

William Cornish

Cases and Materials on

Intellectual Property

Fourth Edition

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Statutes quoted in the Materials appear in bold type. The texts of judicial decisions appear in roman type, and commentary and editorial notes appear in italics.

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PREFACE

This sourcebook continues to provide legislative texts and extracts from case decisions for those who need a handy compendium of primary material on the intellectual property law of the United Kingdom. It is intended as a complement to William Cornish and David Llewelyn, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*, which is appearing in a Fifth Edition in 2003. There is accordingly no editorial commentary here.

Much of United Kingdom IP law derives directly or by incorporation from regulations and directives of the European Union. Of all the areas of private law, intellectual property is now the most Europeanised. Since the previous edition the law of registered designs has been subjected to the twin process previously meted out to registered trade marks. A Community Registered Design has been introduced (together with a short-term unregistered right). National registered rights continue as an alternative but subject to harmonisation measures which secure standard legislative provisions across member states. Despite the efforts of the states which have successively presided over the EU, the Community Patent Convention has lain on the shelf since 1975. Member States have been intransigent over the issue of translating patent specifications into all EU languages and over the creation of a Community jurisdiction to try Community Patent actions. However, as this edition goes to press the EU Council has indicated a new determination to introduce this unitary right as soon as it can be achieved.

The EU trade marks regime continues to provoke an unending stream of issues about the scope and operation of the new law. The drafting of that law left fundamental questions obscure. A flood of case-law strives to settle differences of approach. It used to be thought that such differences derived from national attitudes. Inevitably they have some influence. Equally it now seems that any trade mark system provokes a range of attitudes. Some judges favour an ever-broadening approach that is considered to reflect "modern" business practices. Others show more concern for allowing a reasonable degree of freedom among competitors to emulate developments stemming from others. As ever, individual judges are affected by the positions of the particular parties to litigation, so that their decisions appear to swivel between the two poles. All in all, the experience has provided one of the most intense trials of EU harmonisation of laws.

As to copyright, the desperate attempts to adapt it so as to give meaning to proprietary rights on the Internet has resulted in the EU's Information Society Directive of 2001, which is difficult to transpose into the national context, in the UK as elsewhere. At the stage of going to press, it has been possible only to refer to the UK Government's proposed amendments to the Copyright, Designs and Patents Act 1988 and not to the final form of the eagerly awaited Regulations. This is one point at which fully international law is being transposed into our law, since the Directive develops upon obligations laid down in the WIPO Treaties on Copyright and on Performers and Phonograms, both of 1996. Otherwise there are few novel points at which international conventions have given rise to changes in domestic law.

W.R.C.
Cambridge,
March, 2003

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