Editorial

Intellectual property is often spoken about in terms of words and phrases such as bargain, balance and social contract. While sometimes it may feel like these terms are used to the point of distraction, they nevertheless reiterate the fundamental premise of intellectual property as a tool for innovation through communication, collaboration and dissemination. The intellectual property system is articulated through complex relationships of duties, responsibilities and interests, and the emphasis attending each of these is crucial in its analysis and operation.

The contributors to this issue of the Queen Mary Journal of Intellectual Property consider these broad values of responsibility and balance through a range of perspectives and intellectual properties. The fundamental concern underpinning all the excellent contributions to this issue is the discourse of innovation and all the voices and duties that comprise it.

In ‘Copyright law and online journalism: a South African perspective on fair use and reasonable media practice’, Pamela Andanda explores responsibility in journalism and media practice, and the concept of fair use in South African copyright law. The rapid development of online journalism and the social way in which people consume the news has presented tremendous challenges for news services. Andanda considers these aspects in detail and the potential for fair use to ensure effective adaptation to shifting responsibilities in the face of rapidly developing technological change.

In his article, ‘Decisions around innovation and the motivators that contribute to them: patents, copyright, trade marks and know-how’, Chris Dent also explores this emphasis in the literature on a simple incentives narrative, and challenges this characterization of innovation and of the intellectual property system. Proceeding from the perspective of behavioural economics, Dent argues for a more considered and arguably sophisticated appreciation of the commercial, social and economic dynamics of the system, and applies the concept of ‘motivators’ to analyse decisions across a range of intellectual property rights.

Carmen Rocío Fernández Díaz considers the interactions between communication, duties and rights in the case of trade secrets. In ‘Trade secrets in Spain: protection and connection with intellectual property rights’, Fernández Díaz examines the legal environment for trade secrets in Spain, and notes the significant interaction between civil protection and unfair competition on the one hand, and criminal protection and responsibility on the other. The author goes on to consider in further detail the interaction with patents, and the perpetuation of a relationship between responsibility and punishment, rights and duties.

In ‘Copyright works vs. the public domain: copyrightability requirements pertaining to the restoration and reconstitution of ancient books under Chinese judiciary opinions’, Zhiwen Liang considers further the relationship between cultural responsibility, preservation and intellectual property, all in the context of the rich intellectual history of ancient China. The author addresses the restoration of ancient Chinese books as a work of originality, raising significant questions about the scope, balance and responsibilities of copyright in the context of preservation as well as innovation, and the interaction between investment, cultural preservation and the public interest.
This issue’s In Focus section brings together these issues of responsibility and balance in three key areas – plain packaging, broadcasting in bars and restaurants, and research publications in innovative industries.

In ‘Plain packaging of tobacco products and the South African trade mark system’, Sharon Nyatsanza provides a comprehensive analysis of South African policy in respect of plain packaging and the potential interference with trade mark rights and duties to those rights. The author looks at the complex interplay between so-called ‘negative’ and ‘positive’ rights and the implication for the intellectual property relationship, arguing that the right to use is integral to the trade mark system.

Alexandre L Dias Pereira considers broadcasting in bars and restaurants in Portugal in ‘Broadcast works in bars and restaurants: “resistant” case-law to the CJUE’s rulings’. Broadcasting music is an important cultural aspect of public dining and leisure and an area of ongoing dispute, and the author considers in detail the legal environment to ensure a balance of rights and public interest and cultural participation.

Finally, and continuing the innovation narrative theme, Pawan Sharma, Rashmi Tripathi, Vrijendra Singh and RC Tripathi examine the relationship between patents, research publications and innovation in ‘Assessing the ICT innovative position of India based on patent data and research publications’. The authors note the fiscal pressure in developing countries to support industries requiring less capital, including the information and communication technologies (ICT) sector, and explore the potential for patents and research publication data to provide meaningful and accurate indications of development.

Perhaps the notion of incentives is less about the reality of the system and more about rendering sensible the perils of innovation. It is difficult to accept any new conversation that appears to be without presequence.

We hope you enjoy this issue.

Professor Johanna Gibson
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