LAW, ECONOMICS AND MANAGEMENT
OF INTELLECTUAL PROPERTY

Bureau d'économie théorique et appliquée (BETA) UMR 7522

14th CEIPI-BETA workshop in Law and Economics of IP

"Inventing around Copyright"

by

Professor Dan L. Burk

Chancellor's Professor of Law at the University of California, Irvine, US

December 1st, 2014
at 5.00 pm

Room 330 (CEIPI, 11 rue Maréchal Juin, Strasbourg)

Abstract

Patent law has long harbored the concept of "inventing around," under which competitors to a patent holder may be expected, and even encouraged, to design their technologies so as to skirt the boundaries defined by patent claims. It has become increasingly clear that, for better or for worse, copyright also fosters inventing around. Copyright is not based on written claims, but because copyright links exclusive rights to technological actions such as reproduction, distribution, or transmission, the language of the copyright statute, and judicial readings of the statute, create boundaries around which potential infringers may technologically navigate. For example, the Aereo case recently decided by the United States Supreme Court involves technology that was explicitly designed to conform to non-infringing definitions of private transmission found in previous court decisions. But in copyright, unlike patent, there has been little analysis of the tendency to foster alternative technological development. In this paper I draw upon previous analyses of inventing around in patent law to assess the benefits and detriments of inventing around in copyright.

Professor Dan L. Burk

Dan L. Burk is Chancellor's Professor of Law at the University of California, Irvine, where he is a founding member of the law faculty. An internationally prominent authority on issues related to high technology, he lectures, teaches, and writes in the areas of patent, copyright, electronic commerce, and biotechnology law. He is the author of numerous papers on the legal and societal impact of new technologies, including articles on Internet regulation, on the structure of the patent system, and on the economic analysis of intellectual property law.