IPR info

2–3|2018

Wide range of research

Artificial intelligence and robots fascinate Finnish IPR researchers

Helsinki welcomes ATRIP

ATRIP Congress in Helsinki focuses on morality in IP law and policy

IPR BUSINESS builds on academic research

Eeva Hakoranta: Nokia's licensing success is also based on strong patents and an excellent team

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Interview with Professor Annette Kur

Niklas Bruun
Professor
Director, IPR
University Center

Once Upon a Time...

Once upon a time in Finland there was an exotic field of law called intellectual property law. In the 1970s, it was mainly the domain of practitioners like patent attorneys, book publishers and the music industry. Within Academia, the obligatory studies in IP law at the University of Helsinki amounted to a chapter of 20 pages in the general textbook on civil law. There were two professors of private law, **Berndt Godenhielm** and **Pirkko-Liisa Haarmann** (Aro), who encouraged some of their students to take up IP law as the field of study for a doctoral thesis. The success was limited: during the second half of the 20th century, only five doctoral theses in IP law were approved in Finnish universities.

Many factors contributed to the reconsideration of teaching and research in IP in the 1990s. These included the digital revolution, the TRIPS-Agreement, Finland's joining of the EU and the Finnish industry's experience of the costs of mismanagement of IP (especially Nokia´s adventures in the US courts in the late 1990s). The IPR University Center was established in 1999 as a cooperation between four (later six) Finnish universities encompassing the fields of law, technology and economy. The forming of the IPR University Center Association, and the involvement of all practical stakeholders in the field, has strongly supported IP teaching and research. IPRinfo Magazine, nowadays primarily an online publication, has served as a forum for both researchers and business to present analyses of current issues to the public.

During the 21st Century, there have been over forty doctoral dissertations published in Finland within the field of IP law. In addition, a number of related theses have been defended in the fields of economic and technological research.

We regard the responsibility of arranging the 37th ATRIP Conference in Finland as a recognition for the results that the Finnish IP research and teaching have achieved during the past 15 years. It is a great pleasure to welcome the leading Academics from all over the globe to Helsinki in August 2018.

To present the range and depth of both the Finnish IP research and IPR in business to the international guests coming to Finland, we have decided to publish a special printed edition of IPRinfo in English. In this issue, a few IP researchers in Finnish universities present themselves and their research. You can also read interviews with our supporters from the Finnish business community. Furthermore, we received some fine analyses from three international academics who have been actively teaching in Finland – and whom we regard as our close friends. Enjoy!

The whole Finnish IP Community warmly welcomes ATRIP to Finland in the Summer of 2018.

P.S. The ATRIP Congress in Helsinki will carry a special meaning to me, being my last big project as the director of IPR University Center. From September the Institute will be lead by my excellent colleague Professor **Marcus Norrgård**. ■

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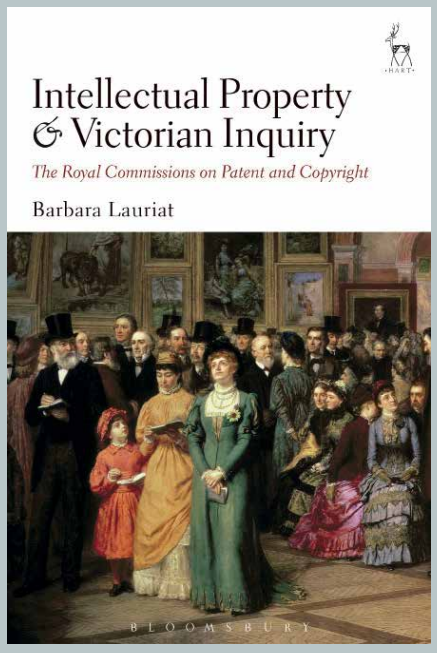

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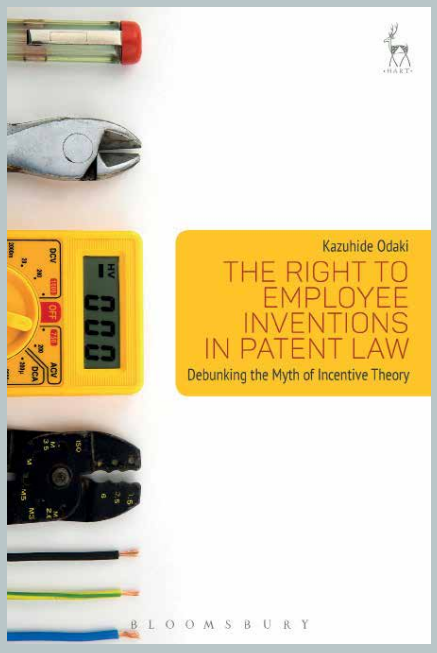

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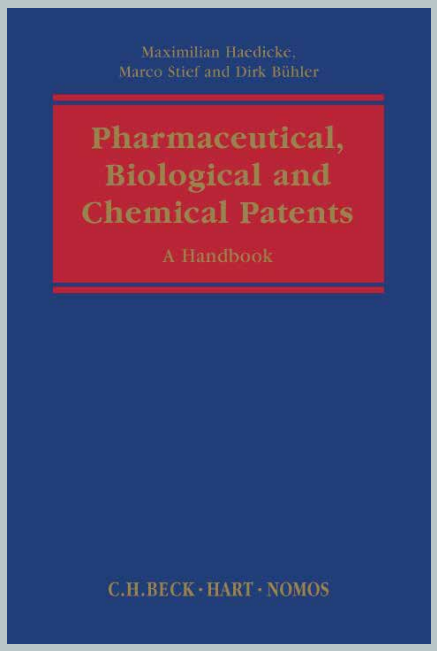

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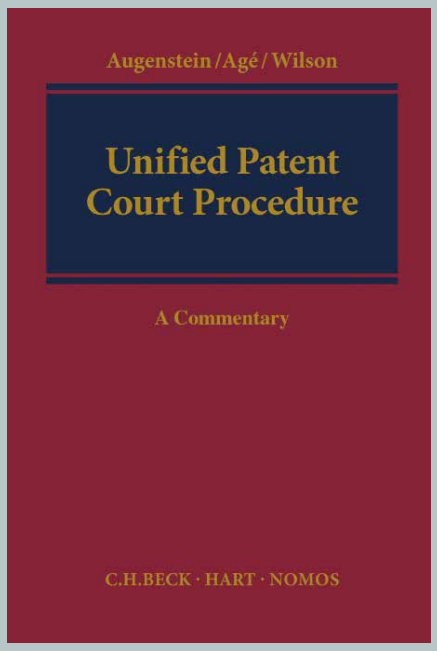

