Copyright and Civil Enforcement

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RESEARCH OBJECTIVES AND KEY THEMES: To map formal and informal copyright enforcement activity in Scotland and to explore the different factors influencing that activity.

- What are the key practices in IP/copyright enforcement, ‘formally’ in court litigation and ‘informally’ in correspondence, respectively?
- What are the key factors influencing the conduct of IP/copyright infringement disputes, their trajectories and outcomes?
- What are the particular considerations relevant to copyright infringement disputes, generally and in the creative industries?

Galanter (1974) identified ‘official’ justice systems as: ‘the ‘upper’ layers of a massive ‘legal iceberg’ consisting of distinct but inter-merging layers of adjudication, litigation, private settlement systems and other routes to dispute resolution.

KEY CHALLENGES: To develop and implement a research design capable of investigating ‘unobservable’ informal and private enforcement practices as well as ‘observable’ litigation activity.

Empirical research into IP enforcement focussed on other jurisdictions – Dent and Weatherall, Greenhalgh et al, Gallagher, Helmers and McDonagh.

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RESEARCH DESIGN: Mixed empirical methods combining analysis of quantitative and qualitative data from Scottish court records and a survey/interviews among legal advisers. Value added: Refining new research design; deepening research connections with legal sector; widening opportunities for knowledge exchange and dissemination (e.g., CIPA Journal, ITMA seminar).

Focus: Court of Session IP actions - approx. 70+ cases in 5 year date range.

Data to be collected: IP right(s) in suit; use of interim interdict; case trajectories; settlement rates; timescales; industry sectors; and more.

Status: currently in discussion with Scottish Court Service over access to SCS data.

Next steps: once agreement reached with SCS, to collect and analyse available data.

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Focus: Firms of solicitors with a practice in IP and firms of patent/trade mark attorneys, all based in Scotland – approx. 170+ firms in total.

Data to be collected: nature and range of IP/copyright infringement disputes, pre-litigation and at court; dispute trajectories and influencing factors; online infringement and intermediaries; use of ADR; settlement outcomes; costs; creative industry disputes; and more.

Status: survey currently live with respondents until into autumn 2014.

Next steps: to collect and analyse survey data; thereafter to arrange follow-up interviews with respondents and other relevant stakeholders.

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Survey and interviews

Scottish court records

The observable....

The unobservable....