

A Quantitative Analysis of Australian Intellectual Property Law and Policy-Making Since Federation

Emma Caine and Andrew F. Christie

Intellectual Property Research Institute of Australia

The University of Melbourne

Intellectual Property Research Institute of Australia

Working Paper No. 20/05

ISSN 1447-2317

November 2005

Intellectual Property Research Institute of Australia

The University of Melbourne

Law School Building

Victoria 3010 Australia

Telephone: 61 (0) 3 8344 1127

Fax: 61 (0) 3 9348 2353

Email: info@ipria.org

www.ipria.org

A Quantitative Analysis of Australian Intellectual Property Law and Policy-Making Since Federation

Emma Caine¹ and Andrew F. Christie²

ABSTRACT

There have been periodic calls for reform of the administration of IP law and policy-making in Australia, and in particular for the consolidation of responsibility for IP into a single federal government department. This article contributes to the debate by analysing quantitative data on Australian IP law and policy-making since federation. It measures the growth of IP legislation and reviews of IP legislation over the past century, and compares this with the corresponding growth in another body of commercial law and in the economy. The article finds that while IP law is growing exponentially, it is growing more slowly than corporations law. Further, the growth of both bodies of law is dwarfed by the growth of the economy. It seems, therefore, that there is no clear quantitative basis for the previously expressed objections to Australian IP law and policy-making. It follows that justification for reform of the administration of Australian IP law will need to be based on qualitative concerns.

¹ Emma Caine is a Researcher at the Intellectual Property Research Institute of Australia, University of Melbourne.

² Andrew Christie is the Davies Collison Cave Professor of Intellectual Property at the University of Melbourne Law School, and the Director of the Intellectual Property Research Institute of Australia, University of Melbourne. Both authors gratefully acknowledge the generous assistance of Stephen Waugh, Australia Bureau of Statistics.

I. INTRODUCTION

A. BACKGROUND

1. Calls for Reform

In recent times in Australia, the process of intellectual property law and policy-making has become an important issue in its own right. Over the last 15 years, there have been periodic calls for the reform of the administration of intellectual property law and policy-making in Australia.³ In 1992 the Intellectual Property Committee of the Law Council of Australia proposed a model for the reform of the administration of intellectual property law in Australia, which was based upon the unification of the administration of intellectual property law and policy-making. Professor Sam Ricketson, who chaired the Committee, has since developed this model of unification and re-iterated the need for reform on a number of occasions.⁴

It is not only within Australia that the issue of the administration of intellectual property law and policy-making has assumed greater significance. Australia's major trading partner, Japan, has recently prioritised intellectual property law and policy-making. In February 2002 Japanese Prime Minister Junichiro Koizumi acknowledged the importance of translating 'the results of research activities and creative endeavours' into intellectual property, and announced the established of the Strategic Council on Intellectual Property.⁵ The Strategic Council on Intellectual Property was set up in March 2002, and released its Intellectual Property Policy Outline in July 2002. The Outline set out strategic goals for encouraging the creation, exploitation and protection of intellectual property, each goal unified under the overall national policy goal that Japan become 'a nation built on intellectual property'.⁶ In December 2002, the *Basic Law on Intellectual Property* was introduced in Japan, providing for the

³ See Sam Ricketson, 'The Future of Australian Intellectual Property Law Reform and Administration' (1992) 3 *Australian Intellectual Property Law Journal* 3, 27-9; Sam Ricketson, 'Intellectual Property Administration and Policy in Australia – An Examination of the Australian Situation, Past and Present, and Recommendations for Future Change' (Paper presented at the National Innovation Summit, Melbourne, 9-11 February 2000); and Sam Ricketson, 'The Future of Intellectual Property Law and Law Reform' in M Richardson (ed) *Intellectual Property Law Reform*, (1995) 1995, 17-25.

⁴ Ricketson (1992), above n 3.

⁵ Policy Speech by Prime Minister Junichiro Koizumi to the 154th Session of the Diet, 4 February 2002, at http://www.kantei.go.jp/foreign/koizumispeech/2002/02/04sisei_e.html.

⁶ Strategic Council on Intellectual Property, *Intellectual Property Policy Outline*, 3 July 2002, at http://www.kantei.go.jp/foreign/policy/titeki/kettei/020703taikou_e.html.

establishment ‘in the Cabinet’ of the Intellectual Property Policy Headquarters,⁷ which has the task of building a ‘promotion program’ in relation to the creation, exploitation and protection of intellectual property.⁸ The desire to streamline and rationalise intellectual property policy-making and to make it a matter of high priority is evident in the establishing provision of the Law, which provides that the Policy headquarters is established ‘[i]n order to promote measures for the creation, protection and exploitation of intellectual property in a focused and planned manner’.⁹

2. Relevant Data

In this context of increasing interest in *qualitative* issues relating to the process of intellectual property law and policy-making, a *quantitative* analysis of the data on the trends in the volume of intellectual property legislation and policy review over time can be seen as particularly valuable. By identifying and interpreting certain externally observable features of the law and policy-making process, a quantitative analysis would enable us to see whether there are any troublesome trends in the growth patterns of intellectual property legislation and policy review. This, in turn, would permit observations to be made about whether there is any quantitative basis for the reform of intellectual property law and policy-making, in addition to qualitative bases suggested by the commentators identified above.

In a previous paper¹⁰ we suggested that the quantitative data on Australian intellectual property law and policy review revealed a disturbing expansion over time. That previous paper reviewed the data on the volume of intellectual property legislation and policy review in Australia from federation until the present. The review disclosed a dramatic increase in the volume of intellectual property legislation and in the number of reviews of that legislation, indicating a future trend of exponential growth. We suggested that there was a causal relationship between the volume of intellectual property inquiries and the volume of intellectual property legislation, which produced a ‘feed-back loop’ in which a review of a piece of legislation leads to the enactment of a larger piece of legislation which leads to more reviews of the legislation, then even more legislation, and so on. We argued that this exponential growth was undesirable, and proposed a future action-plan involving simplification of IP legislation and unification of IP administration as necessary for the containment of the spread of intellectual property legislation and policy review.

⁷ Basic Law on Intellectual Property, Law No 122 of 2002, Article 24.

⁸ Ibid, Article 23.

⁹ Ibid, Article 24.

¹⁰ See Andrew F Christie and Emma Caine, ‘Intellectual Property Law and Policy-Making in Australia: A Review and a Proposal for Action’ (2005) 60 *Intellectual Property Forum* 20-24.

B. AIMS

The current paper presents and analyses new data, which contextualise the growth of intellectual property legislation and policy review within similar observable expansions in another body of statutory law – corporations law – and in the Australian economy. It should be noted that we have assumed that the volume of intellectual property law and policy-making is *a priori* related to the size of the economy, in that the activities to which intellectual property law applies – the creation of art, designs, inventions, distinctive signs and symbols – are clearly all part of the Australian economy. The provision of a context for the expansion of intellectual property legislation and policy review, through legislative and economic ‘baseline-comparator’ data, is necessary for a more complete understanding of the growth in intellectual property legislation and policy review. This paper aims to provide this understanding.

Such an understanding is based on the adoption of a broader perspective on intellectual property law and policy-making than we have previously used. In this paper, we ‘zoom out’ in our focus, so that we can observe the history and development of intellectual property law and policy-making from federation until the present, in the context of the history and development of another area of law, and of the Australian economy. The ultimate aim of the paper is to present contextualised data on the volume of intellectual property legislation and policy review over the century, in order to determine whether the data disclose any disturbing trends which would indicate that the current intellectual property law and policy-making infrastructure and processes are sub-optimal; that is, whether there is any quantitative basis for the reform of intellectual property law and policy-making, in addition to qualitative bases suggested by commentators such as Ricketson.

In addition, the paper seeks to provide a comprehensive record of all government inquiries into intellectual property law from federation until the present, and of the number of subsections of the landmark pieces of legislation introduced across the four intellectual property regimes during the same period.

C. METHODOLOGY AND SCOPE

1. Subject Matter and Time Period

In this part of the paper, we set out the methodology of the study. As we elaborate on this methodology, various bounds on the scope of the study will become apparent. At this point, it is important to note that the initial bounds on

the scope of the study arose out of our choice of: subject matter (intellectual property law and policy-making, as indicated, respectively, by intellectual property legislation and policy review); time period (1901-2005); and the breadth of our definition of ‘intellectual property’ for the purposes of choosing specific legislative schemes to analyse. We chose to focus on the traditional intellectual property regimes of copyright, designs, patents and trade marks law, and to exclude *sui generis* regimes, such as plant breeder’s rights or protection for circuit layouts. This choice was based on our desire to retain a certain degree of simplicity in the presentation of the data, and also on the assumption that those *sui generis* regimes would be unlikely to have any significant impact on our overall findings.

2. Volume of Law

We have chosen the number of subsections in intellectual property legislation as our measure of the legislation’s size, which we use as a proxy for the volume of intellectual property law. The number of subsections was selected as a reasonable and convenient measure of the length and complexity of a given piece of legislation, and as a measure that would be translatable across different types of legislation. This translatability was essential for making comparisons between the legislative expansion of intellectual property and that of other areas of law. Yet other possible measures which might have served equally well include: number of sections, number of pages, physical length of the text and/or number of words. Nevertheless, we considered that the number of subsections provided perhaps the most faithful reflection of the true size of a piece of legislation.

In order to provide an overview from federation until the present, we have attempted to capture the size of intellectual property legislation at particular points in time; specifically, every 15 years. Our methodology was as follows: for each of the traditional intellectual property regimes (copyright, designs, patents and trade marks law), we first identified the original Commonwealth Act,¹¹ and each subsequent new Act which had been introduced,¹² and then the

¹¹ The original Commonwealth Acts are: *Copyright Act 1905* (Cth), *Designs Act 1906* (Cth), *Patents Act 1903* (Cth), *Trade Marks Act 1905* (Cth). Various colonial Acts provided for these regimes prior to the introduction of the Commonwealth Acts, eg the *Copyright Acts 1869 and 1890* (Vic) and the *Patents, Designs and Trade Marks Act 1884* (Qld). For more information on the history of the different pieces of IP legislation, see generally Staniforth Ricketson, *The Law of Intellectual Property* (1984).

¹² By ‘subsequent new Act’, we mean a replacement enactment (ie. not merely an amending enactment). An example, from patents law, is the *Patents Act 1952* (Cth), which replaced the originating Commonwealth enactment, the *Patents Act 1903* (Cth).

most recent consolidated reprint of the Act.¹³ We counted the number of subsections for each of these Acts. We did not count the multiple reprints of Acts as amended over time. It should be noted that where two new Acts fell within a single 15 year time unit, we counted only one of the Acts as representative of the size of the legislation during that particular time. For instance, during the period 1901-1915, two Copyright Acts were variously in force in Australia: the *Copyright Act 1905* (Cth) and later the *Copyright Act 1912* (Cth). We counted and recorded only the 1905 Act.

