Editorial

Trust the law. It must never be overlooked the way in which law benefits from its historical and cultural context, whether considering the harmonization of the ‘narrative’ of litigation, or the ‘artistry’ of intellectual property law in relation to its cultural and creative resonances. The contributions to this issue examine the various ‘cultures’ of intellectual property, from harmonization, exhibition, retailing, news publishing, through to research itself. Law is a relationship, perhaps one of the very mechanisms for cultural participation. For intellectual property law, the relationship to culture is at times explicit and at times extremely personal. Law both is and also contributes to a relationship of trust. The contributions to this issue make this very clear in what are otherwise very different contexts.

This issue of the journal is a very special one indeed, featuring the Herchel Smith lecture for 2012, delivered by His Honour Judge Birss QC. It is a great honour to work in an institution as distinguished for intellectual property scholarship as is Queen Mary, and to honour our history with Dr Herchel Smith who was himself a hugely influential figure in the history of science and the academic development of intellectual property scholarship in the UK. Despite today’s ubiquity of intellectual property in our education, research and media, it was just over 30 years ago that the first dedicated Chair in Intellectual Property was established in the UK: the Herchel Smith Chair in Intellectual Property. Through Dr Smith’s generosity and Sir Roy Goode’s vision, the establishment of the Herchel Smith Chair ensured that Queen Mary’s Centre for Commercial Law Studies (CCLS) could commence with its first operational law unit. Since then, and ultimately under the banner of the Queen Mary Intellectual Property Research Institute (QMIPRI) as we know it today, CCLS has the largest intellectual property faculty and postgraduate community in the country, and maintains the hugely significant Herchel Smith archive. And of course, one of the proudest achievements of QMIPRI, in collaboration with Edward Elgar Publishing, is the *Queen Mary Journal of Intellectual Property* (QMJIP). It is through QMJIP that QMIPRI showcases the tremendous international community of intellectual property, from students to distinguished professors, and it is a project of which we continue to be particularly proud and to which we are especially committed.

Community was indeed something very important to Dr Herchel Smith. QMIPRI is dedicated to its public remit in respect of the wider intellectual property community. QMIPRI’s collaboration with the profession has been a critical part of its ongoing contribution to the training and education of intellectual property practitioners, as well as its contribution to the development of the profession. Ongoing collaboration and cooperation between academics, civil society, industry, government and the profession produces the best kind of teaching, research and policy, and provides that additional dimension of scholarly and professional excellence which was of such importance to Dr Herchel Smith when he first entertained the vision that would ultimately establish the excellent Institute we all enjoy today in QMIPRI. One could hardly hope for a better example of the success that can be achieved by such a collaborative, cooperative and responsive approach to academic, professional and policy development, than His Hon Judge Birss QC, who has not only had a distinguished career thus far as a barrister and judge, but also an unblemished copybook as one of the most gracious and affable people in law. Since his appointment to the Patents County Court, HHJ Birss QC

has literally revolutionized the cultural and social life of English intellectual property litigation.

Paola Magnani and Maria Lillà Montagnani take us on the very artistic journey of law, 'From Art Displays to Art Experience'. The genuine spectacle of law in relation to art exhibitions and arts festivals is an enormously important area of intellectual property and the authors look at the way in which these events are themselves means by which to access culture; that is, they are themselves resources for expression and cultural participation. This very interactive nature of the contemporary festival or exhibition disrupts the limitation of the 'work' and challenges the remit of intellectual property in very particular ways. The authors address the issue of copyright protection in these contexts and the curation or management of such events.

A former Herchel Smith fellow himself, Sam Ricketson provides an analysis of Australian plain packaging legislation, the restrictions on intellectual property ownership and exploitation of rights, and the constitutional challenge in the High Court of Australia under s 51(xxxi) (acquisition of property on 'just terms'). But can there be acquisition without interest?

Guido Westkamp comments on the new German publisher's right, which grants news publishers the right to authorize or prohibit the use of news items by search engines. The author contends that this is contrary to the freedom provided under the Database Directive, and argues that the courts must refuse to apply it as a violation of European law.

The relationship between intellectual property and research is crucial to commercial and public research environments alike. Intellectual property is of course one of the key considerations in various collaboration agreements, consultancies and international knowledge transfer and research. Noting the acquisition of licences as indeed one of the obstacles not only to commercialization of research outputs, but also to initiating projects in the first place, Stuart J Smyth, Sara McPhee-Knowles, Andrew Baker and Peter WB Phillips outline a patent landscape methodology to facilitate the freedom to operate in such relationships. Indeed, in this way, intellectual property not only governs the commercial relationship but also provides a mechanism for constructing 'trust' within a research relationship.

Trust the law.

We hope you enjoy this rich issue.

Professor Johanna Gibson and Lord Hoffmann
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