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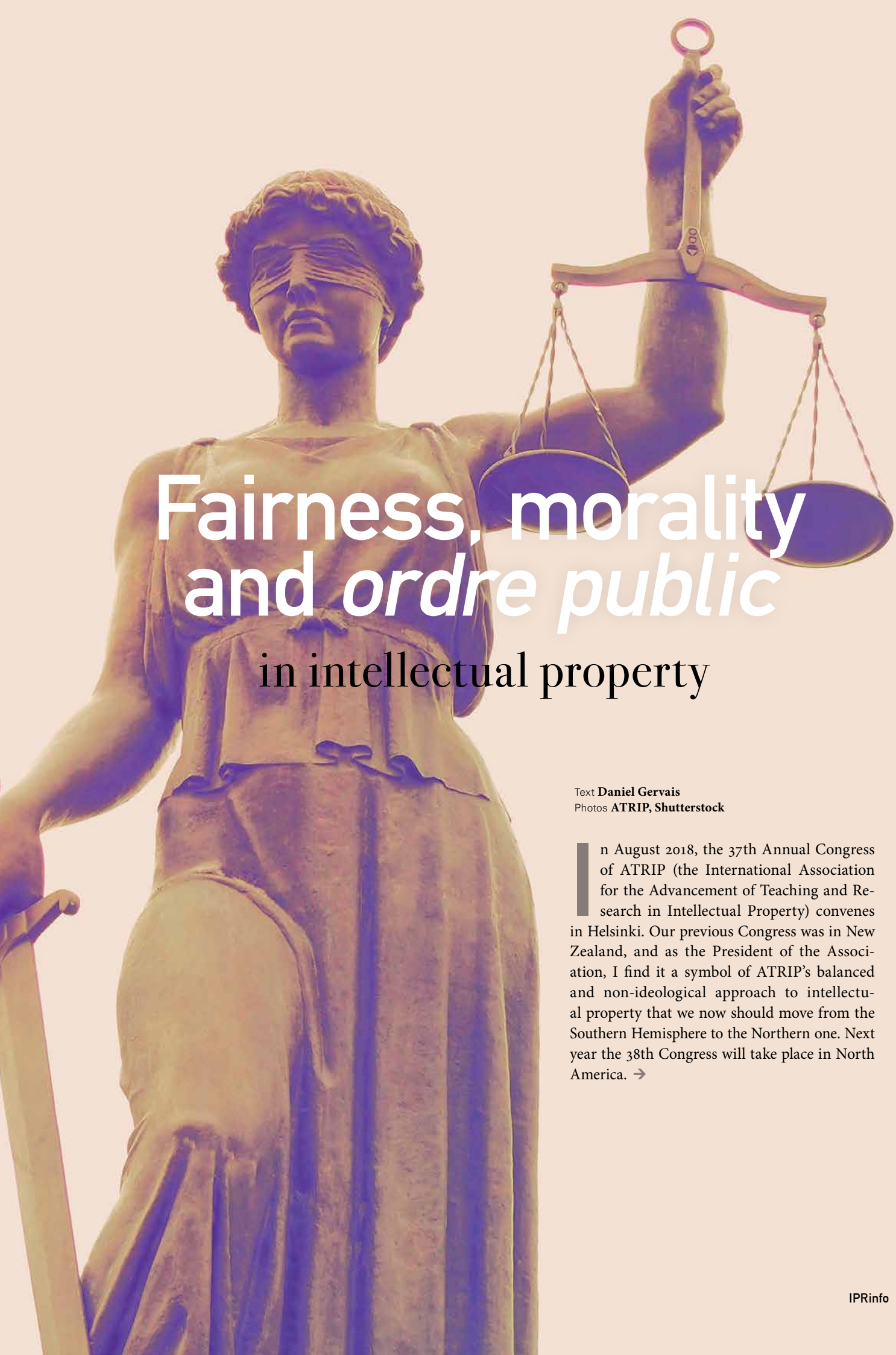


Fairness, morality and *ordre public* in intellectual property

Text **Daniel Gervais**
Photos **ATRIP, Shutterstock**

In August 2018, the 37th Annual Congress of ATRIP (the International Association for the Advancement of Teaching and Research in Intellectual Property) convenes in Helsinki. Our previous Congress was in New Zealand, and as the President of the Association, I find it a symbol of ATRIP's balanced and non-ideological approach to intellectual property that we now should move from the Southern Hemisphere to the Northern one. Next year the 38th Congress will take place in North America. →

THE INTERNATIONAL ASSOCIATION FOR THE ADVANCEMENT OF TEACHING AND RESEARCH IN INTELLECTUAL PROPERTY ATRIP

- founded in 1981
- pursues educational and scientific objectives
- located in Zurich, Switzerland
- annual congresses on different continents and countries
- 361 members from 67 different countries: professors, researchers and PhD candidates (April 2018)
- cooperates with WIPO (World Intellectual Property Organization):
  - The first congress was held in 1982 in Geneva in the HQ of WIPO
  - The cooperation enables members from the developing world to participate in the Congresses
  - Officials of WIPO regularly attend and contribute to ATRIP discussions
  - Together, ATRIP and WIPO continue to develop tools to assist teachers and researchers in the field of intellectual property.

FAIRNESS CAN BE APPROACHED FROM MANY DIRECTIONS

Choosing the theme of the annual Congress is one of the most challenging yet most rewarding tasks of the President of ATRIP. This year's theme, *Fairness, Morality and Ordre Public in Intellectual Property (IP)*, germinated out of an idea by professors **Niklas Bruun** and **Nari Lee**. They suggested fairness (and its rhetorical partner, unfairness).

> "How can fairness be defined? Can it be measured?"

I found fairness an excellent choice, given its role as a general legal principle but also as a notion embedded in IP law itself. Fairness may be defined as the quality of treating people equally or in a way that is right or reasonable. The notion of fairness is often used in IP law to justify the protection of inventors, creators, trademark owners and others against certain forms of free-riding. It is also used to restrict abusive and anti-competitive conduct by IP owners. Fairness can infuse the protection of the "fruits of intellectual labour" with a degree of proportionality and thus constitute one of the justificatory theories of many forms of IP. The best-known role of fairness on the IP stage may be the notion animating fair use and fair dealing limitations on copyrights in common law jurisdictions. Fair use is also applicable with different contours to trade-marks.

This part of the theme will, no doubt, generate discussions on several levels in our Congress: how

In 2017, ATRIP discussed the purpose of IP in Wellington, New Zealand.

can fairness be defined? Can it be measured? If so, according to which criteria? And then: fairness to whom? IP holders, users, intermediaries etc.? Fairness to the North and the South? To women and men? To indigenous peoples? Could fairness be used as the philosophers' stone that would turn IP policy into gold? Or is it too vague and undefined a notion to be more than a rhetorical vehicle used by courts to carve out case-by-case exceptions to IP rights?

