

# Editorial

by **Chris Reed\***

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- 1 By sheer coincidence, this issue of JIPITEC concentrates very much on the challenges which the information technologies continue to pose to IP law. When computing technology began to be widely available and used, in the 1970s and 1980s, IP law's focus was mainly on identifying how digital form could be assimilated into the existing body of the law. Copyright law happily treated digital works as writings or recordings, and (less happily) nuanced its understanding of copying. Patent law took the position that computer programs could never constitute inventions, and then almost immediately began the process of working out how to cope with the fact that most new inventions had some computer program element to them. When the internet arrived in the 1990s copyright law had to be extended to cover the new forms of communication which became available, and is still struggling to work out the boundaries of copyright in a world where digital communication and mass copying and sharing has largely replaced paper and other material forms.
- 2 Three of the articles in this issue address the implications of Artificial Intelligence (AI), a recently resurgent technology which presents even more fundamental challenges to IP law. Maurice Schellekens investigates how the use of AI changes the role of the human inventor, and argues that although this technology will change our understanding of inventiveness it does not, at present, present difficulties which patent law cannot cope with. In a similar vein, Rita Matulionyte's detailed analysis of the Australian DABUS case argues that the Australian court was wrong to hold that an AI could qualify as the inventor of a patent, and that human inventiveness needs to remain at the heart of the law. Both, though, recognise that advances in AI may eventually displace the human completely, which will surely require a complete re-examination of the fundamental bases of patent law. Alžběta Krausová and Václav Moravec consider the complete disappearance of the human from authorship of journalism, and investigate the tension between the ethical principles of accountability, responsibility and transparency and the provisions of copyright law.
- 3 The exploitation of IP rights is equally affected by the digital technologies. Anthony Rosborough examines copyright in repair manuals, which are commonly shared online and which are needed for purchasers of technology to exercise their rights of repair. This discussion raises questions about the conflict between private rights and the public interest, questions which also arise in the article by Mikhail Miller and Stephan Klingner. They undertake an empirical investigation of the practices of collective rights management organisations, and find that the ways in which transparency information is made available are barriers to the public interest aims of the law mandating such transparency.
- 4 The extension of IP rights through digitalisation, and the vast increase in communication made possible by the online technologies, have also had a substantial effect on fundamental rights such as free speech and privacy. Evangelia Psychogiopoulou examines how the case law of the CJEU and the ECtHR have influenced each other when considering how to balance these rights.
- 5 A common theme in all these articles is the mismatch between the law's fundamental aims, and what it now actually achieves. In 2001 Glynn Lunney published an article in the *Virginia Law Review* whose opening words were:
 

'Copyright is dead. The Digital Millennium Copyright Act ("DMCA") has killed it.'
- 6 His arguments were more nuanced than this, as one might expect, but 21 years later his conclusions seem equally applicable to all the IP rights:
 

'... we face a choice both as to how, and more importantly why, we protect creative works.'
- 7 In those 21 years the law's focus has mainly been on the 'how' question. The articles in this Issue suggest, to this editor at least, that the challenges to IP

law from the digital and online technologies are now reaching the point when we have also to address the 'why' question.

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