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European Intellectual Property Review

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Most of the discussions about intellectual property rights take for granted that exclusive rights in intellectual creations pursue—and ideally achieve—certain aims. The point this article strives to make is that this widely accepted view is not necessarily correct. In particular, European IP law has increasingly developed towards an understanding of IP as an end in itself.

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Industrial applicability is one of the requirements for an invention to be patentable, but it is rarely relied on as a ground of invalidity of a patent. A recent dispute between Eli Lilly and Co v Human Genome Sciences Inc has shown that it can be a successful ground for attacking the validity of patents directed at genetic sequences. However, even if the UK courts and the European Patent Office apply the same principles in determining whether a patent discloses an industrial applicability, the standard by which these principles are applied may differ between the tribunals.

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From 2002 to 2010 a group of European scholars united in the Wittem Group collaborated on drafting model provisions of a European Copyright Code. The members of the Wittem Group share a concern that the process of copyright law making at the European level lacks transparency and that the voice of academia too often remains unheard. The Group believes that a European Copyright Code drafted by legal scholars might serve as a model or reference tool for future harmonisation or unification of copyright at the European level. The Code provides model provisions on the main topics of copyright legislation: the subject-matter of copyright, authorship and ownership, moral rights, economic rights and limitations.

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The doctrine of authorisation of copyright infringement is once again hotly debated with the decision in the Australian Federal Court test case of Roadshow Films Pty Ltd v iiNet Limited (No.3). This article will expound the legislation and the case law surrounding the concept of authorisation and demonstrate that much of the confusion is unnecessary as there is one category of cases that seem to have been forgotten by the judiciary and commentators alike. This category, called "bound to infringe" cases, holds the key to deciphering many of the recent decisions in Australia. This article will argue that the concept is in reality quite clear and straightforward but a lack of appreciation for its simplicity has led the judiciary and commentators to muddy the waters.

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