MORALITY AND *ORDRE PUBLIC* SHOW VARIOUS SIDES OF AN ISSUE

Reflecting upon fairness, it occurred to me that there are related doctrines embedded in IP that would make for excellent scholarly debate: morality and *ordre public*. Like fairness, they sometimes play a direct role in the formulation of international IP law & policy.

Some see morality reflected — semantically at least — in the 'moral right' in art 6*bis* of the Berne Convention, although this is debatable. In patent law, *ordre public* and morality are used in TRIPS article 27.3, which allows WTO Members to limit patentable subject matter. Morality (like fairness) has also been invoked in debates about the 'value gap' in the online exploitation of authors' rights. Not to be confused with notion of "international public order", *ordre public* was originally a notion used in domestic law of civil law countries to protect the basic values of the forum law. An equivalent notion is known as public policy in common law countries.

Morality is relevant also in several other ways, including unfair competition regulation and confidential information law such as the EU Unfair Commercial Practices Directive and TRIPS Article 39.3, both of which incorporate the notion of 'honest commercial practices'. Moreover, morality is a factor in trademark law, for example in Article 6 *quinquies* of the Paris Convention (*telle-quelle* principle). Morality was invoked in a recent EFTA Court case *(Vigeland)*. In contrast, a US Supreme Court case *(Tam)* limited the government's ability to decide whether a trademark was obscene for purposes of registration. In this context one should also mention the immoral nature of counterfeiting activities used to fund criminal organizations.

One of ATRIP's core objectives to assist early career IP teachers and researchers. Sponsored by FICPI (the International Federation of Intellectual Property Attorneys), the winner of our annual essay competition for young researchers is invited to present his/her paper in the Congress. I am pleased to note that the 2017 Competition received a record-breaking number of excellent submissions from around the world, in both English and French. ■

Congress papers on definitions and applications

The notions of fairness, morality and *ordre public* are the three pivot points around which our 2018 ATRIP Congress is articulated. We received a record number of paper proposals, over 160, approximately 60 of which will be presented.
Some presentations will discuss definitional issues: how fairness, morality and *ordre public* vary by the country or region. Like many other elements of IP law, the source of the definition can be found both in the interpretation of international instruments and the *lex fori* applicable to specific instances.

Debate will revolve around the application of these three notions to specific fields of IP and, where appropriate, to various "sides" of an issue. In the program, there are also panels proceeding by the area of law. Furthermore, two panels will explore how ground-breaking technologies such as artificial intelligence and blockchain integrate fairness, morality and IP (or fail to do so) in their accelerating development and dissemination. Ethical concerns about big data may provide additional food for thought.

> Some presentations will discuss definitional issues: how fairness, morality and ordre public vary in by the country or region.

The 2018 theme meshes nicely with the work done in several previous Congresses that deliberately crossed the border of IP qua IP. For example, the previous Congress looked at the Object and Purpose of Intellectual Property, a theme inspired by the key role played by the Vienna Convention on the Law of Treaties. In 2013, the Congress discussed whether IP was a *lex specialis* whereas seven years ago, we walked to the Crossroads of IP & trade law. ■

PHOTO: VANDERBILT

"The theme of fairness made me think of how intellectual property interfaces with broad, horizontal legal notions that live atop the legal order as it were", says **Daniel Gervais**, PhD, MAE, President of ATRIP.

Pursuing the academic IP path

After defending their dissertations in Finland, many IPR specialists continue their career as researchers in Finnish universities. Six of them give IPRinfo readers a glimpse to their current areas of interest.

BORROWED COWS AND OTHER TYPES OF APPROPRIATION

Anette Alén-Savikko
postdoc researcher
University of Lapland and
University of Helsinki

In 2014, the Court of Justice of the EU (CJEU) gave a ruling on parody in EU copyright law (C-201/13 Deckmyn). The option to introduce an exception for parody is included in Article 5(3)(k) of the InfoSoc Directive. The Court noted that parody is an autonomous concept of EU law, while also listing the core features of parody. As an expression of humour or mockery, parody must inter alia evoke an existing work but differ noticeably therefrom.

Being a member of a research project called "Art, Copyright and the Transformation of Authorship", I examined the status of parody in Finnish copyright law in light of EU law and art studies in my article of 2016. Later, a dispute took place in Finland regarding the use of one artist's works featuring cow figures in another artist's paintings. The latter pled parody when the issue was discussed by the Copyright Council, which issues non-binding opinions on the application of the Finnish Copyright Act (FCA). The Council considered (TN 2017:4) the use in question to result in new independent works; therefore, no prior authorization was needed (my research constituted part of the source material). This result for parody may be a positive one, but the background is anything but legally sustainable.

The FCA does not include a parody exception. Legal literature and the Copyright Council approach parody via the provisions on adaptation or conversion of works (§ 4 FCA). Thereby, the adaptation of a pre-existing work is subjected to the rights therein, while the creation of new works, in free association with a pre-existing work, is not. Viewing parody as new and independent is, however, problematic. Parody relies on imitation and is dependent. It strives for different goals than the work(s) being parodied. Parody comes in many forms. It is multi-layered. It may critique, ridicule and pay tribute all at once. It repeats and renews. It contributes to and comments on the cultural canon and may target many types of institutions and icons. It would be problematic to require consent for parody.

EU law views parody as an exception to exclusive rights thereby acknowledging the dependence of parody on pre-existing works and the collision with exclusive rights. In addition, the originality requirement has been refined in CJEU praxis. A national parody exception in Finnish legislation would thus follow the lines of EU law, while it would also be applicable to all forms of parody. The exception would not abolish the need to define and interpret. Moreover, parody would never be exhaustively captured legally. It's alive!

