

# THE USE AND ABUSE OF INTELLECTUAL PROPERTY RIGHTS IN E.C. LAW


*Including a case study of the E.C. spare parts debate*

By

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College of Europe  
Bruges

*With foreword by*  
Advocate General F. G. JACOBS  
*European Court of Justice*

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## Foreword

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"The use and abuse of intellectual property rights", the somewhat provocative phrase which appears in the title of this book, epitomises the continuing debate about the proper scope of these rights in a liberal economy. We may no longer, it is true, think of the relationship between intellectual property rights and fair competition only in terms of conflict: we may instead recognise that such rights are an integral part of a competitive system. And we no longer think in simplistic terms of a conflict between intellectual property rights and free trade: as is illustrated by the incorporation of the TRIPS-Agreement into the World Trade Organisation Agreement, the protection of such rights should rather be regarded as an integral part of the world trading system. For practical purposes, nevertheless, it is the proper and improper use of intellectual property rights—patents, trade marks, industrial design, copyright and other rights, and each in the light of its own specific function—which the law must define, in every modern system, so as to reconcile conflicting objectives.

This book ambitiously seeks to determine the proper limits of intellectual property rights in E.C. law. That task has often had to be performed on a case-by-case basis by the European Court of Justice: as the author shows, the broad terms of the E.C. Treaty have imposed on the Court the task of tracing the limits of each form of intellectual property; in so doing the Court has, as she says, always endeavoured to strike a balance between intellectual property rights on the one hand and the Community objectives of creating a single market and maintaining workable competition on the other hand. Striking the right balance is no easy task, given the territoriality principle of rights which are for the most part still firmly anchored in the national law of each Member State. It could even be said that the Treaty, in requiring the Court by Articles 30 and 36 to decide in what circumstances restrictions on trade are "justified" on grounds of the protection of intellectual property, and in what circumstances such restrictions are not justified on those grounds, is asking the impossible. But answers had to be found. Most informed observers probably recognise that the answers have not been unreasonable. Occasionally perhaps there was excessive emphasis on market integration at the expense of trade marks, as in 1974 in the (wholly exceptional) situation of marks of common origin. But in the same year the *Centrafarm* judgments, defining the "specific subject-matter" of patents and trade marks, seemed to provide a sound basis for the interface between national intellectual property rights and the Common Market. More recently, some observers might say that the Court has gone too far in deferring to national rights, by failing in some cases to

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specify their proper limits and effectively leaving the solution to national law. Has the Court still got the balance right?

The reader of this book will be exceptionally well placed to answer that question and to grasp all its implications. The author's exposition of the issues is thorough and clear. She analyses the solutions adopted by the Court with a keen critical acumen. But her criticism is itself admirably balanced.

A further great advantage of the author's treatment of the subject is that she takes a case study to illuminate the subject, and has chosen a highly important and instructive one, the spare parts issue. The topic of the spare parts of cars provides an excellent basis for examining the place of intellectual property rights both in the context of the free movement of goods and in the context of antitrust. Again not uncritical of the case law, she uses it deftly to explore every aspect of this topic.

In paying tribute to this book, I would also pay tribute, as the author does, to the remarkable institutions for study and research in European law in which she was nurtured: the University of Ghent and the European University Institute in Florence. Like a number of other books from those institutions, this thoughtful work will be invaluable both for further academic study of the subject and for the practitioner—indeed, for all who seek a deeper understanding.

*Advocate General F. G. Jacobs  
European Court of Justice  
Luxembourg,  
September 1995*

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*Inge Govaere*  
*Bruges*  
*August 21, 1995*

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