results offer general insights into the relationship between incentives and knowledge sharing and contribute to a better understanding of the initiation of private-collective innovation.


In this paper an attempt is made to evaluate the possible spill-over of the international agreement on Trade-Related aspects of Intellectual Property Rights, underwritten in 1994, regarding economic growth for both wealthy and developing countries. It is found that the TRIPS convention has prompted, at the same time, innovation in developing countries and a rise in the per capita income for all the economies involved in international trade. As a by-product of the research it is found that, despite the strong growth of resident patents application after 1995 (the year in which TRIPS came into force), most of the increase in the gross domestic product per capita in developing countries is attributable to the international transfer of technologies, via foreign direct investments.


Arguments for strong intellectual property protection proceed on the assumption that exclusive rights are necessary to generate the incentives that encourage intellectual production. However, recent events suggest that this assumption is questionable. Many creative endeavors are flourishing without strong intellectual property (IP) protection. Examples include fashion, stand-up comedy, magic, cuisine, and software (consider Linux, Apache, Firefox). Academic research has long been conducted under a sharing regime, and even after the Bayh-Dole Act permitted universities to claim patent rights in faculty inventions, the Mertonian norm of communalism continues to exert a strong influence over academic practices. And as Eric von Hippel has amply demonstrated, users generate and share the fruits of their creativity in contexts as varied as extreme sports, surgery, library science, and commercial high-tech manufacturing. Now that the existence of these robust forms of production has been recognized, it is tempting to argue that traditional IP rights should be abolished. At the same time, however, there may be limits to creative production outside the IP paradigm. Ostensibly open systems are sometimes functionally dependent on copyright, patent, trademark, or trade secrecy law.
The operation of these systems can also be highly contingent – sometimes on the innovative industry at issue or the technological infrastructure supporting it; sometimes on the sensibilities of particular individuals. This paper therefore starts from the proposition that IP rights will not soon disappear. It is intended to contribute to a new conversation on how IP law ought to change in order to accommodate and sustain what Mario Biagioli has termed IP without IP.


The paper focuses on downstream uses of intellectual property (IP) that combine multiple rights and examines the effects of introducing an IP clearinghouse. Two sometimes conflicting functions of clearinghouses have been identified: transaction cost reductions and coordination. It is shown that reduced transaction costs cause licensors to raise royalties in some cases, which makes them worse off due to the ‘tragedy of the anticommons’. Downstream welfare effects may also be positive or negative and the effects are characterized on downstream manufacturers and final consumers. It is also shown that total welfare is most likely to increase following a transaction cost reduction when the number of intellectual property rights per downstream use is small, or if rights are relatively substitutable in downstream use, but it is also possible for welfare to decrease.


The creation of security interests in IP rights raises important questions from the standpoint of conflict of laws since the needs and the goals of the protecting State and those of secured transactions law diverge. Several initiatives have been undertaken at various levels, such as by Working Group VI of UNCITRAL, ALI and the CLIP Group.

As concerns national IP rights, specific rules concerning the creation of security interests in IP rights and related matters are scarce. A large majority of states still apply the traditional rule of *lex loci protectionis*, under which the security interest is denied any autonomy from the encumbered asset and each security interest over each IP right is governed by a different law, thus increasing costs and risks for secured creditors.

The situation of European patents, whose registration is centralized, and of EU IP rights is then analysed. In particular, it is assumed that the centralized registration of EU patents reduces the costs and risks related to the possible existence of conflicting rights. As concerns EU IP rights, for which it is not possible to identify a State of protection, the relevant EU regulations provide for a choice-of-law rule that localizes the right as an object of property at the seat or domicile of the proprietor. Thus, a single law applies to the proprietary aspects of the security interest and to issues that are not covered by the applicable regulation.


The World Trade Organization (WTO) has witnessed a proliferation of Free Trade Agreements (FTAs) since its establishment. These FTAs contain many ‘TRIPS-plus’ provisions, which have alarmed many Intellectual Property Rights (IPRs) commentators. Comparing these FTAs with Bilateral Investment Treaties (BITs) or Bilateral Intellectual Property Agreements (BIPAs), which were common before the WTO, this wave of FTAs can be characterized as a return to bilateralism, within a global system of upgrading IPRs in a cycle of bilateralism, regionalism and multilateralism. The TRIPS Agreement often provides support for this argument. This theory tends to prove that tying IPRs to trade agreements is an unfailing strategy to increase global IPR protection.