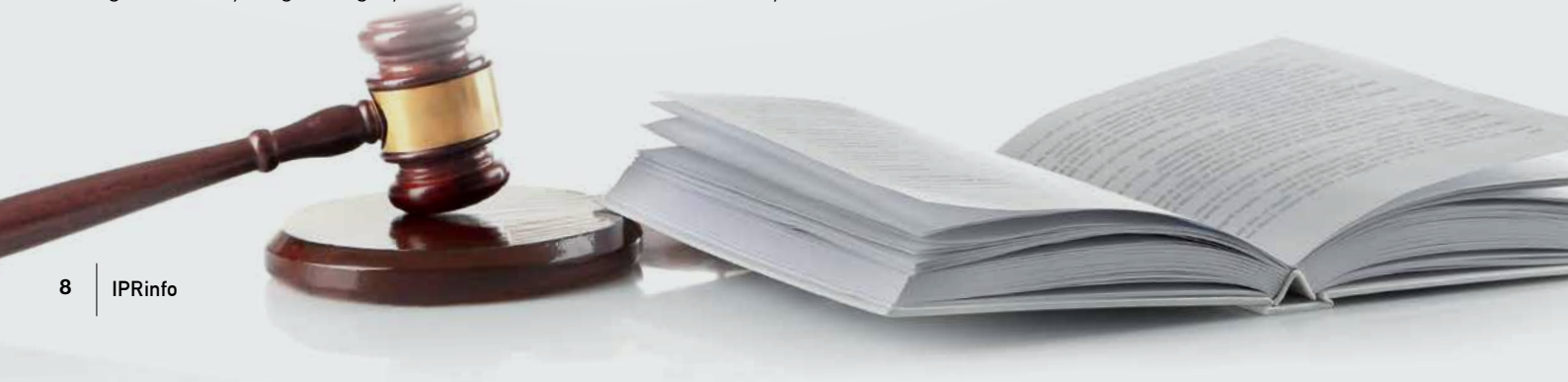
The author defended her dissertation "Law and Community in the New Media Landscape: Critical Perspectives on Audiovisual Sport Coverage in the European Union" at the University of Helsinki in 2014. ■

TRANSFER PRICING OF TRADEMARK IN THE INTERNATIONAL TAX LAW

Katriina Pankakoski
postdoc researcher
University of Vaasa

In addition to her position of a postdoc researcher at the University of Vaasa, D.Sc. (B.A.) Katriina Pankakoski works as a tax specialist at Finnish Tax Administration. Pankakoski's dissertation of January 2018 examines transfer pricing of trademarks in international tax law both theoretically and from a pragmatic point of view. Her thesis, "Transfer Pricing of Trademark: Legal Restrictions Regarding the Arm´s Length Pricing of the Intra-Group Transactions" compares the content and scope of the arm´s length principle as set out in Section 31 of the Finnish Act on Assessment Procedure (AAP) and Article 9 of the OECD Model Tax Convention. In addition, the study compares the norms of Finnish and Chinese tax legislations.

The study identifies key factors that can be used to determine fiscally acceptable valuation outcome in the transfer pricing of trademark. Pricing between independent parties has been clarified from a fiscal point of view, taking into account the solutions offered by the economics. Thus, one possible pricing model for determining the transfer price of trademark has been determined. ■



CONTRACTS, COPYRIGHT AND TRADE SECRETS

Ulla-Maija Mylly
senior lecturer in civil law
University of Turku

Ulla-Maija Mylly's doctoral thesis (2014) discussed IP protection of computer program interfaces and interoperability. She analysed, among others, the extent to which TRIPS provisions and EU norms allow exceptions for interoperability and compulsory licensing of critical computer interfaces.

Her current research analyses international IP agreements and selected EU instruments and (non-)flexibility they produce for the EU and domestic of levels regulation of digital copyright and user rights, in particular. The research asks whether and how copyright concepts and principles (such as exhaustion, communication to the public related to linking, and private copying) could be interpreted and/or regulated in the digital environment so as to keep the copyright system legitimate and to facilitate innovation.

Her research also relates to the new EU Directive on trade secrets which under the Directive are not treated as property, nor as intellectual property. Many international IP treaties, however, cover trade secrets. Moreover, they may benefit from human rights (property) protection, like (other) intellectual property rights. Mylly analyses the role of specific fundamental rights, which have been included as exceptions to the Trade Secret Directive. On a more general level, the research endeavours to analyse the practical significance of the conceptual distinction between trade secrets and other IP.

Her research also addresses connecting concepts between trade secret and other IP law (mostly copyright) and how these are applied. In more practical terms, the research will look for example at fair access to information through reverse engineering practices and the role contracts under both trade secret and copyright laws. This issue is thus connected to the discourse on overlapping IP rights. ■

DECOLONIZING THE EU'S IP POLICY: PROPOSAL FOR A SUBSTANTIVE EQUILIBRIUM

Daniel Opoku Acquah
postdoc researcher
University of Turku

The title of this piece appeared as an original proposal in my doctoral dissertation (June 2017, University of Turku) entitled "Intellectual Property, Developing Countries and the Law and Policy of the European Union: Towards Postcolonial Control of Development". The thesis provided the first integrative analysis of how the EU's rulemaking on intellectual property (IP), both at home and abroad, impacts the ability of developing countries to utilize the flexibilities flowing from the TRIPS Agreement to promote public health and access to medicines. The EU's IP policy was conceptualized as comprising two distinct but intertwined normative regimes – the internal and external.

The analysis showed that the EU's IP policies have developed in manners that are tightly intertwined and detrimental to developing countries' ability to promote public health and access to medicines. Supplemented by other theories, it problematized the issue in the context of postcolonial theory, which underscores the notion that the overly compliant attitude of most developing countries towards international intellectual property laws – despite their obvious effects on their economies – goes beyond contemporary political and economic circumstances. It can be attributed to the colonial roots and neo-colonial structures of this body of law, perpetrated through the EU's internal and external policy. In this regard, the development of this body of law has been complicit in legitimizing the economic control of developing countries at the expense of their development.

To decolonize the European Union's IP policy, I proposed the concept of *substantive equilibrium* specific to free trade agreements (FTA) and the EU's internal norms. By substantive equilibrium, I mean moving the provisions on development (public health) and other references to the TRIPS flexibilities in the FTAs and relevant EU secondary norms from the Preamble or 'general provisions' to the substantive part of the treaty or legislation. This means elevating those provisions from an 'optional' status to 'mandatory' one. This should grant the provisions equal weight and effect in implementation (through the laws and regulations adopted at state level) and interpretation as the others in the main body of the treaty. This way, national courts, decision makers and arbitration panels in the case of dispute settlement (as provided for in most FTAs) would be forced to accord the same level of respect and gravity to which they apply the substantive provisions on IP to those on development and related provisions. ■

PHOTOS: SHUTTERSTOCK

PATENTS, INNOVATION AND BEYOND

Dhanay Cadillo Chandler
PhD, Senior Research Fellow
University of Turku

Access to medicines is not a new topic. However, recent studies point at the need to re-think the patent system aiming to prompt further innovation. This may yield benefits for all stakeholders. Admittedly, the patent system is an important incentive as a reward mechanism, but it has proved not to be enough.

My current research has been conducted within the framework of the project Constitutional Hedges of Intellectual Property (CONST-IP), funded by the Academy of Finland. It has allowed me to look into emerging trends creating additional pillars for intellectual property protection. A key drug innovation does not necessarily enjoy the rewards offered by the patent system. In this context, attention has been given to the roles of governments, universities and science in promoting innovation concerning health. This is also connected to the use and benefits portrayed by the Bolar or research exemption and the way supplementary protection certificates (SPC) have been used until now.

