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Book Review: *Create, Copy, Disrupt: India's Intellectual Property Dilemmas*. Prashant Reddy T. & Sumathi Chandrashekan. New Delhi, India: Oxford University Press, 2017. xxv + 372 pp. ISBN: 9780199470662.

Kevin L. Smith

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Book Review

Create, Copy, Disrupt: India's Intellectual Property Dilemmas.
Prashant Reddy T. & Sumathi Chandrashekan. New Delhi, India:
Oxford University Press, 2017. xxv + 372 pp. ISBN: 9780199470662.
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Reviewed by Kevin L. Smith
 Dean of Libraries, University of Kansas

International and foreign intellectual property (IP) law can seem impenetrable, even to those who are well versed in U.S. copyright issues. On the international front, there is a welter of acronyms and opaque politics, while in each foreign country the values, incentives, and norms are unfamiliar to U.S. observers. This new book from two of the authors of the Spicy IP blog, while certainly written for an Indian audience, can help readers in the U.S. and elsewhere gain a better understanding of the local politics, as well as the international dealmaking that goes into intellectual property policymaking.

For anyone familiar with the Spicy IP blog, it will be no surprise to find that this book is readable, full of interesting characters and incidents, and even handed, while still opinionated. The authors address lots of the same issues that arise in U.S. copyright legislation and case law, but the different perspective and unique context makes this a superb introduction to international copyright law.

Create, Copy, Disrupt is divided into three broad sections. The first four chapters guide us through the complex politics of patent law in post-colonial India, while the next four address a variety of copyright issues, many of which will be extremely familiar to U.S. readers. The final three chapters, however, turn to a set of issues that are vital in many nations, but might be less familiar to those in the West—the unique problems associated with traditional knowledge and traditional cultural expressions. In each case, this book offers a classic example of how delving deeply into the history of an issue can clarify present controversies, not only for those in India, but for readers around the world who are interested in intellectual property.

The chapters that deal with patent law offer an excellent introduction to the kinds of issues that are controversial around the world—process (or business method) patents, term of protection, and compulsory licenses for generic drugs, to name a few – but it also paints a vivid picture of the specifically Indian context. At the time of independence,

India had, of course, a law virtually identical with that of the U.K. In subsequent years, the nation alternated between fairly radical departures from that model, often in keeping with the socialist tendencies of the early governments in India. The outcome of the story of lobbying, threats and counter threats, and shifting positions within the Indian bureaucracy, however, has been a law more in line with the industry-friendly patent policies that prevail internationally. In a sense, one can see this as a story of the move from a law determined by a colonial power, to a law determined by industries and by international treaties that exercise a similar colonial dominance.

One exception to this conclusion, and a hopeful note on which the patent section ends, is the discussion of pharmaceutical giant Novartis and the attempts in Indian law to prevent “evergreening,” the practice of patenting small changes in a drug to extend patent protection and avoid the proliferation of generic versions. A section of the Indian law requires that derivatives of a “known substance” must show more “efficacy” than earlier versions, and this provision tripped up Novartis in its attempt to keep its patent for the cancer-treatment drug Glivec “ever-green.” All the elements of international patent controversies are here—the lobbyists, debates over pricing for developing world markets, and judges struggling to balance incentives for research and development with the need for generic versions that make a drug affordable to those who need it.

Reddy T. and Chandrashekan begin their discussion of copyright by recounting India’s unsuccessful efforts to reform, or even abandon, the Berne Convention in the 1950s. India sought a shorter mandatory term of protection, and wanted to be able to introduce formalities that would require an intentional decision to obtain copyright protection. Obviously these are still issues being debated in the copyright sphere, so this history has contemporary relevance. But it is also a tale deeply anchored in a specifically Indian context, and grasping the politics of the situation within India is part of the value of the book. To me, this struggle to come to terms with Berne reiterated what I found in the first part of the book: India trading a colonial yoke for one imposed by industry and by international interests that saw India only as a market, rather than as a swiftly developing economy in its own right.

Indeed, India briefly prevailed in this struggle, with the adoption of the Stockholm Protocol to the Berne Convention in 1967. The Protocol allowed India and other developing nations to shorten the term of copyright protection to as little as 25 years, mandate the right to make translations if one was not produced by the rights holder within 10 years, and allow educational uses of a foreign-published work

if an Indian version was not published within three years. Publishers opposed this treaty, however, often exploiting the interests of authors to create sympathy among lawmakers and negotiators, and the Protocol was reversed after four years. The chapter that recounts this history ends, in keeping with its emphasis on the role of copyright in education, with a brief discussion of the “Delhi University copyright case,” a lawsuit brought by some publishers, including the publisher of this book, that challenged the making of unlicensed photocopies for educational use. That case only came to end in the past few months, when the publishers withdrew their appeal of a decision by the Delhi High Court that supported such educational copying.

