

# The IP Law Book Review

Published by the Intellectual Property Law Center  
Golden Gate University School of Law

ISSN 2154-6452

Vol. 7 No. 1 (October 2016)

## **EDITOR**

**William T. Gallagher**  
**Golden Gate University School of Law**

## **EDITORIAL ADVISORY BOARD**

Barton Beebe, New York University School of Law  
Dan L. Burk, U.C. Irvine School of Law  
Margaret Chon, Seattle University School of Law  
Peter Drahos, Australian National University  
Shubha Ghosh, Syracuse University College of Law  
Christine Haight Farley, American University Washington College of Law  
Smita Kheria, University of Edinburgh  
Mark P. McKenna, Notre Dame Law School  
Alain Pottage, London School of Economics  
Jessica Silbey, Northeastern University School of Law  
Peter K. Yu, Texas A&M University School of Law

**FROM MAIMONIDES TO MICROSOFT: THE  
JEWISH LAW OF COPYRIGHT SINCE THE  
BIRTH OF PRINT**, by Neil Weinstock Netanel

Reviewed by Roberta Rosenthal Kwall, *Raymond P.  
Niro Professor*, DePaul University College of Law

**THE PARIS CONVENTION FOR THE  
PROTECTION OF INDUSTRIAL PROPERTY: A  
COMMENTARY**, by Sam Ricketson

Reviewed by Jose Bellido, University of Kent

**GOLDEN GATE UNIVERSITY**

School of Law

# The IP Law Book Review

IP Law Center, Golden Gate University School of Law

Vol. 7, No. 1 (October 2016) pp. 1-9

**FROM MAIMONIDES TO MICROSOFT: THE JEWISH LAW OF COPYRIGHT SINCE THE BIRTH OF PRINT**, by Neil Weinstock Netanel, Oxford University Press, 2016. 336 Pages, Hardcover \$99.95

Reviewed by Roberta Rosenthal Kwall  
*Raymond P. Niro Professor*, DePaul University College of Law  
[rkwall@depaul.edu](mailto:rkwall@depaul.edu)

## COPYRIGHT, JEWISH LAW AND CREATIVITY

Not many people would link copyright with Jewish law, but this connection should not be surprising to those who know something about both areas. Jewish law, known as *halakhah*, is a legal system governing far more than Jewish religious behavior. Its scope extends to just about every area of human existence such as personal relationships, property, inheritance, sex, clothing, ethics, health concerns, and business. According to Jewish tradition, the source of *halakhah* is Divine but human beings are charged with its implementation and development. As such, *halakhah* is very much an expression of human creativity. In the secular realm, the purpose of copyright law is to protect works of authorship that are products of human creativity. When seen in this way, it is logical and fitting that Jewish law, itself a product of human creativity, has something to say about whether and how authors and their works should be protected.

This reality was not lost on Microsoft. In the 1990s, the company's Israeli subsidiary sought not only secular legal relief against software piracy in Israeli courts, but also petitioned a rabbinic court in the ultra-Orthodox enclave of Bnei Brak for a ruling that would support its position as a matter of Jewish law. Microsoft received a favorable ruling in the form of an edict labeling as "transgressors" those who copy computer disks and various programs and sell them for a low price. The ruling also stated that people who purchase these unlawful copies are "abettors of those who violate the law."

Professor Neil Netanel's new book, *FROM MAIMONIDES TO MICROSOFT: THE JEWISH LAW OF COPYRIGHT SINCE THE BIRTH OF PRINT*, opens with a discussion of the Microsoft ruling by the rabbinic court, a topic to which he returns in the final chapter. His book furnishes a meticulously researched and artfully presented account of the history of copyright law as it has developed under the watchful eyes of rabbinic authority. A product of decades<sup>1</sup> of research, percolation time, and masterful linguistic crafting, Netanel's book appears to be written with two major goals in mind. One goal is to tell the story of the development of the Jewish law of copyright as it has been formulated by rabbinic decisors since the sixteenth century. I suspect this story is one that is largely unfamiliar to many students of *halakhah*, let alone scholars of copyright law generally. The second goal is the demonstration of how the *halakhah* of copyright law has been influenced by historical and cultural factors operating both within and outside of the Jewish community.

Netanel writes in his preface that as originally conceived, this book was to be a more basic introduction to Jewish copyright law written for the purpose of providing a comparative perspective to students and practitioners of secular copyright law. As his project proceeded, he realized that if he was to do this topic justice, he had to address broader issues that surfaced during his research such as the impact of "external, non-Jewish influences" on the law's development; "the historical context in which early modern rabbis enunciated a Jewish law of copyright; and parallels between the Jewish law of copyright and its secular and papal counterparts" (Preface, *ix*). In other words, Netanel realized that the story of Jewish copyright law is not just a story about the intrinsic application of *halakhic* jurisprudence. It is also a story about how this body of *halakhah* emerged from the surrounding cultures and historical circumstances in which the Jews were living. It is a story about how the legal environment of those cultures impacted the development of *halakhah*.

Netanel's book clearly illustrates the principle that law and culture are inevitably intertwined. This is true not just for secular law but also for *halakhah*, which some regard as a completely insular legal system admitting of no outside influence. The intersection between *halakhah* and culture has been the focus of my own work on Jewish law and tradition,<sup>2</sup> and I was elated to see how Netanel took a specific aspect of Jewish tradition, one not related to ritual, and told a story with lessons for copyright, comparative, and Jewish law scholars.

Early on, Netanel details the development of rabbinic bans on reprinting books beginning with the first known ban issued in Rome in 1518. He illustrates how

these bans simultaneously draw from, and yet differ, from the papal bans and secular book privileges in vogue at that time. Enforcement of these bans through a decree of excommunication was common with respect to both rabbinic and papal bans. Other similarities with the secular book privileges suggest that they too served as a model for rabbinic decisors of the early modern era. These homogenous elements “reflect the confluence of shared understandings among early modern Jews and Gentiles regarding the nature of authorship” (p. 51). Yet, in fashioning these bans, the rabbis drew heavily from the intrinsic sources of the Jewish tradition such as the Torah, Talmud, and subsequent *halakhah*. This focus on Jewish tradition is evident in the first rabbinic ban given its emphasis on *halakhah*'s prohibition of encroaching on someone else's livelihood. The focus of the book privileges, in contrast, was on the sovereign's discretion to reward deserving subjects.

This concept of borrowing elements from the surrounding culture and transposing these elements to suit both *halakhah*'s unique framework and the diverse customs of Jews living in distinct communities has been a hallmark of Jewish law throughout the centuries. As Professor Joel Roth has observed, “borrowings from other legal systems, whether consciously or unconsciously...often incorporate the sociological reality into the Jewish legal system, sometimes intact and sometimes modified.”<sup>3</sup> Netanel illustrates how the first reprinting ban captures the essence of this process to the extent the rabbis “took venerable Talmudic injunctions against encroaching on another's livelihood and applied them to the new business of printing and selling books, a business that the technology of the printing press made at once possible and vulnerable to ruinous competition” (p. 64). In doing so, the rabbis boldly transcended existing Jewish law (p. 64).

