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## Copyright and Civil Enforcement

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# CREATE WP3C-2 COPYRIGHT AND CIVIL ENFORCEMENT - INVESTIGATING THE 'LEGAL ICEBERG'

PI - Jane Cornwell, RA – Andrew Black, University of Edinburgh (October 2013-September 2015)

RESEARCH OBJECTIVES AND KEY THEMES: To map formal and informal copyright enforcement activity in Scotland and to explore the different factors influencing that activity.

- What are the key practices in IP/copyright enforcement, 'formally' in court litigation and 'informally' in correspondence, negotiation and settlement?
- What are the key factors influencing the conduct of IP/copyright infringement disputes, their trajectories and outcomes?
- What are the particular considerations relevant to copyright infringement disputes, generally and in the creative industries?

Galanter (1974) identified 'official' justice systems as: 'the 'upper' layers of a massive 'legal' iceberg'

consisting of distinct but inter-merging layers of adjudication, litigation, private settlement systems and other routes to dispute resolution.

KEY CHALLENGES: To develop and implement a research design capable of investigating 'unobservable' informal and private enforcement practices as well as 'observable' litigation activity.

Empirical research into IP enforcement focussed on other jurisdictions — Dent and Weatherall, Greenhalgh et al, Gallagher, Helmers and McDonagh.

**INFLUENCES** 

Empirical research into other areas of disputing practice in Scotland – Coope and Morris, Samuel, Agapiou and Clark.

**RESEARCH DESIGN:** Mixed empirical methods combining analysis of quantitative and qualitative data from Scottish court records and a survey/interviews among legal advisers. **VALUE ADDED:** Refining new research design; deepening research connections with legal sector; widening opportunities for knowledge exchange and dissemination (eg CIPA Journal, ITMA seminar).

Scottish court records

Focus: Court of Session IP actions - approx. 70+ cases in 5 year date range.

Data to be collected: IP right(s) in suit; use of interim interdict; case trajectories; settlement rates; timescales; industry sectors; and more.

Status: currently in discussion with Scottish Court Service over access to SCS data.

Next steps: once agreement reached with SCS, to collect and analyse available data.

The unobservable....

observable....

Survey and interviews

Focus: Firms of solicitors with a practice in IP and firms of patent/trade mark attorneys, all based in Scotland – approx. 170+ firms in total.

Data to be collected: nature and range of IP/copyright infringement disputes, prelitigation and at court; dispute trajectories and influencing factors; online infringement and intermediaries; use of ADR; settlement outcomes; costs; creative industry disputes; and more.

Status: survey currently live with respondents until into autumn 2014.

Next steps: to collect and analyse survey data; thereafter to arrange follow-up interviews with respondents and other relevant stakeholders.