Research and public policy on academic entrepreneurship are largely based on the assumption that faculty members start businesses to commercialize inventions that have been disclosed to university administrators and have been patented. In this paper, a sample of 11,572 professors are analysed and it is found that much academic entrepreneurship occurs outside the university intellectual property system. Specifically, about 2/3 of businesses started by academics are not based on disclosed and patented inventions. Moreover, it is shown that individual
characteristics, departmental and organizational affiliations, and time allocation of academics that have started business outside the IP system are different from those of academics that have started businesses to exploit disclosed and patented inventions. The implications for research on and the practice of academic entrepreneurship are discussed.


Industrial design law protects the appearance of useful articles but not the functional features of the design. This non-functionality requirement is a key element of design protection, and it is in fact a universal feature of such laws. The reason for it is the desire to avoid from undermining patent law provisions, which under certain strict conditions provide protection of functional elements.

In practice, however, the non-functionality requirement is difficult to apply. Three major reasons for these difficulties are explored in this paper: The first is that it is hard (or perhaps even impossible) to determine definitively that a design feature is purely functional. The second is that contemporary design tends to combine functional and aesthetic elements, with the result that it is often impossible to separate between the two. The question then becomes whether the design as a whole should be deprived of protection. The third reason is that functionality is an abstract concept that covers everything from the narrow meaning of ‘serving a technical goal’ and the broader (and vaguer) one of ‘achieving a purpose’.

After analysing the various difficulties that arise from the non-functionality requirement, the paper discusses a proposed solution, under which non-functionality would no longer be simply treated as a threshold requirement for eligibility for design protection. Instead, in cases that are not clear-cut, the issue would be left to courts to resolve when claims of actual design infringement are brought. This is because a court would be better placed to determine whether a particular feature of the design was functional or not on a case-by-case basis in the context of a competing use. Such decisions would avoid the ‘whole or nothing’ rule of rejecting registration of functional designs, and would accord with the rule allowing challenges to the eligibility of registered intellectual property rights at all times, whether directly or indirectly. The non-functionality requirement would thus function as an open standard norm, similarly to many other intellectual property doctrines that are employed when it is impossible to impose a single rule to cover a virtually limitless range of factual possibilities.

Patents


The potential of human embryonic stem cell (ESC) research could prove to provide immense therapeutic value for illnesses not curable under currently existing therapies. However, human ESC research is controversial as it touches the fundamental value of human life. Taiwan has been aiming to become the biotech hub of Asia-Pacific and is becoming a major player in human ESC research. Whether or not the research results from human ESC are patentable could have a profound impact on the progress in this field. In this article, the science of human ESC research is clarified and tested against the existing murky Taiwan patent standards. In particular, this article distinguishes between therapeutic cloning and reproductive cloning techniques, asks questions about the patentability of totipotent human ESCs and explores the meaning of the word *embryo*. This article draws comparison with the European practice on ethical standards and concludes that patenting human ESC research might not be so controversial, but Taiwan has to make its patent law clearer in this field to fulfill the country's intended goal.


In the paper it is contested whether patent laws promote indigenous technology invention and innovation in developing countries. Brazil reformed its patent laws in 1996 to permit pharmaceutical product patents. Study of five post-patent law reform bio-medical technology invention and innovation projects in the state of Sao Paulo supports the propositions that patents provide incentives to Brazilian bio-medical technology entrepreneurs to make risky investments into innovation and that patents facilitate technology markets among public–private technology innovation networks, both Brazilian collaborations and North–South
collaborations. Brazil enacted a technology law in 2005 that encourages public–private technology innovation through patent incentives and patent-facilitated technology markets.


Patent information provides an objective and public source to understand core technologies of companies. In this paper, a method is proposed for identifying core technology capabilities for a company in the semiconductor industry. The method is built on the patent similarity and K-means clustering algorithm. The indirect relations among the patents in the complex industry are considered in the method. In addition, the age of the patent is taken into account to avoid identifying aged core patents. The method is demonstrated by exploring the core technology capabilities that support the platform technology portfolio of the Taiwan Semiconductor Manufacturing Company (TSMC).