Although the rabbis who issued the first ban drew from Jewish legal authority in supporting their conclusion, they did not develop extensive argumentation for their *halakhic* conclusion. Netanel devotes a chapter to the subsequent *halakhic* arguments by Moses Isserles, who later became the leading Ashkenic Jewish authority of his generation. In 1550, Isserles issued his very first responsum (legal opinion), resolving a dispute between two competing editions of the *Misheh Torah*, a well-known code of Jewish law written by the celebrated medieval philosopher Moses Maimonides. The circumstances prompting this dispute required Isserles to delve into complex jurisdictional and other matters that the rabbis in Rome were able to avoid. Ultimately, Isserles issued a reprinting ban and order of excommunication, limited in scope to Poland, for those who bought or possessed an illicit edition of the work. Significantly, his reasoning focused on the harm engendered by predatory pricing rather than a concern for the copying of

subject matter that would be considered copyrightable material today (p. 99-100). For this reason, Netanel concludes that his ruling “does not sound in ‘copyright,’ as that term would be understood in present-day secular law” (p. 100).

Despite the limitations of the ruling issued by Isserles, it became the basis for the subsequent widespread adoption of rabbinic book bans. In the next chapter, Netanel traces the role of these bans in the development of the Hebrew book trade beginning in the late sixteenth century, and compares the operation of these bans with secular book privileges. In early modern Europe, Jewish communities enjoyed a considerable degree of autonomy, with lay authorities often maintaining a position of power superior to that of the rabbinate. With respect to the book trade, however, rabbinic authority still prevailed, as lay councils typically required rabbinic approval for printing and also honored rabbinic impositions of excommunication (p. 121). This chapter also illustrates the importance of cross-cultural influences in the developing *halakhah* concerning reprinting bans and the culture of regulation in the Jewish communities. Netanel notes that the book regulations governing the Jewish communities paralleled the regulations in force for non-Jewish communities but also “reflected the particularities of Jewish communal life, the rabbinic tradition, and the Hebrew book trade” (p. 122).

During this period, we see the emergence of a nuanced, but often contradictory, *halakhah* concerning reprinting bans. As discussed, the earlier bans focused on the venerable *halakhic* prohibition against encroaching on someone else’s livelihood. In contrast, later multi-faceted rulings, both supporting and opposing these bans, were bolstered by a wide range of *halakhic* doctrine and underlying policy. Netanel devotes two chapters to these significant controversies, including a discussion of two important disputes in the early nineteenth century that laid the foundations for subsequent applications of Jewish copyright law.

The first of these chapter details the cross-border dispute over a set of holiday prayer books known as *Sefer Krovot Hu Mahzor*. This dispute involved two major jurists, Mordekhai Banet and Moses Sofer, who engaged in an extended colloquy about the theory and parameters of Jewish copyright law. Both rabbis invoked policy and current social realities to justify their contrasting views on whether reprinting bans can be justified *halakhically*. Banet’s legal conclusions reflect his overarching policy perspective that reprinting bans are anti-competitive, especially when they are applied to geographical areas outside of the territory in which they are originally issued, or for a duration exceeding the time in which the petitioning publisher has recouped his investment. In contrast, Sofer sees reprinting bans in a favorable light. He believes they are supported not only

*halakhah's* concern for preventing wrongful competition, but also by the policy of promoting the publication of Jewish books in all potential markets of the publisher.

The second chapter continues to explore the growing body of Jewish copyright law by focusing on a major dispute involving competing editions of the Talmud. This dispute resulted in several rabbinic responses, including one from Sofer, and Netanel analyzes each of them meticulously. This diversity of views as to both the legality and appropriate scope of rabbinic printing bans foreshadows Netanel's analysis of the range of opinions on the scope of contemporary Jewish copyright law that he addresses in his final chapter.

By the middle of the nineteenth century, rabbinic reprinting bans waned in importance, a development that paralleled the disintegration of Jewish communal autonomy and rabbinic juridical authority. Jewish copyright law was shaped in the latter half of the nineteenth century by the differing opinions of Joseph Saul Nathanson and Yitzhak Schmelkes. Nathanson's approach was groundbreaking to the extent he posited that authors maintain a perpetual, exclusive right to reprint their creative works. In his view, authors enjoy a property right that is completely divorced from rights deriving from the rabbinic reprinting bans or the Jewish law of wrongful competition. Netanel explains Nathanson's ruling as not grounded in Talmudic logic or precedent but rather as a reflection of the need for Jewish law to take into account the legal norms of secular jurisprudence with respect to the rights of authors (p. 222). In contrast to Nathanson's direct incorporation of secularist copyright notions into Jewish law, Schmelkes essentially concluded that secular law governs these matters according to the *halakhic* doctrine of *dina demalkhuta dina* (the law of the land is the law).

Netanel's final chapter is titled "The Present-Day Debate: Is Copyright Infringement 'Stealing'?" It demonstrates that although neither Nathanson's nor Schmelkes's rulings carry the day presently, their earlier opinions played a part in shaping what he sees as the two modern competing perspectives on Jewish copyright law. One perspective understands copyright as property. The other perspective, which garners more support today, sees copyright as an "amalgam" of rights arising from a multitude of sources including early rabbinic bans, binding custom, protection against wrongful competition and unjust enrichment, and deference to secular law regarding commercial matters. Netanel's analysis also demonstrates how secular copyright law has influenced both modern schools of thought.

The last chapter also returns to the significance of Microsoft's role in the narrative of Jewish copyright law. From a copyright perspective, Netanel discusses why the rabbinic edict answers raises more questions than it answers. From a socio-cultural perspective, Netanel stresses the irony of Microsoft seeking a ruling from a rabbinic court of one of Israel's most Orthodox and insular communities in which all secular entertainment, as well as the Internet, is condemned and banned. He observes that in reality, both the Microsoft ruling, and other rabbinic pronouncements "have failed to stem the tide of Internet usage" in Israel's ultra-Orthodox communities (p. 238).

Throughout his book, Netanel's focus is on how copyright law safeguards the economic interests of authors and publishers. As he acknowledges in his Introduction, however, copyright laws in most countries also incorporate protections for the personal interests of authors through moral rights laws. Netanel explains that moral rights law recognizes the "rights to claim authorship credit and to prevent distortions in the author's work even after the author has transferred to a publisher or studio her exclusive rights of copying, distribution, adaptation, and public communication" (p. 5).

Moral rights violations often arise in circumstances in which someone other than the author has the ability to publish or reproduce a copyrighted work. For example, in many countries a moral rights claim could arise if the publisher of a Jewish book removes a *haskama*, a rabbinic approbation for a particular book, without the author's permission. The basis for this claim would be that authors seek these approbations based on their judgments about the stature and credibility of these rabbinic authorities, and their unauthorized removal violates the integrity and vision of the author's work. This type of claim would not be viable in the United States, however, because here visual artists are the only authors protected by moral rights under federal copyright law.<sup>4</sup>

Although Netanel addresses the historical connection between rabbinic approbations and reprinting bans, he does not discuss the removal issue generally or specifically in the context of moral rights.<sup>5</sup> Given that his work concentrates on how the Jewish tradition protects the economics aspects of works of authorship, he should not be faulted for this omission. Still, the Jewish tradition's perspective on these personal interests furnishes a relevant backdrop to Netanel's narrative.

The story of moral rights and the Jewish tradition begins with the narrative of Adam and Eve in *Genesis*, the first book of the Torah. In chapter 2, verse 17, God commands Adam not to *eat* from the Tree of Knowledge. This verse says

nothing about refraining from touching the fruit. In chapter 3, verse 3, Eve tells the serpent that God's instructions were neither to *eat nor touch* the fruit, or else they would die.

According to the tradition of the Oral Law that rabbinic authorities invoke to understand Biblical text, Adam wanted to add a safeguard to God's commandment of not touching the fruit, so he told Eve not to eat *or* touch it. Adam did not, however, tell Eve that this addition was his own innovation. The cunning serpent then shoved Eve against the fruit, and showed her that she would not die from touching the fruit. As a result, the serpent was able to convince Eve that she could also eat the fruit without any negative consequences.<sup>6</sup> Based on this interpretation of the Biblical text, Adam's lack of regard for God's moral rights in His instructions caused the expulsion of the couple from Eden.