Thus we have taken ‘snapshots’ of the size of intellectual property legislation at particular points in time, to the level of generality required by a time scale of 15 year time units. We considered that a time scale with more frequent intervals would have imported an unhelpful degree of detail which might obscure the general picture of the development of intellectual property legislation over the century, rather than illuminate it.

3. Volume of Policy Review

Our measure of the volume of policy review of intellectual property law is the number of government inquiries into the law undertaken over time. Our investigation of government inquiries relating to IP law turned up a vast quantity of publications and references to inquiries contained within other academic papers.¹⁴ For the purposes of our analysis, we included only those inquiries that had the following characteristics:

- the inquiry resulted in some form of public output such as a report;¹⁵
- the inquiry involved some element of public consultation, even if minor, so long as the inquiry was not a purely internal or ‘off-the-record’ review;

¹³ The most recent enactments are: *Copyright Act 1968* (Cth), *Designs Act 2003* (Cth), *Patents Act 1990* (Cth), *Trade Marks Act 1995* (Cth). In each case, we have used the most recent consolidated reprint, as at 15 February 2005.

¹⁴ Our initial identification of inquiries was assisted greatly by reference to the following publications: Sam Ricketson, ‘The Future of Australian Intellectual Property Law Reform and Administration’ (1992) 3 *Australian Intellectual Property Law Journal* 3-30; Sam Ricketson, ‘Reform of Australia’s intellectual property law’ (1995) 69 (11) *Law Institute Journal* 1126-1128; Sam Ricketson, ‘The Future of Intellectual Property Law and Law Reform’ in M Richardson (ed) *Intellectual Property Law Reform*, (1995) 1995, 17-25; Sam Ricketson, ‘Intellectual Property Administration and Policy in Australia – An Examination of the Australian Situation, Past and Present, and Recommendations for Future Change’ (Paper presented at the National Innovation Summit, Melbourne, 9-11 February 2000).

¹⁵ This criterion reflected the desire to exclude anecdotal evidence and to ensure that each inquiry counted would be specifically identifiable through physical evidence, such as a publication.

- the inquiry was commissioned by government or a government agency; and
- the inquiry had a substantive consideration of a relevant intellectual property regime, rather than mere ‘relevance’ for intellectual property in general or surrounding social/economic issues.

In relation to the second criterion, it should be noted that the earlier inquiries rarely involved public consultation. As Ricketson points out, ‘until the early 1970s, reform of Australian intellectual property laws was left mainly to expert committees ... [that] ... drew on the expertise of person involved in the practice or administration of these laws’ and that ‘only in the later inquiries was there a conscious effort to receive input from rights owners, users and the general public’.¹⁶ While these early inquiries were counted, later ‘inquiries’ which were purely internal affairs, with no element of public consultation or record, were not counted. For the purposes of our analyses of *individual* regimes, a single inquiry could be counted for more than one of the four IP regimes; for instance, the various inquiries into the impact of the Australia-United States Free Trade Agreement on Intellectual Property have been counted for each of copyright, designs, patents and trade marks. However, each inquiry was counted once only for our analysis of the *overall* number of intellectual property inquiries.

The data are presented in various charts below. The number of inquiries over time is charted against the number of subsections in legislation over time, on a 15 year time scale from 1901 to 2005. The data used to produce these charts are included in appendices to this paper, to which we refer during our discussion of each of the charts.

4. Legislative Comparator

We have selected corporations law as an appropriate baseline legislative comparator. This field of law seems an appropriate choice for various reasons – being that, like intellectual property, corporations law: is a statutory area of law; concerns commercial activity; is a Commonwealth legislative regime; is regulatory; and is a significant body of law, in the sense that it is large and high-profile.

In obtaining and presenting the data on the number of subsections of the legislation from federation until the present, we applied the same methodology as that applied in relation to the four intellectual property regimes.¹⁷ However,

¹⁶ Ricketson (1992), above n 3, 17.

¹⁷ That is, we counted the number of subsections in each new piece of corporations legislation introduced over the century, to the level of generality required by a time scale of 15 year units.

our methodology was affected by the peculiar history of corporations/company law, which was regulated by the states (though national co-operative schemes were in force from the 1960s) until they referred their powers to the Commonwealth in 2001.¹⁸ Thus, prior to the national Corporations Law 1990,¹⁹ it was necessary to choose the legislation of a particular state as representative: New South Wales was selected.

5. Economic Comparator

We have selected Australian gross domestic product (GDP) as an appropriate aggregate measure of the size of the Australian economy.²⁰ GDP provides a measure of the productivity of Australian industry, including, importantly, all those industries which are concerned in some way with intellectual property law, whether as producers, or users, of intellectual property.²¹ It should be noted that GDP does not measure innovation as such. Measures of Business Expenditure

Thus, where two new pieces of legislation fell within a single 15 year time unit, we counted only one piece of legislation as representative. For instance, for the 1976-90 period, both the Corporations (NSW) Code 1981, and the national Corporations Law 1990 would have been applicable. We counted the Corporations Law as the most significant, and representative, piece of legislation for the period.

¹⁸ At the time of federation, the regulation of companies remained a matter for the states. In 1909 the High Court confirmed that the Commonwealth had no power to legislate for the incorporation of companies: *Huddart Parker and Co Pty Ltd v Moorehead* (1909) 8 CLR 330. The states first introduced uniform companies legislation in 1961. This regime was replaced in 1981 with another co-operative scheme in which the states mirrored legislation enacted by the Commonwealth: the *Companies Act 1981* (Cth) was enacted by the Commonwealth pursuant to its power under s 122 of the Constitution to make company law for the Australian Capital Territory. Each state passed a 'Companies (State) Code' based on the Commonwealth Act. In 1991, after a failed attempt by the Commonwealth to assume sole responsibility for company law with the introduction of the *Corporations Act 1989* (Cth), a new co-operative scheme was introduced. In this scheme, the Commonwealth amended the *Corporations Act 1989* so that it contained 'the Corporations Law' (in force in the Australian Capital Territory) and each state enacted a Corporations Act which adopted the Corporations Law as the law in force in the particular state. Finally, the states referred their corporations power to the Commonwealth and the current *Corporations Act 2001* (Cth) was enacted. For a more detail history of the development of Australian company law, see: HAJ Ford, RP Austin and IM Ramsay, *Ford's Principles of Corporations Law* (11th ed, 2003), 42-44; and Roman Tomasic, Stephen Bottomley and Rob McQueen, *Corporations Law in Australia* (2nd ed, 2002).

¹⁹ The law is cited as the Corporations Law 1990, though it was not in force until January 1991. For the purposes of our analysis, we have included this piece of legislation within the 1976-1990 period, in order to avoid losing the data within the 1991-2005 period (since the current consolidated version of the *Corporations Act 2001* (Cth) is shown during that period).

²⁰ GDP is defined more precisely in Part III.B.1, below.

²¹ A specific focus on intellectual-property industries was, unfortunately, not possible due to the unavailability of cohesive data on GDP percentage by industry from 1901. In any case, the aggregate measure is clearly relevant for comparison with measures of regulation of intellectual property, and government inquiry into intellectual property law.

on Research and Development (BERD) and Government Expenditure on Research and Development (GERD) could be proxies for innovation. However, BERD and GERD data have only been collected since the 1970s, and not back to federation. In any event, it is doubtful whether BERD and GERD would be a sufficient proxy for activity within the industries to which copyright law applies. For the purposes of providing a broad review, at a macro-level, of the movements in intellectual property and the economy over the last century, GDP is our best *available* proxy for the economic activity.

II. IP LAW AND POLICY-MAKING SINCE FEDERATION

A. ALL INTELLECTUAL PROPERTY

1. Growth of Legislation

Intellectual property legislation has increased significantly in size over the last century. This increase can be seen in Figure 1, which shows the total number of subsections in intellectual property legislation at around federation and today. The number of subsections contained in the first Commonwealth Act, and in the latest consolidated Act, applying to each of the four intellectual property regimes of copyright, designs, patents and trade marks, were added together to obtain the sum totals shown in the chart. The stacked columns indicate the proportion each regime contributes to the sum total. Overall, the volume of IP law increased six-fold over the century: from 553 subsections in 1906 to 3317 subsections in 2005.

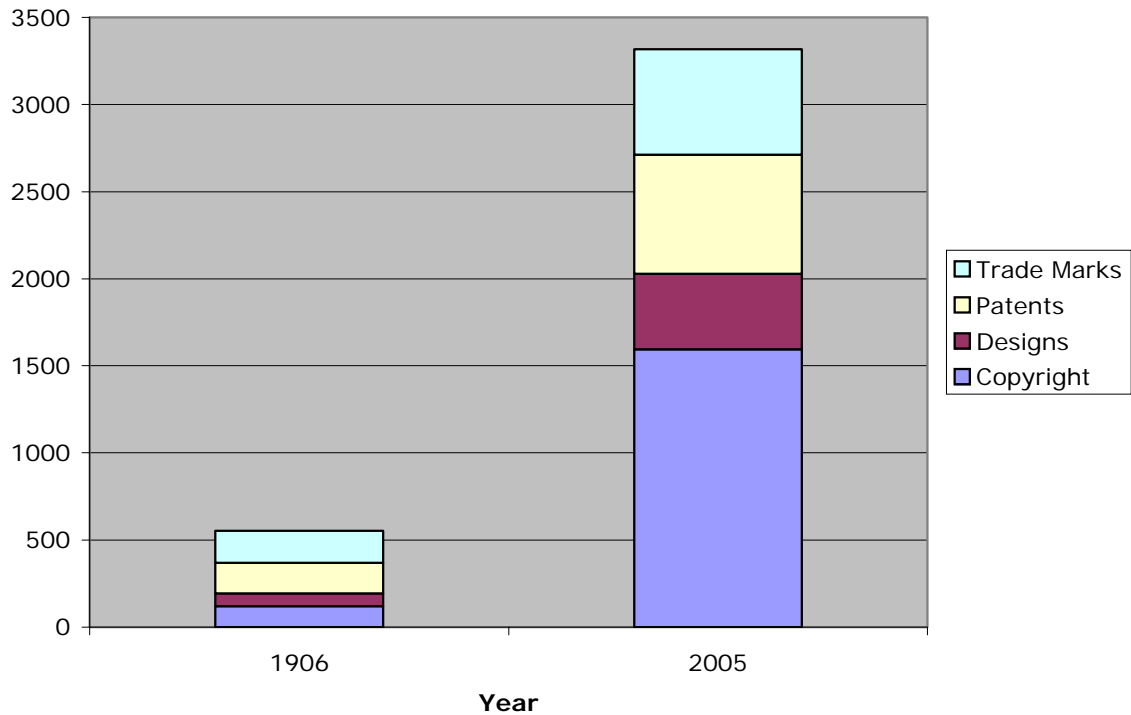


Figure 1. Volume of Intellectual Property Law²²

Copyright, designs, patents, trade marks legislation: 1906 and 2005

2. Differential Growth across Regimes

Figure 2 shows the changing contribution, in percentage terms, of each regime to the total size of intellectual property legislation. Copyright has more than doubled its share of intellectual property legislation, making up just under half of all intellectual property legislation in 2005; it made up only 22% of all intellectual property legislation in 1906, and was second to designs as the smallest regime. Copyright is now the largest regime. Designs was the smallest regime in 1906, attaining 13% of all intellectual property legislation, the same proportion it contributes today. Designs law remains the smallest regime. Patents has decreased its contribution to the total by approximately one third. It was in 1906, and remains in 2005, the second largest regime overall. Trade marks, which was the largest regime in 1906, has also decreased its contribution to the total by approximately one third. Trade marks is now the second smallest regime overall.