New innovation can be vastly dependent upon patented technologies. Despite growing awareness within the legal community of the chilling effect that the patent system may have on research and development, the United States patent law still does not provide adequate solutions to conflicts that may arise in a cumulative innovation setting. Against this background, this article embarks on a comprehensive analysis of cumulative innovation. Examining the issue from the perspective of the well-versed incentive to invent theory—while accounting for certain important aspects that have been overlooked so far in legal scholarship—this article suggests three main mechanisms that can work in tandem to ensure appropriate incentives in a cumulative innovation setting. The first mechanism, the Absolute Scope Principle, ensures the first inventor’s incentive by including the exploitation of all follow-on inventions within the scope of the first patent. This includes products developed through use of patented research tools, and is subject only to a narrow exemption doctrine based on a reasonable expectations test. The Absolute Scope Principle is balanced by the second mechanism, a wide experimental use exception, allowing development of any follow-on inventions without receiving advance permission of the original patentee; and by the third mechanism, liability rule doctrines, allowing non-consented exploitation of follow-on inventions in return for a reasonable royalty in case the inventors fail to reach a voluntary agreement. This article concludes with a critical examination of the US patent law, offering concrete suggestions for patent law reform necessary in order for the US to provide a supportive environment to cumulative research and continue to lead the global innovation markets.


Intellectual property (IP) is a reward and incentive market-driven mechanism for fostering innovation and creativity. The underlying, but disputed, assumption to this logic is that without IP, the wheel of innovation and inventiveness may grind to a halt or spin at a lower and unhelpful pace. This conventional justification of IP enjoys, perhaps, greater empirical credibility with the patent regime than with other regimes. Despite the inconclusive role of patents as a stimulant for research and development (R&D), special exception is given to patent's positive impact on innovation and inventiveness in the pharmaceutical sector. This article focuses on that sector and links the palpable disconnect between the current pharmaceutical R&D agenda and global public health crises, especially access to drugs for needy populations, to a flaw in the reward and incentive theory of the patent system. It proposes a creative access model to the benefits of pharmaceutical research by pointing in the direction of a global treaty to empower and institutionalize private-public partnerships in health care provisions. Such a regime would restore balance in the global IP system that presently undermines the public-regarding considerations in IP jurisprudence.


The requirement for industrial application under Article 57 of the European Patent Convention has been considered by the Court of Appeal in the UK and by the Technical Board of Appeal of the EPO for the same biotechnology patent. The industrial application of a biotechnology invention must be
reasonably plausible to those skilled in the art. It is important for national courts and the EPO to cooperate at all stages of procedure and, where possible, opposition proceedings should be speeded up in commercially important cases. Although it is settled law in the UK that any principle of law clearly laid by the Technical Boards of Appeal of the EPO should be followed, national courts are free to apply their own evaluation to the facts before them rather than give deference to the assessment of the Technical Boards of Appeal.

The UK and Europe appear to be setting different thresholds for assessing industrial application for biotech patents. Patentees may in future decide to wait for ‘wet-lab’ experimental data to back up their claims before filing biotech patents.


This article theoretically examines the potential effect of product patent on the availability of an essential drug in developing countries like India. Previous studies have indicated the possibility of a product patent making a drug unavailable in a developing nation. This has been shown under the uniform pricing policy adopted by the multinational company (MNC) that produces the drug. Allowing for price discrimination and comparing it with the above situation, we have argued that the problem of non-availability of a patented drug is, indeed, much less serious. However, successful price discrimination is not possible when markets are not perfectly segmented and ‘parallel trade’ (a form of arbitrage) by the distributors exists. The model incorporates such a possibility and establishes that even in the presence of parallel trade, the MNC can earn higher profits by supplying the drug to both the developed and the developing nations than by confining itself to the markets of developed countries.


This paper first reviews the evolution of China’s IPR system with an emphasis on the patent system, which is mainly shaped by three forces including the transition to a market economy, the opening of the domestic market and the national initiatives for cultivating indigenous innovative capabilities. Then by using some unique data both at the national level and firm level, it analyses the patenting behaviours and strategies of foreign multinationals in China in comparison with local firms, which has yielded some interesting findings. First of all, the patent deployment of multinationals in China is mainly market-oriented and strategic. Although the negative perception of China’s IPR system has led multinationals to act defensively, they have been able to adapt to the Chinese system and maximise their economic benefits, in addition to gaining competitive advantages. Also, while multinationals’ patenting in China has created some obstacles for local firms to catch-up, it has also forced some of them to find new ways to innovate and develop their own capabilities.


