What is the “Gillette defence”? Is intellectual property “property”? Intellectual Property: The Law in Canada by Daniel Gervais and Elizabeth Judge provides the most up-to-date answers to these and other questions. Despite the fact that the two authors teach at the University of Ottawa, where the law school is becoming known for its user rights focus, the book is written in a balanced, even manner, emphasizing the importance of intellectual property protection as well as the dangers associated with too much protection. (See, in particular, the discussion of user rights, pp. 82-83.) In fact, the inclusion of the user rights element helps to make this book one of the most up-to-date works available; it discusses the latest Supreme Court of Canada decisions as well as decisions at international forums, as the balance between intellectual property protection and the interests of the public and users is negotiated in new ways.

The book is divided into 10 chapters covering copyright, trademark, and patent law as well as industrial design, confidential information, integrated circuit protection, and plant breeders’ rights. An initial chapter is dedicated to the philosophy of intellectual property, and the final two chapters discuss international intellectual property and the interaction and overlap between the various forms of intellectual property protection.

The initial chapter on the “philosophies, policies, and history” of intellectual property is the weakest. Less than five pages in length, it describes the basic justification for intellectual property protection. In less than one page, it contrasts the Lockean theory, which views intellectual property as a reward for one’s labour (on which the common law tradition of intellectual property is focused), with the Hegelian theory of intellectual property (on which the civil law tradition is focused), which views a work as an extension of its author’s personality and identity (p. 4). Of course, Intellectual Property: The Law in Canada is not meant to be a theoretical book, and the following sections make up for the short shrift given to theory by their thorough discussions of the technicalities and workings of intellectual property law in Canada, with ample quotations from judicial decisions and international treaties.

Interesting discussions ensue as chapter 2 outlines the basic elements of Canadian copyright law: how does a computer program come to be conceptualized as a “literary work” under copyright, and exactly who is the author of computer-generated code (pp. 27-30)? The chapter provides useful comparisons between Canadian and American conceptualizations of “fair dealing” (or, in American terms, “fair use”) and between the two countries’ conceptualizations of the purpose of copyright law.

Chapter 3, on industrial design, examines cases in which the qualities of a display stand, a skirt hanger, and a tent peg are weighed against the qualifying criteria for industrial design. Chapter 4, on trademarks, reviews the recent Lego case, in which Lego’s trademark in the distinctive shape of Lego blocks was invalidated (p. 194), and the questions of whether colour, sounds, and odours can be trademarked under Canadian law (pp. 195-197). The chapter outlines current issues involving trademark in domain names, cyber-squatters, and the problems presented by copycats and typo-squatting (p. 323). Readers will also appreciate the remarkable case of the Playboy hairpieces (p. 195).

Chapter 5, on patents, sheds light on the difficult issue of business-method patents, used by Amazon.com to patent its one-click shopping method (p. 343); the question of software patents (pp. 350-355); and—important if one is following Research in Motion’s recent legal problems, which threaten the BlackBerry—the issue of patent trolls, where a “troll” company

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holds a patent that it does not intend to use in order to eventually sue other companies that attempt to make use of it (p. 342). The chapter also considers patents in life forms, with reference to the recent Harvard mouse case and the case in which Saskatchewan farmer Percy Schmeiser was accused of infringing Monsanto’s patent in Roundup Ready canola seed (pp. 355-384).

Chapter 6, on confidential information, discusses the interesting question of whether the taking of confidential information can be considered “theft”—especially if the information is stored in a person’s memory. Chapters 7 and 8 review the specialized legislation that applies to plant breeding and integrated circuit design. The ninth chapter outlines in a comprehensive fashion the various international intellectual property agreements, with a special emphasis on the history and workings of the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). This chapter is particularly well informed and useful.

The final chapter includes clear explanations of confusing cross-protection issues. For example, the chapter examines the question of fictional characters: what form of intellectual property protection prevents fictional characters from being appropriated in new works? In a clear and concise answer, the book explains that “while copyright protects the original expression of the literary or artistic creations, trade-mark law protects fictional characters as indicators of the source of a good or service” (p. 576). Finally, the book’s index is maddeningly difficult to use. For a book likely to be used as a reference, this is quite unfortunate.

Intellectual Property: The Law in Canada is intended to serve as either a textbook for law students or as a handy and up-to-date reference work for legal practitioners. Teaching materials are included, including discussion/comprehension questions on the key elements of each chapter. (Unfortunately, in most cases, the answers are not provided.) The book can also serve as an introduction to intellectual property in Canada for students in communications and related disciplines, covering all of the necessary concepts relevant to Canadian intellectual property law in a clear and concise manner. Students in communications will, however, find more legal information than is necessary for their general needs.

This book should be required reading for any communications scholar working in areas related to intellectual property. It covers all the bases—from a clear discussion of the technical aspects of Canadian law and international treaties to up-to-date considerations centred around recent groundbreaking decisions in Canada and elsewhere. Given the rapid change in intellectual property law in recent years, no older reference book will do. This one is a must.

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