²² See Appendix 1 for the data on which this chart is based.

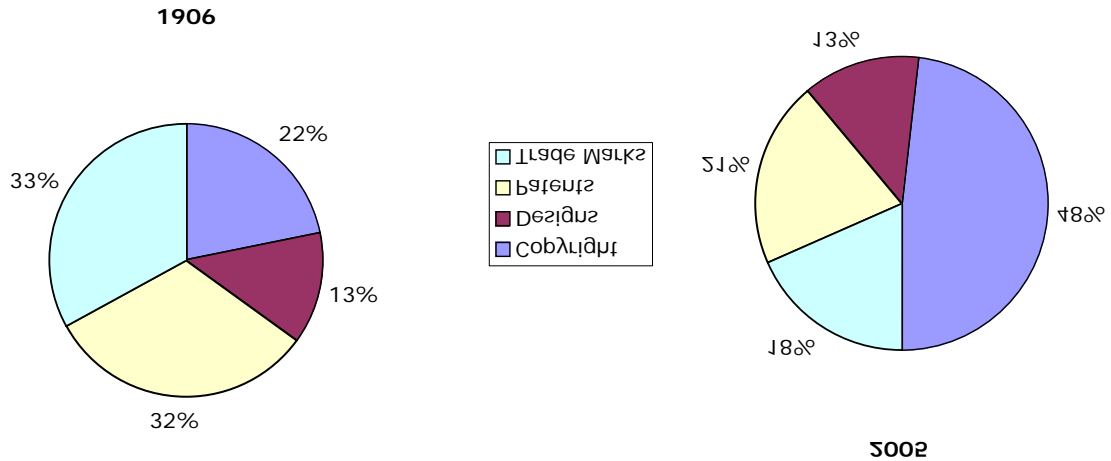


Figure 2. Contributions of Regimes to Volume of Intellectual Property Law
 Copyright, designs, patents, trade marks legislation: 1906 and 2005

3. Growth of Policy Review

The volume of government inquiries into intellectual property law has also increased significantly over the century. Figure 3 illustrates this increase, which is plotted against the data on intellectual property legislation. The purpose of this chart is to show the increase in intellectual property legislation and inquiries over the century on a time scale of 15-year units. Thus, the data on intellectual property legislation are presented quite differently than it was in Figure 1: a third datum point has been incorporated at the 1946-60 point on the time scale.²³

As is illustrated by the chart, the first intellectual property inquiries occur in the 1930s. From 1931 until 1975, there are three inquiries every 15 years or so. From then, the number of intellectual property inquiries soars. In the period 1976-90, 24 inquiries are conducted: this represents an 8-fold increase from the previous 15 year period. From the 1990s until the present, 39 inquiries have been conducted (representing an increase over the previous period of approximately 1.5-fold). As we can also see in Figure 1 above, legislation has also increased dramatically, but at a steadier pace: it has doubled in size by the middle of the century, and it has nearly tripled in size by 2005.

²³ It is important to note that though the intellectual property legislation data series has been drawn from the data on the subsections of the copyright, designs, patents and trade marks legislation over time, it contains a certain level of approximation in two respects. First, we use only three data points (1901-15, 1946-60, 1991-05). Second, it was not possible to obtain the 1946-60 consolidated reprints of the relevant Copyright Act and Designs Act, in order to count the subsections. Therefore, the number of subsections for each Act was estimated using a trendline based on the available data.

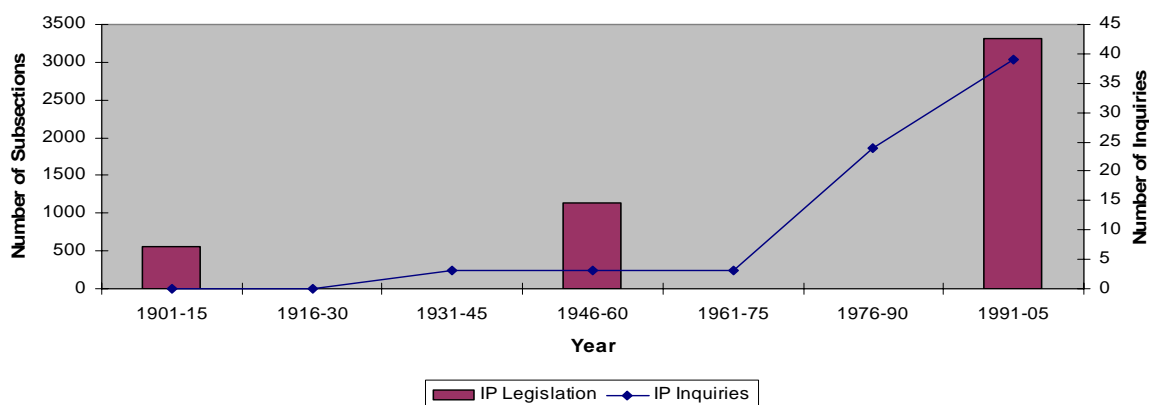


Figure 3. Volume of Intellectual Property Inquiries and Legislation²⁴

Intellectual Property Inquiries and Legislation: 1901-2005

B. INDIVIDUAL IP REGIMES

1. Copyright

Figure 4 shows the number of subsections in copyright legislation and the number of copyright inquiries from federation until the present. The chart illustrates a substantial increase in the size of copyright legislation, and in the number of copyright inquiries, over the century.

The *Copyright Act 1905* (Cth) commences at 120 subsections. After the introduction of the *Copyright Act 1912* (Cth), which enacted the United Kingdom *Copyright Act 1911* as Australian law, the current *Copyright Act 1968* (Cth) was introduced. At its enactment, it contained 616 subsections, five times the number of subsections contained in the original 1905 Act. Currently, the *Copyright Act* weighs in at 1597 subsections; that is, the Act has doubled in size since it was introduced in 1968. Overall, copyright legislation has expanded twelve-fold from federation until the present.

The number of copyright law inquiries has increased dramatically from federation until the present. Indeed, no copyright law inquiry had been conducted until the first copyright law inquiry in 1933: in the first ever inquiry into any intellectual property law, public performance rights were investigated

²⁴ See Appendix 1 for the data on which this chart is based.

by the Owen Committee.²⁵ The next inquiry did not take place until 1958 when the Spicer Committee conducted a wide-ranging review of Australian copyright law.²⁶ The recommendations of the Spicer Committee were not implemented until the *Copyright Act 1968* (Cth) was introduced. The next inquiry into copyright law was the Franki Committee review on reprographic reproduction in 1974.²⁷ During the 1976-90 period, 10 inquiries occurred (a ten-fold increase on the number of inquiries occurring in the previous 15 year period – namely, one). Since 1991, there have been 27 separate government inquiries relating to copyright law.

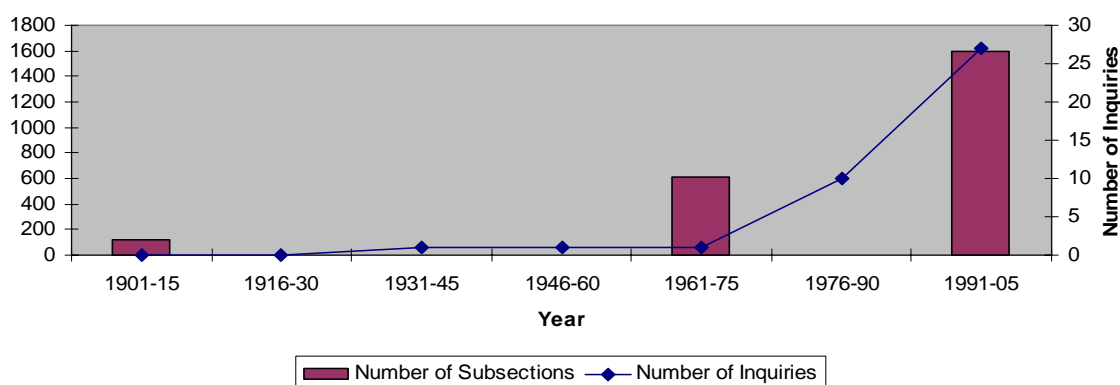


Figure 4. Copyright Law and Policy-Making²⁸

Volume of copyright legislation and inquiries: 1901-2005

2. Designs

Figure 5 shows the number of subsections in designs legislation and the number of designs inquiries from federation until the present. The chart illustrates a significant increase in the size of designs legislation, and in the number of designs inquiries, over the century. This increase takes place on a smaller scale than occurred in relation to copyright.

The *Designs Act 1906* (Cth) debuts at a compact 73 subsections. Interestingly, no replacement legislation is introduced until 2003, when the current *Designs Act 2003* (Cth) was enacted. This Act contained 432 subsections when

²⁵ *Report of the Royal Commission on Performing Rights* (1933) Cth Gov Printer, Canberra.

²⁶ The committee reported in 1959: *Report of the Committee appointed by the Attorney-General of the Commonwealth to consider what alterations are desirable to the Copyright Law of the Commonwealth* (22 December 1959) Government Printer, Canberra, 1965.

²⁷ *Copyright Law Committee on Reprographic Reproduction: Report*, AGPS, Canberra 1976.

²⁸ See Appendix 2 for precise data on the number of inquiries and the number of subsections in each of the Acts counted.

introduced, a figure which has not since increased. Designs legislation has thus increased six-fold from federation to the present.

