

Managing Intellectual Property

The Global IP Resource

A RETIREMENT LUNCH WITH JEREMY PHILLIPS

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Jeremy Phillips, who founded Managing IP, retired this week. James Nurton recently went for lunch with him to hear about how intellectual property has changed in the past 42 years, what his plans are for retirement, and why ethical behaviour matters

The previous time Jeremy Phillips and I had lunch at [Bevis Marks the Restaurant](#), it was on the site of the UK's oldest synagogue, which was opened in the City of London in 1701. The restaurant has now moved a short distance – a reminder that even those things which seem forever fixed are liable to change. Its new location in Aldgate puts Bevis Marks between the old – the street markets testify to the area's long history of welcoming migrants from western and eastern Europe and south Asia – and the new: the location of the London branch of the central division of the Unified Patent Court is at the end of the road. But more of that later.

Phillips arrived slightly after me, accompanied as he often is by what looked like an overnight bag. He said he was recently back from a meeting of young IP practitioners in Utrecht, one of his final engagements before he retired on November 26 after 42 years working as IP blogger, author, editor, lecturer, teacher and supervisor. His final day was spent hosting (and [live-blogging](#)) a conference for the Journal of Intellectual Property Law & Practice (JIPLP), which he founded 10 years ago. The conference concluded with an emotional speech delivered, as is his custom, without jacket or shoes and with originality and humour and occasional hops into the audience. He received a standing ovation.



The first question I asked over lunch was the one that I think many people want answered: after so many years of round-the-clock working in IP, is he really going to retire completely, just like that? The answer was an emphatic “Yes”. “I wanted to go when I was still entirely confident that I could do what I do to the best of my ability,” he tells me. In a reference typical of his wide interests, he says he doesn't want to be like a footballer “who ends up in the bottom divisions hanging on for dear life because they can't face life not doing what they're good at doing”.

But surely, Jeremy, you have a good few years left yet? I didn't expect such an honest answer: “I find it harder to reach the standard which I expect of myself. I will go through things a little more often than I used to rather than being confident that my first take will be right. As you get older, you rely on your experience and your memory. Your experience is only as good as what you've previously done and IP is a perpetually changing field. For example, experience of enforcement of IP rights before the EU Enforcement Directive doesn't give you any authority with what you're arguing after it. Also, if you don't regularly re-read statutes and cases, the text in your mind conforms to a different flow of words to what is actually there. Your memory, which can be a great asset when you're young, can be a danger when you're older.”

A rather amateurish letter

Jeremy Phillips first encountered IP when studying law at Cambridge University in the early 1970s, but not in the way you might expect. He was doing some writing for an underground magazine, which was a rival to the establishment newspaper Varsity. One year, he says, they printed a supplement that looked like Varsity “but contained our own

ON THE MENU

Jeremy Phillips chose the beef pie (a special of the day) and, deducing that would be quite filling, decided to start with seasonal vegetable soup.

scurrilous content". He promptly received a lawyer's letter alleging passing off and demanding £50 plus costs. After a bit of time in the law library, Phillips wrote back and said there was no decision at the point of sale and no diversion of sales, and therefore there was no passing off. His tutor was not convinced this was the right course of action, but Phillips never heard from the law firm again.

It was only a few years ago, he tells me, that it dawned on him that the "rather amateurish letter before action" might have been written by a student, rather than a solicitor.

Aside from that experience, he had little exposure to IP law as an undergraduate – but that was because, he says, back then "there was no subject called IP law". When he began a PhD at the University of Kent in 1973, his aim was to research trade descriptions law. But, in a move that you suspect would not happen in today's time-and-money pressured academic environment, his supervisor Harry Green told him to wait three months and spend the time in the library looking into subjects that were not already being studied. "Not realising this was an unusual course of action, I found a little row of books on IP, including one by Thomas Blanco White [a distinguished IP barrister and author, who died in 2006]. I was instantly hooked – it was historically interesting, intellectually stimulating and useful. That kept me magnetically attracted to it," says Phillips.

