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Book review for Copyright Reporter

“Intellectual Property Rights and the EC Competition Rules”

by Valentine Korah

Hart Publishing, 2006

Review by Shehana Wijesena

This book consists of a detailed and critical commentary on Regulation 772/2004 of the European Commission regarding the technology transfer block exemption of 2004, and aims to examine the interaction between competition law and intellectual property law. In technology transfer agreements, the licensor allows the licensee to exploit the licensed technology for the production of goods or services.

Generally, any such agreements which restrict competition are prohibited by European law. However, the European Commission has created block exemption Regulations which establish “safe harbours”. If an agreement falls within the parameters of the Regulations, it is not anti-competitive. Regulation 772/2004, which is discussed in the book, covers licensing agreements entered into by two parties in relation to patents, “know-how”, software and other intellectual property rights.

The author analyses the Regulation in light of relevant case law of Luxembourg’s Community courts and the Commission, as well as the Commission’s guidelines on technology transfer. Topics addressed include the free movement of goods; the status of the Commission's guidelines; the somewhat hostile attitude of the Commission under Article 81 of the European Commission Treaty towards licensing in general; trade mark licences; traditional copyright licences; and case law on how to avoid the honest concurrent use of a mark. Substantial weight is given to the issues relating to the refusal to supply or license in the light of recent case law under Article 82 of the European Commission Treaty.

The author provides a detailed analysis of the Regulation and the likely treatment of licences that are not covered by it. Throughout the book, the author provides extensive analysis of policy and economics and includes a comparison of competition law in Europe and the United States.

The author manages effectively to discuss the current legal position, which has resulted from a lengthy and complicated development process. The inclusion of annotated copies of the Regulation and relevant guidelines to assist readers in following the complex issues discussed is extremely useful. The level of analysis of the case law of the European Court of Justice, the European Court of First Instance and the Commission makes this an invaluable reference for people with a sophisticated interest in intellectual property rights and competition law as they currently operate in Europe.

Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body, through its Policy, Communication and Planning Division.

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