The call for public consultation by the European Commission points at the re-calibration of the SPC system as currently envisaged. The CJEU decision in Incyte (C-492/16) on 20 December 2017 and the interpretation given by Swedish Courts in deciding corrections on the SPC´s term may indicate small and emerging discrepancies between the CJEU and the Swedish national courts. The result of the consultation remains to be seen.

It is important to consider SPC´s within the context of pharmaceutical innovation as these do not only extend the exclusivity in the market, but also point towards the trend in creating exclusivity regimes in addition to the patent system to reward innovation. My research is focusing to two aspects related to SPC´s and data exclusivity: firstly, the plausible overlap between SPC's and the patent system and, secondly, the need to find a guide for identifying the points of public interest within the emerging regime protection of data exclusivity. I am also preparing publications on the intersection of intellectual property rights and, for instance, corporate social responsibility, the role of sustainable development goals (SDG), or the ongoing debate on access and benefit sharing mechanism (ABS mechanism) within the context of access to genetic resources associated to traditional knowledge.

The author defended her doctoral thesis at Hanken in 2014: "The Role of Patents in the Latin American Development: 'Models of Protection' of Pharmaceutical Patents and Access to Medicines in Brazil, Chile and Venezuela". ■

TRADEMARK PROTECTION IN VIETNAM

Ho Bich Hang Nguyen
postdoc researcher
University of Eastern Finland

Ho Bich Hang Nguyen joined UEF Law School in 2018. She holds concurrent positions as lecturer of law at Hochiminh City University of Law and as an Associate at Russin & Vechi International Legal Counsellors. Dr. Nguyen's research focuses on intellectual property protection in Vietnam with a focus on large informal markets in developing economies.

The Vietnamese economy relies on export of high quality agricultural products to neighbouring countries. Therefore, Nguyen focuses on the use of collective marks, certification marks and geographical indications to protect well-known trademarks and agricultural products. Yet, international intellectual property protection schemes are under-utilized. ■

In several fields of chemistry, about half of the inventors are women.

(WIPO)

In 2017, **MADRID INTERNATIONAL APPLICATIONS** totaled 56,200, the highest number ever filed. The highest numbers of international applications were filed by applicants domiciled in the U.S. (7,884) and Germany (7,316). ■ **(SOURCE: WIPO, IP FACTS AND FIGURES, 2017)**

In 2016, global patent filings grew by 8.3 % to a total of 3,127,900

(SOURCE: WIPO)

In 2017, European Patent Office EPO received nearly 166 000 applications.

(SOURCE: EPO)

ARTIFICIAL INTELLIGENCE is not constrained to the digital world, with significant patenting activity taking place also in sectors such as transport and machinery, and with wide potential for deployment in a range of services such as healthcare and finance. Reaping the benefits of AI will require policy action in a number of fields, however, and education and training systems will need to ensure young people and in-work adults are equipped with the right skills to perform in an AI-enabled environment. ■

(OECD, TRANSFORMATIVE TECHNOLOGIES AND JOBS OF THE FUTURE, 2018)

PUBLIC INTEREST IN PLANT VARIETY RIGHTS?

In March 2018, the Community Plant Variety Office (EU Agency) decided against the "Ben Starav" application for a compulsory licence. The applicant had claimed that there is a public interest based on the benefit that the blackcurrant species "Ben Starav" provides to the public health when used for producing (allegedly healthy) 100% juices. Moreover, it would be in the public interest to use this kind of variety that adapts well to different climatic conditions.

According to the CPVO, the applicant failed to show i.a. the specific benefits provided by "Ben Starav" to public health or its unique characteristics that would be of importance from a public interest perspective. The CPVO ruled that the alleged unique characteristics do not fulfil the requirement of Article 41 (2) of the Proceedings Regulation since these features are also offered by other varieties of blackcurrant. As for the public funding of breeding programme, the CPVO concluded that granting a compulsory licensing should abide by the same rules irrespective of whether the programme leading to the variety was private or state funded. ■

(SOURCE: IPKAT, 20 APRIL, 2018)

PHOTO: SHUTTERSTOCK

RESEARCH AND DEVELOPMENT expenditure [in Finland] amounted to EUR 5.9 billion in 2016. Expenditure went down by EUR 145 million from the year before. The decrease comes entirely from the business enterprises sector whereas in research institutes and elsewhere in the government sector and in the higher education sector, RD expenditure remained on level with the previous year. ■

(STATISTICS FINLAND, OCTOBER 2017)

ILLUSTRATIONS: SHUTTERSTOCK

Both Eeva Hakoranta and Ilkka Rahnasto come originally from Ostrobotnia area, whose traditions of outspokenness and hard work may be noticed in their resilient attitude today.

Commercializing IPR

requires systematic approach

The Patent Business team at Nokia is recognized worldwide for significant patent deals. IPRinfo interviewed two key figures, Ilkka Rahnasto and Eeva Hakoranta, to find out what makes their team so successful.

PHOTO: PÄIVI HELANDER

Text **Päivi Helander**
Photos **Aki Rask**

The Patent Business team at Nokia, led by **Ilkka Rahnasto**, is known around the globe as tough and competent negotiators who build strong relationships with licensees and deliver profitable agreements. IAM, an international magazine reporting on intellectual property as a business asset, ranked Rahnasto as the top global market maker for 2017.

– To go far in licensing business, you must have a first-class product, it must be useful and usable, and you must be able to convince potential licensees that it is worth paying for, Rahnasto sums up the key factors of their success.

Currently vice president and head of Patent Business, he started his Nokia career 20 years ago as an IPR lawyer. Rahnasto says that intellectual property issues already fascinated him as a law student. Moreover, he has taken to technology since high school. His colleague **Eeva Hakoranta**, vice president of Licensing for Patent Business, specialised in contract law, including in particular technology and intellectual property transactions and related enforcement through litigation and arbitration. She worked for several years in a law firm.

> "We all use Nokia technology every day"

– I always liked to look into new things for continuous learning and renewal and over the years IPRs took more and more space in my work as an attorney. I came to Nokia in late 2006 to establish an IPR legal function because they needed lawyers specialising on the interface between business and IPR. Six years later I moved over to lead the licensing group, whose staff has since multiplied.

OPTIMIZING THE PORTFOLIO REQUIRES GROWING AND PRUNING

Rahnasto and Hakoranta are based on the Nokia campus in Espoo, Finland. In 2014, following the sale of its mobile phone business to Microsoft, Nokia Corporation reorganised its activities. Nokia retained its entire patent portfolio, and the responsibility for the licensing of patents, technologies and the Nokia brand moved to the Nokia Technologies business.