A decade after the State Street decision, more than 1,000 business method patents are granted each year. Yet, only 1 in 10 is obtained by a financial institution. Most business method patents are also software patents. Have these patents increased innovation in financial services? To address this question, new indicators of research and development intensity based on the occupational composition of financial industries are constructed. The financial sector appears more research intensive than official statistics would suggest but less than the private economy taken as a whole. There is considerable variation across industries but little apparent trend. There does not appear to be an obvious effect from business method patents on the sector's research intensity. Looking ahead, three factors suggest that the patent system may affect financial services as it has electronics: (1) the sector’s heavy reliance on information technology, (2) the importance of standard setting, and (3) the strong network effects exhibited in many areas of finance. Even today litigation is not uncommon; a number of significant examples affecting financial exchanges and consumer payments are sketched. The legal environment is changing quickly. A number of important federal court decisions are reviewed that will affect how business method patents are obtained and enforced. A number of proposals under consideration in the US Congress are also reviewed.

This article provides the top 10 ways that clients can reduce their litigation costs. The article explains the types of costs that are incurred in patent litigation and discusses the various stages and timelines for a typical patent litigation dispute. The author stresses the importance of clients’ proactively planning for litigation (before a lawsuit is commenced) and education and involvement in the litigation process.


The study examines how fragmentation of patent rights and the formation of the Court of Appeals for the Federal Circuit (CAFC) affected the duration of patent disputes, and thus the speed of technology diffusion through licensing. A model of patent litigation which predicts faster settlement when patent rights are fragmented and when there is less uncertainty about court outcomes, as was associated with the ‘pro-patent shift’ of the CAFC, is developed. It is confirmed that these predictions empirically using a data set that covers patent suits in US district courts during the period 1975-2000. Finally, it is analysed how fragmentation affects total settlement delay, considering both the reduction in dispute duration and the increase in the number of patent negotiations.


In settings where patents and intellectual property provide a strong regime of appropriability, the race to be the first firm to patent a product or a process is a central feature of competition. In this context, it is hypothesized that cooperative arrangements that only gain access to external knowledge contribute less to heterogeneity between firms and have a much weaker influence on patenting than alliances that transfer highly firm-specific knowledge, residing in individual and social relationships. It is also hypothesized that cooperations between private firms and public organizations accelerate the rate of patenting to a higher degree than cooperations among private firms. These ideas are developed and tested on the population of 839 US biotechnology firms between 1973 and 2003. The importance of the findings on the debate about the value of knowledge access versus knowledge transfer in strategic alliances is discussed.


The aim of this article is to investigate to what extent small-firm foreign patents differ from those of their larger counterparts. The research setting consists of the population of US-owned small and large businesses with patent applications at the WIPO during 1996-2006 in the emerging field of nanotechnology. Findings reveal a significant and growing contribution of small firms to the globalization of patents. The analysis also suggests that small-firm patents tend to be more novel and embedded in domestic innovation networks than large-firm patents. Policy implications are multiple, including putting international patenting on the policy agenda and helping highly innovative small companies to explore foreign commercial opportunities in new markets of capital and technology.


The enablement requirement is central to striking the balance between encouraging first-generation inventors and improvers. Unfortunately, the enablement doctrine is in disarray. Scholars have lambasted recent Federal Circuit decisions that apply seemingly inconsistent ‘full scope’ and ‘single embodiment’ tests for determining enablement. These complaints, however, are just one piece of a larger problem: the enablement doctrine incorporates an assortment of moving parts, and scholars, as well as the Federal Circuit, have not fully considered how these parts interact as a whole.