The number of designs law inquiries has also increased from federation until the present. All was quiet on the designs inquiry front until 1970 when the Franki Committee conducted its inquiries, producing two reports: one specifically relating to designs, and one relating to utility models with substantive content concerning designs.²⁹ In the 1976-90 period, the number of inquiries into designs law increased to three, including the significant Lahore Committee inquiry,³⁰ which led to a full scale review of designs law by the Australian Law Reform Commission in 1992.³¹ Following the release of the ALRC report in 1995, new designs legislation was not enacted until 2003. Since 1991, there have been 11 inquiries relating to designs law.

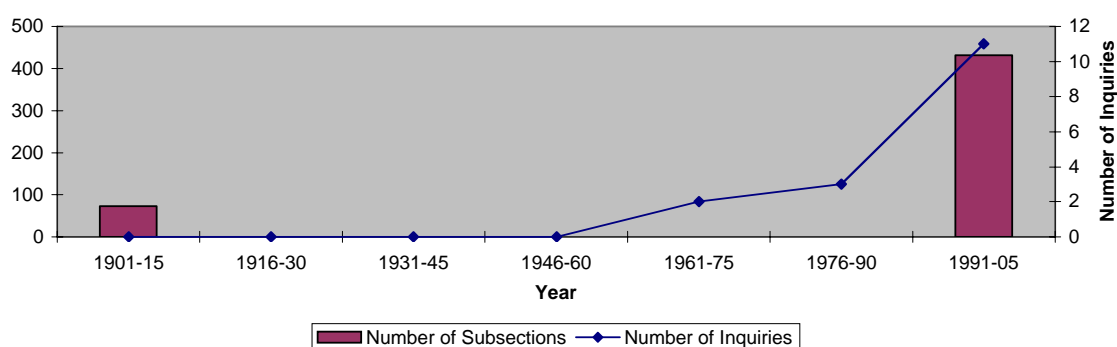


Figure 5. Designs Law and Policy-Making³²

Volume of designs legislation and inquiries: 1901-2005

3. Patents

Figure 6 shows the number of subsections in patents legislation and the number of patents inquiries from federation until the present. The chart illustrates a steady and substantial increase in the size of patents legislation, and in the number of patents inquiries, over the century. While the increase is significant, it is less substantial than that of both copyright and designs.

²⁹ Designs Law Review Committee, *Report on the Law relating to Designs (First Term of Reference)* Parl Paper No1 (1973) and *Report relating to Utility Models (Second Term of Reference)*, Parl Paper No 121 (1973). The reports were counted as two inquiries.

³⁰ Lahore Committee, *Inquiry into Intellectual Property Protection for Industrial Designs – A Report to the Minister for Industry, Technology and Commerce* (1991).

³¹ Australian Law Reform Commission, *Designs – Final Report (ALRC 74)* (1995).

³² See Appendix 3 for the data on which this chart is based.

The *Patents Act 1903* (Cth) starts at 177 subsections, already significantly larger than the *Copyright Act 1905* (Cth) and *Designs Act 1906* (Cth), and on an approximate par with the *Trade Marks Act 1905* (Cth). The next patents legislation is enacted nearly 50 years later: the *Patents Act 1952* (Cth) is just over twice the size of the first Act, containing 399 subsections. When introduced, the current *Patents Act 1990* (Cth) was 1.5 times that size again, with 573 subsections. By 2005, the Act has increased to 683 subsections. Overall, patents legislation had quadrupled in size from federation until the present.

The number of patents law inquiries has increased substantially from federation until the present. The first patents inquiry took place in 1935 with the Knowles Committee review of patent law.³³ This review was followed by the Dean Committee inquiry in 1950,³⁴ and the Franki Committee inquiry into utility models in 1970.³⁵ In the 1976-90 period, the number of patents inquiries increases seven-fold (to seven). It was during this time that perhaps the most significant recent inquiry occurred: the Industrial Property Advisory Committee's review of patent law which commenced in 1979, and was not completed until 1984.³⁶ This review contributed to the enactment of the current *Patents Act 1990* (Cth). The latest period shows the number of patents inquiries doubling again: 16 inquiries into patents legislation have been conducted since 1991.

³³ The reports of the Knowles Committee are contained in the subsequent Dean Committee report: *Report of the Committee appointed by the Attorney-General of the Commonwealth to consider what Alterations are Desirable in the Patent Law of the Commonwealth*, 1952.

³⁴ *Ibid.*

³⁵ *Report relating to Utility Models (Second Term of Reference)*, Parl Paper No 121 (1973).

³⁶ Industrial Property Advisory Committee, *Patents, Innovation and Competition in Australia – A Report to the Minister for Science and Technology* (1984).

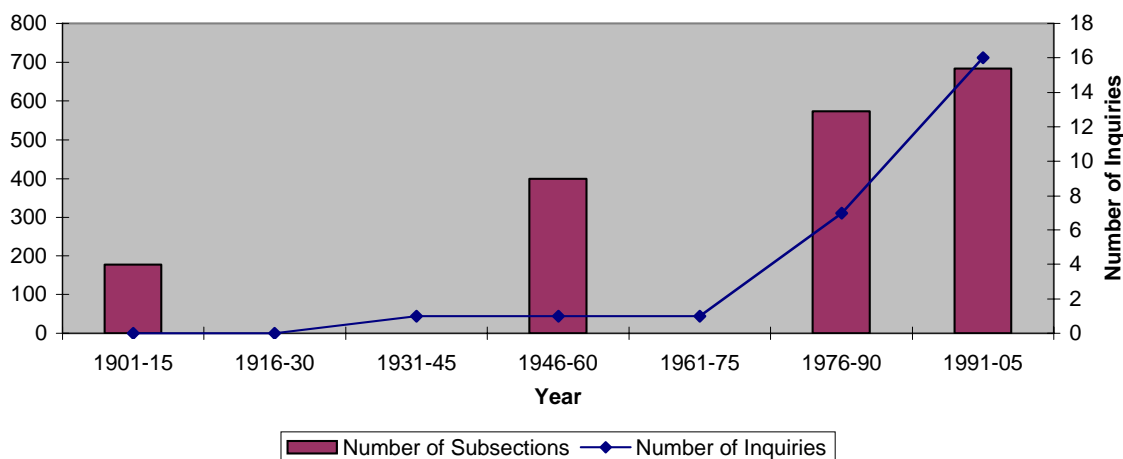


Figure 6. Patents Law and Policy-Making³⁷

Volume of patents legislation and inquiries: 1901-2005

4. Trade Marks

Figure 7 shows the number of subsections in trade marks legislation and the number of trade marks inquiries from federation until the present. The chart illustrates an increase in trade marks legislation, and in the number of inquiries into trade marks legislation, which is unique among the four intellectual property regimes for two reasons: the size of the increase in the number of subsections, and the pattern of the increase in the number of inquiries.

Of all four regimes, the increase in the number of subsections in trade marks legislation is the smallest, though, overall, trade marks legislation expands by more than three-fold from federation until the present. The *Trade Marks Act 1905* (Cth) starts at 183 subsections. Fifty years later, the new *Trade Marks Act 1955* (Cth) is nearly twice the size, reaching 332 subsections. The current *Trade Marks Act 1995* (Cth) contained 566 subsections when it was introduced, representing a near two-fold increase. The Act has expanded by a factor of 1.1 since then, to measure 605 subsections today.

The number of trade marks inquiries increases over the century, but the data show a pattern of increase that is somewhat different to the other intellectual property regimes. The first trade marks inquiry occurs relatively early, with the Knowles Committee inquiry in 1938.³⁸ This inquiry is resumed and completed

³⁷ See Appendix 4 for the data on which this chart is based.

³⁸ The report of the Knowles Committee is contained in the subsequent *Dean Committee report: Report of the Committee appointed to consider what Alterations are desirable to the Trade Marks Law of the Commonwealth*, 1954.

in 1954.³⁹ Twenty-four years passes before the next inquiry commences,⁴⁰ so that the number of inquiries in the 1961-75 time period has fallen to zero. From the 1980s onwards, the number of inquiries increases substantially.

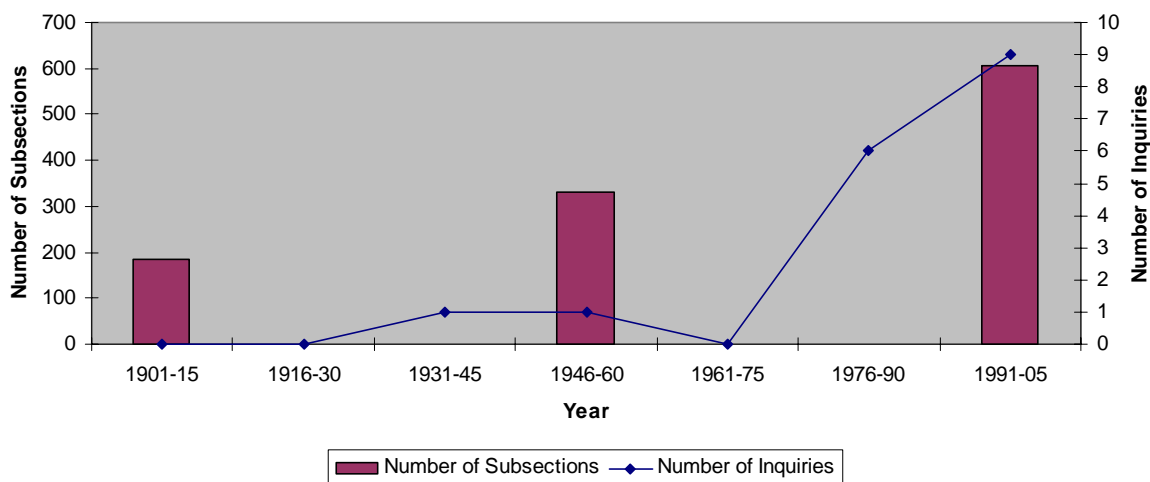


Figure 7. Trade Marks Law and Policy-Making⁴¹

Volume of trade marks legislation and inquiries: 1901-2005

III. IP LAW AND POLICY-MAKING IN CONTEXT

A. GROWTH OF OTHER COMMERCIAL LEGISLATION: CORPORATIONS LAW

A legislative baseline comparator will assist in contextualising the growth of intellectual property legislation that we have observed above. In this section, we set out data on the growth of corporations legislation over the course of the century. Figure 8 shows the volume of corporations legislation plotted against the overall volume of all intellectual property legislation (the sum total of all subsections of all legislation across the four regimes) over the century.

Figure 8 shows the number of subsections in each new piece of corporations legislation introduced over the century.⁴² The first datum point on the chart shows the number of subsections in the *Companies Act 1899* (NSW): 467

³⁹ Ibid.

⁴⁰ Industrial Property Advisory Committee, *Report: The Trade Marks Act and Importation of Goods bearing a Registered Trade Mark*, AGPS: Canberra, 1981. The inquiry commenced in 1979.

⁴¹ See Appendix 5 for the data on which this chart is based.

