

Editorial

Allison Fish*, David J. Jefferson and Andrew Ventimiglia

Introduction to the ‘The Spectral Nature of Intellectual Property’ *Pólemos*

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This special issue grows out of a roundtable organized by the International Research Collaboration on Critical Interdisciplinary Approaches to Intellectual Property that took place during the 2022 Law and Society Association Annual Meeting in Lisbon, Portugal. The roundtable produced a discussion amongst a group of law-in-context researchers from various disciplines including anthropology, history, communication, and law – many of whom we are fortunate to have as contributors in this special issue. In bringing our conversations into print, we are particularly inspired by three separate lines of scholarly inquiry that attach to humanistic studies of intellectual property.

Firstly, we build upon earlier critical approaches to the scholarship of intellectual property that include contributions from socio-legal studies, cultural studies, and science and technology studies. Such approaches include Rosemary Coombe’s research on the way that intellectual property shapes cultural politics and society,¹ Brad Sherman and Lionel Bently’s work on the historical origins and incoherence of modern intellectual property as a single category of law,² and Mario Biagioli’s work on scientific authorship and inventorship across numerous time periods from early modern Europe to the present.³ In attending to prior scholarship

1 Rosemary Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* (Durham: Duke University Press, 1998).

2 Brad Sherman and Lionel Bently, *The Making of Modern Intellectual Property Law: The British Experience, 1760–1911* (Cambridge: Cambridge University Press, 1999).

3 Mario Biagioli has written numerous works on this topic including *Galileo, Courtier: The Practice of Science in the Culture of Absolutism* (Chicago: University of Chicago Press, 1993); *Galileo’s Instruments of Credit: Telescopes, Images, Secrecy* (Chicago: University of Chicago Press); and “Patent Republic:

*Corresponding author: Allison Fish, University of Queensland, St. Lucia, Australia,

E-mail: a.fish@uq.edu.au. <https://orcid.org/0000-0002-6785-6052>

David J. Jefferson, University of Canterbury, Christchurch, New Zealand,

E-mail: david.jefferson@canterbury.ac.nz. <https://orcid.org/0000-0001-5156-3469>

Andrew Ventimiglia, Illinois State University, Normal, IL, USA, E-mail: amventi@ilstu.edu. <https://orcid.org/0000-0001-6244-4684>

and connecting it to a line of inquiry related to spectrality, we aim to illuminate the diverse forms that intellectual property assumes, as well as to highlight the links between these varied forms and local configurations of governance, power, and varied instantiations of capitalist property relations in different areas of the world. In this sense, we focus on how both legal terms-of-art and adjacent concepts, such as authorship, credit, and goodwill, change over time. Additionally, we explore how different actors use claims surrounding intellectual property in novel and interesting ways or to generate new sorts of proprietary relations. Finally, we expose the fraught effects that intellectual property claims-making has had in certain value-laden histories, including those coloured by colonialism and capitalism.

The second branch of scholarship that we draw from includes law and humanities research on peoples' lived experiences of the law. From this domain, we are particularly inspired by Susan Coutin and Barbara Yngvesson's article "Schrödinger's Cat and the Ethnography of Law,"⁴ which explores the temporal implications of legal decisions on seemingly stable identities and statuses – an idea that has been more fully elaborated in their recent book *Documenting Impossible Realities: Ethnography, Memory, and the As If*.⁵ In this book, Coutin and Yngvesson illuminate how legal decisions and processes create specific realities and authoritative versions of identity that have temporal reach not only into the future, but also have the potential to reconfigure how we understand or acknowledge the past.

Finally, in interrogating the spectral nature of intellectual property we recognize the influence of *Spectres of Marx* by Jacques Derrida,⁶ as well as the feminist response to this work as exemplified by *The Spectralities Reader*.⁷ This scholarship employs 'spectre' as a conceptual metaphor that productively guides theoretical work in the humanities, particularly in the ways it complicates historical notions of temporality and causality. In other words, a focus on spectrality allows scholars to theorize the many ways that the past lives on in the present and, consequently, how the present prefigures an indeterminate future conceptualized as a 'spectrum' of possibilities. Together, these critical

Representing Inventions, Constructing Rights and Authors," *Social Research* 73.4 (2006): 1129–1172. See also the edited volume *Scientific Authorship: Credit and Intellectual Property in Science*, eds. Mario Biagioli and Peter Galison (New York: Routledge, 2003).

