

PREFACE

The third edition of “Intellectual Property: Private Rights, The Public Interest, and The Regulation of Creative Activity” continues and builds on the distinctive features of the first two editions. We move beyond the preconceptions of intellectual property having exclusively to do with science and technology to present the subject of intellectual property in a more integrated fashion, showing how similar policy and conceptual issues unite the subfields of intellectual property: trade secret, copyright, patent, trademark, and developing state and federal doctrines. This edition continues the approach of the first in examining the longstanding connection between intellectual property and creative processes. We hope by this choice of approach, we will appeal to persons interested in diverse types of creative activities and in the multiple roles that intellectual property plays in an expanding, thriving economy.

As with the first two editions, our emphasis in the third edition is on public regulation and encouragement of creativity and the use of intellectual products. While many existing books focus squarely on the private interests protected by intellectual property, our perspective is on both the private and public interests affected by law as it regulates and promotes creative processes. Our approach makes the study of intellectual property more approachable and richer for students who can see how the doctrines of intellectual property reflect common law, statutory, and constitutional methodologies. In short, our casebook appeals to students and instructors who understand that intellectual property is not simply about technology and narrow technical industries, but about creativity, authorship, inventorship, and entrepreneurship as they arise across society.

We integrate a traditional case analysis approach with the careful consideration of statutory materials, reflecting the important roles of courts, Congress, and state legislatures in the development of intellectual property law. The cases have been carefully edited and most citations within cases have been removed for readability. We also introduce students to the constitutional and international legal materials that shape intellectual property doctrine and policy. The book is designed so that it can be used with several teaching styles whether focusing on technical legal analysis, on broader policies, or on a combination of the two. In designing the casebook, we also tried to be sensitive to the teaching of legal skills, particularly those needed by intellectual property lawyers to help creative parties as clients construct transactions and relationships that involve intellectual property.

The main innovations in the third edition are the updating of cases and other materials to present contemporary developments in the law. Chapters on copyright and trademark are re-organized to make them more readable and include more material on digital rights management. The new edition covers recent IP issues in biotechnology, termination rights under copyright, search engines, the Google book project and the YouTube vs. Viacom case. The role of economic incentives in copyright and patent law is more extensively discussed, along with new treatments of post-grant patent proceedings, new media for public performance of copyrighted works, and digital copyrights. The third edition has an extensive emphasis on contemporary issues that will make it easy to connect the materials in this book with developments in practice.

As with the first two editions, this project has been a collaborative effort among the coauthors. Several additional parties have also made significant contributions to both editions.

Professor Shubha Ghosh benefitted from the administrative services of Michelle Oswald and the research assistance of Gary Ross Allen, Class of 2008, SMU Dedman School of Law in putting together the first edition. Comments from Mark Bartholomew, William T. McGrath, and Bill Gallagher were constructive and instrumental in identifying ways to improve the first edition. I personally hope that I have been able to integrate their suggestions in this new edition.

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