Mergers, acquisitions and sales have also brought changes in the vast patent portfolio of the company, most notably the acquisitions of Siemens' stake in the NSN joint venture in 2013 and of Alcatel-Lucent in 2016. Following those transactions, Nokia owned more than 30,000 patent families. Through active portfolio management, at the end of 2017 Nokia owned around 20,000 patent families. Around 280 employees work in Patent Business, with many focused on managing the portfolio.

Nowadays, licensing constitutes a considerable portion of Nokia revenue. In 2017, Nokia Technologies increased its net sales 57 per cent from the previous year to 1,654 billion euro. In addition to its ongoing business, the company signed noticeable licensing deals with more than 25 companies, including Apple, Huawei, LG Electronics and Xiaomi. Indeed, Nokia expects recurring net sales from the licensing business to grow by around 10 per cent each year for the next three years.

Rahnasto and Hakoranta trust firmly in their portfolio and the way it is managed. Finishing each other's sentences, they explain that no invention nor any patent or portfolio is profitable until it can be taken into use. Even though Nokia submits patent applications on more than 1,300 new inventions every year, developers cannot work on products →

with only patenting in mind, nor is all patenting directly oriented to licensing.

SUCCESS BUILDS ON AMBITION, TRUST AND SKILLS

What is it that makes the Patent Business team successful? Rahnasto and Hakoranta would not single out any one factor.

– The level of ambition must be high, without it you cannot achieve great success. We need perfectionists with healthy self-esteem but at the same time they should be good team players, Hakoranta reflects.

Rahnasto emphasizes the significance of a solid knowledge basis. Nokia's research scientists, engineers and other technology specialists provide the innovations and products, without which there would be nothing to patent or license.

With a contented laugh Hakoranta and Rahnasto reveal the winning attitude of their team: "we have the world's best portfolio and the best team".

– Participating in licensing negotiations means playing a tough game. In addition to strong patents you must be able to rely on your colleagues with good self-confidence and the courage to stand behind their positions, Hakoranta says.

"We are so well known that everybody wants to meet us"

She adds that one cornerstone of success is the possibility to freely voice your differing opinion in a constructive manner. She expects the team to have a good dialogue before aligning behind a strategy. Sometimes voices are raised, which Rahnasto euphemistically calls "complementing perspectives".

ACADEMIC AND SCIENTIFIC RESEARCH GIVE A SOLID BACKGROUND

– We have collaborations with professors around the world. Academic research continues to play an important role in IP. The application of IP laws in the new evolving technical context keeps on requiring that old IP law concepts are kept fresh, setting all the time new expectations also for the academic discussion, Rahnasto says.

He himself has a LL.M degree from the US and Finland. In 2001, he defended his dissertation in Helsinki: "Intellectual property rights, external effects and antitrust law: leveraging IPRs in the communications." In the thesis he claimed that it is crucial to take into consideration the potential use of all of the company's intellectual property, not only patents but also copyright and trademarks and their possible impact on society.

– This is what we still are doing, using IPRs to create a business, he says.

LICENSING IS A GROWING BUSINESS

Licensing is a business in its own right; monetizing intellectual property is one of the ways to create significant corporate value. Rahnasto sees huge opportunities in the Internet of Things (IoT) and 5G. When a device – for example a thermostat – sends data and receives directions via cloud services, they need to communicate wirelessly. And the standard essential patents (SEPs) for wireless technologies are an area where Nokia has systematically focused on growing its patent portfolio. Rahnasto remarks, however, that the market rules for IoT have not yet been established.

– We all use Nokia technology every day whatever brand of smartphone or connected device we use, Hakoranta reminds.

Indeed, during the past thirty years Nokia has focused on developing wireless technologies, including for the GSM, 3G and 4G and emerging 5G standards. Many of these technologies orig-

Rahnasto describes product development as solving challenging technical problems in an intelligent way. This process can take years, and it involves numerous phases and many people.

Rahnasto believes that value is generated from know-how

inally developed and patented by Nokia are now the core of Nokia's patent portfolio and the basis of its licensing programs.

THE ART OF NEGOTIATION

Despite various new means of communications, business negotiations usually require personal contact. Hakoranta and Rahnasto find themselves abroad often on weekly basis. Rahnasto, Hakoranta and their teams negotiate with people from a wide range of cultural backgrounds. Respect and honesty help to achieve the goal.

– It is important to be yourself. Respecting your partners' culture does not mean that you must adopt all their cultural practices, but you should be mindful of them. One of the most crucial things is to find out who has the mandate to make decisions, Rahnasto says.

"Winning attitude: we have the best portfolio and the best team"

– And everyone in our team must have the courage to stand up for their piece of the negotiations. Sometimes I have been asked afterwards how I dare to be so self-confident. But I trust our portfolio and our team members, Hakoranta continues.

She is often the only woman in licensing negotiations, but her gender has never brought problems. With a grin, Rahnasto remarks that any disrespect would be out of the question. Their team is so well known that "everybody wants to meet us."

Hakoranta adds that some women, often a bit younger, in the male dominated profession have told her that she gives them hope: proof that a woman can rise to a senior position in business and negotiate on the same basis as men. To be a role model makes Hakoranta smile.

– It means I must have done something right. ■

HISTORY OF NOKIA IN A NUTSHELL

- Established in 1865 as a paper mill
- Has produced telecommunications equipment since the 1880s
- Finnish Cable Works Ltd, a phone and power cable producer founded in 1912
- In 1922, partnership with Finnish Rubber Works and Kaapelitehdas (the Cable Factory); rubber boots, tyres, cables
- In 1980s produced computers and software; expansion to Nordic countries and Europe
- Mobile devices; from the mid-1990s onward entering international markets
- In 1982, Europe's first fully-digital local telephone exchange; the world's first car phone for the Nordic Mobile Telephone analog standard; changing telecommunications and mobile as the core business
- In the 1980s, more efficient use of radio frequencies and higher-quality sound
- In 1991, the first GSM call was made with a Nokia phone over the Nokia-built network
- By 1998, Nokia was the world leader in mobile phones
- In 2007, Nokia's telecoms infrastructure operations were combined with those of Siemens to form the Nokia Siemens Network joint venture
- 2011, collaboration with Microsoft in smartphone market
- In 2013 a "programmable world of connected devices, sensors and people" was starting to take shape. Nokia acquired Siemens stake in NSN and renamed it Nokia Solutions & Networks.
- In April 2014, Microsoft bought most of Devices & Services. Nokia continued with three businesses: Nokia Networks, HERE (its digital mapping and location services business) and Nokia Technologies
- In 2015, HERE was sold to a consortium of auto manufacturers
- In 2015, Nokia announced plans to acquire Alcatel-Lucent, together with the iconic Bell Labs, the deal closed in 2016
- 2017 Nokia employed over 100,000 people across more than 100 countries, did business in more than 130 countries, and reported annual revenues of around 23 billion euro
- Core business in connectivity and wireless technology, e.g. infrastructure for 5G and the Internet of Things, emerging applications in virtual reality and digital health.

