Editorial

One way or another, discussions of intellectual property frameworks almost invariably and inevitably engage with the justifications or reasoning for intellectual property, indeed, with the justifications for the justifications themselves. A common point of convergence, however, whether as a point of deflection or a point of impact, arguably is that of the market.

To what extent does the intellectual property economy actually rely upon its own reproduction, its own imitation? To what extent is the act of imitation actually the essential process or relationship that makes possible a market in knowledge? To what extent is creative quality produced by the market, not merely distinguished by it?

This issue of the *Queen Mary Journal of Intellectual Property* brings together a range of contributions and perspectives on the relationship between intellectual property and the market.

In ‘The interface between the EU copyright law and the fundamental economic freedoms of trade and competition in the digital single market’, Mario Cistaro deciphers the aporetic relationship between copyright and trade. With the transformative effect of digital technologies, the comprehension of the law itself is revised and, in particular, the right of communication to the public is recognized. Cistaro examines the impact on EU freedom of trade and competition, including presenting a barrier to entry for competitors, at odds with broader objectives of digital equality and freedoms in the EU. Paradoxically, the broad nature of the right in a way excludes the right-holder from the creative economy, as it were, and Cistaro analyses the potential impact of this anomaly on innovation more widely.

Mary Gani-Ikilama examines justifications in copyright from the perspective of the creative industries and creative markets. In ‘Copyright theory and a justificatory framework for creative autonomy in cultural industries’, Gani-Ikilama notes the emphasis on economic justifications and policy in the creative industries, all with no consensus as to the measurement of the subject matter or even the definition of the subject matter itself. Drawing upon Sternberg’s definition of creativity, the author provides a compelling account of creativity autonomy in copyright law and the creative economy, working from the perspective of human rights, in order to establish effective and efficient incentives and revenue models for creatives.

Haijun Lu examines the practical consequences in China of one of the most significant financial models in the copyright industries, that of collective management. The author notes the structural and management issues and, in particular, the difficulties in transplanting the collective management model into the Chinese system. In this case, the role of competition is clear, not in terms of correcting market efficiencies, but in terms of strengthening the very basis of measurement and remuneration in traditional copyright economic models.

What is common to all the articles is the often ambiguous and contradictory relationship between intellectual property and competition. Philipp Maume brings these issues together in his comprehensive analysis of the competition–intellectual property relationship in ‘*Huawei v. ZTE*, or, how the CJEU closed the Orange Book’. What arises from Maume’s analysis is that the impact of intellectual property protection of standards drives even more strongly an economy compelled by imitation, but as an obligation rather than a freedom.

This issue's 'In Focus' articles bring new insight and research from around the world. Ping-Hsun Chen analyses the impact of the China–Taiwan 'Cross-Strait Agreement on Intellectual Property Rights Cooperation and Protection' and the potential difficulties and implications in relation to the interpretation and application in China of the right of priority arising from a Taiwan application. Ercilia García Álvarez, Sheila Sánchez Bergara, and Jordi López Sintas provide a comprehensive analysis of the controversial Sinde law amendments in Spanish copyright in their article, 'Regulating copyright in the digital age in Spain: the Sinde law'. Yang Cao tackles the difficult area of indirect infringement of intellectual property in China, where the courts have taken divergent approaches to interpretation. And, finally, in 'A chapter called controversy', Eashan Ghosh examines a notorious episode of plagiarism in the Delhi High Court (of an article Ghosh published in this journal no less, in 2013!).

This issue really does have it all, even a drop of scandal.

Intellectual property, whether market failure or market force, it is certainly never dull.

Professor Johanna Gibson
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