
PREFACE

We introduce this fifth edition by welcoming four new authors to this book project: Ryan Abbott, Mira Burri, Henning Grosse Ruse-Khan, and Maegan McCann. The new authors bring with them a range of experience in diverse aspects of international intellectual property (IP) law, representing a second generation of contributors. Ryan Abbott is Professor of Law and Health Sciences at the University of Surrey (United Kingdom), as well as Adjunct Assistant Professor of Medicine at the Geffen School, UCLA (USA). Most recently he is known for his pioneering work in the field of artificial intelligence (AI) and intellectual property. Mira Burri is Professor of International Economic and Internet Law at the University of Lucerne (Switzerland). She has focused recent attention on the role of copyright law in the digital environment, including the interface with data usage and protection, as well as digital trade. Henning Grosse Ruse-Khan is Professor of Law at the University of Cambridge and Fellow, Kings College, Cambridge (United Kingdom). He has published widely on the intersections of public international law, intellectual property and trade and investment regimes. Maegan McCann is Program Officer (National IP Strategies), IP and Innovation Ecosystems Sector at WIPO, following several years with the WTO Intellectual Property, Government Procurement and Competition Division (Switzerland). She was research assistant for the Second Edition of this book, and she prepared several major reports while at the WTO on matters such as the integration of IP in regional trading arrangements.

We are living in “interesting times”. New technologies, most recently advances in AI, have raised a wealth of complex IP related questions. The most direct implications are so far in the areas patent and copyright. Yet, AI advances touch all forms of IP at some level. The international IP system has adapted itself to technological advance throughout its history. We are at the beginning of adapting to the proliferation of AI. This opens a window of opportunity for younger practitioners and academics in the IP field, but still demands knowledge of the fundamentals of IP law.

The long-anticipated Unitary Patent system has come into effect for the European Union (EU). This provides, on one hand, the opportunity for inventors to secure protection throughout a wider territory with a single instrument. This introduces, on the other hand, yet another level of complexity to the IP environment in Europe.

The COVID-19 pandemic of 2019-2023 illustrated the use of patented biotechnological inventions to address new and dangerous viruses, including through patent licensing arrangements. At the same time, concerns were expressed regarding whether IP rights were somehow delaying the production and distribution of vaccines and contributing to inequity. This was reminiscent of controversies from the late 1990s and early 2000s regarding access to HIV medicines, though the contexts were considerably different.

The challenge of climate change mitigation and adaptation calls for enhanced dissemination of technology to developing countries in line with the UNFCCC and the 2015 Paris Agreement. New avenues and approaches need to be found and developed in international IP law beyond compulsory licensing to address these contemporary demands.

We see new forms of challenges to fundamental principles of IP, such as the principle of independence, raised by conflicts over anti-suit injunctions that attempt to extend judicial control over national IP causes of action to a multi-country level.

This international IP system is equally challenged by political developments going to the continued viability of multilateral approaches to IP. What previously appeared to be a relatively stable long-term trend toward economic integration on a global level has given way to a fracturing that shows little immediate prospect of abating. While IP has played a role in this fracturing of relations, deeper concerns involving national and regional security interests are at play.

China and the United States have been at odds over IP protection since the early 1980s. Only recently, however, have these concerns escalated in consequence of China's emergence as a leading economic and military power. That emergence is perceived as threatening US, European, and other G7 interests. IP has gone from primarily an economic concern to a national and global security issue. This has implications for "legalization" at the multilateral level. Negotiations and movement toward a more integrated international IP system have stalled, and even rolled back. The WTO as an institution, and in particular its dispute settlement system, are functioning at a minimum level, and prospects for new IP initiatives at the WTO are dim. The focus of international attention seems to be shifting toward WIPO which may adapt to non-consensus decision-making. But this too has its limits.

There has been expanded "populist" political movement in various countries, and the populist phenomenon tends to manifest itself in favor of national interest and national solutions. This in turn de-prioritizes international focus. An example is the United Kingdom's withdrawal from the European Union, i.e., Brexit. The departure of one of the three leading EU economies has implications for the regional IP system in Europe. While the much-awaited Unitary European Patent is now reality, it does not cover the UK.

An expanding group of emerging market countries, starting with Brazil, China, India, Russia, and South Africa (BRICS), and recently adding several new participants, tries to shift the global balance of power away from the "Western" high income group. This may also have implications for international IP governance. While it is premature to identify specific IP-related developments, there is some parallel to the political power dynamic of the late 1960s that had a considerable focus on IP and technology transfer.

Notwithstanding the challenging international political environment, artists and inventors continue to create, businesses continue to make, sell, and trade, and the digital domain continues to expand. New pathogens emerge and demand innovative treatment. An international system that addresses the interests of creators and entrepreneurs remains necessary, even if it may be less "integrated". And this may give rise to new opportunities for practitioners and academics that can help navigate these choppy waters.

The first edition of this book was published by Aspen Publishers in 2007, but the true first edition was published by Aspen's predecessor, Kluwer International, in 1999 (as a two-volume set). We welcome that the second generation of authors provides a forward-looking perspective on the latest developments in this and future editions.

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