That led to a dissertation on employer and employee rights, but it was also the environment at Kent that impressed Phillips. "Kent was a radical university and didn't have a law faculty. The law was part of the social sciences – for my PhD I had to look at things in sociology, economics and philosophy alongside the law and I got a lot out of that." I was reminded of this comment later in our discussion, when I asked him which people in IP had influenced him. His list included the design rights campaigner Dids Macdonald, Galit Gonen at Teva Europe, former MARQUES chairs Tove Graulund and Guido Baumgartner and the blogger Marty Schwimmer as well as more predictable names such as the UK judge Mr Justice Arnold and IP lawyer Neil Wilkof.

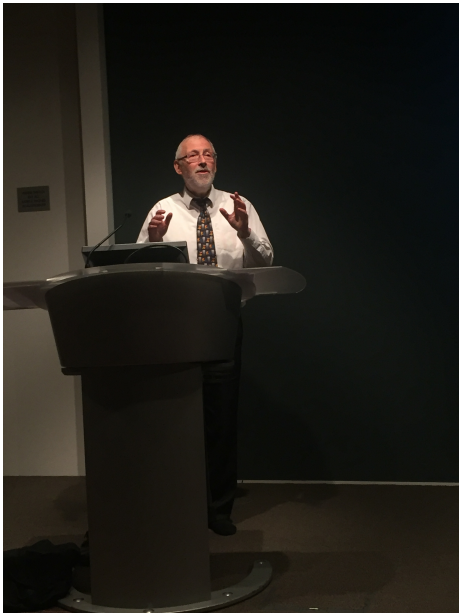
After finishing his PhD, Phillips was "desperate" to pursue an academic career and loved teaching, but most universities did not have IP on the syllabus. On leaving Kent, he went to Trinity College Dublin to teach law and "finally got IP as a half-subject on the syllabus in 1979-80". It was during this time that he also became involved in publishing: the European Intellectual Property Review (EIPR) was founded in 1978, and Phillips became the Ireland correspondent, which gave him the opportunity to meet other lawyers interested in IP.

After Dublin, Phillips moved to Durham University where he also got IP on to the syllabus eventually, before returning to London to teach at Queen Mary. Then another twist of fate occurred: after missing out on a promised professorship, he was approached to edit Patent World, Trademark World and Copyright World, then being launched by Interbrand. "I resigned my senior lectureship, got a company car and doubled my salary at a stroke," he says. He made a bid to buy the business but lost out to an entrepreneur called Richard Armstrong, who retained him as editor on a freelance basis. Unfortunately, Armstrong later sacked Phillips, and sued him for breach of contract. Phillips counter-sued and the case went to court. By the time of the hearing, two years had passed: "The judge stopped the trial after half a day and asked Armstrong: do you really want to continue?" Phillips was awarded damages and indemnity costs. (Years later, Armstrong sold the publications to publishing company Informa; it has since rebranded them as IP Magazine. Armstrong died in a plane crash not long after the sale.)

On the waiter's advice, James Nurton had the shredded salt-beef with Thai herb, noodle and peanut salad as a starter, followed by Jeremy's recommendation of rosemary crusted lamb chops.

For dessert, Jeremy had blackberry and pear crumble and James had apricot frangipan tarte.

They each had a glass of Barkan Cabernet Sauvignon 2007 and some sparkling water.



Phillips at the JIPLP conference

By the time of the trial, Phillips had already moved on, founding Managing Intellectual Property in 1990. (We tend to brand ourselves as Managing IP these days, but Jeremy still prefers MIP which, as the founder, is his prerogative.) With some publishing experience now behind him, he felt confident in embarking on a new venture. However, things were not to go smoothly. His first fundraising plan was to hold a three-day IP conference in Jerusalem; unfortunately, Saddam Hussein invaded Kuwait and, as he says, “I lost a substantial sum of money”. He then organised a conference in Prague on software protection. It couldn’t fail: a hot topic, great speakers, an attractive venue and low costs. Sadly, the Post Office neglected to send out 6,500 brochures and only a few people attended, most of them from the Czech Republic. Phillips only recovered the costs of the postage: the Post Office solicitor, who happened to be his father-in-law, confirmed that it had indemnity against civil actions.

