

IV – Conclusion

As we have seen, there are no specific rules governing overlaps. The potential for different ownerships is high and most frequently these situations are not regulated by explicit contractual provisions. Beyond the mutual blocking situations, applying the priority in time principle can lead to unfair and difficult results. That's why a different number of strategies might and have been used.

This problem can be tackled by means of interpretation or analogy. The use of general concepts of private law such as implied contract/authorization and abuse of law/estoppel – the ultimate stronghold of every lawyer – faces some obstacles in the present legal framework.

Extending copyright solutions by analogy seems thus to be the best option in face of the law as it stands. Nonetheless, a combination of these methodologies is to be expected and should be explored.

It is submitted that it would be useful to have general provisions dealing with overlaps and particularly one addressing this problem. In the absence of a general regulation of overlaps, this rule can be systematically placed either on copyright ownership rules – preventing the different ownership or deeming the joint works/connected works solutions applicable to the problem – or as a limitation to the scope of rights – reducing them to a mutual remuneration right.³⁸¹

According to the latter solution, either of the overlapping IPRs owner's would be able to exploit the object independently and would owe the other his share of the profits, presumed equal. This can obviously lead to discussions – which are not alien to IP; for instance when it comes to damage calculation – on how much of a profit is due to a specific IPR and how much is a result of other efforts, investment and intangibles.³⁸² That is indeed discussing a wider and more fundamental question: how relevant is Intellectual Property?

381 This has an equivalent effect to statutory cross-licensing. The solution is already found v.g. in art. 18(1) PTCA regarding connected works.

382 This is why B E Cookson (n 3) writes that a business has only one goodwill.

