Copyright and Civil Enforcement

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What are the key practices in IP/copyright enforcement, 'formally' in court litigation and 'informally' in correspondence, and particular considerations relevant to copyright infringement disputes, generally and in the creative industries?

**Influences**

Empirical research into other areas of disputing practice in Scotland – Coope and Morris, Samuel, Agapiou and others.

**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).

**Focus**

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

- IP right(s) in suit; use of interim interdict; case trajectories; settlement rates; timescales; industry sectors; and more.
- 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.

**The observable....**

Scottish court records

**The unobservable....**

Survey and interviews

**Key Challenges**

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

**References**

M. Galanter, 'The “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.’

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.

**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, negotiation and settlement?
- 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?