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BOOK REVIEW


Intellectual property (IP) rights—copyrights, patents, trademarks, designs, etc.—are by their nature ubiquitous: an invention can be practiced anywhere where the technical capacities exist, a trademark can be affixed to goods or used for services or in advertising anywhere where goods or services are available, and a copyrighted book can be distributed anywhere. This is all the more so in the Internet age, as works or services protected by IP rights may be accessed—and even physically reproduced—anywhere. On the other hand, rights to IP have been treated historically as local, that is, they depend on whether and to what extent the jurisdiction where protection is claimed recognizes the respective IP right, which often depends on the claimant having successfully navigated a registration and examination system.

Thus, while the principle of territoriality controls the protection of IP rights, their potentially universal availability, particularly in the modern global economy, calls for an international regime of IP protection, a fact recognized at least since the late nineteenth century. A solution requires joint action at the international level, and since the 1883 Paris Convention and the 1886 Berne Convention, the approach to international IP protection has been through a system of mutual recognition, national treatment, and so-called minimum rights. In recent years, the trade aspect of IP rights has added to the complexity, with multilateral agreements within the World Trade Organization (“WTO”) replacing or substituting for the traditional conventions of the World Intellectual Property Organization (“WIPO”). But many other international agreements have an impact on IP rights, resulting in a true web, reflecting a multiplicity of goals (such as biodiversity and human rights, to name just two), a multitude of actors, and, unfortunately, little transparency.

The recent book by Dr. Grosse Ruse-Khan, The Protection of Intellectual Property in International Law, is an excellent tool for understanding the multiplicity and interplay of issues affecting IP rights internationally. The book, as explained by the author, is the outcome of a course he has taught since 2010 at the Munich Intellectual Property Law Centre. However, it is much more than a text book, as Dr. Grosse Ruse-Khan provides an insightful analysis of the issues faced today when analyzing IP protection in the context of international law, or, as the author aptly puts it, “global legal
orders.” There is no single international law, but rather intersecting domains, from those directly relating to IP to those having a less direct or even only a marginal impact on IP rights.

The book is divided into five parts, beginning with an Introduction (Part I), which focuses primarily on the author’s analytic methodology.

Part II, “Norm Relations Within the International IP System,” addresses those elements of international law that directly regulate IP rights and determine their subject matter, the conditions of protection, the rights conferred, and their enforcement against infringers. The analysis centers initially on the traditional multilateral treaties—Paris Convention, Berne Convention, and their progeny. The author moves on, naturally, to the Agreement on Trade-Related Aspects of Intellectual Property Rights Agreement (“TRIPS”), the twentieth century milestone in substantive IP protection, and provides a complete analysis of the relationship of this WTO convention to the traditional WIPO agreements, concluding, correctly, that, post-TRIPS, international IP protection is moving away from universal multilateral conventions and focusing more on regional or bilateral agreements, often as part of more general free-trade agreements. Here the TRIPS-plus elements deserve particular attention.

Part III, “Alternative Rule-System for the Protection of Intellectual Property,” moves beyond the traditional rule-based international agreements that set forth the detailed substantive rules for their acquisition and protection of IP rights to other instruments of international law that nevertheless affect the exercise and value of IP rights. The analysis focuses on international investment laws and on the protection of human rights. The protection of IP rights as investments within the scope of investment protection agreements has become the focus recently in the plain packaging cases, where tobacco companies argue that laws restricting or prohibiting the display of their trademarks on the packaging of cigarettes deprive them of the value of their investments—namely the power of their trademarks. This is extensively analyzed by the author.

The human rights/IP interface chapter deals with universal rules, notably the Universal Declaration of Human Rights (which has its historical foundation in the human rights declarations of the French Revolution), but also regional agreements such as those adopted by the Council of Europe, and notably the protection of property under Protocol 1 to the European Convention on Human Rights. Here, the famous case *Anheuser Busch v. Portugal* is the prime precedent. In that case, it was held that trademark applications even before being granted deserve protection as “property”, and any grounds of refusal must be based on legitimate interests (which in the case at hand were accepted as being present).
With the adoption of the EU Charter of Fundamental Rights and the explicit recognition of IP rights as “property” in Article 17(2) of the Charter, the analysis turns to the situation within the European Union. While Article 17 of the Charter is invoked often, also in the European plain packaging cases, we have so far not seen any effective limitation of government intervention with packaging and display of brands.

Part IV, “Intellectual Property and Other Rule Systems in International Law,” describes and analyzes the interaction of rules for the protection of IP rights with other rules of international law. Of particular importance is the impact of international trade law, such as expressed in the WTO Agreement, on IP rights. The corresponding chapter contains a comprehensive presentation and analysis of the cases decided or arising under the General Agreement on Tariffs and Trade/WTO dispute settlement mechanisms involving IP rights, including the hotly contested issue of goods in transit. The next chapter deals with “IP Rights in International Environmental Law.” Here, the Convention on Biological Diversity is the center of the analysis. The author also addresses protection of genetic resources and traditional knowledge, as both areas occupy much of the attention of WIPO. The information provided here is not readily available elsewhere and is presented with a balanced analysis of the respective positions.

Finally, Part V, “Integration and Conflict Norms for International IP Law,” analyzes in three chapters the formal conflict rules found in the international IP system, focusing on the TRIPS Agreement; the manner of solving conflicts, as expressed in Articles 7 and 8 of the TRIPS Agreement; and finally, a “bird’s-eye” summary and perspective of the role of IP rights in the various international legal orders.

The book has a complete table of cases, a comprehensive table of contents, as well as a detailed index, which facilitate access to individual topics or themes that a researcher may focus on, when the time for a consecutive reading may be lacking.

Overall, Dr. Grosse Ruse-Khan provides a fascinating insight and overview of the many facets of IP protection at the international level that are of direct academic interest to students and teachers, but also are of practical interest and utility for practitioners in the realms of international protection of intellectual property rights.

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