Copyright for Art’s Sake? 275
This opinion piece addresses recent and proposed changes to UK laws affecting designs, particularly where copyright and design laws overlap. It demonstrates how arguments for and against changes have very different underlying assumptions about the purpose of copyright law and its relationship with broader cultural values. Ultimately, it suggests that the legislature may choose to reflect differing cultural values, as well as economic realities, in the laws of copyright and designs, but emphasises the necessity for clarity and transparency in related debates.

Blocking Injunctions and Website Operators’ Liability for Copyright Infringement for User-Generated Links 279
This article explores UK website blocking injunctions, the CJEU ruling in Svensson (C-466/12), and referrals on linking in the context of website operator’s direct, secondary or joint liability for copyright infringement due to user-generated content. Direct liability and UK authorisation doctrine seem questionable, but joint tortfeasance and similar criminal law constructs form a more solid foundation for operators’ liability.

The Legal Position of Sellers and Buyers of Used Licences 289
The Court of Justice of the European Union (CJEU) has delivered a judgment which seems to limit the scope of the principle of exhaustion of copyright and, in certain circumstances, to pave the way for trade with used licences for computer programs. This article addresses some of the issues raised by the judgment for sellers and buyers in this market.

Emerging Privacy Torts in Canada and New Zealand: An English Perspective 298
This article examines the recent development at common law of “intrusion upon seclusion” privacy torts in Ontario (Canada) and New Zealand. It contrasts the courts’ willingness in those jurisdictions to take a substantial doctrinal step (in recognising a novel head of liability) with the English judiciary’s more narrower approach to the elaboration of privacy rights via the piecemeal development of the doctrine of confidence. The article highlights some remaining uncertainties within the English doctrine, attributing these to judicial insistence on pursuing a narrow mode of incremental common law development.

Corporate Involvement in Intellectual Property Policy-Making 306
This article advocates the existence of corporate involvement in the creation and amendment of intellectual property policy in the United States; identifying executive employment history, corporate donations and infiltration of government bodies as the key influencing strategies integrated as agenda furthering stratagems. The General Agreement on Tariffs and Trade (GATT), the North American Free Trade Agreement (NAFTA) and the Copyright Term Extension Act are included as archetypal examples, and the question is posed as to whether nations external to the United States should replicate and promote these tactics in their own internal market, given the irrefutable successes of the US system of intellectual property protection.

Intellectual Property Rights and Distance Sales Contracts 312
Given that the safeguarding of intellectual property plays an essential role in rewarding creative and inventive efforts, it is necessary to guarantee the effectiveness of the protection also in the case of distance sales contracts. At the same time, significant legal differences among Member States and uncertainties in protection may be an obstacle to the free movement of services and products incorporating, or based on, intellectual property. This article focuses on the advisability to eliminate those differences of discipline that may hinder the development of the single European market, in order to maximise the opportunities offered by electronic commerce and by the digital sector in general.
Assessing the Work of the WIPO IGC

This article discusses the work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). In particular, it discusses whether an international instrument developed by the IGC would deliver real value to Māori and to other indigenous peoples. (Māori are the indigenous people in respect of New Zealand; they are the country’s first inhabitants.)


In the field of pharmaceutical inventions, the practices of patent law have been mainly focused on Western pharmaceuticals. The incompatibilities between the patent law and traditional Chinese medicine (TCM) lie in the unique features of TCM. The article discusses this matter from the aspect of identification of TCM in the patent application. After illustrating the methods currently used for the identification of TCM inventions, the article moves to discuss the doctrine of equivalence and other legal means which may serve as the remedies to the incompatibility problems.

Videogames, Consoles and Technological Measures: The Nintendo v PC Box and 9Net Case

On January 23, 2014, the Court of Justice of the European Union handed down its judgment in Nintendo v PC Box and 9Net. In a decision that will not be welcomed by videogames and consoles creators and producers, the Court of Justice found that copyright holders are not protected by IP law against acts of circumvention of disproportionate technological measures.

EU General Court Rejects Application for “Position” Mark for Attachment of Button to Ear of Soft Toy

The EU General Court has confirmed that Steiff, the German soft toy manufacturer, was not entitled to Community trade marks to protect the attachment of a button, or a label attached by means of a button, to the ear of a soft toy because the attachment lacked distinctive character. Finding that there was nothing exceptional about the attachment, the General Court held that the average consumer, who would not normally identify commercial origin on the basis of the appearance of goods, would see the attachment, which was inseparable from the toy itself, as merely decorative.

Court of Appeal Refuses Permission for Passing-Off Survey: Zee Entertainment Enterprises Ltd v zeebox Ltd

On January 24 2014, the Court of Appeal handed down judgment in the case of Zee Entertainment Enterprises Ltd v zeebox Ltd. This is the first case to have gone to the Court of Appeal on the admissibility of survey evidence in a passing-off case, since the landmark judgments of the Court of Appeal in Interflora Inc v Marks and Spencer Plc. The Court of Appeal dismissed the appeal on all five grounds and refused permission to adduce the survey evidence, upholding the judgment of Birss J. for additional reasons. The Court of Appeal found that Birss J. should have gone further in deciding the value of the survey itself and felt bound to exercise his discretion afresh. The most significant factor was that the survey was obviously flawed and any marginal value that it might have had was outweighed by the disproportionate costs of introducing such evidence. While there was a balance to be struck in considering that the appellants would be prevented from adducing potentially relevant evidence, the Court of Appeal held that the “balance came down heavily in favour of refusing permission for the survey evidence”.

Book Reviews