

Book Review

Antitrust, Patents, and Copyright: EU and US Perspectives, Francois Lévêque and Howard Shelanski (eds). (2005) (256 pp) (ISBN 1845426037).

Antitrust, Patents and Copyright: EU and US Perspectives is a superb new collection of nine articles from twelve international experts in antitrust and intellectual property (IP). The impressive list of contributors to the volume includes: H. Hovenkamp, P.B. Hugenholtz, M.D. Janis, W.E. Kovacic, M.A. Lemley, F. Lévêque, R. Maness, N.W. Netanel, R.C. Picker, D.L. Rubinfeld, H. Shelanski, J. Temple Lang, and R. Watt. The editors are Francois Lévêque and Howard Shelanski. The book is derived from a 2004 Paris conference *Antitrust, Patent and Copyright* held at the Ecole des mines de Paris.

The high-level articles in *Antitrust, Patents and Copyright: EU and US Perspectives* provide an excellent international comparative look at the increasingly important intersection between anti-trust and IP. As innovation grows as a key driver of market performance and economic prosperity around the world in our information age, the overlapping, competing and complementary aspects of antitrust and IP must be carefully and continuously balanced. *Antitrust, Patents and Copyright: EU and US Perspectives* provides a valuable and welcome contribution to the literature in this field.

A broad spectrum of topics is canvassed in the book, as reflected by the list of Contents: (1) Competition Policy and Intellectual Property: Redefining the Role of Competition Agencies; (2) Unilateral Refusals to License in the US; (3) The Application of the Essential Facility Doctrine to Intellectual Property Rights under European Competition Law; (4) The Strategic Use of Patents: Implications for Antitrust; (5) Innovation, Leveraging and Essential Facilities: Interoperability Licensing in the EU Microsoft Case; (6) Adverse Selection and the Legal Protection of Intellectual Property Rights; (7) Copyright and 'Market Power' in the Marketplace of Ideas; (8) Copyright and the DMCA: Market Locks and Technological Contracts; (9) Abuse of Database Right: Sole-Source Information Banks under the EU Database Directive.

At the outset, the editors discuss the motivations for the book and for the conference from which it derives. For one, scholarly attention to the intersection between IP and innovation is merited because of the increased attention that antitrust regulators are focusing on the area. However, there are additional motivations. The book strives to and succeeds in bringing a truly international perspective to bear on the issues. This international focus is consistent with many commentators' calls for this area to be approached at an international level. IP, particularly copyright, is being pushed toward international harmonization and many have called for similar, parallel approaches to antitrust issues.

As the title suggests, *Antitrust, Patents and Copyright: EU and US Perspectives* is also motivated by a desire to expand discussion of the intersection between antitrust and IP beyond patents to include copyright policy. The editors correctly note that copyright policy plays growing importance in relation to rights in digital content. As the so-called 'copyright wars' rage on, so too do the critical antitrust policy issues that

they raise, particularly under anti-circumvention laws like the *Digital Millennium Copyright Act*.

The first contribution in the book points out that most commentary on antitrust and IP asks questions about the appropriate application of the former to the latter. The short but pointed article makes a strong case for altering such traditional antitrust approaches to IP. This chapter asserts that competition regulators should emphasize policy instruments in their approaches to IP, rather than relying on law enforcement and the issuance of guidelines.

The next contributions in the book discuss US and EU approaches to the specific problem of unilateral refusals to license IP, including how the courts have approached the issue, problems in the area, and possible solutions. Building on these contributions, chapters 4 and 5 explore the possible boundaries of IP rights from an antitrust perspective. These chapters bring richness to this debate and offer possible solutions.

Chapter 6 builds on the foregoing themes and offers a fascinating and original critique of the 'one-size-fits-all' nature of IP protection regimes from the perspective of promoting innovation. This chapter provides an enlightening analysis of the relative value of the strength of protection offered to major innovations as opposed to weaker ones, and proposes changes aimed at providing a more efficient IP regime.

Chapters 7 and 8 bring the focus of the book to copyright. These chapters discuss the appropriate means by which to determine a proper balance in copyright and endeavor to shed light on the myriad areas where copyright can be used to create 'market locks' that create barriers to entry by competitors. Particular attention is paid to the ways that such considerations can arise under the anti-circumvention provisions of the *Digital Millennium Copyright Act*.

Going beyond the traditional categories of IP, Chapter 9 contributes a very stimulating chapter on antitrust and database rights under the EU Database Directive. The chapter raises matters that have heretofore not received the attention that they merit and raises important issues for further study. This contribution is particularly valuable from an international policy perspective as other countries consider creating forms of database rights protections.

Although *Antitrust, Patents and Copyright: EU and US Perspectives* does not provide a comprehensive treatment of the issues it raises, it does provide a well-written and meaningful contribution to the literature in this field. With its mix of foundational work, and general and specific policy proposals, *Antitrust, Patents and Copyright: EU and US Perspectives* is a vital volume for those working in antitrust or IP, or at the intersection between the two. The contributions by leading US and EU scholars and legal experts are a valuable read for scholars, practitioners, policy makers and others who tread at the increasingly complex and increasingly important intersection between antitrust and IP.

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DOI: 10.2966/scrip.030206.170

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