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The Secret Circuit

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Bruce Abramson’s *The Secret Circuit*

Review by Jeffrey Barlow


This has been, for me, a perplexing book to review. I find it well researched and generally well written, particularly given the complexity of its subject. For certain niche audiences, the work will prove very valuable. However, I must question a number of important decisions made by the author in organizing it, and wonder precisely for which audience the work is intended.

The Secret Circuit is, simply put, an overview from a historical and legal perspective of The United States Court of Appeals for the Federal Circuit. The court is, as the subtitle asserts, little-known, yet very important.

The Court was created in 1982 to hear particularly complex cases dealing with patent law (including Intellectual Property). As well, it serves as the appellate jurisdiction — the court of appeals — for the courts of International Trade and Federal Claims.

The author is well qualified to write such a book. He held a Clerkship at the court in 2003, and is familiar, as the useful notes and bibliography demonstrate, with a wide range of literature dealing with the issues covered.

In addition, Abramson is the author of Digital Phoenix, a 2005 MIT press work on the rise, fall, and the author argues, inevitable second rise, of the digital economy. He is also the President of Informationism, Inc., a name chosen because it apparently represented the author's personal philosophy.
Because the author's philosophy continually intrudes into the work, and a key effort of the book is to describe the location of the court and its important decisions on the political spectrum running from socialist to conservative, readers should be prepared to deal with this issue.

I initially decided that the author was essentially as I understand it, a libertarian. His later prolonged argument that he is in fact, a liberal, I found interesting but unconvincing. An issue such as this, should, of course be quite irrelevant to a work on the "Rules of the Information Age," but the author views these discussions as critical to an understanding of the court itself.

I found these discussions confusing and distracting. Doubtless these responses result from my own intellectual shortcomings, but I think it probable that many readers may share my reaction.

As well as writing an objective history of the court, Abramson continually evaluates its work with the question "Is the policy we have the policy we want?" This makes the work both descriptive and proscriptive, and again many readers may decide that the author's proscriptions are too much rooted in his personal opinions as to the future we should collectively share.

Another flaw with the work is that it was, I feel, in part sold under false colors. The sub-title as well as the colorful cover of the work with its background of digital numerals behind a classical balance scale, all implies that the work will deal quite directly with the information age.

At points it does so, and very well indeed. It is for this reason that I have chosen to review the work. The treatment of Intellectual Property and the World Trade Organization's TRIPS agreement (Trade Related Aspects of Intellectual Policy, DRM (Digital Rights Management) legislation and legal decisions resultant from it are very clearly laid out and very informative. The author's references to other relevant works are also quite valuable.
The author has no problem relating these topics to the development of
digital technology and the rise of the digital economy. Unfortunately the
work then begins to wander from this, to us, useful focus, as it considers
the court's additional appellate roles in trade and federal claims.

At the last we must accept the argument that we are in the information
age, as defined by the author, and that this court is an important legal
jurisdiction in that age as adequate justification for the sub-title. This
position, however, seems quite strained as the work progresses and
many readers may hurry through the last half of the book with some
impatience.

However, there is no question but those involved in any of the issues
covered in the work will find a quick reading of the relevant portions of
the work, easily identifiable from its superb index, useful. For example, I
have been dealing at the Berglund Center with an issue involving
patents, and the work prepared me well for a discussion with a legal
specialist in the area, as well as with a venture capitalist.

Attorneys will find the book useful as well, though there may well be
better sources for highly specialized readers. What the author terms
"policy wonks" might also find the discussion of current policies vs. the
author's perceived ideal policies useful.

But the work as a whole seems to me to be cluttered with the author's
continually idiosyncratic intellectual digressions. At the end I think it
potentially valuable for a number of discrete audiences, but question the
authorial decision to attempt to lump such a broad grouping of topics
together, despite their focus in the work of the United States Court of
Appeals for the Federal Circuit.

The Secret Circuit, for all its insights and value, might well have been
issued as several much shorter and more tightly edited volumes, shorn of
the author's personal perspectives insomuch as this is ever possible.
See review by Steven Margolis at:

See the author's web site with links to his blog at: