

DAY 3 – SATURDAY, 30 NOVEMBER 2019

9:00-10:30 / MODULE 9

ENFORCEMENT STRATEGIES 1 | INTELLECTUAL PROPERTY

Module 9, 10 and 11 will look specifically into enforcement strategies that have been adopted around the world to block undesirable or infringing online content, such as voluntary agreements, three-strikes policies, notice-and-take-down, blocking orders, and administrative enforcement. Again, these modules will consider thorny issues, such as who should bear the cost of enforcement. A number of cases, such as Allstreaming in France and Cartier in the UK, have been considering this issue at the national and EU level. Finally, we will also review the conundrum of extraterritorial application of judicial decisions or administrative orders affecting online intermediaries. In this context, Module 9 will especially focus on copyright and trademark enforcement online.

SPEAKER: Martin HUSOVEC, Assistant Professor, Tilburg University.

10:30-11:00 / COFFEE BREAK

11:00-12:30 / MODULE 10

ENFORCEMENT STRATEGIES 2 | SPEECH & OTHER CONTENT

Module 10 will continue reviewing enforcement strategies online and will focus on the role of service providers in moderating the speech they carry for customers, subscribers and others and look into notions, such as defamation/libel, hate speech, and dangerous speech. We will discuss the role of intermediaries in the moderation of content posted by others. We will review the role of Section 230 of the US Communications Decency Act, the eCommerce Directive and caselaw, such as Delfi, MTE or Phil from the ECHR. Again, great attention will be given to the upcoming DSM Reform package, in particular the Audio-Visual Media Service proposed reform. Finally, we will discuss the function a service provider can/must play in structuring, monitoring and regulating its community of users.

SPEAKER: Martin HUSOVEC, Tilburg University.

