Introduction

Nari Lee and Niklas Bruun

Intellectual property (IP) law performs a number of complex functions in society. One important purpose of IP is to foster innovation and creativity in a society. In meeting this important purpose, the system of IP has evolved where international models and international treaties have become important, although the significant decision making for institutional design and norms is in the hands of national authorities and policymakers. In contemporary history, the legal development of IP law, which is marked by ‘an import’ of foreign legal institutions and concepts from elsewhere, has often been described as legal transplant. As the norms of international IP are increasingly connected to culturally and locally sensitive resources, the debate on the suitability and consequences of legal transplants has become a sensitive issue debated at a global level.

Scholars of IP law have only sporadically attempted to provide an analysis of legal transplants and their anecdotal consequences. The definitions as well as the measurement of success or failure of legal transplants, as well as what follows after, have not been fully explored. The literature may present the recipient nation’s successful legislative changes as evidences of a successful legal transplant. To understand the impact in full, their efficacy in achieving the objectives that they are devised to achieve needs further exploration. Moreover, the influence of foreign norms, institutions and practice needs to be critically analysed from a comparative law perspective, to assess how they function in the local socio-economic environments, after initial transplant.

Chinese IP law has been the topic of much interest of recent scholarship. While emerging works are impressive, often they remain descriptive. From a more analytical perspective, this volume examines the series of IP law and system reforms in China as statutory and textual resources to study legal transplants. The adoption of international standards as the law in the books has to be followed by transformation, implementation and enforcement, in order for them to become local practices of governance.

To explore analytically the ongoing changes in Chinese IP law, contributors in this volume use the metaphor of legal transplants to study a
series of past and current transformations in IP rights and their governance in China and Europe. From a comparative perspective, the contributors explore how Chinese stakeholder institutions – the legislature, the administration, courts and the market – have dealt with, indigenised and transformed the transplanted norms. Furthermore, to compare Chinese and European IP governance in full, most of the chapters are written jointly by a pair of Chinese and non-Chinese authors.

The book is divided into three parts. Part I, ‘Intellectual property for innovation and creativity in China’, contains four theoretical chapters that set the framework for the discussion and subsequent comparisons within the volume. These chapters focus on IP law in China and present a history of legal transplants in China and a governance thesis to explain further transformation.

Part II, ‘Comparing concepts and norms in Chinese and European IP law’, contains six chapters that compare concepts and norms in the IP law of China and Europe. The joint Chinese and European contributors focus on selected topics where transformation is currently ongoing, both in China and in Europe, in three areas of IP law – copyright law, patent law and trademark law, and also in the context of implementing national and regional intellectual property rights (IPR) strategies.

Part III, ‘Governance of practices and IP enforcement’, contains nine chapters focusing on the transformation in governance of practices and enforcement of IP rights in China and Europe. Jointly, contributors explore governance of practices in the areas of copyright (collective rights management), patent (non-practising entities, standard essential patent licensing) and IP enforcement through courts and the administration, including customs authorities, in China and Europe. These chapters highlight the evolving contours of IPR practices and enforcement in China but also present a great internal divergence in technological and economic developments in different parts of China.