Editorial

The authenticity and scope of the ‘product’ within intellectual property is both presented and at the same time confounded by the law. The orientation of the law on the product is itself shifted and repositioned by technological, social, and cultural factors in law. Finding the product in a volatile theoretical and legal environment is at stake in each of the articles in this issue.

In ‘Parallel importation of patented products in Thailand’, Noppanun Supasiripongchai looks at the problem of the product in the context of parallel importation of patented products in Thailand and as part of the ASEAN Economic Community (AEC). The author notes the lack of clarity over the life of the product, as it were, subject to the exhaustion rules of the Thai Patent Act 1979 and argues for a regional exhaustion approach.

The digital product in Australian copyright is the subject of Jani McCutcheon’s article, ‘Digital access to culture: copyright in photographs of two-dimensional art under Australian copyright law’. The author examines the dissemination of art and access to culture through a review of the access policies of five major Australian galleries. Indeed, the dynamic between the copyright product and social and cultural expectation of access suggests an interaction between culture as product (within intellectual property) and culture as relationship, in terms of access to culture. Looking at photographs in particular, the author questions the copyright status of such products and argues for an emphasis on cultural capital as distinct from the private property anticipated in the product.

In ‘Counterfeiting and piracy in international trade: the good, the bad and the ... oxymoron of “real fakes”’, Rostam J Neuwirth considers the increasing importance and currency of intellectual property in an international context, as mapped by trade agreements and economic relationships. With a particular emphasis on the fashion industry, the author looks at the impact of counterfeit products on the characterization of the industry more broadly speaking, and an over-simplistic dualism of the law itself. The concept of ‘authenticity’ and the authentic product is especially challenged by the fashion industry and the ‘industry’ itself of counterfeits and ‘real fakes’. Where is the product in fashion if not in the wearing?

Chenguo Zhang goes right to the heart of the question in ‘What are works? Copyright law subject matter in the transition to the digital era’ with an examination of the Third Amendment to the Chinese Copyright Law. The author notes that copyright subsistence is an area of focus for the reforms and the concept of ‘work’ is central to regulatory efforts to account for digital products within Chinese copyright law. The author analyses the new definition of ‘work’ and the introduction of new works and the way in which a kind of consensus on the ‘product’ is key to international trade relations. Finally, Youhua Liu looks at similar questions for Chinese intellectual property law, but for patents, in ‘Remarks on the proposed Fourth Amendment to the Patent Law of China’. Again, enforcement is key to the effective characterization of the ‘product’ within its commercial and economic life.

Arguably the moment of enforcement arrests an otherwise dynamic relationship within the scope of the product. But in many ways the product is but a ghost in the machine.

We hope you enjoy these diverse perspectives and sight-lines in the product, as much as we enjoyed ‘finding’ them.

Professor Johanna Gibson
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