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Book Review Submission

Handbook of Intellectual Property Research: Lenses, Methods and Perspectives. Edited by IRENE CALBOLI and MARIA LILLÀ MONTAGNANI. [Oxford University Press, 2021. xxxv + 876 pp. Hardback £95.00 ISBN 978-0-19-882674-3.]

A new edited collection, the *Handbook of Intellectual Property (IP) Research* brings together contributors who recognise that IP rights law is no longer siloed within the law discipline. Stressing the importance of evidence to support IP law policy, the aim of the open access *Handbook* is to 'provide a comprehensive overview of the methods and approaches that could be used as guidelines to address and develop scholarly research questions related to IP law'. Its significance lies in that it represents the largest compilation to date of existing IP research methods and approaches from different lenses and perspectives with 52 chapters running to 876 pages.

Jointly edited by Professor Irene Calboli (Texas A&M University) and Associate Professor Maria Lilla Montagnani (Bocconi University), the extensive collection of contributions is an important vehicle for IP law scholars and researchers to share their understanding of the value of IP to society across a myriad of disciplines. This is no easy task given the subject of IP rights law is continually changing and often has an impact on other subject areas. There has never been a time when the legal, economic and political significance of IP rights has been greater. IP laws also vary between countries in the developed and developing world to a lesser or greater extent. Thus, it is no surprise that both comparative and interdisciplinary approaches are important features of the global IP rights law research base and discourse presented in this substantial volume. The international line up of expert contributors present a multitude of ways in which interdisciplinary and comparative IP law research from diverse theoretical perspectives is shaping the contours of IP rights in supporting the creative economy, innovation leading to world-class technologies and to inform public policy choices.

The four themes embedded in the collection cover Intersections between IP law and other areas of law (Part I); the Humanities (Part II); Social Science (Part III) and Pluralism (Part IV). The chapters selected for each of Parts 1 – IV of the collection sit well withing the overarching themes. While all chapters in the volume are valuable contributions, rigorously researched and written, in this review I will focus on those chapters that captured my personal interest in terms of originality, uniqueness or offered a fresh take on IP scholarship on intersections, comparative and interdisciplinary approaches.

Editor Professor Irene Calboli, in her Part I Chapter 3 Comparative Legal Analysis and IP Law: A Guide for Research quite rightly states, 'Although several generations of IP scholars have engaged in comparative legal analysis as part of their research agenda for many decades, a limited number of contributions can be found addressing the role of comparative law in IP

research in this area'. Her intriguing observations include the longstanding history of comparative IP law research which she explains began with the adoption of the 1883 Paris Convention for the Protection of Intellectual Property and the 1886 Berne Convention and subsequent transmission into national law in the UK, the EU and further afield. Helpfully, Professor Calboli provides further examples for IP scholars to consider, directly related to her own comparative law research journey. This began with a comparison of Italian and UK law, followed by US and EU law and most recently she expanded her comparative law research to the Asia-Pacific region focussed on the issues of IP exhaustion and parallel imports. In addition, Calboli shares her approach to structuring edited IP law collections referring to her earlier work the *Cambridge Handbook of International and Comparative Trademark Law* edited with Jane Ginsburg. The chapter offers a fresh approach to comparative IP law scholarship, one that extends to publishing for a global audience with a view to opening up diverse social, cultural, economic and political perspectives.

