

Intellectual Property: Omnipresent, Distracting, Irrelevant? BY WILLIAM CORNISH
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This compact publication is a quasi-transcript of Professor William Cornish's Clarendon Lectures in Law, delivered at the Law Faculty of Oxford University in November 2002, which the author has revised to take into account subsequent changes in the law and policy-making. The Intellectual Property community needs no introduction to the author's pre-eminent status in this field of legal scholarship. His signature textbook (*Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*), now into its fifth edition and co-authored with David Llewelyn, has been a literary staple for law students over the past two decades. Free from the structural and stylistic constraints of a venerated legal classic, the author is able to

express his views on the tapestry of current controversies which have beset these areas of the law with the engaging artistry of a master storyteller. His level of expertise with the subject matter is readily apparent through the ease with which he addresses the key issues facing patentees, copyright holders and registered trade mark proprietors and their critics.

With its intriguing and deliberately provocative title, this book immerses the reader into the dynamic and multi-faceted world of intellectual property from the critical perspective of a highly skilled scholar. Divided into three parts (“Inventing”, “Creating” and “Branding” as categories of intellectual activity) which broadly correspond to the three major species of intellectual property (patents, copyright and trade marks), the author captures the essence of contemporary debates which dominate the current discourse between supporters and critics of the different intellectual property regimes. The three themes which cut across these three parts of the book are vividly illustrated with reference to recent key developments in the fields of technology, industry and commerce. In relation to the dramatic growth in the scope of patentable subject matter (software, business methods, genetic material etc.) and other valuable commodities over which commercial entities have sought to secure intellectual property rights, the author describes the “Omnipresent” character of these proprietary claims as “spreading like a rash, particularly across new technologies, and threatening to leave few patches of unblemished, open skin”. Many instances of intellectual property rights not serving the essential purposes for which they were originally designed, primarily because pressures from the commercial world have emphasised the need to protect the investment interests of right-holders, are also examined by the author, who vividly refers to these developments as “Distracting” and likely to “cause persistent itching”. Also, the author examines the danger of intellectual property rights being rendered “Irrelevant”, as a result of the crippling pace at which new technologies make it easy to reproduce and distribute electronic versions of copyright-protected works across cyberspace, and the increasing reliance on non-intellectual property solutions to combat instances of piracy and to exercise greater control over users of copyright-protected material.

Surveying the wide expanse of copyright, patent and trade mark law with the keen vision of an experienced scholastic cartographer, the author presents a panoramic sweep of the Intellectual Property terrain with exceptional finesse. Clearly evident throughout the book is the author’s strong grasp of current issues in the biotechnology industry, the internet technological revolution, and contemporary culture. The discussion manoeuvres nimbly between topics as varied as biomedical research, genetic databases, peer-to-peer online file-swapping services, electronic encryption technology, professional football club merchandising, and the luxury goods industry. Craig Venter and his role in the “acid contest” which resulted in the Human Genome Project is used to illustrate the “mining licence theory of patents” and the race to patent basic research tools that will give the patentee a lucrative position at the base of the “patent pyramid”. Copyright critic Lawrence Lessig, Michael Eisner of Disney, and the creators of Napster, KaZaA, Gnutella and Morpheus are among the cast of colourful characters conjured up by the author in his discussion on the impact of new digital technologies on the continued relevance of copyright law as a means of managing access to, and use of, digitized works. Contemporary cultural icons—including Homer Simpson (from the Twentieth Century Fox cartoon series

The Simpsons), Elvis Presley, the late Diana Princess of Wales (as well as “HRH-in-waiting Camilla”)—are alluded to by the author while analysing the expansion of trade mark protection to accommodate the entertainment industry’s demands for greater control over the names and images associated with celebrities.

As readers who are familiar with Professor Cornish’s textbook might be aware, the author’s writing style is characterised by its incisive brevity and an intense concentration of ideas condensed within a small amount of space. What may be a pleasant surprise to readers of this book is the author’s droll wit and the delight he takes in tossing cleverly constructed barbs without being weighed down by undue sardonicism. His flair for the dramatic showcased through his compelling characterisation of the issues. For example, patent litigation is described as a “uniquely life-sapping horror” of battles waged by “buccaneers... with dubious rights with which to overpower the vessels of decent traders”, while the copyright crisis arising from online electronic piracy is introduced in the following terms: “The international music industry already sees itself gathered by the Seventh Angel into Armageddon to face the destruction of its cities, and the film, television and publishing industries in their various guises watch anxiously lest the vial of hailstones be poured over them”. Likewise, when he observes that “capitalistic excesses evidence the shallowness of modern life” while analysing the growth in the market for luxury branded goods, the author scathingly articulates the hypocrisy of those who criticise societal preoccupations with famous brands: these consumers are likely to “trail off on another shopping spree; on which they will be as irritated as the next innocent if they are conned into buying a branded fake, and as knowingly indulgent—especially when on holiday in some part of the developing world—when they buy up obvious imitations for the children or the *au pair*”. This curious combination of the author’s serious scholarly agenda and his tongue-in-cheek banter results makes for riveting reading.

Simultaneously illuminating and entertaining, this book has the style and the substance one would expect from an author with Professor Cornish’s stature. This book is also likely to be one of his last publications in this area of law since his retirement as the Herschel Smith Professor of Intellectual Property Law at Cambridge University. With its broad coverage of some of the most controverted legal and policy issues facing the Intellectual Property world today, scholars, students, lawyers and anyone with an interest in current developments in the law of patents, copyright and trade marks will find this a very interesting book indeed.

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