

Practical information



VENUE

ESCARPE BUILDING / ROOM 339, 3RD FLOOR

CEIPI / UNIVERSITÉ DE STRASBOURG

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CEIPI

Advanced Training Program

on Intellectual Property,
Intermediary Liability, and
Online Platforms' Regulation

7-9 DECEMBER 2017
CEIPI | STRASBOURG



Centre d'études internationales de la propriété intellectuelle | CEIPI

Center for International Intellectual Property Studies

Institut für internationale Studien des geistigen Eigentums

Université de Strasbourg

www.ceipi.edu

DAY 1 – THURSDAY, 7 DECEMBER 2017

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: HISTORY, THEORY, AND INTERNET JURISDICTION

Module 1 will provide an introduction to the training program in the first 30 minutes. The remainder of the class will introduce the theoretical and historical background of intermediary liability in the digital environment and discuss the problem of jurisdiction online. We will discuss how the Internet has produced complex jurisdictional challenges and look into some case studies, such as the Yahoo! France case and its progeny. **SPEAKER:** Giancarlo FROSIO, Senior Lecturer and Researcher, CEIPI.

10.45-11.00 / COFFEE BREAK

11.00-12.30 / MODULE 2

SAFE HARBOURS

Module 2 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 the United States and Europe. In particular, we will talk about the Communications Decency Act, Section 230, the Digital Millennium Copyright Act, Section 512, the eCommerce Directive, Articles 12-15, as well as differences among providers (ISPs, search engines, p2p). This module will expand on more recent experiences in other jurisdictions, such as Brazil and Asian countries. We will consider the reasons that have led to the introduction of those safe harbours, what the Internet would have been without them and whether the market conditions have changed and what that may imply. In this context, the module will introduce the discussion of the upcoming EU DSM reform and its effects on online platforms and the digital ecosystem. **SPEAKER:** Giancarlo FROSIO, Senior Lecturer and Researcher, CEIPI.

12.30-14.00 / LUNCH

14.00-15.30 / MODULE 3

SECONDARY LIABILITY FOR COPYRIGHT INFRINGEMENT

After reviewing the basic principles of copyright protection, module 3 will discuss judge-made doctrines of secondary liability, including contributory, vicarious and inducement liability. We will look into to case law in the United States, such as Sony, Fonovisa, Napster, Aimster and Grokster. We will also touch on other countries doctrines of secondary liability, such the doctrine of authorization in UK and Australia and relevant tort law principles in Continental European and South American countries. Recent case law from the Court of Justice of the European Union (CJEU) will be introduced to be further discussed in the next modules. **SPEAKER:** Christina ANGELOPOULOS, Lecturer, Faculty of Law, University of Cambridge. **SPEAKER:** Giancarlo FROSIO, Senior Lecturer and Researcher, CEIPI.

15.30-16.00 / COFFEE BREAK

16.00-17.30 / MODULE 4

LINKING AND COMMUNICATION TO THE PUBLIC ONLINE

Linking is essential to the very existence of the Internet. However, linking to third party content may trigger liability of online intermediaries. In this context, this module will discuss US case law, such as *Perfect 10*, *Flava Works* and the *Roadirecta* case, and recent CJEU decisions, such as *Svensson*, *BestWater*, *C More Entertainment*, *GS Media*, *Filmspelers*, and *Ziggo*. Also, we will look into cutting edge issues like linking to streaming of live sports events. In addition, this module will discuss the notion of communication and making available to the public online under the recent CJEU jurisprudence. We will highlight how different approaches have been increasingly emerging in different jurisdictions. **SPEAKER:** Christina ANGELOPOULOS, Lecturer, Faculty of Law, University of Cambridge.

18.30 / WELCOME COCKTAIL

DAY 2 – FRIDAY, 8 DECEMBER 2017

9.00-10.30 / MODULE 5

MONITORING OBLIGATIONS

We will also review the notion of monitoring obligations. 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 5 will discuss international case law, such as *SABAM* from the CJEU, *Viacom v Youtube* in the US, *Allotstreaming* in France, *Dafra* in Brazil, and *Belen* in Argentina. Also, this module will review recent EU reform proposals included in the DSM package that may impose filtering obligations on online intermediaries. Finally, we will look into recent case law that imposed on search engines proactive monitoring obligations for the violation of privacy rights in the *Max Mosley* cases. **SPEAKER:** Giancarlo FROSIO, Senior Lecturer and Researcher, CEIPI.

