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Book review: *Deciphering IP Law and Its Conflict and Complementarity With Competition Law: Global Norms Against Asian Context*

Kung-Chung Liu
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1 Introduction

For every exclusive right that IP law carves out of the public domain, a boundary problem follows: how far, how long, and at whose expense? Professor Kung-Chung Liu's monograph *Deciphering IP Law and Its Conflict and Complementarity With Competition Law: Global Norms Against Asian Context* at the outset, prefaces his answer: IP is a form of market regulation, where under-protection causes fewer incentives to innovate, and over-protection leads to market failure.

Liu first sets out the three main strands in Part I of this book: a descriptive theory of IP as market regulation, an exposition of market competition and competition law, and a normative proposal for an IP code. These foundations anchor the monograph's remaining parts, which cover compulsory licensing (Part II), patent and trade mark databases (Part III), Fair, Reasonable, and Non-Discriminatory ("FRAND") licensing of standard-essential patents ("SEPs") (Part IV), second-hand branded-goods market (Part V), and the tangle of data, algorithms and IP (Part VI).

2 The grand theory: Part I

Liu opens with a survey of the intersection between IP and competition law, drawing on examples from across the full range of IP rights on a global scale – the LEGO trade mark cases, Google's book-archiving project and author's rights, Philips' patent pool with one royalty formula, Qualcomm's licensing practices, and more. Each example ends with targeted questions to identify a common problem – when IP rights produce outcomes that strain their own rationale or lead to unfair results, what can and should competition law do?

Chapter 2 is Liu's answer at the level of theory. Dissatisfied with the lack of an accessible general theory of IP law, Liu asserts that one should seek to

"democratise IP law to become laws for people on the streets."[1] Drawing on Robert Merges, Liu characterises IP as a sector-specific market regulation and outright rejects arguments that IP is an absolute natural right.[2] IP is, on this view, strictly instrumental: the exclusivity it confers is justified only to the extent that it incentivises innovation, fosters competition, and expands the public domain. Liu's framework is organised around two dimensions. The internal dimension, modelled on the Berne Convention's three-step test, concerns how IP rights are granted, used, and terminated, while the external dimension governs IP's relationship with competition law.

In Chapter 3, Liu identifies a shared goal between IP and competition law: enriching the public domain through the optimal allocation of limited resources. He surveys how competition law has variously checked and deferred to IP, citing US antitrust scepticism toward patent-related contracts in the 1960s and Germany's 1965 grant of immunity to collective societies for the exercise of copyright. He then examines how different jurisdictions apply a rule of reason approach in place of *per se* rules: an effects-based analysis in the US, a case-by-case approach in the EU, and a broad acceptance of the rule of reason across Asian jurisdictions save where IP holders engage in specific anti-competitive conduct.

Liu warns against IP exceptionalism and that IP should not displace other laws *lex specialis* in Chapter 2. In Chapter 4, Liu calls for a general theory of IP that elevates it as a standalone discipline. The case for codification is clear: "without codification, our lives will be ungovernable."[3] This is presented as a

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[1] Kung-Chung Liu, *Deciphering IP Law and Its Conflict and Complementarity with Competition Law: Global Norms against Asian Context* (Routledge, 2025) p.30.

[2] Robert P Merges, *American Patent Law: A Business and Economic History.* (Cambridge University Press, 2022) pp.22-23.

[3] Liu (n 1), p.76.

remedy for divergent regulation of similar problems, vulnerability to lobbying pressure, and the recurring temptation to address each new issue by layering on more substantive law rather than integrating substantive and procedural rights into a coherent code.

Liu sets out fifteen principles for his IP Code, intended to apply across IP rights, though with varying force. The examples raised are, unsurprisingly, drawn from civil-law jurisdictions, but are framed as shared approaches rather than by legal tradition. Two principles are worth noting. The first, technical neutrality, challenges the special treatment accorded to semiconductor technology. According to Liu, *sui generis* protection of IC layout designs is unnecessary when patent law would suffice. The sixth – "fair sharing of economic fruits derived from one's creation"[4] – stands out: Liu floats the possibility of an AI levy system to provide authors with equitable remuneration, while candidly questioning its workability. The chapter closes with an international perspective: non-conformity with the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") should be tolerated where a country's actual circumstances require it, provided the principles of free trade are upheld, and Article 8(2) of TRIPS should be revised to mandate that competition law prohibit any abuse of IP rights that restraints or excludes competition.[5]

