

Book reviews

***Resource Book on TRIPS and Development* edited by Fiona Macmillan (Cambridge University Press, New York, 2005)**

This book is a comprehensive source of information on the background and technical application of the TRIPs Agreement (“the Agreement”). Each provision is examined from a legal and economic perspective in order to identify ways in which the Agreement can be implemented. It aims to clarify the implications of the Agreement and to provide an explanation of rights and obligations of WTO Members. The book also considers the interaction of developments at the regional, national and international level with the objectives of the Agreement.

It was created as part of the UNCTAD-ICTSD Project on Intellectual Property Rights and Sustainable Development, which began in 2001. The main aim of the Project is to help inform key members in the IP community (such as decision makers, the private sector and civil society) so they can establish and implement effective development objectives.

The book comprises six parts to reflect the structure of the Agreement. Each part is further divided into chapters dealing with individual topics. Part one focuses on Articles 1–8 and discusses a range of topics on the nature of obligations, principles and objectives under the Agreement. Topics addressed include the characterisation of the TRIPs rules as a minimum standard, the discretion afforded to Members to decide on how the Agreement is implemented, which IP rights are covered and the Agreement’s principles and aims.

Part two examines substantive obligations under the Agreement and analyses Sections 1–7 of Part II of the Agreement. Particular attention is paid to patents and issues such as access to medicines and the patentability of life forms under Article 27.3(b). In regards to this last issue, the book contains an in-depth analysis of the options for implementation of Article 27.3(b), and a run-down of the Members’ positions on the reconsideration of the provision.

This part includes a thorough discussion of the provisions relating to geographical indications and also addresses topics such as copyright, trademarks and industrial designs.

Part three concentrates on IP rights and competition, specifically methods that can be utilised to prevent the abuse of IP rights under Articles 8.2 and 40 of the Agreement.

Enforcement, acquisition and maintenance of rights are addressed in Part four. Considerable discussion of Parts III and IV of the Agreement are included and the challenges faced by Members in establishing and implementing effective enforcement procedures are highlighted.

Part five deals with dispute prevention and settlement under Part V of the Agreement. Methods of interpretation used by the WTO panels and Appellate Body are examined, as well as the WTO dispute settlement system and the issues related to the proposed introduction of “non-violation” complaints in disputes relating to the Agreement.

In Part six, Parts VI and VII of the Agreement, covering transitional and institutional arrangements, are considered.

The book is well structured to allow for the reader to easily navigate through the information contained within it. The book makes effective use of break-out boxes to display the parts of the Agreement being discussed. This is an extremely useful device, as it makes it quite straightforward for the reader to be able to locate the actual text of the Agreement.

Each chapter includes the same user-friendly arrangement of information under common headings, enabling the reader to find relevant information with ease and allowing for efficient cross-referencing. Each chapter includes an introduction of the issue covered, the history of the provision and possible interpretations of the provision. Following this is a summary of the parts of the WTO and Appellate Body that deal with the provision being analysed. The relationship with other international agreements such as WTO Agreements and other international instruments is then addressed. Each chapter includes discussions on new developments, comparing the approaches adopted by national laws, international instruments, regional and bilateral contexts and proposals for review. Concluding comments focus on development policy issues and economic and social implications.

The book provides a rich source of information on the Agreement while also considering its place alongside other international agreements. It will no doubt prove an excellent resource for lawyers, policy-makers, academics and diplomats. A unique and commendable aspect of the book is that it is periodically updated online, allowing for the consideration and evaluation of topical developments and related issues.

Shehana Wijesena

***Digital Copyright Law and Practice (2nd Ed)* by Simon Stokes
Hart Publishing, 2005**

This second edition of Simon Stokes' excellent text is that rare thing, a book that combines detailed analysis of the relevant law and useful practical guidance in a succinct, readable, well-structured form. It will be valuable to anyone with an interest in this area.

The book begins with an overview of copyright and its justifications, and the particular issues raised by digital and internet technology. Stokes articulates the conceptual challenges posed to copyright by digital technology, for example, because of the need to make copies in order to view or access material; and the blurring of the (always problematic) distinction between ideas and expression in the world of copy-and-paste. Stokes outlines some possible alternative directions for copyright law in the digital age, acknowledging the influence of the "intellectual commons" arguments. Possibilities he canvasses include, on the one hand, recasting copyright as a broad and simplified right rather than the traditional bundle of rights; on the other hand, the increasing role of technological protection measures and contractual licences could diminish the significance of traditional copyright law in the digital context.

The central, and longest, part of the book works systematically through the relevant areas of law in the digital context. Separate chapters deal in detail with copyright (including the impact of the EU Electronic Commerce and Digital Copyright Directives on UK law), database law, moral rights, the impact of competition law (including the cases on refusal to license) and computer software (including a section on the open source movement). Although the focus is on UK law and the EU directives, the discussion of the principles, cases and issues will be very useful to Australian practitioners. Each chapter concludes with a summary of the issues and their practical implications.

The last two chapters address practical issues for those active in the digital copyright world. One chapter deals with e-commerce, covering a wide range of topics including re-use of content, linking, legal issues concerning search engines, file-sharing, service provider liability, streaming of digital media and technological protection measures. The legal position is summarised, with a focus on the practical application and implications of the issues. The summary for this chapter includes a checklist for the lawyer or business person on protecting digital content.

The final chapter takes a purely practical approach, looking at protecting and managing digital copyright assets. The chapter includes checklists generally and for specific industries, discusses the role of collecting societies, and even sets out checklists and precedents covering a range of situations.

It is inevitable that a book on such a topic will date, as technology, the law and business practices are changing very rapidly. However, this book should last longer than many others on similar topics, because of the quality of analysis of the underlying issues and tensions. The mapping of the territory will continue to be useful even though new cases and legislation will alter the applicable law.

The strength of this book is that, as well as engaging with high-level theoretical and policy arguments, it analyses the specific application of copyright law in the digital world, and builds on this to discuss specific practical issues for the lawyer or advisor. Obviously, the level of detail on each subject is limited, given the range of subjects covered. However, all key issues are succinctly covered and appropriately footnoted to allow further research as needed. It is a triumph of good writing to be able to achieve such a clear, comprehensive and helpful overview in a book of less than 200 pages.

Helen Dakin

Copyright Reporter

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