12:30-14:00 / LUNCH

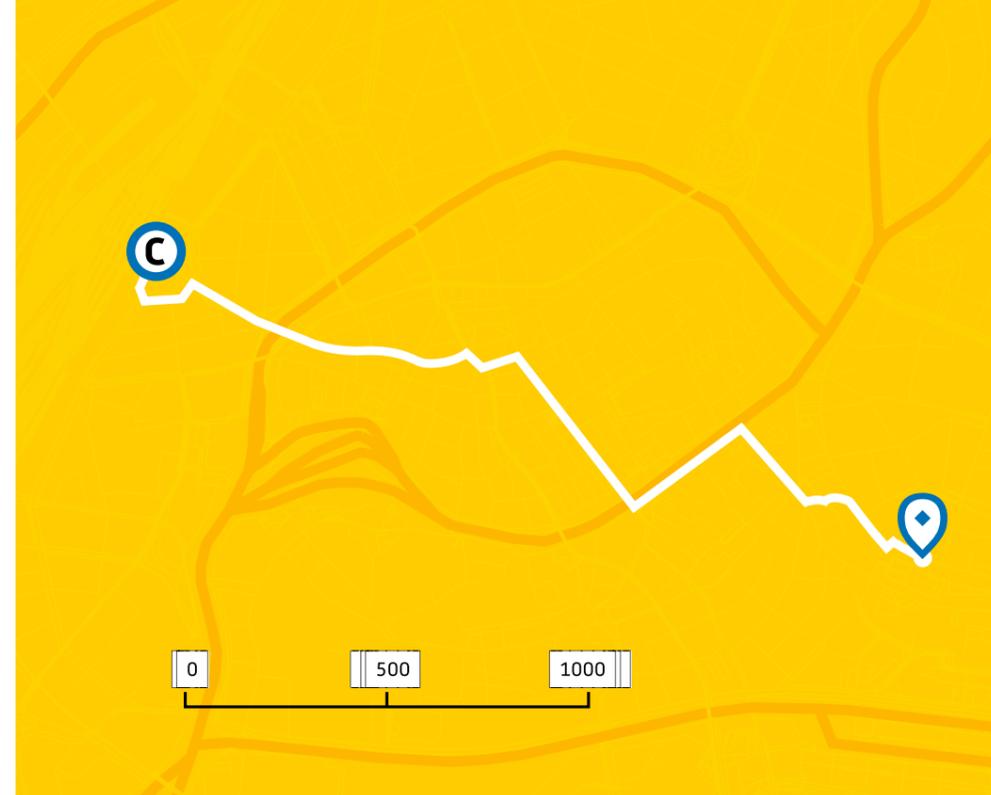
14:00-15:30 / MODULE 11

ENFORCEMENT STRATEGIES 3 | ALGORITHMIC FILTERING
AND PROACTIVE MONITORING OBLIGATIONS

Finally, Module 11 will discuss emerging automated and algorithmic enforcement, including filtering and monitoring obligations that might be imposed on online service providers. Starting from the general principles that online intermediaries do not have an obligation to monitor, and filter, their networks for infringement of third party rights, Module 11 will discuss international case law imposing proactive monitoring obligations on search engines and other online intermediaries for copyright and trademark infringement and for the violation of personality and privacy rights. Finally, this module will review recent EU reform proposals included in the DSM package that may impose filtering obligations on online intermediaries.

SPEAKER: Giancarlo FROSIO, CEIPI.

15:30-16:30 / Q&A AND FAREWELL



Practical information

VENUE

UNIVERSITY OF STRASBOURG / ADDRESS TO BE CONFIRMED

ACCESS

TRAMWAY / TBC

DIRECTION / TBC

STOP / TBC

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DAY 1 – THURSDAY, 28 NOVEMBER 2019

9:00-9:30 / WELCOME ADDRESS

Christophe GEIGER, Professor of Law, Director General and Director of the Research Department, CENTER FOR INTERNATIONAL INTELLECTUAL PROPERTY STUDIES | CEIPI UNIVERSITY OF STRASBOURG | FRANCE

Giancarlo FROSIO, Senior Lecturer and Researcher, CENTER FOR INTERNATIONAL INTELLECTUAL PROPERTY STUDIES | CEIPI UNIVERSITY OF STRASBOURG | FRANCE

9:30-10:45 / MODULE 1

OVERVIEW | INTERNET JURISDICTION & SAFE HARBOURS

After providing introduction to the training program, Module 1 will first review the theoretical and historical background of intermediary liability online and discuss how the Internet has produced complex jurisdictional challenges. Later, module 1 will magnify on the safe harbours that were introduced to shield intermediaries from liability. We will look at copyright, speech and e-commerce related safe harbours in Europe, the United States, and other selected jurisdictions, such as Brazil and Asian countries. In particular, this Module will review the eCommerce Directive, Communications Decency Act, the Digital Millennium Copyright Act, as well as differences among providers (ISPs, search engines, p2p). In this context, this Module will introduce the discussion of the upcoming EU Digital Single Market (DSM) reform and consider market effects of liability exemptions and enhanced obligations imposed on online platforms.

SPEAKER: Giancarlo FROSIO, CEIPI.

10:45-11:00 / COFFEE BREAK

11:00-12:30 / MODULE 2

COPYRIGHT INFRINGEMENT | SECONDARY LIABILITY AND LINKING

After reviewing the basic principles of copyright protection, Module 2 will discuss judge-made doctrines of secondary liability, such as tort law, extra-contractual liability and copyright-based doctrines in civil law and common law systems. In particular, this Module will look into fundamental and more recent case law from the Court of Justice of the European Union (CJEU) and case law in the United States, such as Sony, Fonovisa, Napster, Aimster and Grokster. This Module will also discuss the notion of communication and making available to the public online and how linking to third party content may trigger liability of online intermediaries. This Module will highlight how different approaches have been increasingly emerging in different jurisdictions. In this context, this Module will discuss recent ECJ decisions, such as Svensson, BestWater, C More Entertainment, GS Media, FilmSpeler, and Ziggo, and US case law, such as Perfect 10, Flava Works and the Rojdirecta case.

SPEAKER: Giancarlo FROSIO, CEIPI.

12:30-14:00 / LUNCH

14:00-15:30 / MODULE 3

TRADEMARK INFRINGEMENT | SECONDARY LIABILITY IN EUROPE

Module 3 and 4 will review trademark infringement that may occur through intermediaries' online platforms. In the past few years, trademark owners sued major online platforms, such as eBay and search engines, for contributory liability for trademark infringement taking place in connection to their online sale and advertising services. In this context, consistent case law developed in the U.S. and Europe. In particular, Module 3 will look into relevant case law from the CJEU, such as Luis Vuitton, L'Oréal, or Tommy Hilfiger, and EU Member States. Recently, for example, case law in Europe expanded the reach of injunctions against access providers to include orders to block website infringing trademarks. Again, EU national cases have found that trademark infringement might be ground for liability in case of linking that does not trigger copyright infringement.