Who filed the most PCT patent applications in 2017?

TOTAL NUMBER OF APPLICATIONS

243,500 ↑ 4.5%

TOP 10 PCT APPLICANTS

Number of published PCT applications

Huawei Technologies	ZTE	Intel	Mitsubishi Electric	Qualcomm	LG Electronics Inc.	BOE Technology Group	Samsung Electronics	Sony	LM Ericsson
4,024	2,965	2,637	2,521	2,163	1,945	1,818	1,757	1,735	1,564

TOP 5 FIELDS OF TECHNOLOGY

Number of published applications and share of total

COMPUTER TECHNOLOGY	DIGITAL COMMUNICATION	ELECTRICAL MACHINERY, APPARATUS, ENERGY	MEDICAL TECHNOLOGY	MEASUREMENT
19,122	18,400	15,223	15,024	10,082
8.6%	8.2%	6.8%	6.7%	4.5%

TOP 10 COUNTRIES

Number of PCT applications and % growth since 2016

U.S.	CHINA	JAPAN	GERMANY	REPUBLIC OF KOREA
56,624 ↑ 0.1%	48,882 ↑ 13.4%	48,208 ↑ 6.6%	18,982 ↑ 3.7%	15,763 ↑ 1.3%

FRANCE	U.K.	SWITZERLAND	NETHERLANDS	SWEDEN
8,012 ↓ -2.4%	5,567 ↑ 1.2%	4,491 ↑ 2.8%	4,431 ↓ -5.2%	3,981 ↑ 7.0%

WIPO WORLD INTELLECTUAL PROPERTY ORGANIZATION

Brexit and IP law:
working hard not to fall off a cliff

Professor Graeme Dinwoodie reminds that the IP provisions in the Brexit Withdrawal Agreements depend on the political agreement being reached between the EU and the UK.

Text **Graeme Dinwoodie** Photos **Shutterstock**

Brexit has presented challenges for all areas of law, including intellectual property law. It is too soon to tell whether the most pressing challenges in intellectual property law will successfully be met by the UK and EU negotiators. But, as of Spring 2018, the latest drafts of a proposed UK Withdrawal Agreement give some cause for optimism that a truly cataclysmic upending of settled expectations is likely to be avoided. For example, it appears as though agreement will be reached to ensure that unitary EU Trade Marks (EUTMs) presently covering the current twenty-eight member states of the Union will, after Brexit, automatically carry the same territorial coverage without the instigation of new procedures or the payment of new filing fees. Formally, this will occur by the pre-Brexit EUTMs giving birth on Brexit Day to a counterpart UK Trade Mark registration to accompanying the post-Brexit EU(27)TM, with the same priority date. A similar mechanism will operate regarding unitary Registered Community Designs (RCDs). →

THE UK RATIFIED THE UPC AGREEMENT.
On 26 April 2018, the World Intellectual Property Day, the IP Minister announced that the UK has ratified the Unified Patent Court (UPC) Agreement.

Of course, going forward, this environment might be tested on any number of fronts. From the perspective of the UK Intellectual Property Office (UKIPO), the administrative burden and cost of superintending another 1.2 million registrations is not negligible, even if those registrations will not require immediate examination. Moreover, from a substantive point of view, UK registrations will exist for a large number of marks which the owner has no intent to use in the United Kingdom (or, even, possibly the European Union, given different intent to use requirements in the UK and EU). In light of studies commissioned by the UKIPO over the last few years to address the phenomenon of trademark clutter, this is an unwelcome prospect. From the trade mark owner's perspective maintenance of rights will once again be rendered more complex and more expensive. And this speaks not at all to the complexities that cannot reasonably be worked out in the compressed period for negotiating the bare-bones Withdrawal Agreement. Who knows precisely the minefield of doctrinal issues that will arise when litigation occurs in the UK or EU courts concerning commercial activity that straddles both the English Channel and the date of Brexit. What we do know is that they will arise, with all the attendant unnecessary uncertainties and costs.

From the trade mark owner's perspective maintenance of rights will once again be rendered more complex and more expensive.

And it is not clear for how long UK law will provide equivalent protection. The current EU

(Withdrawal) Bill before the UK Parliament certainly has a preference for regulatory alignment (this is the post-Brexit "happy phrase" for all the despised "harmonisation" against which the voters supposedly revolted). Section 6(5) provides that the decisions of the Court of Justice before Brexit will have the precedential weight of the UK Supreme Court, and it is very rare for the UK Supreme Court (or its predecessor House of Lords) to overturn its own precedents. And although EU Regulations as such will not have any effect after Brexit, Section 3 of the Bill provides that direct EU legislation operative on Brexit Day will form part of domestic law on or after Brexit Day. This so-called "converted" EU law will, along with "preserved domestic law," be called "retained EU law."

This superficially technical mechanism masks substantial policy questions: what should be the scope of exhaustion, for example, in UK law?

HOW SHOULD THE UK COURTS INTERPRET "RETAINED EU LAW"?

But because a lot of retained EU law will not operate properly (or make any sense) after the UK leaves the EU, in Section 7, the Bill gives delegated powers to correct problems by statutory instrument ("Henry VIII powers") for a period of two years. This superficially technical mechanism masks substantial policy questions: what should be the scope of exhaustion, for example, in UK law? And, even without such interventions, how are the UK courts to interpret this EU-inspired law, and what weight should they accord EU decisions after Brexit interpreting the same law? Both the current President of the Supreme Court, **Baroness Hale** of Richmond, and her predecessor, **Lord Neuberger**, have raised concerns about the lack of guidance currently being provided to the courts.

Thus, even this "optimistic" assessment of the likely transition from a pre- to post-Brexit world is to a large extent premised on a baseline prediction of utter chaos; from that baseline, almost anything arguably could look like a relative success. And that "success", if it arrives, will be to ensure that, after several years consuming vast time, effort, money and talent on both sides of the English Channel, the United Kingdom and the European Union will manage to ensure a legal environment only mildly worse than that existing on 23 June 2016.

Getting back to something approaching zero will have been costly; all that time, effort, money and talent has been diverted from other important tasks (both in intellectual property law and beyond). The UK political and governmental process has for the last two years been consumed by applying tourniquets to stem the bleeding from the wound inflicted by a narrow majority of UK citizens voting on a fateful (rainswept) day in 2016. The opportunity costs are huge.