All relevant works of Jewish law on this topic cite as the direct legal source a statement from the Ethics of the Fathers, a Talmudic tractate embodying the accumulated ethical and moral wisdom of the rabbinic sages. The importance of having one's words properly attributed to the original source is emphasized here in the following verse: "Whoever repeats a thing in the name of the one who said it brings redemption to the world."<sup>7</sup> The commentary by Rabbi Meir Zlotowitz emphasizes that a person "must display indebtedness to a source and mention him by name,"<sup>8</sup> thus prohibiting taking false credit for a statement made by someone else. Implicitly, this verse also mandates a responsibility for accurate quotation.

Based on the Ethics of the Fathers, it is clear that the Jewish tradition concerning authors' personal interests is centered on the *duty* of the second speaker rather than on a *right* of the first speaker. In this way, the Jewish perspective on moral rights differs from the secular version that understands the law as a right of the author. Moreover, a duty is perpetual but a right only lasts as long as the first speaker or her representative has the ability to enforce it. This suggests that according to the Jewish tradition, those who use an author's work have a perpetual duty to safeguard the author's moral rights interests. This view contrasts with most secular moral rights laws that provide the author with a period of protection lasting for as long as the copyright is in force.<sup>9</sup> To illustrate this point in the context of removing *haskamot*, it seems as though Jewish tradition would say that this conduct arguably constitutes a violation of the second speaker's duty to preserve the moral rights interests of the author.

Also worthy of note is the Talmud's focus on attribution through several generations of students and teachers. When the Talmud states "Rabbi X said," it

is conventional wisdom that the Talmud does not necessarily mean Rabbi X himself but rather the school of Rabbi X. The idea of misattribution in the Talmud must be accessed within its tradition of flexible, collective authorship. Jewish Studies scholar Sacha Stern has observed that “only *deceptive* plagiarism would have constituted a breach of the practice of attribution.”<sup>10</sup> Although authorship of material in the Talmud cannot be equated to authorship in Western terms, the concern for accurate attribution in the Jewish tradition, as well as preservation of artistic integrity, is palpable.

For copyright, comparative law, and Jewish law readers, Professor Netanel’s book contains material that will fascinate and delight. Those interested in Jewish law, on both theoretical and practical levels, will be intrigued with his nuanced *halakhic* discourse and perhaps even surprised by its application to copyright law. Copyright and comparative law scholars are likely to be interested in how he situates his *halakhic* discussions within a historical, sociological, and comparative law context, and deftly illustrates how rabbinic rulings are sensitive to “context” in copyright matters. Secular legal readers will also appreciate his deep discussion of whether copyright is, and should be considered, “property” under Jewish law, as well as his analysis of the implications of this characterization.

## END NOTES

---

<sup>1</sup> Netanel acknowledges in his Preface that early on, he and David Nimmer were going to co-author the book. Although Nimmer was unable to continue in this capacity, Netanel provides touching credit to his former collaborator and indicates which portions of the book specifically were based upon his early drafts.

<sup>2</sup> Roberta Rosenthal Kwall, *THE MYTH OF THE CULTURAL JEW* (Oxford University Press, 2015).

<sup>3</sup> Joel Roth, *THE HALAKHIC PROCESS* 303, (JTS Press, 1986).

<sup>4</sup> See 17 U.S.C. § 106A.

<sup>5</sup> For a discussion of the removal issue absent a connection to moral rights, see Marc B. Shapiro, *CHANGING THE IMMUTABLE: HOW ORTHODOX JUDAISM REWRITES ITS HISTORY* 152 (Littman Library of Jewish Civilization, 2015).

<sup>6</sup> Moshe Weissman, *THE MIDRASH SAYS* 45-46 (Bnay Yakov Publications, 1980).

<sup>7</sup> *PIRKEI AVOS, ETHICS OF THE FATHERS*, Ch. 6, § 6, 59 (Mesorah Publications, 1984).

<sup>8</sup> *Id.* at 59 n. 6 (commentary by Rabbi Meir Zlotowitz).

<sup>9</sup> In some countries such as France, moral rights protection is perpetual. Many nations follow the minimum standard mentioned in the Berne Convention and terminate moral rights with copyrights. See Roberta Rosenthal Kwall, *THE SOUL*

---

OF CREATIVITY: FORGING A MORAL RIGHTS LAW FOR THE UNITED STATES 46 (Stanford University Press, 2010).

<sup>10</sup> See generally Sacha Stern, ATTRIBUTION AND AUTHORSHIP IN THE BABYLONIAN TALMUD, 45 JOURNAL OF JEWISH STUDIES 28 (1994).

© 2016 Roberta Rosenthal Kwall

# The IP Law Book Review

IP Law Center, Golden Gate University School of Law

Vol. 7, No. 1 (October 2016) pp. 10-24

**THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY: A COMMENTARY**, by Sam Ricketson, Oxford University Press, 2015. 992 pp. Hardcover \$450.00

Reviewed by Jose Bellido  
University of Kent  
[j.a.bellido@kent.ac.uk](mailto:j.a.bellido@kent.ac.uk)

## Introduction

The appearance of Sam Ricketson's ground-breaking study of the Berne Convention for the protection of literary and artistic works (1886)<sup>1</sup> over three decades ago was welcomed as 'a feat of scholarship'.<sup>2</sup> The timely publication coincided with the centenary of the treaty. Both reviewers and commentators were surprised by the 'careful attention to the sources'<sup>3</sup> and the erudite, informative and 'splendid'<sup>4</sup> execution of a work that was rapidly praised as 'seminal'.<sup>5</sup> Ricketson's writings on Berne and other related topics made him one of the leading scholars of the discipline that has become to be known as 'intellectual property'.<sup>6</sup> In what was being increasingly recognised as a fully-fledged autonomous academic subject,<sup>7</sup> the book constituted a magnificent bibliographic achievement, an exemplary work. Described by Cornish as a 'work of very considerable scholarship';<sup>8</sup> Ricketson's work influenced and continues to influence those who write about the history of copyright, to the extent that his commentary of the Berne Convention was surely one of those books that shaped their becoming as academics.<sup>9</sup> Every page of this monumental and fascinating book contained a number interesting twists. Certainly, it was one of those universal books destined to become a key point of reference in a particular field, an indispensable volume that could impress any reader. Three decades later, Ricketson has developed the same detailed and ambitious analysis but has turned attention to a different subject, another major convention for intellectual property: The Paris Convention for the Protection of Industrial Property (1883). Although any appraisal is arguably affected by how overwhelming the volume might be for the contemporary reader, there can be no doubt that this endeavour represents an enormous step forward in intellectual property scholarship. This breakthrough of sorts possesses incalculable

value for future generations of scholars. This is already a singular and astonishing achievement as publications in the field, often focused on the immediate legal and doctrinal developments, have tended to convey solely ‘news’ or expectations of future legislative horizons.<sup>10</sup>

