

## Editorial

# IP: the universal lubricant

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Press coverage of IP law is generally pathological: it focuses on things that have gone wrong. Youngsters who have the bright idea of copying and file-sharing their favourite recordings and movies end up in court, as do sellers of knock-off perfumes in street markets, as do fashion chains whose new ranges of dresses or accessories bear a striking resemblance to the lines previously unveiled on Paris catwalks by leading designers.

Even when there isn't an obvious prisoner in the dock or civil infringer, the media are apt to portray the exercise of IP rights in terms of heroes and villains: grasping pharmaceutical companies who, not content with making profits from consumers in the prosperous developed world, insist on reaping their grim harvest of undeserved income from the less financially comfortable; copyright collecting mafias that impose a tax on student discos, charity performances and piped music in the hairdresser's; attempts by cash-rich companies to steal precious national icons such as Basmati rice, thus depriving their original owners of any entitlement; rapacious brand-owners seeking to repress any use of such emblems as the prefix "easy", and so on.

Yet the good that IP does—or rather the good that IP lawyers achieve—is all too often achieved through stealth. You never see newspaper headlines like "IP underpins new job creation deal" or "Patent licence makes medicine available", which is to be regretted. IP law needs some positive spin if the consumer, who is not only the beneficiary of IP but the responsible voter to whom politicians and policymakers appeal, is to be adequately informed when he makes his decisions.

Whether one likes it or not, the licensing of intellectual property rights has produced much of the cultural, recreational and commercial ethos which has shaped the world as we know it. While the Romans kept their proletariat content locally with bread and circuses, twenty-first century man does so on a global scale with McDonald's burger buns and the Olympic Games: the first is brought to 120 countries by a web of franchise agreements that involve the licensing of trade marks, design-protected materials and know-how; the latter are brought to 202 nations via a complex structure of sponsorship deals, broadcasting and recording contracts,

merchandising arrangements and the like—all achieved through the medium of IP transactions.

Beneath the level of bread and circuses, non-contentious IP practice positively bubbles with activity. For example, a business seeking to raise capital may now do so on the security of its IP rights; this in turn has stimulated IP expertise in the areas of due diligence (working out exactly which rights the borrower has, and what they cover) and valuation. Possession of a healthy IP portfolio may even assist those other than its owners to exploit it through the medium of technical standards-setting IP pools, where the making of patent and other rights available for cross-licence leads competitors from litigation to cooperation.

Even those who eschew the exclusionary principles upon which proprietary IP business blueprints are based are forced to turn to the IP licence as a means of achieving their aim. Thus the Open Source movement, seeking to predicate the development of software on code that is freely available to all, must rely on what is in effect an IP licence in order to achieve its ends. Likewise, the Creative Commons device for liberating copyright is at its heart no more than a set of mix-and-match copyright licence terms.

It is no exaggeration to say that IP transactions are a global lubricant. They oil the mechanism that distributes desirables into the duty-free and delectables into the delicatessens. They underpin the DRM schemes that allow almost universal access to popular culture, the syndication of a constant supply of instant news and the advertisements that inform our every purchase.

This issue of JIPLP is the first to focus on a single topic, and it has chosen IP transactions for this purpose. Acting as guest editor, Dr Neil J. Wilkof has impeccable qualifications for this purpose. As author of a leading text on trade mark licensing he has applied his scholarship to transactional IP issues on both sides of the Atlantic and indeed beyond. As a leading practitioner he has been able to test theory against reality; and as an academic with an interest in economics he has taken the opportunity to examine transactional IP in a wider context than that of a set of rules for doing business.

*doi:10.1093/jiplp/jpm184*

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