# Henning Grosse Ruse-Khan, The Protection of Intellectual Property in International Law (Oxford University Press, 2016) 544 pp

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Intellectual property law has increasingly acquired a more and more international dimension. And indeed, international intellectual property law has come a long way since the Paris and Berne conventions were devised in the late 19th century. While intellectual property law is not the only field of law that has become increasingly international, it is yet a particularly interesting field for analysis. This is due to its nexus with so many various and divergent fields of society, which have been increasingly internationalised and globalised over the years themselves. This nexus with other fields of law is central to this timely publication and its aim is quite ambitious: Dr Grosse Ruse-Khan's book wishes to provide a holistic view of intellectual property law within the wider framework of international law.

This aim necessarily requires a wide scope of analysis of intellectual property law, its position within international law, its relationship to other fields of law and importantly how these various fields may impact on each other. With regards to this analysis, Grosse Ruse-Khan offers both a broad as well as a narrow approach to international law in relation to intellectual property: Broad, since he goes to analyse the usual international laws that are traditionally associated to intellectual property. Narrow to the extent that it does not cover such international law deriving from global civil society and enforced by private means, often coined as transnational law.

Starting point for the analysis of publication is an apparent conflict among the different sets of legal systems relating to the protection of intellectual property. And globalisation is at the core of this conflict: On the one hand, it is believed to have had an accelerating effect on the internationalisation of law. On other hand, globalisation also accelerated the differentiation of the legal system into fragmented and specialised areas of law. These specialised areas of law would often follow their own rationality and would lead to conflicts between competing regimes of law. This system theoretical analysis of the globalisation of law can be traced back to the great German sociologist (and lawyer) Niklas

Luhmann.[1] This analysis has been further developed by Andreas Fischer-Lescano and Gunther Teubner whose work focusses on uncovering the true nature of these conflicts.[2] For instance, the much discussed and analysed conflict between patent rights and access to medicine can be reconstructed into a conflict between the societal fields of the economy (represented by safeguarding the investment in creating medicine) and that of health. The conflict would be reproduced within the legal subsystems of health law and IP protection.[3] Grosse Ruse-Khan expertly uses this system theoretical approach to provide for a fresh approach to analysing international IP law.

The book discusses the conflicts arising between these various regimes, their effect on intellectual property law and how such conflicts can eventually be accommodated. Initially, he discusses how legal conflicts have traditionally been treated by law. Conflict should be understood broadly in this context and "which is able to cover all cases where rules 'point in different directions'."[4] A discussion of "conflict of norms" and "conflict of laws"-approaches, as well as substantive law methods, provides a useful base to get to the core of how to address the conflicting regimes impacting on international intellectual property law. Grosse Ruse-Khan proposes a manner of how to accommodate conflicting regimes through a meta rule of integration.[5] By this, the regime that would apply to the conflict at hand which would be most suitable for integrating the rules of the conflicting system.[6] The chapter then suggests a tool box which provides for principles from conflict of norms, conflict of laws as well as substantive law methods. The toolbox, as the author notes may suggest some arbitrariness and consequently states that it should not provide an authoritative metric for determining which norms should prevail.[7]

[1] Luhmann himself provided a rather negative account of the differentiation of societal fields when he said: "The sin of differentiation can never be undone. Paradise is lost." - Niklas Luhmann, *Die Wirtschaft der Gesellschaft* (Suhrkamp 1994) 344.
[2] See for instance - Andreas Fischer-Lescano and Gunther Teubner, 'Regime-Collisions: The vain Search for legal Unity in the fragmentation of Global Law' [2004] Michigan Journal of International Law 999; Andreas Fischer-Lescano and Gunther Teubner, *Regimekollisionen* (Suhrkamp 2006).
[3] See Andreas Fischer-Lescano and Gunther Teubner, 'Regime-Collisions: The vain Search for legal Unity in the fragmentation of Global Law' [2004] Michigan Journal of International Law 999, pp. 1024-1032.
[4] Henning Grosse Ruse-Khan, *The Protection of Intellectual Property in International Law* (Oxford University Press, 2016) 38.
[5] *ibid* 54.
[6] *ibid* 54 – 55.
[7] *ibid* 65.

This toolbox of how to resolve conflicting rules is applied within the following chapters of the book. The conflicting relationships that the author wishes to analyse are firstly those *within* the international IP system (i.e. the TRIPS Agreement and the provisions within FTAs), then those *between* the international IP system and alternative protection system (such as investment or human rights law) and finally those relationship between international IP rules and those rules system that would follow another objective (i.e. laws safeguarding biological diversity or the environment). Hence, linkages of intellectual property with WTO law, the very pertinent issue relating around investment treaties, human rights and environmental law are established and scrutinised as their possible overlaps and conflicts. Grosse Ruse-Khan, for instance, comes to the very interesting finding that a cross-fertilisation of how conflicting rules are accommodated can be applied to other fields of law: Investment law which would lack considerations for competitors of IP right holders, could integrate rules of conflict resolution from 'outside' its ambit, e.g. the balancing rules within human rights laws.[8]

Overall, this is a very welcome publication that provides a refreshing approach on how to look on international intellectual property law. It bundles many threads of contemporary research in this great and authoritative tome. The structure and content of this book will provide an important addition to the state of the art on the international dimension of intellectual property law and may serve as a blueprint for further, exciting research within the field.

[8] Henning Grosse Ruse-Khan, *The Protection of Intellectual Property in International Law* (Oxford University Press, 2016) 266.