3 Applying the theory: Parts II–VI

3.1 Compulsory licensing (Part II)

With the theoretical framework in place, Parts II-VI turns to its application across specific doctrinal areas. Part II applies competition principles to compulsory

[4] Liu (n 1), p.90.
[5] Agreement on Trade-Related Aspects of Intellectual Property Rights, Article 8(2).

licensing. Liu offers a cursory view of how compulsory licensing has been, or may be, applied across major IP rights, excluding trade marks in line with TRIPS. Particularly notable is his call to apply the essential facilities doctrine which Liu notes is accepted globally and retains substantive influence in China. To my mind however, the doctrine has been relatively dormant in the US ever since the Supreme Court "neither recognised nor repudiated" it.[6] Similarly in the EU, the conditions have been further restricted following the *Android Auto* case.[7]

Liu also calls for revision of TRIPS to affirm compulsory licensing under several conditions: when domestic demand is not met, when an SEP is held by a dominant undertaking, or when a later IP cannot be exploited without infringing prior IP. Yet as Liu himself notes earlier in the chapter, the real bottleneck for compulsory licensing has been political rather than textual. The proposed revisions might also duplicate existing flexibilities. For example, Article 31(l) of TRIPS already addresses dependent patents.[8] That said, expanding compulsory licensing to cover unmet domestic demand remains politically contentious, and its application to SEPs warrants further exploration.

3.2 Aggregating IP (Part III) & FRAND Licensing (Part IV)

Part III offers a systematic comparison of how different jurisdictions approach patent pools and work pools, alongside a somewhat oddly placed proposal for a well-known marks database. The unifying concern is that the concentration of rights, while necessary to facilitate licensing, carries an inherent risk of restraining market competition.

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[6] *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko*, LLP, 540 U.S. 398 (2004).

[7] Case C-233/23, *Alphabet Inc and Others v Autorità Garante della Concorrenza e del Mercato* (Android Auto) EU:C:2025:110 (Grand Chamber, 25 February 2025).

[8] Agreement on Trade-Related Aspects of Intellectual Property Rights, Article 31(l).

For patent pools, Liu sets out several principles to prevent horizontal collusion: excluding substitute technologies, ensuring reasonable royalties, and retaining openness via a non-exclusive requirement. On work pools, Liu traces a shift in bargaining power from copyright management societies and voluntary agencies to internet provider platforms, examining the potential abuse of dominant position, and how competition authorities have responded. Liu proposes a dual response: ex-ante codification through copyright law or a *sui generis* collective rights management law, combined with ex-post control by competition law. On well-known trade marks, Liu identifies a market distortion when latecomers seeking to register or use a mark cannot determine whether a well-known but unregistered prior mark exists. The proposed remedy is a centralised online database which is governed by several reasonable, but largely aspirational principles: accuracy, all-inclusive, user-friendly, informative, and timeliness.

Part IV builds on Liu's long-standing work on FRAND licensing of SEPs and it is here where his comparative expertise is most fully deployed. Liu surveys the main jurisdictional fault lines: the hold-up and hold-out flip in US case law; good-faith and transparency obligations on both SEP holders and willing licensees in Germany and China; the bundling of non-essential with essential patents addressed in Korea, Japan, and Taiwan; royalty bases as determined by the Delhi High Court,[9] and national-versus-global portfolio licences as in *Unwired Planet v Huawei*.[10] Liu also addresses the deficiencies of the current licensing landscape: over-declaration, confidentiality of licensing terms and standard-setting organisation ("SSO") patent policies, and forum-shopping via anti-suit

[9] See e.g. *Dolby International AB & Anr. v GDN Enterprises Private Limited & Ors.* (2016) Delhi High Court, CS(COMM) 1425/2016.

[10] *Unwired Planet International Ltd v Huawei Technologies (UK) Co Ltd* [2020] UKSC 37.

and anti-anti-suit injunctions. Liu's solution, alongside a softer call for "dialogue and mutual persuasion,"[11] is that Asian jurisdictions, which tend to treat injunctive relief against a willing licensee as an abuse of right or dominance, should recognise FRAND commitments as contracts with third-party beneficiaries, as the US and UK do to forestall hold-ups. The continued relevance of competition law intervention in Asia is also underscored by an imbalance that Liu aptly flags: most SSOs are established in the US and France, leaving Asian jurisdictions as rule-takers rather than rule-makers.