Taking into account that the Paris Convention is ubiquitously and routinely cited as a foundational text,<sup>11</sup> it is surprising to note that few books on its history had been published in English before Ricketson’s commentary.<sup>12</sup> As it turns out, there were just two or three publications covering the Convention in detail: a volume published to coincide with the centenary,<sup>13</sup> an authoritative exegesis written by Georg Bodenhausen<sup>14</sup> and two remarkable accounts given by Stephen Ladas.<sup>15</sup> Nevertheless, a brief glance at current intellectual property scholarship shows how the mention of Paris frequently appears in references to the Berne Convention (1886) and in the wider context of the so-called ‘internationalisation’ of intellectual property. This is appropriate since, according to historians such as Adrian Johns, Paris and Berne ‘would set in train the international harmonization of intellectual property’.<sup>16</sup> Rather than internationalisation, it might more accurately describe this shift as ‘positivisation’ of international intellectual property. As those levels were being defined (and redefined) by their histories, Ricketson’s nuanced gloss provides different lenses through which to view the shifting character of the Convention. It is not just that chronological links or similar professional and institutional networks were built around them, but that Paris and Berne conventions share a number of properties and were routinely described as historical pillars of the international intellectual property edifice.<sup>17</sup> Ricketson is more cautious in his approach and is keen to emphasise the differences and gaps between Berne and Paris (p. 279; 787). However, if there was ever an obvious candidate to explore the historical intricacies of the Paris Convention, it is Ricketson, whose skilful sense of craftsmanship and focused disciplinary ethos permeate his whole writing. He is systematic not only in his treatment and arrangement of the topic, but also in his reflections on his previous work, either personal or professional. His style of answering questions and developing perspectives shows a particular and interesting tendency to break down any topic and organise it into different ‘levels’ (at xlix; lxi). This distinctive care and passion for the object of scrutiny is a salient characteristic that arguably made him the most suitable writer to take on what was previously perceived to be an impossible task. While the Berne Convention arguably lent itself to a systematic and clear analysis, the Paris Convention presented many obstacles that hampered its presentation as a ‘coherent and logical system, complete in itself’ (p. 119). Many factors contributed to this perception, such as the proliferation of associated and special agreements that extended or refined what Ricketson interestingly defines as the Paris ‘system’ (p. li). Moreover, the lack of minimum standards contributed to the difficulty of weaving a historical narrative after the Convention. Despite (or precisely

because) the division of intellectual property into different domains was reinforced by the passage of the conventions,<sup>18</sup> historians found it easier to write a history of international copyright after Berne than a history of a convention such as Paris that grouped patents, designs and trademarks together.<sup>19</sup>

It is evident that the Paris Convention left puzzling interpretative questions not only about the different ways of conceptualising its respective subject matter but also about its institutional underpinnings.<sup>20</sup> Such a history was clearly affected by a period of 'stagnation and crisis' in the 1960s.<sup>21</sup> Retrospectively, it is possible that the universality approach in Paris suffered much more than the one emerging from Berne.<sup>22</sup> While the Berlin Revision Conference of the Berne Convention abolished copyright formalities,<sup>23</sup> the Paris Convention continued to be hampered by formalities. This remarkable difference not only reinforced the territorial nature of rights but also, and more significantly, made the task of writing about them more difficult. Ricketson's way of writing certainly helps to overcome some of these obstacles, elevating Paris to a paradigmatic case for the study of the development of industrial property in the twentieth-century. Certainly there are other ingredients that facilitated the book's systematic approach, for instance, the numbering of paragraphs, the appearance of diagrams (p. 120) and the way that Ricketson builds on previous attempts to narrate the history of the Convention.<sup>24</sup> However, the book's fluidity is provided by Ricketson's sensitive approach to the Convention at different levels: overreaching issues (pp. 121-360); organizing principles (pp. 328-360) and subject matter protected (pp. 361-751).

## **1. Time & Change**

It is, therefore, the multi-layered approach that best defines Ricketson's book. Divided into five parts, the commentary presents a conceptual account of the history of the Paris Convention. The first section, potentially the most controversial of the book, is devoted to the Convention's origins. Although an obvious start point for the historical narrative might be a disentangling of the 'origins' of the Convention from the 'mess' of previous bilateral agreements, the question arises as to whether or not such evolutionary story that charts the path from national industrial property laws to international agreements was actually a history of origins and inevitable paths already mediated by the desire to enrol new members to the Union that the Convention established.<sup>25</sup> In this sense, it is not a coincidence that the context of justification is almost simultaneously raised and linked to the author's historical chronicling (pp. 6-24). When the book begins to narrate the antecedents to the Convention (pp. 25-61), one wonders whether such an absolute, ingenious and narrative synthesis is able to capture the imprecise and contingent ways in which the making of international conventions and its revisions actually materialised. In fact, institutional pressures,

material infrastructures and interpersonal dynamics affected not only the arrangement of the treaty, but, more importantly, the way that its history was written.<sup>26</sup> In other words, the collective emerging through the publishing endeavours of the Union created at Paris heavily invested in knowledge practices such as statistics and history in order to legitimise its own existence.<sup>27</sup> The distinct ways in which these practices impinged upon and constituted the narration of a particular history of international intellectual property merits research. Rather than considering the Convention *per se* as a major problematic civilising gesture,<sup>28</sup> the relationship between the text of the convention and its annotation is perhaps the major political issue inextricably connected to its history.<sup>29</sup> Indeed, one of the main aims of these publications was to generate political trust and transparency in relation to the inner workings of the Union.<sup>30</sup> In other words, the Convention was being largely sustained by these knowledge practices. This is particularly remarkable because many diplomatic acts connected to the Convention and its revision conferences depended on secrecy.<sup>31</sup>

The Paris Convention was initially signed in 1883 by eleven countries: Belgium, Brazil, France, Guatemala, Italy, the Netherlands, Portugal, El Salvador, Serbia, Spain and Switzerland.<sup>32</sup> However, it might be more interesting to turn attention to those who declined forming part of the initial fraternal circle or those who severed their links with the Convention.<sup>33</sup> Such a detour enables us to avoid the epic celebratory statements on the birth of the Convention that characterised previous accounts and illustrates how particular countries had specific concerns regarding its effects. While this is not the place to map all of their diplomatic moves and responses, it would be interesting to briefly illustrate the multiplicity of histories that sprung from the prospect and the signing of a multilateral treaty.<sup>34</sup> For obvious reasons, connected to the cosmopolitan aspirations embedded in the Convention, their effect in colonial and postcolonial settings was notable.<sup>35</sup> In November 1883, Chilean representatives considered that signing was not the right action to take at that point.<sup>36</sup> Rather surprisingly, the source of contestation was not the fact that Chile was failing to protect 'foreign' industrial property, but just the opposite: that domestic Chilean laws were more generous to foreigners than the consequences of adhering to the principle of 'national treatment' that was established in Paris.<sup>37</sup> Similarly, Argentina found that although there could be benefits in joining the Convention, the 'priority' right established at Paris preventing the country from signing.<sup>38</sup> Other South American countries such as Uruguay waited to see who else would join, before deciding. Rather interestingly, Uruguay's predictions were not completely accurate since countries they thought would sign, like Colombia, did not end up entering the multilateral treaty in 1883.<sup>39</sup> Here it is worth noting that the history of the Paris Convention is also the history of alternative attempts to develop a system of industrial property such as the Pan-American Conventions, since some of these emerged in

response to Paris.<sup>40</sup> Understanding and unpacking the challenges posed by the relationships of these different regimes is a task left to future historians.

