

Guidance on answering the discussion questions in the book

Para 20.50

Can you think of any other examples in which these exceptional circumstances might apply to require the owner of an IP right to license that right to a third party?

These particular tests are narrow. They reflect the facts of *Magill* and previous battles in respect of car spare parts. This focus on the lack of substitute and the need for a separate market meant that initial fears about the fundamental impact which this could have on IP, were allayed. There have been cases in the United States, argued on different grounds, involving a refusal by the owner of copyright in the only known photographs of the assassination of President Kennedy to license the right to use them to an author of his biography, or the photographs of the shooting of Rodney King in Los Angeles riots in the 1980s? Or a refusal by a paper mapmaker to license the copyright in the maps to companies who wish to supply thumbnail images to mobile phone companies. Would either of these fall under ‘exceptional circumstances’? Should they? You might find it helpful to return to this issue after you have considered paras 20.52 - 20.64. Exceptional circumstances are no longer so exceptional. Can this be justified?