⁴² It should be noted that, as mentioned above, our 15 year ‘snapshot’ methodology meant that we did not count the number of subsections in the 1981 *Companies* (NSW) Code, since we counted the *Corporations Law 1990* for this time period.

subsections. By 1936, the Act has more than doubled in size, to reach 1016 subsections. The 1961 Act is approximately one-and-a-half times larger than its predecessor. The most significant increase in size takes place in the following 30 years, during which time the Act expands nearly four-fold, reaching 5164 subsections. The current Act is one-and-a-half times larger again.

Interestingly, both sets of legislation start at approximately the same size at federation, yet the expansion of corporations law is shown to be far greater than that of intellectual property legislation. In the 1901-15 period, corporations legislation commences at 467 subsections, slightly smaller than the total intellectual property legislation in force at the time (553 subsections).⁴³ Currently, the corporations legislation towers over the total intellectual property legislation, with the former reaching 7229 subsections, just over double the comparatively meagre 3317 total subsections of intellectual property legislation. Over the century, corporations legislation increases 15-fold while intellectual property law increases only six-fold. Thus, it is clear that the expansion of corporations law is far more pronounced than that of intellectual property law.

Both sets of legislation evidence a rapid rate of increase which, broadly speaking, could be described as ‘exponential’ – and we emphasise that we are not adopting a precise mathematical definition of the term, but rather simply referring to a growth which is ‘becoming more and more rapid’.⁴⁴ The rate of growth in the corporations legislation has been somewhat higher than that of all intellectual property legislation, mainly due to the spike in corporations legislation in the 1961-75 to 1976-90 period. Thus, on average, corporations legislation has tended approximately to *triple* in size every thirty years or so, while intellectual property law has tended approximately to *double* in size every thirty years or so.

⁴³ It should be noted that though corporations legislation is smaller, it can perhaps be inferred that it is possibly a larger area of law conceptually, or in substantive content, because it is but a single piece of legislation, as opposed to four separate pieces of legislation regulating separate intellectual property regimes. This inference is based on the assumption that four pieces of legislation would naturally tend to accrue extra ‘administrative’ subsections, simply by virtue of being separate Acts, whereas a single Act would be more ‘efficient’ in this regard. That corporations law is indeed a larger area of law is indicated by its dramatic expansion over the century.

⁴⁴ *Compact Oxford English Dictionary*, accessed on 8/4/04 at http://www.askoxford.com/concise_oed/exponential?view=uk.

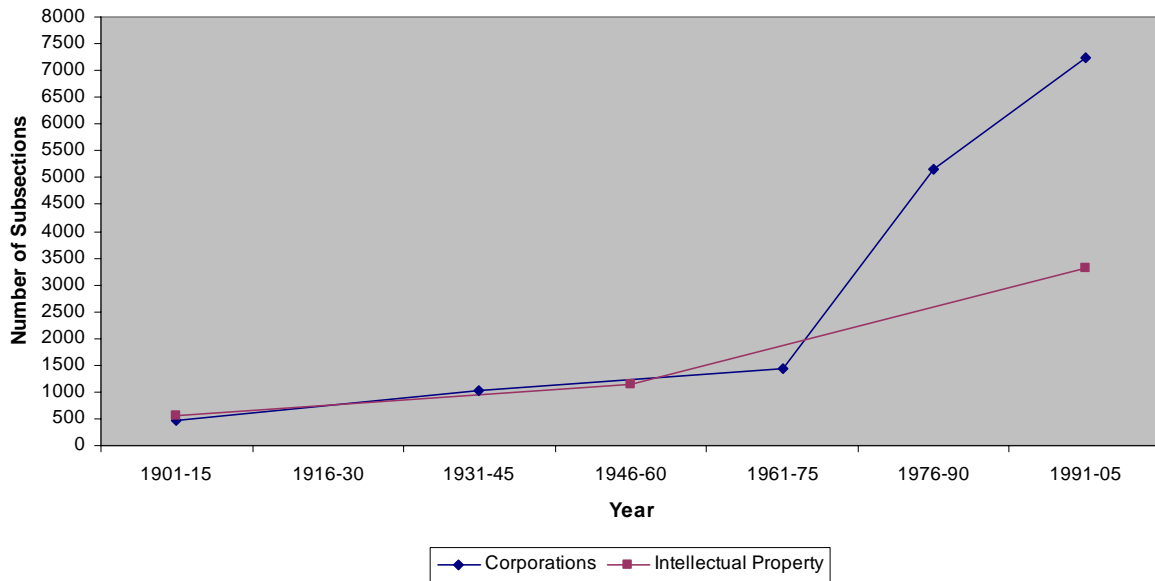


Figure 8. Volume of Corporations Law and Intellectual Property Law⁴⁵
 Corporations and intellectual property legislation: 1901-2005

B. ECONOMIC GROWTH: GROSS DOMESTIC PRODUCT

1. Definition and Statistical Issues

Gross Domestic Product (GDP) is, simply put, a measure of how big an economy is.⁴⁶ GDP is formally defined as ‘the total market value of goods and services produced within a given period after deducting the cost of goods utilised in the process of production’⁴⁷ or, in other words, ‘the unduplicated value of production that occurs in Australia during a particular period’.⁴⁸ The term ‘gross’ indicates that no deduction has been made for the consumption of fixed capital (depreciation).⁴⁹

⁴⁵ See Appendices 1 and 6 for the data on which this chart is based.

⁴⁶ For a clear and simple explanatory article on GDP, see NZIER, ‘GDP: its measurement and meaning’, available at http://www.nzier.org.nz/SITE_Default/SITE_economics_explained/GDP.asp (accessed 21/3/05).

⁴⁷ Ibid.

⁴⁸ Australian Bureau of Statistics, *Australia Now – Measuring Australia’s Economy*, ‘Section 1. Measuring Economic Activity’, available at <http://www.abs.gov.au/Ausstats/abs@.nsf/94713ad445ff1425ca25682000192af2/70ef43745fa5445eca256cbf0017216f!OpenDocument> (accessed at 21/3/05).

⁴⁹ Ibid.

We draw our data on GDP from the sources available from the Australian Bureau of Statistics (ABS), including historical publications, and current publications available from the ABS web site. It was necessary to draw on various ABS data sources, which had been compiled in different years, and sometimes with slightly different methods of calculation.⁵⁰

Apart from these statistical issues, there is a general issue of which method is used to measure GDP. There are three ways of measuring GDP: the value of goods and services produced by an industry less the costs of production (production approach); the sum of incomes generated by production (income approach); and the sum of final expenditure, plus exports minus imports (expenditure approach).⁵¹ In the ABS data, different measures have been used in different periods. Nevertheless, we consider that this has not posed a significant threat to the comparability of the data, especially given the long-term nature of this study.⁵²

2. Data Analysis

Figure 9 demonstrates that the number of subsections of intellectual property legislation as a proportion of GDP declines markedly over the century. At federation, for every \$billion unit of GDP, there are approximately 1030 subsections of intellectual property legislation. By the middle of the century, there are only approximately 140 subsections for each \$billion unit of GDP. By 2003-04, for each \$billion unit of GDP, there are only roughly 4 subsections of intellectual property legislation.

⁵⁰ GDP may be presented as either 'real' or 'nominal'. Nominal GDP is the final value of the goods and services produced in a given year, in 'current prices'. Real GDP is the inflation-adjusted measure of nominal GDP; it adjusts the dollar value based on a particular reference year, and is expressed in 'constant prices' (Australian Bureau of Statistics, *Australian National Accounts: National Income and Expenditure 1992-93*, ABS Catalogue No. 5204.0, 113; NZIER, above n 46). The scope of our inquiry indicated that compiling nominal – or 'current price measures' of – GDP was appropriate. In any case, data for the earliest period was available only in current price measures.

⁵¹ Australian Bureau of Statistics, above n 48 and n 50. See also NZIER, above n 46.

⁵² In any case, each measure 'should, conceptually, deliver the same estimate of GDP', though statistical discrepancies can occur (Australian Bureau of Statistics, *AusStats 5204.0: Australian System of National Accounts 2003-04*, 'Explanatory Notes', available at <http://www.abs.gov.au/ausstats>). Such discrepancies are more significant when examining short-term movement in GDP (Australian Bureau of Statistics, above n 50, 104). Moreover, due to the introduction of a new statistical method in 1993, there is no statistical discrepancy for the annual estimates from 1994-5 up to 2002-03. The *System of National Accounts 1993* (SNA93) integrated Australian national accounts estimates with annual balanced supply and use tables, ensuring that the same estimate of GDP is obtained from the three approaches (Australian Bureau of Statistics, above n 50, 104).

Figure 9 shows that, like intellectual property legislation, the number of subsections of corporations legislation as a proportion of GDP declines significantly over the century. Indeed, the rate of that decline is quite similar to that of intellectual property legislation. Referring to figure 8 above, which sets out the volume of intellectual property and corporations legislation over the century, it can already be deduced that both legislative regimes will reach a similar proportion of GDP at the mid-century point: indeed, for every \$billion unit of GDP mid-century there is also approximately 140 subsections of corporations legislation.⁵³ At federation, for every \$billion unit of GDP, there are approximately 900 subsections of corporations legislation, a proportion which is slightly less than that of intellectual property legislation. By 2003-04, for each \$billion unit of GDP, there are only 9 subsections of corporations legislation, a figure which is about double the intellectual property legislation as a proportion of GDP. In summary then, intellectual property legislation and corporations legislation show a similar rate of decline as a proportion of GDP, though corporations law starts as slightly smaller proportion of GDP than intellectual property, and ends as a larger proportion of GDP.

⁵³ It should be noted that, given that no data had been obtained in relation to a particular Act within the 1946-60 period, the number of subsections for the corporations legislation was estimated using a trendline based on the available data.