This paper introduces a cohesive treatment of the enablement doctrine, and in doing so, seeks to calibrate the doctrine so that it more properly strikes the balance between pioneers and improvers. To this end, Part I introduces the tests that have troubled scholars and highlights these tests’ apparent inconsistencies. Part II proffers a theory that reconciles the tensions in the fragmented case law.
Though critics cast the full scope rule as a ‘new enablement standard’ that ‘vitiates old doctrines’, it is actually entirely consistent with preexisting doctrine. Contrary to critics’ claims, the single embodiment rule merely dictates that the patentee need not disclose alternate means for making or using the claimed invention. Accordingly, the single embodiment rule works alongside the full scope rule, and together, the rules are consistent with longstanding principles of enablement and literal infringement.

Part III introduces and defends three reforms motivated by an understanding of the costs associated with the standard proposed in Part II. First, the Federal Circuit should reconsider its approach to undue experimentation. Second, the Federal Circuit should resurrect the moribund maxim that claims should be construed narrowly when such construction is necessary to preserve their validity. The third reform addresses the relationship between enablement and later-developed technology. A critical but unresolved issue is how to treat embodiments that become possible only as a result of technology which arises after the patent application is filed. This final reform disentangles the inconsistent case law and proposes policy levers for isolating after-arising technologies which merit protection from those that do not.


Economists have called for the patent system to preclude the grant of overlapping patent rights. However, the literature is silent on what constitutes an overlap of patent rights and on whether any overlap is legally permissible. This article identifies the existence, and determines the validity and consequences, of overlapping patent rights. It finds that there are various types of overlap, and that each type is legally permissible subject to certain conditions. The authors conclude that where overlap is permitted, it should not be considered problematic.


With the increase in the complexity of trade and commerce, there has been a huge indulgence of the entrepreneur’s mind in creating newer and valuable intellectual properties to avoid the normal competition prevailing in the market. This has rather led to the birth of vivid varieties of intellectual works. This can be said only in the literal sense as to classify them as intellectual property, which indeed is a legal term, one has to see whether that particular work generated out of the intellectual labor is covered under the aegis of the law. Business method patents are per se not new to the patent law as the earliest business method patents granted goes back to the 18th century, yet they have not been recognized in many jurisdictions to be patent eligible. The reasons are manifold for instance a business method may not qualify either for either of the test of patentability on the basis of patentable subject matter (new invention/ new discovery/ new use), novelty, inventive step or non-obviousness and industrial applicability or utility.

However, the reality is that business method patents can be granted depending upon the claims represented in the application and the way in which the invention is projected. Moreover, today most of the business method patent applications are related to computers and are covered under computer-implemented inventions; the general problem is to classify them and to understand them to be of what category of patent - a process or a machine?

There are other problems also associated with business method patents and that is of economic nature. It is a well recognized practice that generally methods of doing businesses are not inventions per se and therefore, cannot be patented but the involvement of external knowledge i.e. the combination of two or more disciplines that leads to the applicability of the method may make it unique and unprecedented; similarly involvement of technology would also result into the same.


This study examines the sources of technological innovation in Chinese industries using the 2004 economic census data. On the one hand, it analyzes the relationships between patent grants and new product sales. On the other hand, it analyzes the relationships among in-house R&D, technology transfer from foreign and Chinese domestic technology markets, spillover effects of foreign investment, as well as export. The study reveals that in-house R&D has become the most important source for industrial innovation in China. In-house technological efforts are critical for developing original innovations as well as for absorbing the
technologies transferred from external agencies. However, neither technologies transferred from foreign countries nor those from the domestic technology market are playing significant roles in China’s industrial innovation. The spillover effect of foreign investment on patent grants is strong and significant, though its impact on new product sales is insignificant. Export shows negative, though insignificant, impact on patent grants, but positive, strong, and significant effects on new product development. Overall, the results of this study demonstrate the critical role of in-house R&D in China’s industrial innovation.


Today biotechnology is perhaps the most important technology field because of the strong health and food implications. However, due to the nature of said technology, there is the need of a huge amount of investments to sustain the experimentation costs. Consequently, investors aim to safeguard as much as possible their investments. Intellectual Property, and in particular patents, has been demonstrated to actually constitute a powerful tool to help them. Moreover, patents represent an extremely important means to disclose biotechnology inventions. Patentable biotechnology inventions involve products as nucleotide and amino acid sequences, microorganisms, processes or methods for modifying said products, uses for the manufacture of medicaments, etc. There are several ways to protect inventions, but all follow the three main patentability requirements: novelty, inventive step and industrial application.


