

TRANSITION AND COHERENCE IN INTELLECTUAL PROPERTY LAW

The nature and content of intellectual property (IP) law, which is heavily contingent on the state of technology and on social and market developments, has always been subject to ongoing transitions. How those transitions are effected and the shape they take is crucial to the ability of IP to achieve its stated goals and provide the necessary climate for investment in creativity, innovation and brand differentiation. Yet the need for change can run headlong into a desire for coherence. A search for coherence tests the limits of the concept of “intellectual property,” is imperiled by overlaps between different IP regimes, and calls for a unifying normative theme. This volume assembles contributors from across IP and the globe to explore these questions, including whether coherence is desirable. It should be read by anyone interested in understanding the conceptual underpinnings of one of the most important and dynamic areas of the law.

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Transition and Coherence in Intellectual Property Law

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Preface

As will be seen from the identity and location of the contributors to this volume, there is no doubt among intellectual property scholars anywhere that Annette Kur deserves a “Festschrift.” The four undersigned editors wholeheartedly agree.

And the theme of “transition and coherence” is exceptionally well suited as a vehicle by which to honour Annette. Annette’s focus during her long, unique and successful academic career has been marked by transitions – starting from German law and gradually expanding from there. After having obtained her law degree (*Zweites Staatsexamen*) in autumn 1975, she was accepted as a Doctoral Candidate of the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law in Munich (now the Max Planck Institute for Innovation and Competition). There she successfully completed her dissertation in 1980 with the title “*Beweisführung und Beweislast in Verfahren wegen unlauteren Wettbewerbs*” (“Burden of Proof and Giving of Evidence in Proceedings Against Unfair Competition”) under the supervision of Professor Gerhard Schricker, one of the two Institute directors. Immediately after her dissertation, Annette was engaged as a member of the Institute’s research staff.

At that time, the Institute was organized in a number of regional departments and from the start Annette was involved in the Nordic department. By the late 1970s, she had already spent time in the Nordic countries, being introduced to Niklas when she was hosted by Professor Berndt Godenhjelm as a guest researcher in Helsinki. Over the following months, Annette broadened the German focus of her dissertation across the Baltic as well as the Atlantic to a comparison with the US and Swedish regimes of burden of proof: *Beweislast und Beweisführung im Wettbewerbsprozess: rechtsvergleichende Untersuchung zum deutschen, amerikanischen und schwedischen Recht* (1981).

In making this first transition from a national German perspective to take account of Nordic and US law, Annette was already intrigued by parts of the legal world

other than Germany. The comparative approach nourished her curious mind and offered challenges in the identification and analysis of similarities and differences.

At the time, the European Union had not developed an approach to unfair competition law or to procedural issues. But Annette's forward-looking research agenda fitted well with the growing body of EU regulation of intellectual property rights, which took place more or less at the same time as the European Union enlarged towards the Nordic countries. European integration and harmonization of intellectual property rights proceeded most intensely in the fields where Annette had focused her ongoing research: trade mark and design law. At that time, Marianne had been a scholar at the Max Planck Institute and defended her thesis on design law in Sweden. Thus, Friedrich-Karl Beier, the other director of the Max Planck Institute, formed a task force which included these two formidable women. This task force was able to exercise considerable influence on the European Commission as it planned to shape European design law.

Annette soon became a leading scholar on EU intellectual property law, not only in her "own" fields of trade mark and design law, but more generally. In her capacity as Nordic contact person in the Max Planck Institute, she was often welcomed and engaged in especially Finland and Sweden as a visiting fellow or guest professor, lecturing and supervising masters and doctoral students. In addition, she hosted many young Nordic researchers at the Max Planck Institute for shorter visits. Her close contacts and intense cooperation with Stockholm and Helsinki were later recognized by well-deserved Honorary Doctorate Degrees in both countries (Stockholm 2012 and Helsinki 2014).

Annette's Nordic activities did not hinder her from remaining active at the Max Planck Institute where her close collaboration with both Ansgar (then at Max Planck) and Graeme started in the 1990s. Annette also was the crucial contact link between the IPR University Center in Helsinki and the University of Bayreuth in Germany when these universities established a common graduate school "Intellectual Property and the Public Domain" in 2006–2015, which led to a close collaboration between Nordic and German researchers.

Although one might think that it is more than enough work for one person to focus on German, Nordic and EU intellectual property law, Annette made a further transition to the global level in the 2000s. She pursued important research in public international intellectual property law and private international intellectual property law. Her focus on TRIPS resulted in the 2011 book *Intellectual Property Rights in the Fair World Trade System* (Kur and Levin, eds.). On matters of private international law, Annette not only participated as an Adviser to the American Law Institute's project on principles governing conflicts issues in transnational disputes, but also headed up the counterpart CLIP Principles Project in Europe.

The overarching feature of Annette Kur as an intellectual property researcher is her search for consistency and coherence within intellectual property. She has a German instinct to take systemic aspects into account even when dealing with

concrete legal issues. But her approach is anything but dogmatic. Indeed, Annette could even be described as a Nordic legal realist in her open-minded approach to new solutions taking into account the law in action in real-world contexts. As a result, her views are often more reflective and analytical, and less absolute, than those of other intellectual property scholars. For example, her approach to some of the CJEU's most controversial decisions, such as *Baby-Dry* in trade mark law or *Svensson* in copyright law, has been more relaxed than that of many colleagues. On the other hand, Annette does not withhold criticism when she comes across inconsistent or superfluous reasoning.

Annette's many interesting transitions and impressive activities (not least in ATRIP, ALAI and ECTA) in combination with her positive and unpretentious behavior have garnered her numerous friends among colleagues all over the globe. In this volume, we could only include a small number of potential authors. We thank all those who willingly contributed with excellent essays within a strict timetable, and we apologize to all those who would have wanted to participate but whom we could not include within the allotted pages.

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