Another notable example of the international relations deployed is illustrated by attempts to sign the Convention by countries that had not participated in the Conferences. For instance, Serbia requested accession to the Revision Conference that took place in Madrid without having attended the original event, something that caused considerable *furor* in the Spanish headquarters.<sup>41</sup> As it is well known, Great Britain joined the Paris Convention when it came into force in July 1884.<sup>42</sup> Interestingly, one of the issues for the British Board of Trade was its increasing concern with German trade, thus it invested a considerable amount of diplomatic effort to persuade Germany to enter the Convention.<sup>43</sup> In exploring these examples, Ricketson's book provides a framework to study the complex network of relationships shaped by the establishment of the Paris Convention. As was the case with Ricketson's book on the Berne Convention, it is only a matter of time before this historical turn is taken up by future scholars interested in investigating the emergence of national histories connected to this major international event.<sup>44</sup>

## 2. Paris and its Progeny

The multiple iterations of the Paris Convention meant that tracing its trajectory is a difficult task. The Convention was subsequently revised in Madrid just three years later in 1886 (pp. 66-72);<sup>45</sup> Rome in 1890 (pp. 72-74); Brussels in 1897 and 1900 (pp. 75-77), Washington in 1911 (78-80); The Hague in 1925 (80-82); London in 1934 (pp. 83-85); Lisbon in 1958 (pp. 86-92) and Stockholm in 1967 (93-96).<sup>46</sup> When one looks at the number of revisions affecting the text initially agreed on in 1883 and compares them to the revisions of the Berne Convention, which are more limited and constrained, one can see how the convention agreed to at Paris had become more and more complex, less manageable and uneven (p. 61). In exploring the work of the revision conferences, Ricketson patiently traces changes of mood, different international approaches to important issues such as the mechanics of accession, uniform classifications (p. 71) and remarkable professional events such as the formation of the International Association for the Protection of Industrial Property (AIPPI; pp. 75-76).<sup>47</sup> Although this constant process of revision is already an interesting historical process, the changes identified by Ricketson also reveal that some of the controversies related to the development of industrial property throughout the twentieth-century had already been identified in these conferences. As such, what made the Paris Convention even more interesting was not just the Convention itself, but its revisions and, more importantly, the series of agreements resulting from it.<sup>48</sup> In order to survey this trajectory of texts and cross-references, Ricketson uses an interesting metaphor that refers to this series: 'Paris and its

progeny' (p. 119). As he aptly describes, the Convention remained a 'work in progress' (pp. 65-96), an incomplete project, or to a certain extent, a 'caravan' (p. 106). Although the last revision – Ricketson notes- might be a sad story, 'a tale of blunted aspirations on the parts of different – and now entrenched –regional groupings (p. 105), the fruits of the Paris system can be seen in its interaction with and influence on some of the agreements that proliferated from it (pp. 106-120). One of them was the 'Madrid Agreement for the Repression of False and Deceptive Indications of Source on Goods' in 1891 (p. 530). While the treaty failed to achieve the support of significant trading nations such as Germany, Italy and United States,<sup>49</sup> it was nevertheless remarkable in elucidating and anticipating problems arising from the interpretation of Article 10 of the Paris Convention.<sup>50</sup> Unlike the Paris Convention, a treaty covering a range of different categories of industrial property, the Madrid Agreement precipitated specific questions underpinning the tension between the protection of manufacturers and the protection of consumers.<sup>51</sup> Over time, some difficulties raised in the late nineteenth-century were domesticated in the twentieth century. The reform of the Madrid Agreement in the Madrid Protocol (1989) is an example of successful international law reform (p. 109). In a parallel but connected development, Ricketson follows the fragmentation of international industrial property by looking at procedural and substantial treaties that emerged after Paris (pp. 109-113) and elucidates their links to the main Convention (p. 120). While some of the associated agreements can be explained by reference to a specific momentum, their culmination might be better described as an example of patient perseverance. In fact, the ongoing and repeated process of revision undoubtedly contributed and encouraged many countries to become members of the Union.

The third part of Ricketson's commentary moves from history to theory of international law (pp. 123-165). It does so in order to discuss the structure of the Convention and its interpretation. Ironically the chapter begins with a paragraph from Lewis Carroll and juxtaposes it with a quote from the International Law Commission, commenting on its proposed principles of interpretation of the Vienna Convention (p. 123). It is not a surprise that, after highlighting the proliferation of treaties that emerged after Paris, the book turns to questions of public international law. Above all, the methodological shift serves to give coherence to the Paris Convention. Here Ricketson explains the difference between Paris and Berne *and* previous conventions dealing with posts and telecommunications (p. 125). He notes how Paris and Berne 'both depend essentially upon implementation by each contracting state for the fulfilment of their purposes' (p. 125). In fact, some of the founding members such as Spain were intensely criticised for not having implemented the Convention almost a decade after its ratification.<sup>52</sup> Ricketson surveys techniques employed in treaty interpretation (pp. 139-165) in addition to tackling the preliminary question of the official language of the Convention; how it was challenged, and how languages in

associated agreements were treated differently (p. 137). In doing so, the book momentarily and eloquently grasps the changes in the underlying linguistic history of the Convention (p. 132-133). Bureaucratically structured, the specific form of organisation constituted in the wake of the Paris Convention ('a Union for the protection of industrial property') is also fully analysed in the book (pp. 166-327). Ricketson points to new theoretical directions when he compares the functions of the Paris Bureau with the Bureau of International Telegraph Union (p. 169-180). Again, analysis of the legal personality and the 'new kind of international entity [that] had come into existence' (p. 168) enables the reader to appreciate the distinctiveness and limitations of the Convention as well as enhancing the coherent narrative undertaken in the book. In a rather skilful gesture, Ricketson traces the different meanings attributed to the notion of 'union' in order to show how some accounts have tended to gloss over the issue rather 'quickly' (p. 173). Although today's discussion might be increasingly irrelevant, it does reveal a historical sensibility that moves between the past and the present smoothly, trying to emphasise the rise of distinct interpretations in their original contexts. Interestingly, Ricketson also covers the phrase 'contracting countries' and does not allow the semantics to obscure the historical settings in which the meaning of the term had to be reassessed, mainly after World War II (p. 179).

### **3. Industrial Property**

The explicit reference to the term 'industrial property' in its title is another notable feature of the Paris Convention. While the term was not defined under the Paris Convention until the adoption of Article 1, first paragraph of the Hague Act 1925 (p. 184-185; p. 477), the expression acquired a particularly broad meaning.<sup>53</sup> Yet, it would be fascinating to consider the fate of the term in the twentieth-century.<sup>54</sup> Whereas some countries enacted laws giving a unified legislative framework to the term,<sup>55</sup> others continued to legislate patents, trademarks and designs separately.<sup>56</sup> Somewhat paradoxically, the Paris system found a variety of semantic resources to accommodate different meanings of its inner workings, but did not ultimately succeed in making the notion of 'industrial property' completely viable as an international legal category.<sup>57</sup> The failure of the term came precisely in its shift from a mere positivistic reference to an epistemic structure. For many different reasons, the notion lost its power to mobilise contemporary scholars and legislators and succumbed to the term of 'intellectual property'. A myriad of factors contributed to its demise, but surely the notion of industry was already too vague and too elusive a term, particularly in relation to a subject matter that was left primarily undefined or even outlined in Paris (p. 758). Although it makes sense to talk about industrialized nations, as Ricketson does, one interesting avenue for research would be to explore how the contours of the term 'industry' shifted in the twentieth century. It is

important not to neglect the international attempts to regulate and define ‘scientific property’ that emerged after Paris from the history of ‘industrial property’<sup>58</sup> In fact, the shift from the factory to the laboratory might be vital to understanding the ways in which the project of defining ‘industrial property’ also left many disparate areas such as enforcement and exploitation unresolved (p. 759). The point here is that patent or trademark laws were underpinned by tensions that were generated by different understandings of the term ‘industry’ and the way in which the two poles of distribution and production developed in unpredictable and contentious ways during the twentieth-century. Curiously, a considerable number of emerging practices triggered by failures and deficiencies of the Paris system were characterised by a tendency towards ‘verbification’ of intellectual property (e.g. merchandising, licensing, valuing, watching and searching). These activities operated at the level of an incipient legal practice where diplomatic consensus had supposedly failed. Attempts to trace some of their histories might reveal unexpected surprises, allegiances and exchanges, like those forged by some of the commentators of the Convention. One of these was Stephen P. Ladas who developed legal practices and services that tried to overcome theoretical failures ‘in house’.<sup>59</sup>