The value creation or destruction associated with the introduction of software patents in the United States have been examined in two ways. The first looks at the cumulative abnormal returns to Information and Communication Technology (ICT) firms around the time of important court decisions that impacted software patents, and the second analyzes the relationship between firms’ stock market value, the sector in which they operate, and their holdings of software patents. It is concluded that the market evaluated software patents as a negative development ex ante. Ex post, a greater number of firms in all ICT sectors invested in these patents, and these firms had slightly higher market values than those with no software patents. However, while clear evidence is obtained that the technological importance or quality of patented innovation mattered for the market value of hardware firms both before and after the legal changes, it is less clear that the marginal patent right per se was associated with increases in market value, and there are no significant valuation effects associated with patents for pure software firms after the change.

Copyright and Trademark


The enactment of anti-circumvention laws in Canada appears imminent and all but inevitable. This article considers the threats posed by technical protection measures and anti-circumvention laws to fair dealing and other lawful uses of protected works, and so to the copyright system more generally. The argument adopts, as its normative starting point, the principle of ‘prescriptive parallelism’ according to which the traditional copyright balance of rights and exceptions should be preserved in the digital environment. Looking to the experiences of other nations, the article explores potential routes towards reconciling technical protection measures with copyright limits, and maintaining a substantive continuity in Canada’s copyright balance.


The article summarizes the findings of a project undertake to assess the impact of digital rights management (DRM) on the ability of users to take advantage of certain statutory exceptions to copyright. The research filled an existing gap by unveiling, through empirical lines of enquiry, (1) whether certain acts which are permitted by law are being adversely affected by the use of DRM, in the United Kingdom, and (2) whether technology can accommodate conflicts between freedom of expression and DRM – linking, thus, policy recommendations to empirical findings. The survey concluded that although DRM
has not impacted on many acts permitted by law, some beneficiaries of privileged exceptions are being adversely affected by the use of DRM and practical solutions are required.


Earth observation by satellites is one of the developing sectors of space activities with the growing involvement in private capital or actors. This leads to the question of how efficient legal rules governing this activity are. Copyright law is one of the key fields of law applicable to earth observation activities and is the subject of the present analysis. This paper describes the current state of copyright regulations in different jurisdictions. It also addresses the issue of defining earth observation data for the purpose of applying copyright protection to them. Finally, it analyses whether more or less copyright protection would be beneficial for the commercialization of the earth observation activities, and the distribution and further use of data they produce.


Software forms an essential element of information and communication technologies (ICT). Computer program interoperability elements, or interfaces, in turn are parts of a computer program, which enable a program to communicate with other programs and devices. Interfaces are the points of connection that enable a software component to become a part of a larger ICT system. This connotes that the control mechanism of these elements has an impact on who are able to take part in the technological development of programs and devices forming a relevant information and communication system. As these systems establish important platforms for the information society, the question of interoperability in building such systems becomes internationally a significant one. How this issue is resolved has an impact on the possibilities for technological development and innovation in the global information society. Moreover, how software is regulated has consequences for the democratic structures of a society. This is because software technologies can be used as private means for regulating human behavior, e.g. by preventing access to various resources.


This article discusses the development of the compulsory license for making phonorecords of nondramatic musical works in the Copyright Act of 1909 and the continued existence of this compulsory license in subsequent iterations of copyright law. Drawing on this background, the paper then argues that, however useful the compulsory license may have been in the past, it is no longer a useful means to promote the creation of intellectual works and should be repealed.

In particular, the paper highlights several factors that compel the conclusion that compulsory licenses are an outdated concept and should be repealed. In particular, the article focuses on how compulsory licenses deviate from the traditional bargain struck by copyright law, the lack of moral rights under the present system, the debatability of the assertion that repeal of the compulsory license will result in a sufficient quantity of exclusive licenses that will not only be exclusive but will harm the public interest, the lack of anti-monopoly concerns in the modern marketplace, and a belief that private negotiation will result in fairer treatment of the authors of nondramatic musical compositions.


