

BOOK REVIEW:

'PUTTING INTELLECTUAL PROPERTY IN ITS PLACE: RIGHTS DISCOURSES, CREATIVE LABOR, AND THE EVERYDAY' BY LAURA J MURRAY, STINA PIPER AND KIRSTY ROBERTSON

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This short but confident book considers intellectual property 'law' in the most distanced sense. In essence, the book seeks to contextualize IP, the different roles it has to play and the contours it can take. Recognizing that there are multiple factors that influence creators, the authors explain the dissociation between the written law of IP and its conception and application in the 'everyday'. The contribution of the book is therefore to set the social and historical context to IP law as we know it, rather than commenting on the state of law or its enforcement.

For those familiar with the subject, it is worth noting by way of compliment that both in tone and topic the book rings distinctly of Rosemary Coombe's 1998 'The Cultural Life of Intellectual Properties'. This book is, however, an interdisciplinary effort by three Canadian scholars; an IP law specialist (Piper), an English and cultural studies Professor (Murray) and an historian of visual culture (Robertson). The combination of these backgrounds means that the book is accessible to a wide reach of readers, all the more so for its use of contemporary, unique and accessible case studies. Each chapter picks up a different theme, and the diversity of these themes is worth reflecting on (who would have knitting circles could cause so much of a furore?). In their given order, the chapter subjects cover: the difficulties of cross-border 'translation' of IP law and norms (chapter 2); the evolving roles and perceptions of IP in hand crafts, in patenting plant hormones, in newspaper editing, in the legal profession, and in small locally based arts communities (chapters 3-7); and finally the dynamics of the city of Dafen in China, renowned for its output of hand-painted replica paintings.

You, like I did, probably eyed the chapter topics above with some

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suspicion, and began wondering what exactly this might have to do with law: real law? From a lawyer's viewpoint, the text has a distinctly more historical and social focus than most of us are probably used to; the pages are filled with names, dates, subjects questioned and exerts of their sometimes frustratingly imprecise and subjective responses. However, the law is undoubtedly there and it is in attempting to remedy our law-centric view of IP that this work finds its biggest challenge. The authors take care to pinpoint where, from a legal perspective, their respondents are clearly in the wrong and, more to the point, where our everyday conception of 'IP law' is, for want of a better word, befuddled. As lawyers, with our statutes, case law, textbooks and commentaries close at hand, we tend to think of IP for the most part in these black-letter terms. Instead, throughout the case studies examined in the book, IP is framed as a community built and community supported recognition of certain ethical or professional norms, rather than a law-based infliction of rights and duties. The law, it seems, is on the back-burner.

An interesting aspect that the case studies underline is the point that, as lawyers, we tend to see only one side of IP – the side that portrays the interactions between creators and 'outsiders'; it is in these situations that recourse to law is most prevalent. However, there exists a distinctly separate side to IP, enforced through common norms shared by a community (which may equally exist online as in more traditional contexts). Where practices that are 'illegal' from a community IP perspective are adopted *within* the community by a member against the 'common interest' of members, recourse is most often to social action rather than legal action. Even writing the above sentence, it was necessary to employ the use of scare quotes because, particularly for online community norms, it seems that the 'common interest' may be in fact decided by a relative few, and that the concept of 'illegality' according to the community norms may have little to do with *actual legality according to the law*. This is perhaps best demonstrated in Chapter 3, which looks at the intrigues of IP norms in online crafting communities. Entitled 'No One Would Murder for a Pattern' (if that doesn't pique your interest perhaps nothing will), it essentially underlines that the norms – which often are based on vague conceptions, or more often misconceptions – about copyright, trademark and patent law enforced by communities online are often stricter than those developed offline (eg within knitting groups or at craft fairs) and stricter even than the law itself. For example, while instructions for a pattern cannot be copyrighted (only surrounding texts that constitute 'works' can be), even copying the pattern alone and disseminating it within the community is considered as 'illegal' by the community itself.

The stand-off approach to the actual nitty-gritty of the law allows us to step back and better understand the extent of the complexity of IP dynamics between creators, creative communities, legal minds and outsiders. However, if you wish to read about the critical need for strong, accessible and effective law for creators, then you should go elsewhere. If anything this book serves to disprove this assertion that is by now commonplace in IP discourse, particularly insofar as copyright is concerned. In this sense, the limited notions of IP law held by the creators that make up the case studies can be seen to trivialize the efforts of actors on all sides of IP debate (from 'copy-left' activists through to rightholders) who seek to attain changes in behaviour through changes to statutes:

We hold that IP law is nothing like an on-off switch with determinable and direct effects. Yes, some realms of corporate cultural production may be saturated enough with lawyers that statutes and case law may be an especially prominent driver of behaviour. But more generally, we contend that in seeking a full understanding of what IP law is, statutes and cases are the last thing we should look at, not the first. (p 1-2)

The authors instead assert that local norms and customs are, and should be, the starting point; legal codes can supplement these not the other way around. They revere that the essence of IP 'law' is more than just stubbornly worded codified laws and legal judgments. It is a collection of interactions that make up an altogether more fluid arrangement; 'IP law in our view is not so much the day in court as the many other days IP law is experienced and imagined in the various contexts in which it is invoked.' (p 2)

A last word remains to be said about the unity of the chapters in their approach and their tone. Although each was penned by a single scholar, the writing is not easily identifiable with the discipline of the author. For example, Piper (the lawyer of the trio) writes chapter 4 on plant hormone research and patents, however the content stays well away from the legal intricacies and reads convincingly (to this lawyer at least) like the chronologically and historically accurate work of a full out historian. Equally Robertson (an historian) writes chapter 3 on IP in online knitting and craft circles - focussing on social analysis of online chat room interactions, questionnaire responses and inserting in a good amount of legal correction, her discipline by no means betrays her. As is clarified in the Afterword, this work can therefore truly fall into the category of interdisciplinary and collaborative scholarship. Finally, while it is noted that the book is written by three distinguished female academics, who in the afterword confess the project originally started out to be a principally

feminist work, to the present author a discreet feminist tone is present but is by no means prevalent. For example, this can be pinpointed distinctly in Chapter 2 insofar as it explicitly addresses the absence of female voices in what is referred to as 'free culture discourse' (think Larry Lessig), but for the rest it remains as an undertone.

In short, if you are looking for a legal commentary or the historical background to the body of law we now call 'intellectual property' this is not the place to come. If you are instead going for something by way of escape from more typically black-letter approaches, without feeling the guilt of stepping outside the intellect-zone entirely (it is, after all, not quite August yet) then this is a good basis for a more long-term reflection. To top it all, no doubt you'll gain some crafty coffee-break material from these well-researched yet unexpected case studies which previously you may never have thought to ponder.