

Book Review

Intellectual Property in the New Millennium: Essays in Honour of William R. Cornish

David Vaver and Lionel Bentley (eds.)

Cambridge UK, Cambridge University Press; 2004, Price: £60, ISBN: 0521846439, 322 pages

The collaborative editing effort of two professors from Oxbridge is the perfect pair to pay tribute to Professor William R. Cornish in whose honour this ‘must-read’ book has been created, to mark the retirement of this distinguished scholar. After graduating with LL.B. from Adelaide University, Professor Cornish began his higher studies in UK at Oxford University and ended his remarkable career as Professor of Law at Cambridge University, having been the Herchel Smith Professor of Intellectual Property Law at Cambridge since 1995. The out-pouring of praise that is attached to Cornish’s name is neatly summed up by Leonard Hoffman, in the foreword to the book: *‘At any rate . . . he has been one of the small band of brilliant academic intellectual property lawyers who have made the subject a fascinating and demanding branch of study’*.

The book in itself draws on a number of aspects of intellectual property law to which Cornish has made insurmountable contributions throughout the years; reflecting the many important areas that have been enhanced by his knowledge. Moreover, it represents a list of impressive authors drawn from many corners of the world, thus giving an international flavour to intellectual property law.

The book is divided in to four main parts, namely, General Intellectual Property; Patents and plant protection; Trade Marks and Unfair Competition; and Copyright, moral and neighbouring rights. The first section lays the foundation to the book by drawing on the theme why harmonisation is *necessary* in intellectual property law before moving on to look at the fascinating distinction brought about by harmonisation vs. unification and the policy objectives, which arise from these two similar yet very different concepts in the context of intellectual property. The section on trademarks and unfair competition represents an international dimension with contributions, which draw on the experiences from Europe, US and Australia.

Most interesting is the section on patents and plant protection where much ground on patent law is covered in Europe and elsewhere. The section kicks-off with an insight in to the past, present and future of European patent law followed by an interesting paper which questions the ‘inventiveness’ of a patent. Written from the point of view of the extremely commercialised world we live in, a very realistic point is made: *‘it has been said that patents are not granted simply for coming first in the race to achieve an obvious product or process . . . absent the commercial incentive of a patent, there will be no race at all’*.

The papers drawn from UK, United States and Israel provide a comprehensive and critical assessment of the implications in relation to patent law in practice within an international setting. For example, *‘how does the large and ever-expanding universe of United States jurisprudence . . . compare to the experience of patent harmonization in Europe?’* is an appropriate, sum-it-up question, which is raised in chapter seven.

Can we even begin to compare the different systems or are they too diverse are some of the other questions that are further raised. These questions strike an important note especially within the European Union where despite the differences within the European countries, a European-wide patent is being envisaged as essential in the future years. Sir Robin Jacob considers this all-important future development in the European Union in detail in chapter five.

Patent law is almost always linked to debates on health and medicines and appropriately the section is made complete with two captivating papers on genomics and the food industry and plant variety rights. In relation to genomics, a useful discussion on the developments brought about by the Trade Related Aspects of Intellectual Property (TRIPs) is carefully traced, reflecting the manner in which the Agreement provided for patent protection for food products. However, as to whether this would create a positive or negative impact, remains a moot point as highlighted in chapter nine. In the final contribution to the section on patents, the reader is presented with a wonderful paper on plant varieties which, challenges a view by Professor Cornish who described plant variety rights as an '*outmoded impediment*' which obstructed the '*logical framework of protection*', namely the use of patents for the protection of plant material. The discussion that follows is both thought provoking and complete with concrete considerations.

The world of copyright law has been rocked by a number of technological developments in the last century, but not anymore than when the printing machine was invented in the fifteenth century. As such copyright law has always been challenged to keep up with technological developments, more so than other branches of intellectual property. Historical readings of IP is a key factor towards the deeper understanding of modern day IP issues whilst at the same time providing a platform towards appreciating the ancient texts. As such, a number of papers in this section of the book strike the important balance of drawing on past texts and past experiences to understand the present copyright issues.

Sam Ricketson's paper on the Berne Convention and its relevance to the present-day makes it a valuable read. As Ricketson points out, the Berne Convention, or as he calls it, 'the come back kid' provides the foundation upon which we can begin to understand the pressing issues in today's copyright world. It provides an excellent starting point to the present section, providing the reader with a foundation on which the more modern copyright issues is based. It also provides for an excellent starting point to the articles that follow and reflect a diverse number of issues in copyright law. This is especially true in relation to chapter sixteen, which carries out an in-depth analysis of the 'right of making available to the public' in copyright law and throws open the debate whether this right is something new and different or whether it is a reaffirmation of the scope of rights already mandated by the Berne Convention?

One of the more recent technological inventions, the internet, emphasised the need to understand criminality of copyright more deeply. In the penultimate contribution to the book, the tension between the validity of the criminalisation of infringement of copyright law is prevalent on the one hand and its value in doing so in the light of policy on the other. In keeping with the theme of this section, the paper commences with a historical survey before coming in to step with the more serious issues thrown up by modern technology.

Undoubtedly this is a fascinating book. What makes this book stand out from the rest is the vast breadth of intellectual property law it covers in a concise manner whilst at

the same time setting out the practical significance of these areas of law to the modern-day practitioner and academic alike. It is fitting to conclude the review of this book with the rhetoric of the editors, Lionel Bentley and David Vaver who in the preface state: *'despite Professor Cornish's many interests, this festival of writing is an appreciation of his work on intellectual property law. The contributions reflect some of the most pressing practical and theoretical concerns which intellectual property lawyers face today'*.

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