10.30-11.00 / COFFEE BREAK

11.00-12.30 / MODULE 6

SECONDARY LIABILITY FOR TRADEMARK INFRINGEMENT

Module 6 will discuss an additional form of intellectual property that may be infringed through intermediaries' online platforms: trademarks. In the past few years, trademarks owners sued major online platforms, such as eBay, and search engines for contributory liability for trademark infringement in connection with their online advertising services. In this context, consistent case law developed in the U.S. and Europe. Recently, case law in Europe expanded the reach of injunctions against access providers to include orders to block website infringing trademarks. **SPEAKER:** Yann BASIRE, Associate Professor, University of Haute Alsace and Lecturer, CEIPI.

12.30-14.00 / LUNCH

14.00-15.30 / MODULE 7

INNOVATION, HOLD-OUT POWERS, AND COMPETITION

Property owners repeatedly try to leverage their hold-out power to block progress and prevent new technologies and business models to emerge. This behavior applies to property at large, but surfaced often throughout the history of copyright ownership. As we have seen in previous modules, intellectual property owners challenged innovative technologies, such as piano rolls, tape recorders, the radio, VHS recorders, cable television, peer-to-peer software, mp3 music format, search engines and digital image thumbnails. This module will discuss the tension between property owners and innovators/intermediaries and look at additional cases dealing with intermediate digital copying, digital exhaustion, satellite retransmission, respectively in the *Googlebooks*, *ReDigi*, *UsedSoft*, and *Aero* litigations. In this context, we will consider how copyright enforcement has quietly shifted from regulating copying to regulating the design of technology. Also, we will discuss again competition aspects of trademark lawsuits against major online platforms, such as eBay, and search engines for contributory liability for trademark infringement in connection with their online advertising services. Finally, this module will consider recent antitrust litigation before the European Commission, such as the Google shopping case. **SPEAKER:** Giancarlo FROSIO, Senior Lecturer and Researcher, CEIPI.

15.30-16.00 / COFFEE BREAK

16.00-17.30 / MODULE 8

PRIVACY RIGHT TO BE FORGOTTEN

Module 8 focuses on the role of private sector entities in gathering information for and about users. This module will review data protection legislations (e.g. the EU Data Privacy Directive) and explore the legal and policy privacy implications of social networks, with special emphasis on the newly emerging right to be forgotten. Module 8 will also discuss the recently enacted GDPR, the *Schrems* case and the transatlantic data flow and Safe Harbour Agreement. **SPEAKER:** Giancarlo FROSIO, Senior Lecturer and Researcher, CEIPI.

DAY 3 – SATURDAY, 9 DECEMBER 2017

9.00-10.30 / MODULE 9

FREE SPEECH DEFAMATION AND HATE/DANGEROUS SPEECH

Module 9 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. The decentralized, global nature of the Internet means that almost anyone can present an idea, make an assertion, post a photograph or push to the world numerous other types of content, some of which may be illegal in some jurisdictions or offensive in some cultures. 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, Assistant Professor, Tilburg Law School.

10.30-11.00 / COFFEE BREAK

11.00-12.30 / MODULE 10

ENFORCEMENT STRATEGIES 1

Module 10 and 11 will look specifically into enforcement strategies that governments and private parties around the world adopt to press intermediaries to block their users' undesirable or infringing online content, such as voluntary agreements, three-strikes policies, blocking orders, and administrative enforcement. The discussion of global enforcement strategies will be also an opportunity to sum up on most topics that we touched on in previous classes. Finally, we will also review the conundrum of extraterritorial application of judicial decisions or administrative orders affecting online intermediaries. **SPEAKER:** Giancarlo FROSIO, Senior Lecturer and Researcher, CEIPI, **SPEAKER:** Martin HUSOVEC, Assistant Professor, Tilburg Law School.

12.30-14.00 / LUNCH

14.00-15.30 / MODULE 11

ENFORCEMENT STRATEGIES 2

Module 10 and 11 will look specifically into enforcement strategies that governments and private parties around the world adopt to press intermediaries to block their users' undesirable or infringing online content, such as voluntary agreements, three-strikes policies, blocking orders, and administrative enforcement. The discussion of global enforcement strategies will be also an opportunity to sum up on most topics that we touched on in previous classes. Finally, we will also review the conundrum of extraterritorial application of judicial decisions or administrative orders affecting online intermediaries. **SPEAKER:** Giancarlo FROSIO, Senior Lecturer and Researcher, CEIPI, **SPEAKER:** Martin HUSOVEC, Assistant Professor, Tilburg Law School.

15.30-16.00 / FAREWELL

