Self-interest and the international stage

IP law is no stranger to self-interest. Almost from its very outset, self-interest was not so much a by-product of IP protection as a driving force which shaped it. The Venetian patent law of 1474 sought only to protect the inventions of foreigners, luring them to Venice with the prospect of a 10-year monopoly that would shield them from local competitors. Early English patent protection was also aimed at attracting foreign skills for the benefit of the English, whether it be wool-dyers from Flanders or craftsmen in glass from Venice. It was not the act of creation, or investment in it, but the desire to possess another nation’s skills which motivated both legislation and the exercise of the royal prerogative.

By the late nineteenth century, while competition between states remained acute and trade advantage was a sufficient ground to go to war, IP protection was no longer regarded a battlefield on which such contests were fought. Those two great pillars of international IP legislation, the Paris Convention of 1883 (for industrial property) and the Berne Convention of 1886 (for copyright), were erected on the foundations of equal treatment and reciprocity: thus, for example, British copyright law was directed to assist French authors, while British authors could expect protection from the droit d’auteur, and signatory states to the Paris Convention had to treat foreigners as well—or in many cases as badly—as they treated their own citizens. What is remarkable is the fact that both equal treatment and reciprocity arose at a time when the word ‘globalization’ was still a century away from being coined and most trade, if not entirely national, was far from being the sort of international trade we take for granted today.

One might have thought that, with the internationalization of trade and the World Trade Organization’s increasing thrust towards a barrier- and tariff-free world in which to trade, self-interest would have been a thing of the past, a curious relic of interest only to academics. Particularly, within Europe, where the relentless drive towards the single market and a level-playing field has flattened many a local commercial hillock, the idea of a country saying: ‘we really must develop IP laws that stimulate local trade and help local businesses gain an advantage over their rivals abroad’ sounds somehow wrong. But this is a message which we are increasingly hearing.

The USA has recently emerged from a bitter debate over the reform of its patent system with the passage of the America Invents Act—a debate in which those who favoured its introduction and those who opposed it tugged like dogs contesting a bone over the right to say that their position more greatly favoured American interests over those of aliens. The title itself reflects parochial self-interest. But do not let it be thought that the USA is alone. In the UK too, the recent discussions on how to protect the interests of small- and medium-sized enterprises not just against infringers but against the depredations of bigger IP owners have also invited contributions designed to bolster local British interests in a predominantly non-British world.

I believe that every government in every country has not only the right but also the responsibility to take care of the commercial interests of its own businesses and to seek to attract investment in the creation and development of new products, processes, and concepts. However, I cannot accept that there exists any argument in favour of the proposition that either creating different national IP laws or allowing existing differences to persist is the best way of achieving this. Once the proposition is accepted that IP law is beneficial to the interests of all its stakeholders, efforts should be redoubled to ensure that, across the board, we identify and implement the best and most efficacious means of bringing national laws closer together, and eventually eliminating national differences entirely, without allowing the case for any national self-interest to bar the path to full harmonization of national rights.