

Editorial

Intellectual property law is characterized by a particularly dynamic regulatory environment, shaped by frequent legislative reform, rapidly evolving case law, and continuous technological change. This raises a major methodological question concerning the temporal validity of IP scholarship: to what extent do research findings from several years ago remain relevant in a field where both legal doctrine and market realities may shift within a short timeframe?

The answer depends primarily on the nature of the research claim and the extent to which it is contingent on the legal, technological, or institutional context at the time of writing. Doctrinal scholarship that primarily describes or systematizes positive law is especially vulnerable to becoming outdated, as it may be displaced by new EU instruments or subsequent interpretative developments in the jurisprudence of the Court of Justice of the European Union. Nonetheless, such research may retain value as historical material, particularly where it documents earlier interpretative approaches or the doctrinal evolution of key concepts.

By contrast, scholarship that is normative, theoretical, or mechanism-based tends to exhibit greater temporal resilience. Normative arguments concerning the appropriate balance between incentives and access, the legitimacy of enforcement measures, or the institutional design of IP governance may remain relevant even where the surrounding legal framework has changed. Similarly, law and economics approaches often retain explanatory power over time insofar as they focus on structural features such as transaction costs, market power, information asymmetries, cumulative innovation, and strategic behavior. These mechanisms may persist despite changes in doctrinal form and therefore provide analytical tools that remain applicable across different regulatory configurations.

An interesting reading confirming this approach is that of Brian Z. Tamanaha's *Law as a Means to an End: Threat*

to the Rule of Law.¹ Tamanaha's core argument in the introduction is that modern legal culture, especially in the United States (but with implications beyond it), has shifted strongly toward an instrumental understanding of law: law is seen as a tool, a means to an end, an "empty vessel" that can be shaped, interpreted, and used to advance goals. He contrasts this with older non-instrumental understandings of law, where law was seen as having an internal integrity and a kind of predetermined content, derived from sources such as custom, natural law, divine law, or the "logic" of legal concepts. In that older picture, law was not primarily something to be used strategically, but something that constrained actors and carried an authority independent of their preferences.

A key move in his argument is that instrumentalism originally came as a two-part proposition: law is an instrument, and it should serve the social good. But over the twentieth century, he argues, the first part survived and became dominant, while the second part became increasingly unstable because agreement on a shared social good weakened. The result is that law becomes a contested instrument: groups compete to control it, interpret it, and use it as a weapon in political, economic, and social struggles. He describes this as a kind of "Hobbesian" conflict carried out through legal institutions, where law generates conflict as much as it resolves it.

In an instrumental legal culture, law is continuously being reinterpreted and repurposed to serve changing ends. That means legal doctrine is not simply "discovered" and then stable; it is actively contested and reshaped. This is especially true in intellectual property, where the stakes are high, the economic incentives are strong, and the underlying technology changes rapidly. In other words, IP is almost a perfect example of the kind of legal domain Tamanaha describes: law is treated as a strategic instrument, and the "ends" (innovation policy, market regulation, cultural policy, competition policy, industrial strategy) are both plural and contested.

¹ Tamanaha BZ. *Law as a Means to an End: Threat to the Rule of Law*. Cambridge University Press; 2006.

As a result, under a more non-instrumental understanding of law, a doctrinal account might remain valid for longer because the system's self-understanding aims at stability and internal coherence. Under an instrumental understanding, however, doctrinal content is more likely to shift because it is constantly under pressure from competing interests and policy objectives. So the temporal fragility of doctrinal IP research is not just caused by "technology moving fast"; it is also caused by law's modern role as a tool of governance and contestation.

In this issue we host the contributions of authors, who defended their doctorate theses during the past 12 years at the Law Faculty, Stockholm University in the field of Intellectual Property Law. They were asked to submit I would say, non-conventional contributions, reflections of the temporal character of their research. They were in fact, asked to revisit the relevance of their respective research projects and research results at the time the thesis was defended and reflect on their impact today. Are the research results still relevant? And if so to what extend and under which preconditions?

The revisiting exercise resulted in a common conclusion shared by the authors; and that is that although time passes the conceptual questions and problems remain the same. Both Christina Wainikka and Branka Marušić lift up the conceptual question on defining relationship between technology and law. Although Christina revisits her thesis on trade secrets, and Branka on copyright – both of them wonder to what extent can legal provisions in IP accommodate technological advancement.

Merit Berlips Persson and Anna Horn centre their conceptual question to adherence to higher legal norms as well as harmonisation of laws between countries. Merit revisits her thesis on the Swedish cross-protection of company names and trademarks and forewarns that the adherence to EU law has not yet been settled. In similar

vein, yet on a more pan European level, Anna argues the case for increased harmonisation and cooperation within the United Patent Court (UPC) system – in relation to patent law within Europe.

Lydia Lundstedt takes a bird-eye perspective on the findings of her thesis on the application of the principle of territoriality and reflects how the old confusions are adapting to new digital landscapes.

Even I had the opportunity to revisit my thesis on the protection of traditional knowledge and genetic resources in light of the recently adopted WIPO Treaty and conclude that, although it marks an important multilateral milestone, its regulatory ambition remains largely procedural and limited.

This is such an interesting and valuable intellectual exercise, being able to revisit your work and critically reflect on its impact, both at the time of its original publication and now. I hope you enjoy reading!

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