“Towards a different balance: precaution, Wild Law, and the IP owner’s right to exclude”. Professor Abbe E. L Brown, University of Aberdeen

It has been argued that intellectual property (IP) rights confer the right to exclude and to control the activities of others. Yet even if an IP owner is successful at the end of a full trial, or the facts may appear in their favour at the interim stage, there is still debate about the remedies which should be available and the bases on which these decisions should be made.

This paper will note, taking a UK focus, decisions in the English courts (Williams (2002), HTC (2015), Huawei (2020) and Edwards Life Sciences (2020)) confirming that injunctions are discretionary; the EU enforcement directive’s introduction of proportionality as seen Cartier (2016); and, with Brexit, the likelihood of further uncertainty.

This paper will build on this to develop a different approach to the power, and its possible limits, of IP rights at a practical level. It will also take in a different direction previous work of the author and of others (Rimmer, Zhuang, Thambisetty) arguing for other areas of law (such as climate change and regarding areas beyond national jurisdiction) to have regard to IP and for there to be intersection between different areas of law relevant to the use of innovation and creativity to respond to societal challenge.

This paper will explore IP and injunctions in cases involving climate change and sustainable development in the context of the precautionary principle (building on arguments regarding its place in IP law by Matthews, Reynolds, Nordberg et al, Bonfanti, Li, Pila, and regarding injunctions by McLeod-Kilmurry); and in the context of a Wild Law approach (building on previous work of the author and others, notably Rogers, Maloney, Cunningham, Howe, Callinan). This paper will put forward a new means for decision makers in IP cases to address the questions of power and remedy in an internal and more structured manner.