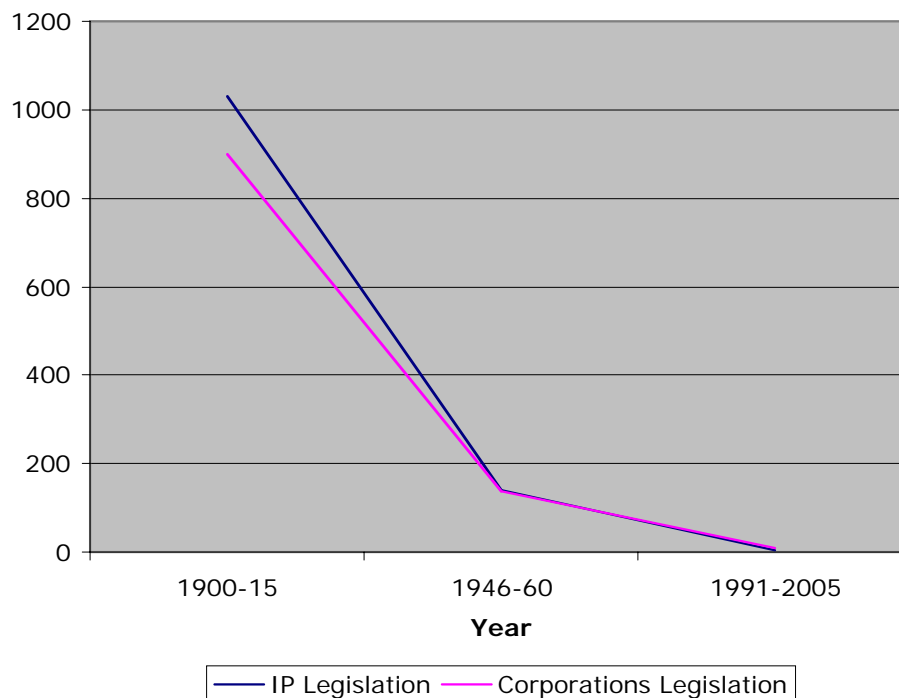


Figure 9. IP and Corporations Legislation as a proportion of GDP⁵⁴
 Intellectual Property and Corporations legislation: 1901-2005

III. CONCLUSION

This paper has reviewed the history and development of intellectual property law and policy-making from federation until the present with, so to speak, a ‘zoomed-out’ focus. This perspective observes intellectual property law and policy-making within the context of another body of law and the economy. Such a contextualised representation of the growth trends in intellectual property enables us to determine whether the data indicate any potential problems with the process of intellectual property law and policy-making. Before making substantive comments, we will briefly summarise our observations on the data, in order to construct an overall picture of the results of our study.

⁵⁴ Data on GDP was obtained from the following ABS sources: ABS, *Australian National Accounts: National Income and Expenditure 1995-96*, Catalogue No. 5204.0, Table 87 ‘Principle Aggregates at Current Prices 1900-01 to 1948-49 (\$million)’, p 80 (for the years 1900/01-1948/9) and Table 90 ‘Domestic Production Account (\$million)’, p 85 (for the years 1948/9-1960/1); ABS, AusStats 5204.0: Australian System of National Accounts 2003-04, Table 1 ‘Key National Accounts Aggregates’, available at <http://www.abs.gov.au/ausstats>.

1. Summary of Findings

First, we examined the movement of all intellectual property legislation and all intellectual property inquiries over the century. We saw that intellectual property legislation had increased significantly, and at an exponential rate. The same was true of intellectual property inquiries. Intellectual property legislation, in particular, showed a steady rate of increase – it doubled in size every 30 years or so.

Secondly, we examined legislation and inquiries broken down to the level of individual regimes. Copyright legislation showed the most dramatic increase: it had increased 12 fold from federation until the present. Designs legislation had increased approximately six-fold. Patents had increased nearly four-fold. Trade marks legislation had approximately tripled. For each regime, the number of government inquiries begins to rise dramatically in the second half of the century.

Thirdly, we compared the change in size of intellectual property legislation with the change in size of corporations legislation. This comparison demonstrated that while intellectual property legislation has expanded exponentially over the century, its expansion is not nearly so dramatic as that of corporations legislation. We saw that, on average, corporations legislation tended approximately to triple in size every thirty years or so, while intellectual property legislation tended approximately to double in size every thirty years or so.

Finally, we analysed the volume of both intellectual property law and corporations law as a proportion of GDP from federation until the present. We saw that the number of subsections of both bodies of legislation as a proportion of GDP declined substantially over the century.

2. Comments on Findings

The above observations present a picture of intellectual property law and policy-making as increasing exponentially from federation until the present. When viewed in the context of the growth of a similar body of statutory law, this exponential increase appears less stark than it might if viewed in isolation: next to the behemoth that is corporations legislation, intellectual property legislation does not appear so monstrous. Furthermore, when the growth of intellectual property law and policy-making is observed in the context of the enormous growth of the Australian economy, it seems even less ominous. Both corporations and intellectual property legislation behave similarly in showing a rapid decline in proportion to GDP.

We suggest that this indicates that a base level of regulation of a particular area (such as intellectual property, or corporations) is necessary, but that this level will not need to increase in proportion the size of the economy. In any case, it is apparent that the growth of intellectual property law and policy-making might in part be ascribed to the growth in the economy, but that the volume of intellectual property law and policy-making will not necessarily continue to rise as the economy expands.

The new, contextualised, data indicate that it might be necessary to modify our previous position on the growth of intellectual property law and policy-making; namely, that it was ‘virus-like’ and needed to be contained.⁵⁵ Indeed, it is still true that the growth of intellectual property is exponential, but whether it should be viewed so pejoratively is doubtful. In the context of the growth of a comparable body of legislation (corporations law), the growth does not appear unusual; rather, the growth appears to be *relatively* conservative. In the context of the growth of the economy, the growth of intellectual property also appears less worrying than it did in isolation.

The overall results of this study provide no strong indication that the current intellectual property law and policy-making process – including the administrative, law and policy-making infrastructure – is sub-optimal. The data show that the growth of intellectual property legislation is in no way out of keeping with the growth of a similar body of legislation. The data also show that the growth of intellectual property law is more than accounted for by the growth of the economy, and that the volume of intellectual property law has actually declined as a proportion of the size of the economy.

Thus, it is possible to conclude that, in light of the new data presented in this paper, there is no clear *quantitative* basis for the reform of the intellectual property law and policy-making process at this stage. If it is appropriate to institute reforms – such as Ricketson’s proposal for unifying the administration of intellectual property – then any justifications must be *qualitative*, rather than quantitative.

⁵⁵ Christie and Caine, above n 10.

Appendix 1 – All Intellectual Property Legislation and Inquiries

	1901-15	1916-30	1931-45	1946-60	1961-75	1976-90	1991-05
LEGISLATION (number of subsections)	533			1331			3317
<i>Copyright Act</i>	120			500 ⁵⁶			1597
<i>Designs Act</i>	73			100 ⁵⁷			432
<i>Patents Act</i>	177			399			683
<i>Trade Marks Act</i>	183			332			605
INQUIRIES	0	0	3	3	3	24	39

⁵⁶ This figure is notional, representing the 1946-60 point on the trend line between the 1901-15 figure (120 subsections) and the 2005 figure (1597 subsections).

⁵⁷ This figure is notional, representing the 1946-60 point on the trend line between the 1901-15 figure (73 subsections) and the 2005 figure (432 subsections).

Appendix 2 – Copyright Legislation and Inquiries

Legislation

	Name of Legislation	Number of Subsections
1.	<i>Copyright Act 1968</i> (Cth) consolidated as at 1 January 2005	1597
2.	<i>Copyright Act 1968</i> (Cth) as introduced	616
3.	<i>Copyright Act 1905</i> (Cth)	120

Inquiries

	Author	Title	Date
Attorney-General's Department & Department of Communications, Information Technology and the Arts (DCITA)			
1.	DCITA	<i>Resale Royalty Inquiry</i>	2004 (ongoing)
2.	Phillips Fox (for Attorney-General's Department)	<i>Digital Agenda Copyright Reforms Review – Review of the Copyright Amendment (Digital Agenda) Act 2000</i> (Cth)	2003 (-2004)
3.	Rupert Myer (for Minister for the Arts and the Centenary of Federation)	<i>Contemporary Visual Arts and Craft Inquiry (the Myer Report)</i>	2001 (-2002)
4.	DCITA and Attorney-General's Department	<i>Duration of Copyright in Photographs – Discussion Paper</i>	2000 (-2000)
5.	Attorney-General's Department and Department of Communication and the Arts	<i>Performers' Intellectual Property Rights: Scope of Extended Rights for performers under the Copyright Act 1968 – Discussion Paper</i>	1997 (-1997)
6.	Attorney-General's Department and Department of Communication and the Arts	<i>Copyright Reform and the Digital Agenda: Proposed Transmission Right, Right of Making Available and Enforcement Measures – Discussion Paper July 1997</i>	1997 (-2000)
7.	Brad Sherman & Lionel Bently (for Department of Communication and the Arts)	<i>Performers' Rights: Options for Reform</i>	1995 (-1995)
8.	Shane Simpson (for Attorney-General's Department and Department of Communication and the Arts)	<i>Review of Australian Copyright Collecting Societies, A Report to a Working Group of the Australian Cultural Development Office and the Attorney-General's Department, (the Simpson Report)</i>	1994 (-1995)
9.	Attorney-General's Department & Department of Communication & the Arts	<i>Proposed Moral Rights Legislation for Copyright Creators - Discussion Paper June 1994</i>	1994 (-94)
10.	Attorney-General's Department, and Aboriginal and Torres Strait Islander Commission (ATSIC)	<i>Stopping the Rip-Offs: Intellectual Property Protection for Aboriginal and Torres Strait Islander Peoples</i>	1994 (-94)

11.	Attorney-General's Department	<i>Discussion Paper: Copyright Protection for Artistic Works Industrially Applied</i>	1987 (-87)
12.	Attorney-General's Department	<i>Review of Audiovisual Copyright Law</i>	1982 (-82)
13.	Copyright Law Committee, chaired by Robert Franki (for the Attorney-General's Department)	<i>Copyright Law Committee on Reprographic Reproduction (the Franki Report)</i>	1974 (-76)
14.	Spicer Committee Attorney-General	<i>Report of the Committee appointed by the Attorney-General of the Commonwealth to consider what Alterations are desirable to the Copyright Law of the Commonwealth</i>	1958 (-59)
15.	Owen Committee (Royal Commission on Performing Rights)	<i>Report of the Royal Commission on Performing Rights</i>	1933 (-33)
Copyright Law Review Committee (CLRC)			
16.	CLRC	<i>Crown Copyright – Government Ownership of Copyright</i>	2003 (ongoing)
17.	CLRC	<i>Copyright and Contract</i>	2001 (-2002)
18.	CLRC	<i>Jurisdiction and Procedures of the Copyright Tribunal</i>	1999 (-2000)
19.	CLRC	<i>Simplification of the Copyright Act Pt 1 (Exceptions)</i>	1996 (-1998)
	CLRC	<i>Simplification of the Copyright Act Pt 2 (Subject Matter and Rights)</i>	1996 (-1999)
20.	CLRC	<i>Journalists' Copyright</i>	1992 (-1994)
21.	CLRC	<i>Computer Software Protection</i>	1988 (-1995)
22.	CLRC	<i>Conversion Damages</i>	1987 (-1990)
23.	CLRC	<i>Moral Rights</i>	1984 (-1988)
24.	CLRC	<i>Importation Provisions of Copyright Act</i>	1983 (-1988)
25.	CLRC	<i>Performers' Protection</i>	1983 (-1987)
26.	CLRC	<i>Use of Copyright Materials by Churches</i>	1983 (-1985)
27.	CLRC	<i>Reference Concerning the Meaning of Publication</i>	1983 (-1984)
Ad hoc inquires			