Chapter 11 A Research Framework for Intellectual Property and Environmental Law by Professor Joshua D Sarnoff (De Paul University College of Law) is a highly interesting work given the rise of up to the minute topics such as climate change, net zero carbon emissions and sustainability, all of which have a planetary and environmental dimension. The author explores interdisciplinary research at the intersection of the broad legal frameworks of IP and environmental law research. The term 'interdisciplinary' may be understood in different ways however, in this collection it is used here to refer to the full spectrum of interdisciplinary activity including cross-disciplinary, multi-disciplinary, interdisciplinary and transdisciplinary work. Sarnoff suggests that the first step in carrying out interdisciplinary research is defining a suitably narrow value-driven research topic so that reaching a rational solution is more likely. He proceeds to highlight the common features and synergies that emerge from the two disciplines of IP and environmental law. The reader is invited to consider the most basic question in patent law from an environmental lense - which types of technological innovation should be considered inventions and thus private property? His chapter is highly theoretical in its approach to the evaluation of choice of IP/environmental law research methodology. Addressing legal theory is valuable as there is a certain morality to any legal theory which can empower researchers to consider what is occurring in the physical environment beyond the courts to create strategies to improve the IP law system.

Part II Intersections between Intellectual Property Law and the Humanities presents a fascinating selection of chapters across the board. Chapter 15 Intellectual Property Law and Geography by Marketa Trimble, Samuel S. Lionel Professor, University of Nevada is noteworthy. I was expecting to read all about copyright and maps. I soon found, to quote the author, 'Geography is much more than the study of maps.' Although, law and geography are considered to be a relatively recent addition to the growing family of multidisciplinary perspectives, research involving IP law and geography research is even more rare. Trimble introduces comparative national IP law legislation and proceeds, as a counterpoint, to discuss cyberlaw IP issues arising due to the lack of national borders. Another example in this research prism involves IP law and anti-trust (competition law) relating to market power in changing geographies of markets. Finally, and perhaps more obviously connected to IP law is the topic of geographical indications that assist to propel local and rural economic and

cultural development. This chapter demonstrates an important advance in the reach of interdisciplinary IP research, essential when facing modern issues involving geography, borders and the Earth.

In a similar vein, Chapter 20 Intellectual Property and Archaeology: Research Concerns and Considerations by Professor of Archaeology George Nicholas (Simon Fraser University) and Professor Emerita Catherine Bell (University of Alberta) examines IP rights in the context of the material culture of human societies, past and present. The authors reflect on the challenges of Indigenous communities whose heritage is the mainstay of archaeological study. The authors explore the question of 'Who owns the past?' through a discussion of the concepts of heritage and the blurring of tangible and intangible personal property such as traditional knowledge in some Indigenous communities. The discussion of 'communities' extends beyond the Global South. The authors shed light on the consequences that flow from the legal IP rights in new technologies such as 3D scanning and printing of artefacts and human remains, genetic information and remote sensing. These examples are critically evaluated to facilitate informed best practice when encountering and navigating IP rights in archaeology research.

Chapter 22 Intellectual Property and Linguistics by Professor of Communication Alan Durant (Middlesex) and Jennifer Davis (Cambridge University) provides an introduction to the growing field of language and law. IP law is a law of words. The content is organised under three banners where language and terminology issues intersect with IP law, namely: (1) where language is the object of a dispute in trade mark and copyright legal proceedings involving property rights in a sign or text; (2) metalanguage to define the characteristics of IP terms such as a 'descriptive' trade mark or a 'substantial' part of a copyright work; and (3) 'overarching' IP terminology that has evolved in response to wider debates in science, industry and the arts. Insight from the field of linguistics. As a whole, the authors illuminate the pivotal role that language and linguistics play in the functioning of the IP law system, highlighting the many ways in which litigation and justice must critically engage with language which is dynamic, continually emerging and transforming our understanding of the scope of IP rights.