The 1998 enactment of the anti circumvention provisions of the Digital Millennium Copyright Act in the United States amended the Copyright Act to prohibit disabling or circumventing technical protection of copyrighted works. Consequently, over the last decade, the development of copyright law has been inextricably intertwined with the development of ‘digital rights management’ (DRM) systems, intended to protect digital content, and the laws that were intended to safeguard DRM systems. In this paper, the interconnection of copyright and DRM is reviewed, arguing that DRM constitutes a conscious attempt to re-impose upon digital works the material exclusion that has been lost through digitization. Pre-determined material affordances are re-inscribed on digital content through discursive DRM technology. DRM imposes pre-determination of use and access on creative works, which is reinforced by anticircumvention laws. Pre-determination, however, imposes unexpected constraints on the use of creative works, limiting the prospects for creative interaction with secured texts.

In 2006, the Gowers Review of Intellectual Property made a series of recommendations for reforming the intellectual property regime to better serve the interests of both consumers and industry. Among the proposed recommendations was that an exception for parody be introduced within the Copyright Designs and Patents Act 1988. In January 2008, the Intellectual Property Office (the IPO) launched the first part of a two-stage consultation process on exceptions to copyright. As part of that consultation process, the IPO proposed a ‘fair dealing style exception’ for parody, and sought views on whether a new exception should be introduced as well as what form it might take. In December 2009 the IPO launched the second stage of this consultation process. The second consultation document rejected the case for a new parody exception. This article considers the place of parody within the copyright regime and the objections levelled against the introduction of an exception set out within the IPO’s second consultation document. It invites the IPO to reconsider its decision not to recommend the introduction of a specific exception for parody within the UK.


In Canada, Crown copyright permits government to assert control over its works. These Crown rights have often been justified on the basis that government must assert intellectual property rights so as to be better able to control the accuracy, integrity and quality of any information that reaches the public through Crown works. In this article, the authors examine GeoConnections’ template agreements for the licensing of government geographic data. They argue that not only is the basis and scope of claims to intellectual property rights uncertain, the objectives of quality control, data integrity and accuracy do not appear to motivate the licence terms. The uncertainty as to the legal basis of the intellectual property claims is significant, as licences of this kind may give support to otherwise weak downstream claims by third parties to copyright in data products generated through the use of geographic data provided by the Crown.


Copyright protection is becoming more challenging by the day in the digital era. In line with its political policy, China has established a copyright regime with particular characteristics. While the public interest in access is highlighted, the public interest in authorship has also been imposed and taken further. It also provides for public, non-criminal enforcement – copyright administrative enforcement. Could the Chinese model possibly be a solution for effective copyright protection? This will be explored in the light of an up-to-date case analysis in both actual and virtual environments.


Trademark dilution, a relatively new concept in intellectual property jurisprudence, has often been criticized for being vague and arbitrary. Over the years litigators have struggled to give specific boundaries to the concept and courts have struggled with its interpretation and application. In general, trademark dilution is understood as an extension of the concept of infringement. The difference being that where the goods involved are diametrically different, then the harm caused to a trademark by its use by an unauthorized person is known as dilution. A well known trademark is diluted when the use of similar or identical trademarks in other non competing markets means that the trademark in and of itself will lose its capacity to signify a single source. In other words, unlike ordinary trademark law, dilution protection extends to trademark uses that do not confuse consumers regarding who has made a product. Instead, dilution protection law aims to protect sufficiently strong and well known trademarks from losing their singular association in the public mind with a particular product. Dilution is sometimes divided into two related concepts: blurring, or essentially basic dilution which blurs a mark from association with only one product to signify other products in other markets (such as ‘Kodak Shoes’); and tarnishment, which is the weakening of a mark through unsavory or unflattering associations. The aim of this study to understand the legal position of the trademark dilution doctrine in international and Indian domain.

The core purpose of enforcement of trademark rights is insure and protect the monetary gains of the trademark owner and also helping the consumers. But as it has been understood, the basic idea underlying the trademark protection is securing the benefits of person (including the legal entities) who are in the business. In the present heavily commercialized market scenario, the creation of trademark and brand is extremely desirable as this plays a very crucial part in the advertisement business and hence in the trade itself. Celebrities play a very crucial role in this respect. As the commercialization is evolving, it has been witnessed that even the celebrities themselves have acquired the brand status and their names are getting registered as trademarks, common examples are Michael Jackson, Elvis Presley, Spice Girls, and many more.