With mounting debts, Phillips decided to sell Managing IP and, after being turned down by a couple of legal publishers, he had a meeting with Chris Brown, a director of the expanding business and finance publisher Euromoney, which already had a couple of legal-related titles. I knew Brown slightly after I joined the company in 1996 and he had a reputation as a difficult person to deal with – he used to run Euromoney’s graduate training and would set the pass marks for tests at 100% and, if anyone arrived even a minute late, he would turn on them in front of the whole group and ask: “Would you be late if you were interviewing the chairman of ICI?” (The correct answer was No.) But the Scottish publisher and the London academic must have found some common ground because in 15 minutes they struck a deal. Euromoney acquired Managing IP (it still owns it 24 years on), Phillips’s debts were paid off and he was retained as editor (later becoming consultant editor).

I first got to know Phillips when he was consultant editor, and I was a trainee reporter. He would come into our office once a month, ostensibly to deliver his copy on a floppy disc (this was pre-internet) and collect a stack of copies of the latest issue, which he would take away in a carrier bag. I always suspected though that the real reason for his visits was to exchange gossip about the worlds of IP and publishing, an interest which it must be said we shared.

Eventually his formal role came to an end, but by then Phillips had developed new projects: he was the legal adviser to the Chief Rabbi, was teaching IP law and was working two days a week as a consultant with Slaughter & May – a role to which he was invited by a former student, Nigel Swycher, who was then a partner of the firm (and has since founded Aistemos). Phillips continued to publish prolifically, contributing to Managing IP, editing the European Trade Mark Reports and founding JIPLP (published by Oxford University Press) in 2005. Meanwhile, he stumbled upon another interest, one that he is probably now most well-known for: blogging.

An accidental blogger

The IPKat (which Phillips pronounces ipp-kat,

JEREMY PHILLIPS AND PUBLISHING

rather than i-p-kat) blog started in 2003. At the time he was writing a textbook, [Trade Mark Law: A Practical Anatomy](#), and [Ilanah Simon](#) (now a senior lecturer at University College London) was his research assistant. “She kept mentioning [The Trademark Blog](#), and after this had happened about six times, I asked her: what is it?” he says. “It” was a website run by US lawyer Marty Schwimmer, which hosted news and comment on trade mark issues. After contacting Schwimmer for advice, Phillips and Simon decided to launch a European-focused blog, thinking it would be of interest to law students. However, this was in June and most students were either finishing exams or heading off for the summer break. “Students weren’t looking at it, but practitioners were, so we changed the stance,” says Phillips.

In the 12 years since, there have been nearly 10,000 posts on the IPKat blog, and Phillips estimates he has written about three-quarters of them. However, he has built up a team of part-time contributors and these will manage the blog after he retires. “I’m going to give them as much space as possible,” he says. “They’ll do better without a safety net. There’s no law that says the IPKat has to exist in its current or in any other form.” The IPKat has spawned many other blogs, including Class 46, PatLit, the SPC Blog, the 1709 Copyright Blog and IP Finance, many of which Phillips has also coordinated.

The IPKat has more than 12,000 subscribers who value its IP case reports, event news, irreverent comment, reader polls, book reviews and unusual cat pictures. Many people have commented on the speed and frequency with which Phillips posts (often live blogging conferences as they happen). Lately, it’s been outspoken on issues such as IP scams and what’s happening at the European Patent Office, where the pseudonymous blogger [Merpel](#) has powerfully criticised the management and the Administrative Council over staff relations and independence. Phillips says he is “not happy” with the situation in Munich, and while he agrees that staff relations have long been troubled at the Office, he says “the level and intensity of the complaints has changed; people are terrified to be identified”. And he’s not optimistic that things will improve: “I don’t think the Administrative Council have the knowledge, the energy or the time to do anything about it. When presented with divisive issues, people take the line of least resistance.” He predicts that the problems will not start to be resolved until the next president is appointed – expected to be in 2018.

The ethics of IP

Phillips says the biggest change during his 42 years working in IP has been “the much greater access to relevant information”: “When I started, if a case hadn’t been reported in one of the official law reports it was as though it was never there. You could hardly get hold of office decisions. Nowadays everything is available online.” Collections of case reports have become “redundant” he adds, as resources such as [BAILII](#) and [Westlaw](#) provide immediate access to judgments. In the past, it could take six months for a case to be reported, and another six months for it to be digested. The result, he claims, is that “cases are better argued, and better decided, and there are fewer appeals. And when there are appeals, they are more focused. Better information and more information means better decision-making”.