Part III Intersections between Intellectual Property Law and (Social) Science includes Chapter 33 Survival Analysis in Intellectual Property Research by Alan C. Marco and Saurabh Vishnubhakat. Survival analysis is a powerful quantitative method used to evaluate the duration of time between events is of interest. To date this research methodology involving statistical models has been more prominent in public health and economics for example although it can be applied in diverse settings. Here, the authors apply it to IP-related events such as litigation and termination of disputes. The authors explain that the methodology can be used to study when and why an IP dispute may be terminated, how the likelihood of being terminated changes over time and how this event may relate to neighbouring IP disputes. The authors believe this type of research is increasingly relevant due to the close practical relationship between dispute duration, legal costs and access to justice. They suggest that other aspects of IP law that may benefit from survival analysis research include maintenance and renewal costs of registered rights such as patents, trade marks and

designs to determine strategic value; and the longstanding issue of patent backlogs. Although survival analysis is likely beyond the expertise of typical IP law experts, research collaborations with survival analysis experts could prove to be beneficial in providing the evidence based sought by policymakers to effect sensible change.

Gregory Mandel's Chapter 35 *The Psychology of Intellectual Property* examines the effect of human cognition, behaviour, heuristics and biases on IP rights law. Initially, he notes the example of the behaviour of creators and users in a copyright context to address unauthorised copying. Next, he proceeds to dissect the hindsight bias that arises patent law when assessing the non-obvious validity standard. In relation to the latter, Mandel notes that the judiciary in certain jurisdictions have developed a number of different approaches to combat such bias in patent law. Beyond special instruction to juries, it would have been interesting to learn more. In his previous work, Mandel conducted studies which he suggests indicates significant limitations on human ability to judge creativity in hindsight. Mandel then turns to incentive and reward theory of IP rights law as applied to creation and commercialisation of creative works identifying various hurdles in this type of behavioural research identified in the earlier literature. Finally, Mandel considers the psychology of apparently misconceived American attitudes towards intangible property rights ownership largely viewed as means to prevent plagiarism (the 'plagiarism fallacy') and attribute authorship, rather than to incentivize creation. He contrasts this with his research findings in relation to the Chinese public. His final interpretation and conclusions of the psychology of IP rights studies reviewed, show that at least in the US and People's Republic of China, the public's of the role of the IP system diverges significantly from the manner in which the IP system is actually designed. Chapter 36 *Intellectual Property and Behavioural Studies: Methodological Perspectives* by joint authors Elfriede Penz and Eva Hofmann continues the theme discussing the results of their qualitative research on the psychology of IP infringement. Their research methodology includes the use of expert interviews, website analysis, data collection and analysis.

Reviewing a substantial edited collection presents different challenges to reviewing a research monograph. The prospect of making insightful critical commentary on all 52 chapter contributions was not feasible and to do the volume justice was daunting. I hope readers and authors will accept that I was unable to comment on each of the 52 chapters individually. I selected chapters that offered something new to me personally as an IP scholar and researcher with which I could engage and advance my own understanding of comparative and interdisciplinary research in the IP rights law field. These included topics rarely connected to intellectual property law scholarship including environmental law, geography, archaeology, linguistics, survival analysis and psychology. In my view, the relatively narrow selection of chapters showcased demonstrate the collection's strengths. Other reviewers will no doubt have selected differently. A minor point is that each chapter would benefit from an abstract.

Importantly, the *Handbook* highlights the degree to which interdisciplinary questions are being recognised as central to IP creators, owners, practitioners, users in increasingly diverse policy areas that rely on evidence-based research. The answers, however, to

comparative and interdisciplinary problems with an IP dimension are still emerging. According to UNESCO in *Bridging the Gap: The Role of Monitoring and Evaluation in Evidence-Based Policy Making* (2008) the use of evidence may improve public policy by achieving recognition of a policy issue, informing the design and choice of policy, horizon scanning to identify new issues and forecast the future as well as monitoring policy implementation and evaluating impact.

The *Handbook of Intellectual Property Research* will nurture the enthusiasm and research skills of IP scholars whose activities aim stimulate and extend debate about the role and value of IP rights protection and ownership across an ever-expanding canvas of traditional and modern academic disciplines. Through the real-world examples in interdisciplinary IP research culture, the *Handbook* opens interesting avenues to enhance IP policy outcomes and is indeed a 'call to action' to IP researchers around the globe.

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