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REVIEW OF INTELLECTUAL PROPERTY LAW



A RETROSPECTIVE REFLECTION ON RIPL

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The *Review of Intellectual Property Law* (“RIPL”) was founded in 2001 by a group of students who recognized a need for a student honors organization devoted to intellectual property: patents, copyrights, trademarks, and trade secrets. They envisioned RIPL as an outlet to voice progressive opinions on the state of the law and provide valuable information from peers, scholars and the bench. Over the past 20 years, the landscape of intellectual property has changed dramatically, requiring RIPL to address new technologies and emerging areas of the law. Those founding students couldn’t have imagined how society and technology would change the world around us and how this would alter the landscape of the intellectual property profession.

At the crest of the 21st century, the world was introduced to several developments that have transformed how we live. High-speed internet became readily available in the early 2000s and has drastically advanced modern living, introducing the world to social media, artificial intelligence, extensive consumer technology, and improvement of international business and relations, all of which need to be protected under intellectual property law. Modern smartphones were introduced in 2007, allowing users to keep, share, transfer, and store data that can be created in an instant. Business in the modern day has extensively shifted to e-commerce, which introduces new issues in advertising, marketing and sales, and payment technologies. Streaming services like Netflix, Hulu, and Twitch have brought thousands of copyrighted materials to the fingertips of most consumers.

These advances in society and technology begat a host of legal changes, such as the enactment of major legislation and new policies around intellectual property law. The America Invents Act (2013)¹ changed the patent system to a first-to-file system and put the United States on par with the other patent systems around the world. The Digital Millennium Copyright Act (2000)² was designed to prevent the circumvention of control devices to reach copyrighted material, which has had a major impact on content providers such as YouTube and other streaming platforms. With the Defend Trade Secrets Act (2012)³ the federal government unified the state laws surrounding trade secrets and created a uniform guideline that can be used in domestic

¹ Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (codified in scattered sections of 35 U.S.C.).

² The Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860 (1998).

³ Defend Trade Secrets Act, Pub. L. No. 114-153, 130 Stat. 376 (2016).

and international business relations. Both state and federal agencies have worked to provide data privacy laws aimed at protecting personal data, criminalizing hacking and cyberbullying, and implementing standards for data security. Laws were created, for the most part, to address the changes in technology and provide guidance on how these changes will be handled.

Practitioners must also understand the evolving policy considerations that change with the world view of intellectual property. Today, intellectual property is a complex economic tool that businesses use to grow its brand through the internet and other emerging distribution channels. This innovation-as-an-asset focus is due to the constantly changing technologies and the need to continually adjust to the market. The recent pandemic has only accelerated these advancements. As explained by the Hon. Paul Michel, retired Chief Judge of the U.S. Court of Appeals for the Federal Circuit: “The Covid-19 pandemic has also worked to shift the policy behind intellectual property, with a focus on improving innovation in life sciences. Intellectual property constantly changes with the world around it and is a law that fails to remain stagnant due to its reliance on society, technology, and policy shifts.”⁴

With these developments in society, technology, and the law, intellectual property practitioners have been exposed to a wide range of complex issues that often incorporate several areas of law, including data protection and privacy. Practitioners must now be well versed in these emerging laws and the diverse forums in which these issues may arise. An intellectual property practice before the 21st century may have required attorneys to know the core concepts of intellectual property, along with notions of contract law and other litigation-based tactics. Now, a more seasoned intellectual property practice should include a base knowledge of how the internet, social media, and new laws enacted within the past two decades may have impacted a client’s rights. Also, each attorney must know how to protect these rights in different venues, such as the Patent Trials and Appeals Board, International Trade Commission, and various district courts in which judges have become increasingly knowledgeable in these areas and the courts have enacted local rules addressing intellectual property.

These societal and technological changes have also attacked new law students, each with broad educational backgrounds. The incoming classes of intellectual property student bodies are no longer made up of graduates interested in a career in patents, trademarks, or copyright. Now, those with backgrounds in niche areas—such as artificial intelligence, cloud computing, marketing informatics or data analytics—can pursue a career in intellectual property law, while focusing on the narrower area in which they educational or work expertise. The expansion of the intellectual property profession has required law schools to attract diverse groups of students to fill the current needs of the practice. Now more than ever students with interests outside the traditional notions of intellectual property are needed to pilot the new endeavors that spawn from changing society and laws.

This discussion of the changes to the intellectual property landscape invites the question: what’s next for the profession? Students, scholars, and practitioners will

⁴ Eileen McDermott, *Judge Paul Michel to Patent Masters Attendees: It’s Time to Wake Up to Preserve Our Patent System*, IP WATCHDOGS (March 16, 2020), <https://www.ipwatchdog.com/2020/03/16/judge-paul-michel-time-wake-preserve-patent-system/id=119874/>.

be faced with a wide variety of issues, technologies, and questions that will continue to expand the scope of the law. Many of the new laws and policies that have arisen in the past two decades will be further litigated and tested, bringing new depth, guidance, and meaning. These changes will highlight the impact of a legal journal like RIPL and serve as a beacon for why this pioneering organization will be more necessary than ever. Undoubtedly, RIPL will continue to dedicate itself to advancing the principles and values established by its founders and serving as the leading voice of the evolution of intellectual property law.



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