And, with the explosion of information on blogs, law firm websites and from professional bodies, practitioners can assimilate different views: “You can see what the person involved in the case has written, what an academic has written, what a trade association thinks, what other professionals think.” What’s more, Phillips denies that the quality of analysis has suffered, and takes issue with the view that there is too much misinformation about IP. On the contrary, he says, modern

“Jeremy basically invented non-academic IP publishing and made the UK the centre of it, something that it continues to be to this day. And then he did it all over again with blogs. That’s two huge achievements. Those of us who make a living from IP publishing owe him a great deal, as do all our varied readers.” That was part of a tribute sent to us by Joff Wild, who edited *Managing IP* in the 1990s and later founded Intellectual Asset Management (IAM).

Possibly uniquely, Phillips combines the academic’s interest in the detail of law and policy with an entrepreneur’s sense for making information accessible and pushing boundaries. In addition, he has a love of the English language and an instinct for good writing that has been demonstrated in hundreds of articles, thousands of blog posts and several books (most famously [An Introduction to Intellectual Property Law](#), co-authored with Alison Firth, and the [IP Law Handbook](#), now in its 12th edition). But while publishing can be a competitive business, Phillips has always stood above rivalries between different titles and companies. Indeed, he even instituted an annual lunch for IP editors and publishers in the UK (and beyond) which has over the years hosted many distinguished guest speakers. Perhaps the most memorable of these was a former judge who confessed that, when compiling a collection of law reports, he included a made-up case – which was later cited before him in court.

Wild remembers one meeting with Phillips in the mid-1990s, which proved to have a lasting impact: “When I was editor of MIP Jeremy was never anything other than totally encouraging of everything we were planning. One lunchtime in the Cockpit pub on one of his visits to Nestor House [where Euromoney was then based] I asked him about starting the law firm rankings and what people would say if we did. He laughed with what seemed to be huge relish and said don’t worry about that, just do it anyway. I think he liked the idea of us shaking things up and maybe pricking a few egos ... ‘Don’t worry about the reaction, just do it if you believe in it’ is something that has stuck with me ever since. It’s what inspired me to get IAM off the ground with Globe after the likes of the American Lawyer and Informa had turned it down.”

technology gives people the opportunity to comment and that means accuracy has increased. For example, he points to a recent [post](#) he wrote on IPKat, where he stated that no injunction was sought or granted in a case, a conclusion based on reading the judgment. Subsequently, a reader emailed to say that there was an injunction – and he was able to add that information to the blog. “The level of criticism does not reflect the quality of the articles,” he points out.

But isn't there, I ask, more broadly a lack of understanding about IP, particularly among those who criticise IP rights? This leads us on to a discussion about the recent [attack on patents in The Economist magazine](#), which prompts Phillips to defend patent rights: “The number of patents that are litigated is tiny. The number subject to FRAND disputes is tiny. The number subject to competition enquiries is tiny. It's like insurance: the vast majority of insurance policies issued never face a claim. That doesn't mean insurance policies are wrong. At the time you seek patents, they have a value in getting investment or security. It enables you to work out what you can do in the market and what other people can't do.”

Does this make Phillips an IP maximalist, in the jargon? He balks at such terms, but when I press him he says that what matters, and what makes the IP system work, is “human behaviour”: “If you're a sharing, magnanimous person then your conduct will not be affected by the fact that you have a broader or lesser right or no right at all. If you are a self-seeking person, your conduct will not be affected the fact that your right is maximalist or minimalist. We have doctrines like abuse of rights and essential facilities which enable people who misbehave to be regulated. The question is do we have the inclination and willpower to condemn bad behaviour and celebrate good behaviour? I really believe what we need to do is address human conduct. People don't say copyright should be abolished because someone such as Getty is abusing it. We have to persuade them they are bringing the system into disrepute. As humans we have to improve the system, not change the rules.”

