

Neil Wilkof and Shamnad Basheer, *Overlapping Intellectual Property Rights*

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Arpan Banerjee

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The term ‘intellectual property’ (IP) is seen by many as reductive and misleading. For instance, Richard Stallman, a pioneer of the copyleft movement, has argued that it is wrong to ‘toss ... into one pot’ laws governing copyright, patents and trade marks, as these ‘laws developed independently’ and ‘are different in every detail, as well as in their basic purposes and methods’.¹ The different contexts in which IP operates can even lead to one country adopting a defensive, pro-access position with respect to one form of IP and an aggressive, pro-rights owner position with respect to another form of IP. However, the edited book *Overlapping Intellectual Property Rights* serves as a timely reminder that while IP is indeed a highly specialised field that warrants viewing different types of IP rights in isolation, sometimes it does make sense to analyse at least a few varieties of IP rights together.

The book’s editors come with impressive credentials. Neil Wilkof is one of Israel’s best-known IP practitioners, and has also lectured at many reputed universities. Shamnad Basheer, until recently, was a professor at one of India’s top National Law Universities (in Kolkata), and has been involved in a range of important initiatives outside conventional academia. Indeed, the book chapter’s authors are indeed among the world’s leading academicians and practitioners (Lionel Bently, Sam Ricketson, David Llewelyn, et al). Yet,

¹ Richard M. Stallman, Did You Say “Intellectual Property”? It’s a Seductive Mirage, <<http://www.gnu.org/philosophy/not-ipr.en.html>>.

Arpan Banerjee: Assistant Professor, Jindal Global Law School, India.

A. Banerjee (✉)
Jindal Global Law School, O P Jindal Global University, Sonipat, Haryana, India
e-mail: abanerjee@jgu.edu.in

the impressive *dramatis personae* is not the sole reason for the book to aspire to be a one-stop resource. The book is truly engaging and insightful, and meticulously planned.

The book consists of seventeen chapters, contributed by legal experts from different countries, highlighting legal positions towards overlaps in IP rights in key jurisdictions. Each of these starts with a hypothetical case (often based on real-life cases) to provide a practical context to the ensuing discussion. Let me cite a few examples, involving disparate IP issues. The first of the contributions by Mark Janis, who examines overlapping IP issues in the context of plant protection, starts with a generalised hypothetical involving cross-breeding corn varieties and subsequently modifying them genetically. Janis then discusses how countries might prevent overlaps in plant IP rights, such as overlaps between *sui generis* regimes and utility patents. Janis notes that this might be done by applying principles such as subject-matter limitation or ‘policing doctrines’ that reflect normative judgements. In her chapter Mira T. Sundara Rajan, who discusses overlaps between moral rights and economic rights, starts with a hypothetical based on a well-known Canadian case involving the artist Claude Théberge.² Rajan examines whether reproducing an artist’s work from one medium to another – as had happened in the case – should be seen not just as a copyright problem but also a moral rights problem. Rajan supplements a largely practical analysis of the case with a commentary on the historical origins of moral rights, and theories of ‘French dualism’ and ‘German monism’. In his chapter Dev Gangjee, who discusses the overlap between trade marks and geographical indications, starts with a hypothetical based on the battle between ‘veteran pugilists’ Anheuser-Busch (the mighty American manufacturers of Budweiser beer) and Budějovický Budvar (an arguably lesser-known Czech company with links to a town called Budweis, which also lays claim to the Budweiser name). Gangjee discusses issues such as how different jurisdictions deal with conflicts between trade marks and geographical indications, and problems with generic names. As a practitioner-turned-academic, I strive to provide students an overview of how IP affects businesses in the real world. I thus greatly appreciated the hypothetical-centred approach. Another positive feature of the book is that its appendices are not reproductions of material easily available in the public domain (a deplorable publisher’s trick) but a set of comparison tables from different jurisdictions. These tables can serve as a useful ready reckoner.

It must be mentioned that the book’s theme, though relatively uncommon, is not unique. Two similarly themed (and well-researched) books are *Intellectual Property Overlaps: A European Perspective*, by Estelle Derclaye and Matthias Leistner (Hart, 2010), and *Intellectual Property Overlaps: Theory, Strategies and Solutions*, by Robert Tomkoicz (Routledge, 2012). However, while these two books are helpful for advanced researchers and policymakers, Wilkof and Basheer’s book is likely to appeal more to practitioners and law students, as well as to a more global audience.

² *Théberge v Galerie d’Art du Petit Champlain Inc* [2002] 2 SCR 336 (Supreme Court of Canada).

In conclusion, I do not have any major criticisms of the book. I wonder, however, if future editions might benefit with chapters dealing with overlaps between IP law and other legal fields, such as constitutional law, company law or even the law of wills. Apart from a chapter on the intersection between IP law and competition law, the book, in its present form, does not consciously attempt to examine such interdisciplinary overlaps. Another point worth mulling about is whether the book should aspire to become a more extensive, multi-volume work in the future, or whether that would make the book less compact and accessible.