Copyright and Civil Enforcement

Citation for published version:

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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, generally and in the creative industries?
- 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?

**KEY CHALLENGES:**

- Empirical research into other areas of disputing practice in Scotland – Coop and Morris, Samuel, Agapiou and Clark.

**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 (eg CIPA Journal, ITMA seminar).

**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.

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

**INFLUENCES**

**Empirical research into other areas of disputing practice in Scotland – Coop and Morris, Samuel, Agapiou and Clark.**

**RESEARCH OBJECTIVES AND KEY THEMES:**

- The observable....
- Scottish court records
- Survey and interviews
- 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.

**INVESTIGATING THE ‘LEGAL ICEBERG’**

- The unobservable....
- Survey and interviews
- 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.