The last two parts of Ricketson’s book are also remarkable. Part IV of the book is devoted to the specific subject matter protected by the Paris system. Again, Ricketson’s analysis skilfully pivots between the Paris Act 1883 and other conferences and revisions (p. 371-373). It charts histories of uneasy compromises (p. 393); governing principles (p. 380-381) and links several current articles to their moment of introduction (p. 390) or even earlier (p. 416). The subject matter approach provides a microcosm of ways in which national treatment and the right of priority operated in respect to each category. It also shows that, whilst the Convention might not offer clear solutions to some contemporary questions, it could be used as a starting point to think about them (p. 551). Part V closes the book by situating the Paris Convention in the wider context of debates generated after the Trade Related Aspects of Intellectual Property (TRIPS) Agreement. Ricketson uses what he considers a ‘rather crude analogy’ (p. 759) as a vehicle to describe the role of the Convention today. He suggests that the position of the Paris Convention is ‘rather like that of the elderly family relative who is always present at family functions, but who is hard to place among the guests because his or her conversation is seen to be somewhat tedious and repetitive, even outdated. Nonetheless, all family members know in a general sense that he or she has had an important role to play in family affairs in the past, and this is, of course, the very reason for his or her inclusion in present family functions’ (p. 759). More than background, the ‘family’ metaphor is at once conclusive (p. 792) and problematic because, as we all know, relatives are always a surprise.

## ENDNOTES

---

<sup>1</sup> Sam Ricketson, *THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS: 1886-1986* (London: Centre for Commercial Law Studies, Queen Mary College, 1987)

<sup>2</sup> Peter Groves 'Book Review' *I.C.L.Q.* 1988, 37(4), 1033-1034; see also Jeremy Phillips 'The Berne Convention and the Public Interest' [1987] 4 *E.I.P.R.* 108.

<sup>3</sup> W. R. Cornish 'Foreword' in Sam Ricketson and Jane Ginsburg, *INTERNATIONAL COPYRIGHT AND NEIGHBOURING RIGHTS: THE BERNE CONVENTION AND BEYOND*, vol 1 (Oxford: Oxford University Press 2006) at v.

<sup>4</sup> J.A.L. Sterling 'Book Review' *E.I.P.R.* 1988, 10(7), 223-224

<sup>5</sup> S. M. Stewart, *INTERNATIONAL COPYRIGHT AND NEIGHBOURING RIGHTS*, Volume 1 (London: Butterworths, 1999), p. 149

<sup>6</sup> See, for instance, Sam Ricketson 'The Birth of the Berne Union', 11 *Columbia VLA Journal of Law and Arts* (1986) 9; Sam Ricketson, *THE LAW OF INTELLECTUAL PROPERTY* (Law Book, Sydney, 1984).

<sup>7</sup> The process of researching and writing the book coincided with the development of Intellectual Property as a university discipline in Britain, and in particular with the rise of the Centre for Commercial Law Studies at Queen Mary as the centre for study of intellectual property. For a history, see Malcolm Langley, 'The Weston Papers: intellectual property law and the origins of the Centre for Commercial Law Studies at Queen Mary, University of London' (2011) *Queen Mary Journal of Intellectual Property*, vol. 1 (1) pp. 2-20.

<sup>8</sup> W.R. Cornish 'Foreword' in Sam Ricketson and Jane Ginsburg, *INTERNATIONAL COPYRIGHT AND NEIGHBOURING RIGHTS: THE BERNE CONVENTION AND BEYOND* vol 1 (Oxford: Oxford University Press 2006) at v.

<sup>9</sup> Only a handful of books published in the last three decades might have achieved a similar effect of changing the way scholars looked at the past. A bibliography of these key texts would include Brad Sherman and Lionel Bently's *THE MAKING OF INTELLECTUAL PROPERTY* (Cambridge: Cambridge University Press, 1999), Mark Rose's *AUTHORS AND OWNERS: THE INVENTION OF COPYRIGHT* (Harvard University Press, 1995), and Mario Biagioli, Peter Jaszi and Martha Woodmansee (eds) *MAKING AND UNMAKING INTELLECTUAL PROPERTY* (University of Chicago Press, 2011).

<sup>10</sup> This is particularly the case of the burgeoning literature on the impact of EU jurisprudence in the UK intellectual property landscape. As Kretschmer, Bently and Deazley noted a few years ago '[I]awyers for most of the twentieth century were functionalists, oriented towards the future'; see Martin Kretschmer, Lionel Bently and Ronan Deazley 'The History of the History of Copyright: Notes from an Emerging Discipline' in Martin Kretschmer, Lionel Bently and Ronan Deazley (eds)

---

PRIVILEGE AND PROPERTY: ESSAYS ON THE HISTORY OF COPYRIGHT LAW (Open Book Publishing: Cambridge, 2010) p. 2. Some contemporary scholars are still functionalists.

<sup>11</sup>Justine Pila 'Intellectual Property as a Case Study in Europeanization: Methodological Themes and Context' in Ansgar Ohly and Justine Pila (eds) *THE EUROPEANIZATION OF INTELLECTUAL PROPERTY LAW: TOWARDS A EUROPEAN LEGAL METHODOLOGY* (Oxford: Oxford University Press, 2013) p. 7; Lionel Bently and Brad Sherman, *INTELLECTUAL PROPERTY LAW* (Oxford: Oxford University Press, 2014) p. 378; Tanya Aplin and Jennifer Davis, *INTELLECTUAL PROPERTY LAW: TEXT, CASES AND MATERIALS* (Oxford: Oxford University Press, 2013) p. 546; Sebastian Haunss, *CONFLICTS IN THE KNOWLEDGE SOCIETY: THE CONTENTIOUS POLITICS OF INTELLECTUAL PROPERTY* (Cambridge: Cambridge University Press, 2015) p. 25; Michael Spence, *INTELLECTUAL PROPERTY* (Oxford: Clarendon Series, Oxford University Press, 2007) p. 4.

<sup>12</sup>There were however a number of commentaries in other languages such as Spanish and French: Luis Mariano de Larra, *LA UNIÓN INTERNACIONAL PARA LA PROTECCIÓN DE LA PROPIEDAD INDUSTRIAL* (Madrid: 1887); Teodoro Merly de Iturralde, *LA UNIÓN INTERNACIONAL: ANÁLISIS DE LA MISMA* (Madrid: 1890); M. J. Bozérián, *LA CONVENTION INTERNATIONALE DU 20 MARS 1883 POUR LA PROTECTION DE LA PROPRIÉTÉ INDUSTRIELLE* (Paris: Pariset, 1885); Michel Pelletier, Edmond Vidal-Naquet. *LA CONVENTION D'UNION POUR LA PROTECTION DE LA PROPRIETE INDUSTRIELLE DU 20 MARS 1883 ET LES ET LES CONFERENCES DE REVISION POSTERIEURES* (Paris: Pichot, 1902) ; Yves Plasseraud and F Savignon, *PARIS 1883: GENESE DU DROIT UNIONISTE DES BREVETS* (Paris : Litec 1983).

<sup>13</sup> *THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY FROM 1883 TO 1983* (Geneva: WIPO 1983).