28.	Senate Legal and Constitutional References and Legislation Committee Senate	<i>Inquiry into the Copyright Legislation Amendment Bill 2004</i>	2004 (-2004)
29.	Centre for International Economics (for Department of Foreign Affairs and Trade)	<i>Economic Analysis of the AUSFTA: Impact of the bilateral Free Trade Agreement with the United States</i>	2004 (-2004)
30.	Joint Standing Committee on Treaties	<i>Australia-US Free Trade Agreement Inquiry</i>	2004 (-2004)
31.	Senate Select Committee on AUSFTA	<i>Senate Select Committee on the Free Trade Agreement between Australian the United States of America (AUSFTA)</i>	2004 (-2004)
32.	Intellectual Property Competition Review Committee (chaired by Henry Ergas)	<i>Review of intellectual property legislation under the Competition Principles Agreement (Ergas Report)</i>	1999 (-2000)
33.	House Standing Committee on Legal and Constitutional Affairs	<i>Cracking Down on Copycats: Enforcement of Copyright in Australia</i>	1999 (-2000)
34.	House Standing Committee on Legal and Constitutional Affairs	<i>Advisory Report on the Copyright Amendment (Digital Agenda) Bill 1999</i>	1999 (-1999)
35.	House Standing Committee on Legal and Constitutional Affairs Attorney-General	<i>Don't stop the music! A report of the inquiry into copyright, music and small business</i>	1997 (-1998)
36.	Terri Janke, Michael Frankel & Co, & House Standing Committee on Legal and Constitutional Affairs (for Australian Institute of Aboriginal and Torres Strait Islander Studies & Aboriginal and Torres Strait Islander Commission)	<i>Our Culture, Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights</i>	1996 (-1997)
37.	Prices Surveillance Authority	<i>Inquiry into Book Prices and Parallel Imports – relates to parallel importation controls of the Copyright Act re books</i>	1994 (-1994)
38.	Copyright Convergence Group	<i>Highways to Change: Copyright in the New Communications Environment –Report of the Copyright Convergence Group</i>	1993 (-1994)
39.	Prices Surveillance Authority	<i>Inquiry into Prices of Computer Software</i>	1992 (-1992)
40.	Prices Surveillance Authority	<i>Inquiry into the Prices of Sound Recordings</i>	1990 (-1990)

Appendix 3 – Designs Legislation and Inquiries

Legislation

	Name of Legislation	Number of Subsections
1.	<i>Designs Act 2003</i> (Cth) consolidated as at 1 January 2005	432
2.	<i>Designs Act 2003</i> (Cth) as introduced	432
3.	<i>Designs Act 1906</i> (Cth)	73

Inquiries

	Author	Title	Date ⁵⁸
<i>Advisory Council on Intellectual Property (ACIP)/Intellectual Property Advisory Committee (IPAC)</i>			
1.	ACIP	<i>Consideration of Crown Use provisions for patents and designs</i>	2003 (ongoing)
2.	ACIP	<i>Consideration of extending the jurisdiction of the Federal Magistrates Service to patent, trade marks and designs matters</i>	2001 (-2004)
3.	ACIP	<i>Review of Enforcement of Industrial Property Rights</i>	1996 (-1996)
4.	IPAC	<i>Practice and Procedures for enforcement of industrial property rights in Australia</i>	1988 (-1992)
5.	IPAC	<i>Report on the provisions of the Designs Act 1906 relating to infringement by articles imported from abroad</i>	1985 (-1985)
<i>Ad hoc inquiries</i>			
6.	Centre for International Economics (for Department of Foreign Affairs and Trade)	<i>Economic Analysis of the AUSFTA: Impact of the bilateral Free Trade Agreement with the United States</i>	2004 (-2004)
7.	Joint Standing Committee on Treaties	<i>Australia-US Free Trade Agreement Inquiry</i>	2004 (-2004)
8.	Senate Select Committee on AUSFTA	<i>Senate Select Committee on the Free Trade Agreement between Australian the United States of America (AUSFTA)</i>	2004 (-2004)
9.	Intellectual Property Competition Review Committee (chaired by Henry Ergas)	<i>Review of intellectual property legislation under the Competition Principles Agreement (Ergas Report)</i>	1999 (-2000)
10.	Terri Janke, Michael Frankel & Co, & House Standing Committee on Legal and Constitutional Affairs (for Australian Institute of Aboriginal and Torres Strait Islander Studies & Aboriginal and Torres Strait Islander Commission)	<i>Our Culture, Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights</i>	1996 (-1997)
11.	Attorney-General's Department, and Aboriginal and Torres Strait	<i>Stopping the Rip-Offs: Intellectual Property Protection for Aboriginal and Torres Strait</i>	1994 (-1994)

⁵⁸ The date of the commencement of the inquiry is shown. The date of reporting is shown in brackets.

	Islander Commission (ATSIC)	<i>Islander Peoples</i>	
12.	Australian Law Reform Commission	<i>Australian Designs Law Review</i>	1992 (-1995)
13.	Lahore Committee	<i>Inquiry into Intellectual Property Protection for Industrial Designs</i>	1989 (-1991)
14.	Designs Law Review Committee, chaired by Robert Franki	<i>Report relating to Utility Models- Second Term of Reference</i> (Parliamentary Paper No 121 August 1973)	1970 (-1973)
15.	Designs Law Review Committee, chaired by Robert Franki	<i>Report on the Law Relating to Designs – First Term of Reference</i> , (Parliamentary Paper No 1 February 1973)	1970 (-1973)

Appendix 4 – Patents Legislation and Inquiries

Legislation

	Name of Legislation	Number of Subsections
1.	<i>Patents Act 1990</i> (Cth) consolidated as at 1 January 2005	683
2.	<i>Patents Act 1990</i> (Cth) as introduced	573
3.	<i>Patents Act 1952</i> (Cth)	399
4.	<i>Patents Act 1903</i> (Cth)	177

Inquiries

	Author	Title	Date⁵⁹
<i>Advisory Council on Intellectual Property (ACIP)/ Industrial Property Advisory Committee (IPAC)</i>			
1.	ACIP	<i>Consideration of Crown Use provisions for Patents and Designs</i>	2003 (ongoing)
2.	ACIP	<i>Consideration of Patents and Experimental Use</i>	2003 (ongoing)
3.	ACIP	<i>Consideration of a position on the Patenting of Business Systems</i>	2002 (-2004)
4.	ACIP	<i>Consideration of Excluding Plant and Animal Subject Material from the Innovation Patent</i>	2001 (-2004)
5.	ACIP	<i>Consideration of Extending the Federal Magistrates Service to Patent, Trade Marks, and Designs Matters</i>	2001 (-2004)
6.	ACIP	<i>Review of Enforcement of Industrial Property Rights</i>	1996 (-1996)
7.	ACIP	<i>Review of the Petty Patent System</i>	1994 (-1994)
8.	IPAC	<i>Practice and Procedures for enforcement of industrial property rights in Australia</i>	1988 (-1992)
9.	IPAC	<i>Patent information for smaller Australian enterprises</i>	1985 (-1986)
10.	IPAC	<i>Extension of the convention period under the Patents Act</i>	1980 (-1981)
11.	IPAC	<i>Patents, innovation and competition in Australia</i>	1979 (-1984)
12.	IPAC	<i>Report on amendment of regulation 7B of Patent Regulations</i>	1978 (-1979)
13.	IPAC	<i>Report on proposed petty patents legislation</i>	1978 (-1978)
<i>Ad hoc Inquiries</i>			
14.	Centre for International Economics (for Department of Foreign Affairs and Trade)	<i>Economic Analysis of the AUSFTA: Impact of the bilateral Free Trade Agreement with the United States</i>	2004 (-2004)
15.	Joint Standing Committee on Treaties	<i>Australia-US Free Trade Agreement Inquiry</i>	2004 (-2004)

⁵⁹ The date of the commencement of the inquiry is shown. The date of reporting is shown in brackets.

16.	Senate Select Committee on AUSFTA	<i>Senate Select Committee on the Free Trade Agreement between Australian the United States of America (AUSFTA)</i>	2004 (-2004)
17.	Australian Law Reform Commission	<i>Gene Patenting and Human Health Inquiry</i> (Issues Paper 27, Discussion Paper 68, Report No. 99)	2002 (-2004)
18.	Professional Standards Board for Patent and Trade Marks Attorneys	<i>Review of the Regulatory Regime for Patent and Trade Marks Attorneys</i>	2002 (-2004)
19.	Intellectual Property Competition Review Committee (chaired by Henry Ergas)	<i>Review of intellectual property legislation under the Competition Principles Agreement (Ergas Report)</i>	1999 (-2000)
20.	House of Representatives Standing Committee on Agriculture, Fisheries & Forestry	<i>Inquiry into Primary Produce Access to Gene Technology – Work in Progress: Proceed with Caution</i>	1999 (-2000)
21.	Terri Janke, Michael Frankel & Co, & House Standing Committee on Legal and Constitutional Affairs (for Australian Institute of Aboriginal and Torres Strait Islander Studies & Aboriginal and Torres Strait Islander Commission)	<i>Our Culture, Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights</i>	1996 (-1997)
22.	Dr Noel Byrne (for the Minister for Primary Industries and Energy and the Minister for Industry, Technology and Commerce)	<i>Legal Protection of Plants in Australia under Patent and Plant Variety Legislation</i> (Byrne report)	1990 (-1990)
23.	Designs Law Review Committee, chaired by Robert Franki	<i>Report relating to Utility Models- Second Term of Reference</i> (Parliamentary Paper No 121 August 1973)	1970 (-1973)

24.	Dean Committee	<i>Report of the Committee appointed by the Attorney-General of the Commonwealth to consider what Alterations are desirable to the Patent Law of the Commonwealth (Dean Committee), 1950-2</i>	1950 (-52)
25.	Knowles Committee	<i>Report of the Committee appointed by the Attorney-General of the Commonwealth to consider what Alterations are desirable to the Patents Law of the Commonwealth (Knowles Committee)</i>	1935

Appendix 5 – Trade Marks Legislation and Inquiries

Legislation

	Name of Legislation	Number of Subsections
1.	<i>Trade Marks Act 1995 (Cth)</i> consolidated as at 1 January 2005	605
2.	<i>Trade Marks Act 1995 (Cth)</i> as introduced	566
3.	<i>Trade Marks Act 1955 (Cth)</i>	332
4.	<i>Trade Marks Act 1905 (Cth)</i>	183