Later, he expands on this theme: “I've always believed that even commercial self-interest should be guided by an ethical code, because what is in one person's interest may also be in another's interest, and altruistic behaviour ultimately benefits you. I'm all in favour of a moral code which I would like to see IP owners and users adhere to.” He says for the most part “people's IP behaviour exceeds that of corporate behaviour because it gets scrutinised by others” but adds that it's important to distinguish between IP rights and conduct: “If you see IP as an emanation of your personality, you feel threatened when somebody else does things with it. It's a natural thing. But you have to learn to accommodate what other people do. That's how markets are built up.”

Moreover, he believes that when disputes do come before the courts, judges generally get it right – at least when they are IP specialists. It's a different story regarding appeals and references to the CJEU. “It's like you've gone to your heart specialist and he says: you've got a heart problem. Now you're going to appeal to a panel of three people – a dentist, a chiropodist and a psychiatrist – and ask them to validate the opinion of your heart specialist.” I suggest that generalist judges might provide a useful check on the inherent bias of the specialist, to which he responds that, if there are problems, they can be ironed out by the legislature: “If it's a bias towards the use of one's expertise and experience and knowledge, then I'm all in favour of it.” In this context, he says he feels “very very sad” at the proposals for the Unitary Patent and UPC: “It's a situation in which political expediency has trumped expert functionality. It will have to be fairly vigorously re-tuned. I'm really sad that they didn't use the same model as CTM and RCD courts, which have done extraordinarily

JEREMY PHILLIPS AND MANAGING IP

Unfortunately, the Managing IP online archive only goes back to 1999, just after Jeremy's regular involvement as the author of the monthly editorial and the irreverent MIP Masterson column ceased. However, he continued to contribute articles from time to time, including an annual review of trade mark cases in Europe up to 2007. Here's a selection of his articles:

[Europe's new order – the 10 most important cases of the past year](#) (April 1999)

[Europe's march towards harmonisation](#) (March 2000)

[Ten years on – reflections on the launch of Managing IP](#) (June 2000)

[Lessons from Europe's trade mark courts – 10 cases](#) (April 2001)

[Quality control and the Napoleon principle](#) (May 2001)

[Stuck in the pipeline](#) (May 2002)

[Europe's courts tackle the big issues](#) (April 2003)

[How to enforce rights in the new Europe](#) (March 2004)

[A busy year in Europe's courts](#) (May 2004)

[Member states battle over trade mark issues](#) (May 2005)

[An agenda for Europe's trade mark regime](#) (December 2005)

[Evidence, shapes and profits](#) (May 2006)

[Continental drift](#) (April 2007)

[How IP has changed in 20 years](#) (June 2010)

Phillips was presented with an [outstanding achievement award](#) at the Managing IP Global Awards in 2013, and has several times been named among the 50 most influential people in IP.

He was [inducted](#) into IAM magazine's IP Hall of Fame earlier this year.

well as national courts have come closer together over the past 20 years.”

A new challenge

Now that he is liberated from the world of IP, how will Phillips be spending his time? “While I’ve got enough energy and drive to do other things, I want to have a tilt at them too,” he says. Family has always been important to him, but he says he’s not had the chance to enjoy it to the full. His four children have not followed him into IP (even though he says they used to put copyright notices on their artwork when they were at school). Two work in business, one is a lawyer specialising in charity law and one is a musician. In total he has 10 grandchildren (aged from two to 12) and, with their parents all working, Phillips says he hopes to fill a vacuum and “have some benign influence on the way in which they see the world and how much it has to offer”. This will include encouraging them to appreciate music, the arts and sport. Some rest and holiday with his wife Sara (a breastfeeding consultant) is also on the horizon. He insists he will not miss the world of IP: “I was brought up as an only child in a block of flats in London, and soon learned to love whatever I’m doing.”

Another project is, he says, “to engage more deeply with the Babylonian Talmud”, a document of life in Mesopotamia about 1700 years ago, written in Biblical Aramaic and Hebrew. His eyes light up as he explains the “intellectual and interpretational challenges” of studying a text without vowels or punctuation, which would take over seven years to read if studied at a rate of one page a day: “The words seem to change their meanings as you look at them!”

He adds that some of the many topics debated in the Talmud are whether someone should be blamed for not passing knowledge of the Temple to the next generation; whether sources should be attributed; and how to work out who is the original author of a statement. As he says, these are in a way questions about moral rights. So maybe Jeremy Phillips won’t be leaving IP completely behind, after all.

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