SPEAKER: Frederick MOSTERT, Professor, King's College

15:30-16:00 / COFFEE BREAK

16:00-17:30 / MODULE 4

TRADEMARK INFRINGEMENT | SECONDARY LIABILITY IN THE US

Module 4 will continue discussing trademark infringement on line with special emphasis on comparative analysis with other international jurisdictions and the United States in particular. This module will review cases such as Tiffany v. eBay and Louis Vuitton v. Akanoc in the United States and discuss relevant remedial measures that brand owners might have to enforce their trademark online. Conversely, the limitations that platforms and online services might have for liability for trademark infringement occurring through their networks will be also discussed. In addition, some consideration will be given to the overlap between secondary liability for trademark infringement and unfair competition. Finally, Module 4 will highlight voluntary collaborative efforts that trademark owners and intermediaries are making in an effort to suppress the proliferation of online counterfeit merchandise.

SPEAKER: Frederick MOSTERT, King's College

18:00 / WELCOME COCKTAIL

DAY 2 – FRIDAY, 29 NOVEMBER 2019

9:00-10:30 / MODULE 5

PRIVACY OBLIGATIONS | GENERAL DATA PROTECTION REGULATION

Module 5 and 6 focus on the role of private sector entities in gathering information for and about users. This module will review data protection legislations and explore the legal and policy privacy implications of social networks, with special emphasis on the recently applicable GDPR. Module 5 will also consider the legal framework that applies to sensitive data, including health data, which are processed through online platforms, website or mobile applications. This section will also consider the interpretation of the new EU General Data Protection Regulation's provisions on profiling and automated decision-making, as well as the main elements of the upcoming E-Privacy Regulation.

SPEAKER: Miquel PEGUERA, Associate Professor, Universitat Oberta de Catalunya.

10:30-11:00 / COFFEE BREAK

11:00-12:30 / MODULE 6

PRIVACY OBLIGATIONS | RIGHT TO BE FORGOTTEN & TRANSBORDER DATA FLOW

Module 6 will expand the discussion of data protection policies and privacy obligations for online intermediaries by considering regulation in other jurisdictions and striking a balance with the GDPR regime. This module will also focus on the newly emerging right to be forgotten and its cross-border implications. Finally, Module 6 will discuss the Schrems case, transatlantic data flow and the Privacy Shield Framework. This module will highlight emerging international phenomena as data localization and data protectionism and their implications for online businesses.

SPEAKER: Miquel PEGUERA, Universitat Oberta de Catalunya.

12:30-14:00 / LUNCH

14:00-15:30 / MODULE 7

PATENTING INTERNET PLATFORMS AND APPLICATIONS

Module 7 and 8 will consider a vast array of issues related with patenting web-based and mobile technology. In this context, Module 7 will review international legislation, case law and patent offices' practices, with special emphasis on EU-US comparative analysis. It will discuss patenting of software, software-implemented inventions and business models that are deployed in web-based technologies. This module will consider how to patent the functionality of a web or mobile app or platforms, by discussing eligibility criteria such as novelty, inventive step/non-obviousness and industrial applicability. Further, how a web-based invention claim should be drafted? In addition, being the field especially crowded, there might be much prior art. In this context, this Module will discuss issues of commercial value and how to design around existing patents.

SPEAKER: Jean-Marc DELTORN, Patent Examiner, European Patent Office (EPO).

15:30-16:00 / COFFEE BREAK

16:00-17:30 / MODULE 8

PATENTING INTERNET BUSINESS MODELS & ALTERNATIVE PROTECTIONS

Protection of innovative business models is especially relevant in the platform economy. To which extent business models can be patented? Module 8 will consider protection of business models in web-based and mobile applications and will strike relevant differences between US and European practices. Again, openness or trade secrets might be alternative models implemented by web-based platforms to promote their business and protect their technology. In this respect, Module 8 will contrast patent protection for web-based technologies and business models with trade secrets protection or open-access models and consider potential shortcomings of patent protection. In this regard, trade secret protection - that arises automatically - may be especially well-suited for fast developing and changing web-based inventions, whose improvements occur at an extremely rapid pace.

SPEAKER: Jean-Marc DELTORN, EPO.