

Torti, Valerio. “Intellectual Property Rights and Competition in Standard Setting: Objectives and Tensions.” Routledge Research in Intellectual Property” 2016, 252 p.

A review by Murilo Lubambo¹

I have just reviewed the recent book written by Dr. Valerio Torti, published by Routledge in the series Research in Intellectual Property. It is largely the result of Torti's research undertaken at and funded by the Centre for Law & Business - National University of Singapore. It has also drawn on extensive research previously carried out in other institutions, including the University of Southampton (UK), where the author was awarded his PhD.

The book explores a fascinating topic: the tensions inherent in the relations between competition law and intellectual property law in the context of standard setting. The general challenge we face is how to define the proper balance between the protection of intellectual property, and therefore, innovation and creativity, and the preservation of competition in the market, to the benefit of consumers. In other words, how to spur innovation and deter opportunistic anticompetitive behaviour in standard setting? Torti acutely presents this dichotomy of objectives and goals in Part One (“IPR, Competition and the Standards”), but also emphasises and reinterprets this pervasive tension throughout the book.

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The material is at the same time comprehensive in terms of content and accessible for non-experts. It is sufficiently analytical to cover in depth the key debates on the matter of standardisation. The structure is coherent, with good connection between the chapters.

Part Two contains an up-to-date discussion on the main issues and landmark court cases in the context of licensing and standard setting. Chapter 4 not only points out the need to develop *ex ante* optimal policies but also the role of antitrust in *ex post* enforcement. He then presents and compares both the US approach (Chapter 5) and the EU approach (Chapter 6), not without providing thoughtful inputs for change in the current practice.

Torti's original contribution is particularly evident in Chapter 7 of Part Three, entitled "Suggested Model and Enforcement" (p. 191-226). He identifies the problems and proposes solutions, by developing a clear line of reasoning to base his opinion on the optimal policy framework. From a critical perspective, Torti calls attention to a series of faults in the (F)RAND model and in some *ex ante* negotiation regimes. One should notice that an important part of the literature claims that (F)RAND is still the best framework. Torti, in its own right, explores and indicates an alternative solution in the form of unilateral disclosure of maximum royalties and maximum licensing terms before the standard is set. These proposals are not new, but he casts fresh light on them. He puts

forward an array of logical arguments to support the conclusion that “private defences and antitrust doctrines need not to be viewed as mutually exclusive, but as bodies of law which may lead to complementary remedies.” p. 226

It is true that some of his alternatives may face implementation challenges and only time will reveal their feasibility. These concerns, however, do not take the merit of his proposals, which were the result of deep and nuanced reflection. This is just enough to stimulate the reading of this fine book by academics and practitioners. It has a particular appeal to young students willing to find a topic for research in the interface between intellectual property and competition law.

Overall, the book is very welcome and provides an original analysis of the issues. Some will probably disagree with its findings, but it certainly contributes to the ongoing debate in the standard-setting world.