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# Innovation, competition, standards and intellectual property: policy perspectives from economics and law

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**Abstract**

The paper identifies the sources of regulatory complexity that lie behind the management of innovation, intellectual property, competition law and technical standard setting processes. It then introduces the remaining papers in the Special Issue. These papers focus on aspects of regulatory complexity in the Australian and New Zealand context. Taken overall the papers suggest that flexible standards of regulation are key to small and medium sized states being able to manage the integrated regulation of innovation, intellectual property, competition law and standard-setting.


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## 1. The sources of regulatory complexity

Institutions that regulate property rights in information, competition in the marketplace and the setting of technical standards have long histories. The Venetians are generally credited with the first patent statute (1474). Ecclesiastical law and the common law regulated competition in different ways during the medieval period.

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Regulation of competition by statute came later. Prussia passed a law to restrict the power of guilds in 1811 and in 1890 the US Congress passed the Sherman Act. [1] The setting of technical standards began in the last quarter of the 18th century when mass production got underway in the industrializing economies of the West. Similarly, institutions that support innovation have been around for a long time. Patronage is a case in point.

As modern economies have continued to evolve and governments have made innovation a primary economic virtue the goals, interaction and effects of the institutions that relate to innovation, institutions of competition, technical standards and property rights have come under greater policy scrutiny. An example of this is the final report of the Australian Intellectual Property and Competition Review Committee (the Committee). [2] Under its terms of reference the Committee had to report on the various restrictions on competition that were contained in Australian intellectual property legislation and to evaluate those restrictions from the perspective of costs and benefits "to the community as a whole". [3] This cost-benefit approach to competition policy issues has been entrenched by the Competition Principles Agreement of 1995, an intergovernmental agreement between federal, state and territory governments. [4] This Agreement was itself the product of a nationally co-ordinated approach to competition policy that had been initiated by the Council of Australian Governments in 1991. [5]

The articles in this volume are the fruits of a workshop run at the Australian National University in August, 2002. [6] The workshop used the Committee's report as a springboard into thinking about the problems and policy implications raised by regulation in four different sectors: intellectual property, competition law, standards and innovation. These problems are not uniquely Australian, but rather problems of developed economies that in the 1990s went through a period of economic growth labeled the 'new economy'. The label drew attention to the rise in strength of industries based on research and development (most notably in the biotechnology and digital technology sectors), new modes of networked production (for example, the free software movement), and the rise of the services sector that itself was based, at least in part, upon the convergence of technologies such as telecommunications, broadcasting and information technology. Discussions of the new economy also became linked to globalization. Neoliberal accounts of globalization suggested that

[1] See Braithwaite and Drahos (2000, p. 186).

[2] Review of intellectual property legislation under the Competition Principles Agreement, Final Report by the Intellectual Property and Competition Review Committee, 2000, Commonwealth of Australia. Known as the Ergas Report.

[3] See Review of Intellectual Property Legislation Under the Competition Principles Agreement (2000, p. 217).

[4] Principle 5(1) of the agreement requires that legislation shall not restrict competition unless the benefits outweigh the costs and the objective of the legislation can only be met by the restriction.

[5] See the National Competition Policy Review (the Hilmer Report, 1993). The National Competition Council was established in 1995 to act as a policy advisory body on the implementation of the National Competition Policy. More information can be found at http://www.ncc.gov.au.

[6] The paper by Paul Heald was not presented at the workshop. The workshop was run by the Centre for Competition and Consumer Policy.