Inquiries

	Author	Title	Date
<i>Advisory Council on Intellectual Property (ACIP) & Intellectual Property Advisory Committee (IPAC)</i>			
1.	ACIP	<i>Consideration of extending the jurisdiction of the Federal Magistrates Service to patent, trade marks and designs matters</i>	2001 (-2004)
2.	ACIP	<i>Review of Enforcement of Industrial Property Rights</i>	1996 (-1996)
3.	IPAC	<i>Practice and Procedures for enforcement of industrial property rights in Australia</i>	1988 (-1992)
4.	IPAC	<i>Legal protection of character merchandising in Australia</i>	1987 (-1988)
5.	IPAC	<i>Qualifications for professional practice in trade mark matters</i>	1987 (-1987)
6.	IPAC	<i>Report on the registration of service marks under the Trade Marks Act 1955 and protection of company and business names</i>	1981 (-1981)
7.	IPAC	<i>The Trade Marks Act and importation of goods bearing a registered trade mark</i>	1979 (-1980)
<i>Ad hoc Inquiries</i>			
8.	Centre for International Economics (for Department of Foreign Affairs and Trade)	<i>Economic Analysis of the AUSFTA: Impact of the bilateral Free Trade Agreement with the United States</i>	2004 (-2004)
9.	Joint Standing Committee on Treaties	<i>Australia-US Free Trade Agreement Inquiry</i>	2004 (-2004)
10.	Senate Select Committee on AUSFTA	<i>Senate Select Committee on the Free Trade Agreement between Australian the United States of America (AUSFTA)</i>	2004 (-2004)
11.	IP Australia	<i>Trade Marks Legislation Review – to review Trade Marks Act 1995 and Regulations</i>	2002 (ongoing)
12.	Professional Standards Board for Patent and Trade Marks Attorneys	<i>Review of the Regulatory Regime for Patent and Trade Marks Attorneys</i>	2002 (-2004)
13.	Intellectual Property Competition Review Committee (chaired by Henry Ergas)	<i>Review of intellectual property legislation under the Competition Principles Agreement (Ergas</i>	1999 (-2000)

		<i>Report)</i>	
14.	Terri Janke, Michael Frankel & Co, & House Standing Committee on Legal and Constitutional Affairs (for Australian Institute of Aboriginal and Torres Strait Islander Studies & Aboriginal and Torres Strait Islander Commission)	<i>Our Culture, Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights</i>	1996 (-1997)
15.	Working Party – Trade Marks Office, Law Council of Australia, Institute of Patent Attorneys of Australia	<i>Recommended Changes to the Australian Trade Marks Legislation</i>	1989 (-1992)
16.	Dean Committee	<i>Report of the Committee appointed by the Attorney General of the Commonwealth to consider what Alterations are desirable to the Trade Marks Law of the Commonwealth</i>	1954 (-1954)
17.	Knowles Committee	<i>Report of the Committee appointed by the Attorney-General of the Commonwealth to consider what Alterations are desirable to the Trade Marks Law of the Commonwealth</i>	1938

Appendix 6 – Corporations Legislation

	Name of Legislation	Number of Subsections
1.	<i>Corporations Act 2001</i> (Cth) consolidated as at 1 January 2005	7229
2.	<i>Corporations Law 1990</i> ⁶⁰	5146
3.	<i>Companies Act 1961</i> (NSW)	1422
4.	<i>Companies Act 1936</i> (NSW)	1016
5.	<i>Companies Act 1899</i> (NSW)	467

⁶⁰ The Corporations Law 1990 is contained in s 82 of the *Corporations Act 1989* (Cth), as amended by the *Corporations Legislation Amendment Act 1990* (Cth), and set out in: *Australian Corporations Legislation*, (3rd ed, 1991) Sydney: Butterworths.

IPRIA Working Papers

No.	Title	Author(s)
20/05	A Quantitative Analysis of Australian Intellectual Property Law and Policy-Making Since Federation	<i>Caine / Christie</i>
19/05	Sellers of Labour or Investors of Intellectual Capital?	<i>Rider</i>
18/05	Measuring Intangible Investment	<i>Hunter / Webster / Wyatt</i>
17/05	Perfect Price Discrimination with Costless Arbitrage	<i>Gans / King</i>
16/05	Has Investment in Start-Up Firms Driven Incumbent Innovative Strategy? Evidence from Semiconductor and Biotechnology Venture Capital Funded Firms	<i>Dewo / Gans / Hirschberg</i>
15/05	Communication in the Digital Environment: An empirical study into copyright law and digitisation practices in public museums, galleries and libraries	<i>Hudson / Kenyon</i>
14/05	A Comment on the Copyright Exceptions Review and Private Copying	<i>Weatherall</i>
13/05	The Culture of Trade Marks: An Alternative Cultural Theory Perspective	<i>Bosland</i>
12/05	Strength of Partnership as a Key Factor in Collaboration between Universities and Industry for Production of IP: A Study of Applications to the BHERT Awards	<i>Mann</i>
11/05	Repeated Interactions & Contract Structure: Evidence from Technology Development Contracts	<i>Ryall / Sampson</i>
10/05	Operationalizing Value-Based Business Strategy	<i>Gans / MacDonald / Ryall</i>
09/05	Determinants of International Patent Examination Outcomes	<i>Palangkaraya / Jensen / Webster</i>
08/05	Intellectual Property Strategy and Business Strategy: Connections Through Innovation Strategy	<i>Samson</i>
07/05	An Empirical Investigation into Patent Enforcement in Australian Courts	<i>Weatherall / Jensen</i>
06/05	Patent Application Outcomes Across the Trilateral Patent Offices	<i>Jensen / Palangkaraya / Webster</i>

05/05	The Effects on Firm Profits of the Stock of Intellectual Property Rights	<i>Griffiths / Jensen / Webster</i>
04/05	Capitalised Intangibles and Financial Analysis	<i>Matolcsy / Wyatt</i>
03/05	Reach-through Patent Claims in Biotechnology: An Analysis of the Examination Practices of the United States, European and Japanese Patent Offices	<i>Lim / Christie</i>
02/05	Venture Capital Taxation in Australia and New Zealand	<i>Stewart</i>
01/05	The New Right of Communication in Australia	<i>Christie / Dias</i>
18/04	Trends in the Value of Intellectual Property in Australia	<i>Griffiths / Webster</i>
17/04	On Technology Locks and the Proper Scope of Digital Copyright Laws – <i>Sony</i> in the High Court	<i>Weatherall</i>
16/04	Techniques for Measuring Intangible Capital: A Review of Current Practice	<i>Wyatt / Webster / Hunter</i>
15/04	Achieving the Optimal Power of Patent Rights	<i>Jensen / Webster</i>
14/04	On The Interaction Between Patent Policy and Trade Secret Policy	<i>Erkal</i>
13/04	The Determinants of Research and Development and Intellectual Property Usage among Australian Companies 1989 – 2002	<i>Griffiths / Webster</i>
12/04	Regulating Private Copying of Musical Works: Lessons from the U.S. Audio Home Recording Act of 1992	<i>Elkman / Christie</i>
11/04	<i>Droit de Suite</i> Down Under: Should Australia Introduce a Resale Royalties Scheme for Visual Artists?	<i>Hudson / Waller</i>
10/04	The Research Exemption to Patent Infringement: A Doctrine In Search of a Principle	<i>Elkman</i>
09/04	SMEs and their Use of Intellectual Property Rights in Australia	<i>Jensen / Webster</i>
08/04	Catching Up or Standing Still? National Innovative Productivity Among “Follower Nations”. 1978 – 1999	<i>Furman / Hayes</i>
07/04	Patent Length and the Timing of Innovative Activity	<i>Gans / King</i>

06/04	Moving Beyond Tacit and Explicit: Four Dimensions of Knowledge	<i>Casselman / Samson</i>
05/04	Examining Biases in Measures of Firm Innovation	<i>Jensen / Webster</i>
04/04	Principle or Compromise?: Understanding the original thinking behind statutory licence and levy schemes for private copying	<i>Gaita / Christie</i>
03/04	Patterns of Trademarking Activity in Australia	<i>Jensen / Webster</i>
02/04	Protecting Indigenous Signs And Trade Marks Under The New Zealand Trade Marks Act 2002	<i>Morgan</i>
01/04	Patent Renewal Fees and Self-Funding Patent Offices	<i>Gans / King / Lampe</i>
12/03	Accounting for Intangible Assets: A Conceptual Framework for Measurement and Reporting on Intangible Assets	<i>Wyatt / Abernethy</i>
11/03	The Decision to Patent, Cumulative Innovation, and Optimal Policy	<i>Erkal</i>
10/03	The Protection of National Icons under the Trade Marks Act 1995	<i>Morgan</i>
09/03	An Analysis Of The Approaches Of The Trilateral and Australian Patent Offices to Patenting Partial DNA Sequences	<i>Howlett / Christie</i>
08/03	Accounting for Intangible Assets: Theory and Evidence on the Influence of Technology and Property Rights Related Conditions	<i>Wyatt</i>
07/03	Using Patent-Based Metrics to Understand the Value of Companies	<i>Matolcsy / Wyatt</i>
06/03	The Economics of Patent Design: A Selective Survey	<i>Lampe / Niblett</i>
05/03	An Analysis of the Approach of the European, Japanese and United States Patent Offices to Patenting Partial DNA Sequences (ESTs)	<i>Howlett / Christie</i>
04/03	The Rise of Trade Marking in Australia in the 1990s	<i>Loundes / Rogers</i>
03/03	Forces Shaping Firms' Decisions To Innovate: Evidence from Large Australian Organisations	<i>Webster</i>

02/03	Virtual Markets for Virtual Goods: An Alternative Conception of Digital Copyright	<i>Eckersley</i>
01/03	Managing Ideas: Commercialization Strategies for Biotechnology	<i>Gans / Stern</i>
07/02	Intellectual Property Rights: A Grant of Monopoly or an Aid to Competition	<i>Gans / Williams / Briggs</i>
06/02	Intellectual Capital: Accumulation and Appropriation	<i>Hunter</i>
05/02	The Product Market and the Market for “Ideas”. Commercialization Strategies for Technology Entrepreneurs	<i>Gans / Stern</i>
04/02	When does Funding Research by Smaller Firms Bear Fruit?	<i>Gans / Stern</i>
03/02	Network Externalities and the Myth of Profitable Piracy	<i>King / Lampe</i>
02/02	When Does Start-Up Innovation Spur the Gale of Creative Destruction?	<i>Gans / Hsu / Stern</i>
01/02	Intangible and Intellectual Capital: A Review of the Literature	<i>Webster</i>

Electronic copies of all IPRIA working papers are available at:
www.ipria.org/publications/workingpapers.html