When the authors turn to the entertainment industries, we again see many familiar issues, including the difficulty in defining “substantial similarity,” debates about who owns all of the copyrightable elements that together form a motion picture, and how the idea/expression distinction plays out when Bollywood film producers begin to borrow stories for their movies. The interrelationship between the music and film industries in India is probably unique, but this chapter does a great job of illuminating the complex tangle of rights and licenses in a way that readers around the world will recognize. In the next chapter, “Akhtar Rescripts Copyright Law,” debates about work made for hire lead to the adoption, in India, of a nonassignable, “moral” right to royalties, thanks in large part to the impact of one determined artist. This is unique, as far as I know, to Bollywood, but, in a familiar twist, the lack of an effective collective rights society for composers and authors has apparently rendered this moral right somewhat ineffective.

The final chapters on copyright again address another debate that is taking place all over the globe, about the liability for online intermediaries for copyright infringement committed over their networks, and safe harbors for online service providers. These chapters begin with a very clear explanation of the evolution of the approach taken by the United States. Indeed, the impact of U.S. law and politics on India is a persistent element of the story told in this book. But, in this case, the path taken by India is quite different because the pendulum that has become familiar to readers swings so wildly, first towards the publishers’ ability to impose liability on intermediaries and then toward a safe harbor that is much stronger than that enjoyed in the U.S. A sensible course lies in the middle, of course, and the authors point us that way when they write that, “Addressing piracy challenges in the twenty-first century requires a nuanced understanding of how technology and the law intersect, and foresight of how the areas of filmmaking and technology are likely to evolve.” Such nuance, unfortunately,

continues to prove elusive, in India, the U.S., and most everywhere else where copyright is discussed.

When an ancient culture adopts relatively new (18th century) intellectual property laws, frictions are bound to occur. By the time the U.S. was founded, by contrast, IP rules were fairly well established, and the American economy grew up with them. This was not the case, of course, for India, so the last issues addressed in *Create, Copy, Disrupt*, about traditional knowledge and how it can be controlled or appropriated by IP laws, do not have clear parallels in Western nations. Healing powers have been attributed to the rootstalk of the turmeric plant for many centuries, for example, so it is not surprising that the Indian government opposed a U.S. patent that was granted for the use of turmeric in healing wounds. Similar disputes are described regarding *neem*, a plant with pesticide properties, and basmati rice. The results of these proceedings are mixed, but an interesting development that runs through all of them is the creation of the Traditional Knowledge Digital Library (TKDL), a database intended to help patent examiners determine if properties for which exclusive rights are claimed are actually known in the “prior art” of traditional knowledge. Although this seems like an innovative and useful idea, the authors are quite critical of how it has been realized in India.

Basmati rice continues to be an ingredient in this story, as the next chapter details the efforts to define basmati and protect it either under trademark law or using a Geographic Indicator (GI). For those unfamiliar with, or simply confused by, the processes and issues that go into GIs, this chapter is an excellent object lesson.

Like a number of other ancient cultures, religion is a thriving business in India, and efforts to gain and preserve exclusivity in religious writings and practices are the subject of the final chapter in *Create, Copy, Disrupt*. Indian law, for example, provides that a trademark should not be registered if it is “likely to hurt the religious susceptibilities” of any group of Indian citizens.” This provision, however, does not prevent a company in Bangalore from marketing *beedis*, a kind of inexpensive cigarette substitute, using the image of the Hindu deity Ganesha. In one of the many quirks of IP practice in India that seem to amuse the authors, a government-issued list of religious and mythological figures that may not be used in trademarks simply does not include Ganesha, so courts have allowed the mark in spite of several challenges. On the other hand, the Attukal Bhagavathy temple in Kerala was blocked from claiming exclusive rights over an icon of Kannaki, an avatar of the goddess Parvati.

Such apparent inconsistency is not, of course, unique to Indian IP regulation, but it has a different kind impact when the subject at issue is a religious tradition or image. Perhaps the deeply held emotion that attends such disputes is what led the Delhi High Court to dismiss one such case by expressing “our trust and hope that instead of trying to reach the Court with litigations on the subject, both the [parties] should help each other in trying to reach the public, including devotees, with the message and teaching.... That only will provide fulfillment of their objects and aims.” A most unusual sentiment for a court to express in an IP dispute!

As I hope this review has demonstrated, this book reinforces the special character of intellectual property law that I think makes it so much more interesting than other legal practices—the rich and endless variety of subject matter, limited only by the bounds of human creativity, that IP touches. Reddy T. and Chandrashekan tell these stories in a lively and readable way. The book is not without its faults, however. The breezy style becomes episodic at times, so that the reader is in danger of losing a clear picture of the topic under discussion—missing the forest for the trees, as it were. It is sometimes marred by repetition, and occasionally by stories that do not seem to reach any conclusion. Finally, there are some unfortunate typographical and grammatical errors, especially in the early chapters, which could have been eliminated with better editing. None of these small complaints, however, should distract from the fascination these pages hold for those interested in how cultures work themselves out through the benefits and the obstacles presented by IP laws, nor from the ironic but even-handed way in which the authors tell us about these Indian struggles.