4 Susan Coutin and Barbara Yngvesson, "Schrödinger's Cat and the Ethnography of Law," *PoLAR: Political and Legal Anthropology Review* 31.1 (2008): 61–78.

5 Susan Coutin and Barbara Yngvesson, *Documenting Impossible Realities: Ethnography, Memory, and the As If* (New York: Cornell University Press, 2023).

6 Jacques Derrida, *Spectres of Marx: The State of the Debt, the Work of Mourning, and the New International*, trans. Peggy Kamuf (New York: Routledge, 1994).

7 Maria del Pilar Blanco and Esther Peeren, eds., *The Spectralities Reader: Ghosts and Haunting in Contemporary Cultural Theory* (New York: Bloomsbury, 2013).

analyses provide a roadmap for how to think with the immaterial – the ghosts of forgotten pasts and imagined futures that haunt the law's living present.

In putting these varied lines of inquiry together, our 2022 Law and Society Association roundtable provided an initial attempt to explore what we, the organizers, understood to be the spectral nature and haunting effects of intellectual property – a legal domain we perceived capable of exerting power through both presence and absence. In this sense, and as the contributing authors show through their various pieces, intellectual property is far from a well-defined legal category animated by stable concepts, firm logics, or widely accepted principles. Instead, the articles in this special issue track how intellectual property can be understood as a flexible tool; one that for many is deployed for the purposes of anticipatory claims-making and/or the expression of future imaginaries. In this sense, intellectual property is always being made and unmade by legal professionals working within the bounds of formal legal institutions, as well as by lay actors who engage with proprietary claims-making through the market, science, religion, and a range of other domains. As such, intellectual property can be read as both encapsulating and reflecting historically and socially contingent logics, hopes and desires, fears and perceived threats, and world-making strategies that have very little to do with doctrinal principles.

The special issue tracks questions about the spectrality of intellectual property through nine contributions written by 12 authors and explores several key themes. As Andrew Ventimiglia shows in his article, there are numerous instances – both historically and in the present – in which intellectual property is used to engage, manage, and shape the realm of the sacred in American religion. On a related note, Allison Fish traces the historical roots of yoga-as-property and, in doing so, illustrates how popular understandings of this South Asian spiritual practice and proprietary logics move in and out of sync with one another. Moving from the spiritual to the practical, Dahlin and Bosse investigate how the inventor's certificate became a dominant form of intellectual property in the Soviet Union, and why this proprietary form remains relevant today despite its repeal following the collapse of the Soviet system in 1991. Similarly, two articles uncover the role of patent law in shaping scientific innovation. Brad Sherman takes an historical approach to assess how the spectre of the machine has haunted and continues to haunt the question of inventiveness for patentable subject matter. In a similar vein, Omkar Nadh Pattela, Pratap Devarapilli, and Sruthi Balaji discuss how contemporary health policy, which focuses on singular patent claims, functions to obfuscate the collective impact of multiple and intersecting patents across the innovation pipeline. In his contribution, David Jefferson demonstrates how intellectual property claims are deployed in relation to new objects and subjects by recounting the evolution of the plant variety rights system in Aotearoa New Zealand. Finally, other contributors investigate the spectral

nature of intellectual property adjacent concepts. These investigations include articles by Jose Bellido and Maria Rodriguez, who explore how authorship claims relate to the production of knowledge in two very different contexts – a key journal in the emerging field of information studies and a cutting-edge cancer research institute in Mexico, respectively. Similarly, Leo Coleman’s work traces how legal claims, aesthetic judgments, and historical understandings combine and conflict to shift the value of ‘modernist antiquities’ through his reading of Amy Siegel’s film, *Provenance*.

Through interdisciplinary conversation, this special issue anticipates contributing to scholarship on the everyday nature and lexical attributes of different intellectual property forms, specifically. The special issue further aims to advance broader conversations about the dark side of innovation, the negative space produced via claims-making, and the varied and often unanticipated effects of law in culture and society. We would like to close this introduction with a special thank you to the journal editors for allowing us the space for this conversation and for their support in bringing our work to print.

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