---

<sup>14</sup> G. H. C. Bodenhausen, *GUIDE TO THE APPLICATION OF THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY, AS REVISED AT STOCKHOLM IN 1967* (Geneva: WIPO, 1969)

<sup>15</sup> Stephen Pericles Ladas, *THE INTERNATIONAL PROTECTION OF INDUSTRIAL PROPERTY* (Cambridge: Harvard University Press, 1930); Stephen Pericles Ladas, *PATENTS, TRADEMARKS, AND RELATED RIGHTS: NATIONAL AND INTERNATIONAL PROTECTION* (Boston: Harvard University Press, 1975)

<sup>16</sup> Adrian Johns, *PIRACY: THE INTELLECTUAL PROPERTY WARS FROM GUTENBERG TO GATES* (University of Chicago Press, 2009) p. 284; Adrian Johns 'The Property Police' in M. Biagioli, P. Jaszi and M. Woodmansee (eds) *Making and Unmaking of Intellectual Property* (Chicago: University of Chicago Press, 2011) p. 206; see also Michael Blakeney 'International Intellectual Property Jurisprudence' in David Vaver and Lionel Bently (eds) *INTELLECTUAL PROPERTY IN THE NEW MILLENNIUM* (Cambridge: Cambridge University Press, 2004) 3-19; at 5 and Calestous Juma *THE GENE HUNTERS: BIOTECHNOLOGY AND THE SCRAMBLE FOR SEEDS* (Princeton: Princeton University Press, 2014) p. 146;

<sup>17</sup> Graham Dutfield and Uma Suthersanen, *GLOBAL INTELLECTUAL PROPERTY LAW* (Edward Elgar, 2008) 23; see also Manuel Becerra, *La PROPIEDAD INTELLECTUAL EN TRANSFORMACIÓN* (México: Porrúa, 2009) p. 12;

<sup>18</sup> Brad Sherman and Lionel Bently, *THE MAKING OF INTELLECTUAL PROPERTY* (Cambridge: Cambridge University Press, 1999) p. 162.

<sup>19</sup> Catherine Seville, *THE INTERNATIONALISATION OF COPYRIGHT LAW: BOOKS, BUCCANEERS AND THE BLACK FLAG IN THE NINETEENTH CENTURY* (Cambridge: Cambridge University Press, 2006).

<sup>20</sup> Margaret Llewelyn, Mike Adcock, *EUROPEAN PLANT INTELLECTUAL PROPERTY* (Oxford: Hart, 2006) p. 4.

<sup>21</sup> Friedrich-Karl Beier 'One Hundred Years of International cooperation – the Role of the Paris convention in the Past, Present and Future' *IIC*, vol. 15. No. 1/1984, pp. 1-20; 14-16; see also W.R. Cornish, *INTELLECTUAL PROPERTY. OMNIPRESENT, DISTRACTING, IRRELEVANT?* (Oxford: Oxford University Press 2004) p. 3.

<sup>22</sup> After referring and problematising 'universality as ideal objectivity', Jacques Derrida highlighted the 'complexity, the intricacy of its casuistry as well of its philosophical presuppositions' of the Paris Convention. See Jacques Derrida, *PSYCHE: INVENTIONS OF THE OTHER, VOLUME 1* (Stanford: Stanford University Press 2007) 36-37.

<sup>23</sup> Stef van Gompel, *FORMALITIES IN COPYRIGHT LAW: AN ANALYSIS OF THEIR HISTORY, RATIONALES AND POSSIBLE FUTURE* (Kluwer Law, 2011) pp. 146-149.

---

<sup>24</sup> See, for instance, how Ricketson's approach follows that of Ladas' INTERNATIONAL PROTECTION OF INDUSTRIAL PROPERTY cited above.

<sup>25</sup> For instance, Spain, one of the original members, found herself with the need to pass a law to cover industrial designs after signing the Convention, see *Industria e Invenciones*, 23 October 1886, p. 189; 'La Propiedad Industrial' *El Pais*, 11 July 1888, p. 2. Similarly, criticism was raised that some signatory members such as Serbia or the Netherlands did not have patent laws when they signed the treaty; see 'La Unión Internacional para la protección de la propiedad industrial' *El Liberal*, 21 March 1890, pp. 1-2.

<sup>26</sup> In fact, Ricketson acknowledges how the first years of the Convention shows a new Union that was institutionally 'quite unstable'; Ricketson, THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY: A COMMENTARY (Oxford: Oxford University Press, 2015) p. 69.

<sup>27</sup> See, for example, 'Statistique' *La Propriété Industrielle*, 31 January 1912, p. 10. This desire of making the territorial reach or lists of membership public is noted by Ricketson, THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY: A COMMENTARY (Oxford: Oxford University Press, 2015) p. 273; 287.

<sup>28</sup> Ruth L. Okediji, "The International Relations of Intellectual Property: Narratives of Developing Country Participation in the Global Intellectual Property System" SINGAPORE JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW (2003) pp. 315-341

<sup>29</sup> See, in the context of the Berne Convention, J. Bellido "The Editorial Quest for International Copyright - 1886-1896" BOOK HISTORY, 2014, pp. 380-405

<sup>30</sup> For instance, see 'La Conferencia de Roma' *Industria e Invenciones*, 3 April 1886, p. p. 153 [deriving the information from *Propriété Industrielle*, the official journal published by the Union]; the appointment of 'technical' representatives was another crucial ingredient from which to infer the prospective attitude of countries towards the Union – Note from the Spanish Ambassador in Italy, 7 April 1891; Negociados, S. XIX, Exp. 001 (C403-01); Archive of the Ministry of Foreign Affairs, Spain; see also Herbert Hughes' appointment and the way it was reported in *The Times*, 20 April 1886, p. 9.

<sup>31</sup> Telegrams from Brussels to Madrid (Minister of State) stating that 8 March 1891; Negociados, S. XIX, Exp. 001 (C403-01); Archive of the Ministry of Foreign Affairs, Spain. For an account criticising the secrecy of the negotiations, see 'Conferencia Internacional para la Propiedad Industrial' *El Pais*, 7 April 1890, p. 1.

<sup>32</sup> 'The Conference on Industrial Property' *The Times*, 19 March 1883; p. 6; see also 'The Patents Convention' *The Times*, 2 August 1883; p. 5; see 'Convenio para la Propiedad Industrial' *La Iberia*, 10 July 1884, pp. 1-2; some criticisms of the amount

---

contributed by Spain to the formation of the ‘Union’ appeared in the Spanish newspapers, see, for instance, ‘La protección de la propiedad industrial’ *El Imparcial*, 20 July 1884, p. 1; ‘Protección a la propiedad industrial’ *La Época*, 22 July 1884, p. 1.

<sup>33</sup> Ecuador, Guatemala and El Salvador withdrew in 1886, 1887 and 1895. An explanation of why El Salvador withdrew from Berne and Paris might be found in J. Bellido ‘El Salvador and the Internationalisation of Copyright’ in Isabella Alexander and H. Tomás Gómez-Arostegui (eds) *RESEARCH HANDBOOK ON THE HISTORY OF COPYRIGHT LAW* (London: Edward Elgar, 2016) pp. 313-331. One of the notable absences was Germany and the absence is thoroughly discussed in ‘Alemania y el Convenio Internacional’ *Industria e Invenciones*, 12 September 1885, pp. 109-110.

