



Foreword

The practice of law has long been interdisciplinary. Rumpole of the Old Bailey knew all about typewriters and bloodstains, and was no doubt the one to brief if “The Case of the Bloodstained Typewriter” ever came along. Lawyers who, on starting, know nothing of medicine or forensics have to become instant experts when they get their first big personal injury or criminal case. They can only hope and pray that, if it comes to court, they will get a judge whose abilities to absorb science transcend that explosion in the school lab.

Interdisciplinarity — a commendable concept but an ugly word — can occur only where there is a discipline to be “inter-” with. Intellectual property is a relative newcomer in these stakes compared with, say, torts or criminal law or contracts or land law. Yet IP has always been interdisciplinary because the fields it deals with involve technology and the arts, and the interests in them that need nurturing, managing, and reconciling as their products go public.

As a field in its own right, however, IP for long remained underdeveloped. Since law curricula tend to track the subjects that practising lawyers believe are important, the fact there seemed to be few IP lawyers around misled scholars to conclude that nothing fertile lay out there for them to work on. Economists and other social scientists woke up earlier.

It has taken the last couple of generations of legal scholars to catch on to the fact that there is a *there* there. IP’s importance to society and the economy has become a commonplace, and patents, copyrights, trademarks, de-

signs, and information and image rights have become vibrant individual academic disciplines, and not just in law. Still, academic practice has been slow to realize the full potential of what interdisciplinarity can mean for IP law. The solitudes of science and the arts are mirrored by the solitudes of IP law and the territories it affects. Polymaths may conduct their own interdisciplinary soliloquies, while more focused scholars may swap shoptalk with their soulmates in other university departments. But crosstalk occurs less frequently than it could and joint work, while growing, is still the exception rather than the norm.

That is why this volume assembled by Professors Teresa Scassa and Mistrale Goudreau, together with Courtney Doagoo and Madelaine Saginur, from the papers at a 2012 University of Ottawa workshop on interdisciplinary approaches to intellectual property law is so important. The editors did not get distracted by defining interdisciplinarity too closely. Instead, acting as facilitators, they assembled a group of scholars and practitioners in law and the humanities, told them to get interdisciplinary with IP—whatever that meant to each of them—and hoped for the best.

And, as this volume demonstrates, the best can be very good indeed.

While the authors are mainly Canadian and the subjects they touch on are often focused on Canada, the themes are universal and international, as old as music and Aboriginal art, as new as the Internet, social media, and genetics (yes, what Crick, Watson, and Franklin did still seems to feel “new” to some lawyers). Basic issues such as what it means to create, recreate, appropriate, invent, discover, copy, free-ride, own, share, and research are raised and examined in a variety of contexts—from academic labs and recording studios to courts, continents, competitive sports, and, of course, online—and questions are asked why this or that activity should occur or be privileged over another.

There is discussion of IP law’s engagement with other branches of law such as jurisprudence, criminology, and human rights. More often the cross-over is broader, refreshingly not just with economics or political theory but with semiotics, environmentalism, anthropology, communications theory, media studies, and more specialized fields such as music theory and film adaptation studies. The “other” discipline is typically used to illuminate some aspect of IP law—e.g., the thing protected or the scope and terms of protection; access, overlap, incentives, or deterrence—to suggest how it might be better studied, conceptualized, reordered, or even banished.

Some papers focus on reform: who does or should do it, why and how, with a view to furthering the public interests that IP laws are ostensibly designed to foster. Other times the spotlight is on custom, how and why practice diverges from formal law, whether convergence matters, and if so in which direction movement should occur. The usual suspects naturally pop up: Locke, Kant, Marx, Hegel, Jhering, Gramsci, Radzinowicz, Rawls, and a bunch of “Bs”: Beethoven, Barthes, Bataille, Bourdieu, Benjamin, Bram, and Britney (Stoker and Spears, of course). But there are others too like Jung, Castells, Kurosawa, and Godard — even Prometheus and Minerva. And, of course, Innis and McLuhan.

This is an intellectual feast worth savouring and digesting. Anyone with even a passing interest in how society and intellectual property interact will enjoy sampling these delights. The editors deserve congratulation for their enterprise (and their introductory chapter), the contributors one and all for their imagination and sometimes even daring.

Is it too much to hope for a repeat, and soon?

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