Liu further proposes an institutional solution: SSOs should establish a one-stop competence centre, staffed by professionals already involved in the standard-setting process, and open to both SEP patentees and implementers. The centre would conduct essentiality checks, maintain a rates depository, and provide FRAND-targeted arbitration. On FRAND arbitration specifically, Liu contrasts it with standard arbitration where arbitrators are “clueless” as to appropriate FRAND rates.[12] The problem outlined by Liu however is access to FRAND data, and not competence. Arbitrator selection is a natural product of party autonomy, and parties to a FRAND dispute would logically elect arbitrators with FRAND-specific expertise, as the existing rosters at several arbitral institutions already make possible. What those arbitrators need is just access to the database. Liu’s proposal would be more persuasive if, for instance, it is made clearer that confidentiality obligations require the repository to be accessible only to the SSO’s own roster of vetted arbitrators. Still, the arbitrability of competition law issues in FRAND disputes, combined with the consent requirement inherent in arbitration means that where forum-shopping offers

[11] Liu (n 1), p.238.
[12] Liu (n 1), p.253.

strategic advantages, it is hard to see why parties would commit to a centralised procedure that affords them the least room to manoeuvre.

3.3 Second-hand branded goods (Part V) and Data and algorithms (Part VI)

Part V focuses on second-hand branded-goods market. Liu uses the problem of counterfeits and authenticity to frame a broader question about the integrity of the second-hand ecosystem. Expansive trade mark protection, Liu notes, obstructs competition where brand owners deny resellers retail and advertising relationships and dismiss them as counterfeiters. The prescription is pragmatic and draws on Howard Bowen's corporate social responsibility framework – brand owners should proactively support independent third-party authentication and accreditation bodies, while resellers should develop industry-wide standards on counterfeit prevention and liability.[13]

Part VI covers data and algorithms. Liu's premise is that big data, IP-protected or not, should not be prevented from forming, accumulating, and flowing freely. Liu points out that competition law is poorly suited to addressing access to big data because it is too slow and inefficient ex-post in a fast-moving market. The proposed alternative is an ex-ante FRAND-like licensing mechanism to compensate copyright holders. The treatment of algorithms follows a similar logic: algorithms drive online trading and develop patterns that resist easy detection, yet their internal decision-making processes remain undisclosed. The chapter is not explicit as to how algorithms are situated under IP law, focusing instead on governance and transparency in a data-driven economy – disclosure

[13] Howard R. Bowen, *Social Responsibilities of the Businessman* (University of Iowa Press, 2013).

obligations on deployers and operators, and effective audit regimes by the regulators.

4 Critical Reflections

Deciphering IP Law is a pragmatic monograph that situates IP law within broader governance considerations. It promises a comparative account of global IP norms tested against Asian responses, and on that promise it delivers. The monograph proceeds in a utilitarian-consequentialist manner, but readers seeking a deep dive into doctrinal disputes or normative theory will nonetheless find value in the handpicked cases and targeted questions that Liu deploys throughout the book.

Prospective readers should note several developments that have emerged since the book's publication in 2025. The landscape which Liu described, including the European Commission's draft SEP Regulation which contemplated FRAND-rate determination through a structured procedure was withdrawn in 2025, and the revised Technology Transfer Block Exemption Regulation, adopted in May 2026, is shaping EU's competition treatment of technology-licensing agreements and patent pools. None of this defeats Liu's framework; if anything, the continuing changes illustrates the durability of Liu's principle-based analyses and solutions.

One limitation worth flagging is that the monograph's account of Asia is geographically narrower than its framing suggests, centred on China, Korea, Japan, and India, with occasional appearances from Singapore, Taiwan, and Malaysia. The selection is understandable since only a handful of jurisdictions have resolved disputes on core IP and competition law issues or made them accessible in the literature. But these are the costs of pragmatism rather than reasons against it. Liu's analysis is methodical, comparative, and patient in

working through what a competition-based IP system would look like in operation. For policymakers, scholars working on Asian IP, and practitioners navigating the FRAND and compulsory-licensing puzzles that the next decade will continue to generate, Liu's monograph offers a holistic and governance-oriented point of departure.