<sup>34</sup> It would be interesting to follow the effect of the convention on what Bently has described as the ‘extraordinary multiplicity of Intellectual Property in British Colonies’; see Lionel Bently ‘The “Extraordinary Multiplicity” of Intellectual Property Laws in the British Colonies in the Nineteenth Century’ (2010) 12 *Theoretical Inquiries in Law* 160-200. In fact, a few years after the British accession, there were still doubts as to whether or to what extent colonies have entered the treaty as well. See dispatch from Edward Wingfield to the Foreign Office, 25 July 1889 saying that ‘no colonial government has signified its desire to accede to the International Convention for the Protection of Industrial Property and that Queensland is the only Colony whose Laws comply with article IV of that Convention’; FO 83/1078; National Archives, UK.

<sup>35</sup> For instance, immediately after the Paris Convention, Spain enacted a trade mark law that specifically applied to Cuba, the Philippines and Porto Rico, see ‘Marcas y Dibujos Industriales en Ultramar’ *Industria e Invenciones*, 6 September 1884, pp. 88-89; Francisco Lastres, “La Propiedad Industrial y las Marcas de Fábrica” *Revista contemporánea*, 4/1886, no. 62, pp. 361-382; at 367-368; Juan B. Sánchez Pérez, *LA PROPIEDAD INDUSTRIAL EN ESPAÑA* (Madrid: Reus, 1945) p. 103 and Francisco Garcia Garofalo y Morales, *LA PROPIEDAD INTELECTUAL E INDUSTRIAL* (Habana: La Propaganda Literaria, 1890).

<sup>36</sup> Montt to the President of Chile, Domingo Santa Maria, 2 November 1883 (explaining the reasons for Chile not to join the Paris Convention); vol. 265; Archive of the Ministry of Foreign Affairs, Chile.

<sup>37</sup> This was significant because ‘national treatment’ is still considered today as ‘the core structural principle’ of the Paris Convention; see Susy Frankel, *Test Tubes for Global Intellectual Property Issues: Small Market Economies* (Cambridge: Cambridge University Press 2015) p. 25.

<sup>38</sup> Note to the Argentine Minister of Foreign Affairs, 14 December 1882, Serie Tratados y Conferencias; C; Caja AH; Archive of the Ministry of Foreign Affairs, Argentina.

- 
- <sup>39</sup> Memo from Oscar Hordeñana to Manuel Herrera y Obes, Minister of Foreign Affairs from Uruguay, 20 December 1882; Legacion de Francia, Carpeta 311; National Archives, Uruguay.
- <sup>40</sup> Stephen P. Ladas, *THE INTERNATIONAL PROTECTION OF INDUSTRIAL PROPERTY* (Cambridge: Harvard University Press, 1930) pp. 756-843.
- <sup>41</sup> Negociados, S. XIX, Exp. 001 (C403-01); Archive of the Ministry of Foreign Affairs, Spain.
- <sup>42</sup> ‘The International Patent Convention: House Of Commons’ *The Times*, 24 June 1884, p. 7; ‘Patents In 1887’ *The Times*, 3 January 1888; p. 4 (reporting the US accession).
- <sup>43</sup> 17 March 1886; see also David Asher, ‘Registration of Trade marks in Germany’ *The Times*, 27 January 1885, p. 7; Edmund Johnson, ‘Trade Marks in Germany’ *The Times*, 5 January 1887; pg. 7;
- <sup>44</sup> Lionel Bently and Brad Sherman, (2001). Great Britain and the Signing of the Berne Convention in 1886” *JOURNAL OF THE COPYRIGHT SOCIETY OF THE USA*, 48(3), 311–340; J. Bellido ‘España en el Convenio de Berna: Vacilaciones políticas y ambigüedades jurídicas (1883-1899)’ in Ortega Domenech, J. ed. *CUESTIONES ACTUALES DE LA PROPIEDAD INTELECTUAL*. Madrid: Editorial Reus, 2011.
- <sup>45</sup> ‘Industrial Property’ *The Times*, 10 July 1889, p. 5.
- <sup>46</sup> See also Gabriel Galvez-Behar. The 1883 convention and the impossible unification of industrial property. *International Diversity in Patent Cultures - a historical perspective*, May 2014, Leeds, Royaume-Uni.
- <sup>47</sup> See ‘Historique de l'Association’ *ANNUAIRE AIPPI*, 1897 (Berlin: Verlag, 1898) pp. 20-21.
- <sup>48</sup> For instance, the Locarno Agreement in 1968, see Ricketson, *THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY: A COMMENTARY* (Oxford: Oxford University Press, 2015) pp. 502-503.
- <sup>49</sup> Letter from the Spanish Minister in The Hague to the Minister of State, 17 March 1892, Negociados, S. XIX, Exp. 001 (C403-01); Archive of the Ministry of Foreign Affairs, Spain.
- <sup>50</sup> Dev Gangjee, *Relocating THE LAW OF GEOGRAPHICAL INDICATIONS* (Cambridge: Cambridge University Press, 2012) pp. 49-50.
- <sup>51</sup> ‘La Conferencia de Madrid’ *El Imparcial*, 2 April 1890, p. 1; ‘Conferencia Industrial Internacional’ *La Dinastía*, 5 April 1890, p.1;

---

<sup>52</sup> Teodoro Merly de Iturralde ‘La Unión internacional para la protección de la propiedad industrial’ *El Liberal*, 6 April 1890, p. 2

<sup>53</sup> Protocole de clôture annexe à la Convention d'Union de Paris du 20 mars 1883 pour la Protection de la Propriété Industrielle (ad Article Premier).

<sup>54</sup> See, for instance, T. A. Blanco White, *INDUSTRIAL PROPERTY AND COPYRIGHT* (London: Stevens & Sons, 1962); Bruce Cawthra, *INDUSTRIAL PROPERTY RIGHTS IN THE EEC: PATENTS, TRADEMARKS AND COPYRIGHT* (Epping: Gower Press, 1973); Michael Lehmann, ‘The Theory of Property Rights and the Protection of Intellectual and Industrial Property’ (1985) 16 *International Review of Industrial Property and Copyright Law* 525

<sup>55</sup> See, for instance, Real Decreto-Ley reformando la de *Propiedad Industrial* de 16 de mayo de 1902 and *Estatuto de la Propiedad Industrial* aprobado por Real Decreto Ley de 26 de julio de 1929; see also generally J. Patricio Sáiz González, *Legislación histórica sobre propiedad industrial: España (1759-1929)* (Madrid: Oficina Española Patentes y Marcas, 1996).

<sup>56</sup> Blanco White divided his book into three parts, ‘broadly along the lines drawn by the Acts of Parliament dealing with these branches of the law’ in T.A. Blanco White, Robin Jacob and Jeremy D. Davies, *PATENTS, TRADE MARKS, COPYRIGHT AND INDUSTRIAL DESIGNS* (London: Sweet & Maxwell, 1978) p. 2.

<sup>57</sup> Cornish noted that ‘there is no single generic term that satisfactorily covers them all [rights]. Industrial property is not uncommonly used in the common law world, but many would hold this to exclude copyright, particularly if they want to emphasise the special importance and vulnerability of the creative artist’ in W.R. Cornish, *INTELLECTUAL PROPERTY: PATENTS, COPYRIGHT, TRADE MARKS AND ALLIED RIGHTS* (London: Sweet & Maxwell 1981) p. 3.

<sup>58</sup> Stephen P. Ladas, *THE INTERNATIONAL PROTECTION OF INDUSTRIAL PROPERTY* (Cambridge: Harvard University Press, 1930) pp. 844-872.

<sup>59</sup> 100 Years (1912-2012) Ladas & Parry: *Intellectual Property Law for the Next Century* (2012) p. 5; see also Bellido ‘Toward a history of trade mark watching’ *Intellectual Property Quarterly*, 2015 (2). pp. 130-152

© 2016 Jose Bellido