Moreover, all this reassurance flowing from the current draft IP provisions in the Withdrawal Agreements depends entirely on a broader political agreement being reached between the EU and the UK. Nothing is agreed until everything is agreed, as both EU and UK leaders are wont to recite as they struggle to invent a rational outcome to Brexit. There is no guarantee that such an agreement will be struck, especially given the complex political and constitutional gyrations that will have to be performed on both the UK and EU sides of the deal to secure domestic approval. ■

Graeme Dinwoodie is the Global Professor of Intellectual Property Law, IIT Chicago-Kent College of Law.

I want to be useful

The chair of the ATRIP local organising committee in Finland, Nari Lee would like to see more young scholars and teachers involved in the work of ATRIP in the future.

Text & Photo **Päivi Helander**

Professor **Nari Lee** speaks fast and to the point. This has proved useful in conferences where the time slot allocated to speakers is brief. She prefers, however, sessions where scholars elaborate their ideas in a pace that the audience, too, can follow.

JUNIOR IPR RESEARCHERS NEED ENCOURAGEMENT

As the chair of ATRIP local organising committee in Finland, Lee has contributed to the program planning of the conference. She is pleased that junior researchers are given a whole afternoon because academic organisations like ATRIP prosper when experience and fresh thinking are combined.

In March 2018, Lee attended a Works-in-Progress Conference "IPScholars Asia" in Singapore, where she had been invited as a patent specialist. Listening to and commenting younger researchers' papers meant a revelation.

– I felt useful. I do love working in a university and Hanken is the best possible place for me. But in the future, I perhaps want to have more to do with helping research in developing countries, she says.

CONCEPTS VARY FROM ONE IPR TO THE OTHER

The ATRIP congress 2018 focuses on fairness, morality and *ordre public* in Intellectual Property law and policy. Lee welcomes the theme as these concepts are at the core of the research project on unfair competition and IP law, which Lee explored with Professor **Annette Kur**, a former president of ATRIP (2007–2009).

Being an expert on patent issues, Lee often participates in patent panels. She regrets that she therefore misses sessions on copyright or trademarks. In her opinion, it would be more useful to have sessions by topic than by the type of right. This can open new interfaces between disciplines. *Ordre public* is an example of a concept used differently in all IPRs.

> "In the future, I perhaps want to have more to do with helping research in developing countries."

– First, including the specific term *ordre public* in the conference theme seemed to me to narrow it too much: hearing the phrase, you always think of TRIPS Art 27.2!

Lee admits that this was a patent specialist's thought, and it just proves how important it is to learn the application of common concepts in fields other than your own.

IPR RESEARCH FOCUSES INCREASINGLY ON TRADE ISSUES

In Asia, IPR research mostly involves the same themes and problems as in Europe. According to Lee, traditional knowledge and geographical indications have been recently discussed a lot. In Spring 2018, however, one of the hot topics was the new Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) involving 11 countries in the Pacific region. This free trade agreement contains a chapter on intellectual property setting a regional standard for the protection and enforcement of IPR.

Lee has recently focused on trade secret protection, which has become an important topic in the law reform projects in various countries. Reform proposals have recently been in the agenda in China, US and Europe. The new EU directive now extends the liability to the third parties trading in the 'infringing goods,' i.e. goods significant benefits from trade secret.

– This puts an additional layer of burden on the trader in goods. As trade secret protection in fact may substitute IPR in new digital technologies – as any creative or innovative outputs may be viewed protectable as trade secret against misappropriation – such regulation raises concerns, Lee says. ■

PROFESSOR NARI LEE

Professor of intellectual property at Hanken (Helsinki) 2013–

Assistant Professor at Hanken (Helsinki) 2012–Feb 2013

Program Director at Munich Intellectual Property Law Center 2009–2011

Post doc researcher at Hokkaido University (Sapporo, Japan) 2004–2005

LLD student / degree at Kyushu University (Japan) 1999–2001

PHOTO: PÄIVI HELANDER

According to Annette Kur, the concept of fairness could be seen as set of principles covering the different branches of IP and ensuring that the system remains balanced and consistent.

Annette Kur

focuses on the borderlines between IP and other fields of law

Professor Annette Kur is known to many generations of IPR students and researchers from her books, articles and lectures. IPRinfo asked her to share her thoughts about current IPR developments.

The "IP tree" is rooted in general law and in ethics.

AS THE FORMER PRESIDENT OF ATRIP (2007–2009), HOW WOULD YOU COMMENT ON THE ORGANISATION NOW; ITS ACHIEVEMENTS, PRESENT AND FUTURE

I have known of ATRIP (International Association for the Advancement of Teaching and Research in Intellectual Property) since the 1980s; the former director of the MPI, **Friedrich-Karl Beier**, was one of the "founding fathers". I got involved more closely from 2000, when I became the treasurer of the organisation. At the time, ATRIP seemed to be on the decline, with WIPO – that had been an eager and generous sponsor in the past – gradually withdrawing its support.

However, the subsequent developments proved the wisdom in the double meaning of the Chinese character for "crisis", which also means "chance". Forced to continue on its own, ATRIP has become stronger over the years. It is unique because it is the only truly global association of IP teachers and researchers, thus enabling a free discourse among academics – without the agenda being shaped by stakeholder interests – in a "family feeling" that can hardly be matched.

WOULD YOU SHARE WITH US YOUR IDEAS ABOUT THE LIFE-LONG RESEARCH PROJECT?

My focus always was on the borderlines of IP and its interaction with adjacent fields. This started early when I investigated the interface of trademark law and consumer protection. Next, I had the opportunity to participate in the MPI working group elaborating the EU design legislation (the other members being **Friedrich-Karl Beier**, **Kurt Haertel** and **Marianne Levin**). Design law is fascinating in that it sits right at the crossroads of all IP areas. So one can learn a lot about the specifics of different IP fields, how they are distinguished from each other and how they overlap, and also how competition law can or should intervene in the case of "exclusivity" – as the usual consequence of IP protection – turning into "indispensability".
All that reinforced my interest in overarching rules steering and holding together corpus of intellectual property in its entirety. This can be illustrated by the image of the "IP tree". It is rooted in general law and in ethics, develops a solid trunk of common legal principles, and then stretches into different branches, with each one engendering its own little ecosystem of small, smaller and tiniest twigs representing the details of sectors, rules and practices in each IP area. Importantly, those "twigs" are only viable if they stay attached to the "trunk". The ultimate question, therefore, is: what exactly does that trunk, i.e. the solid core of common rules, consist of?

"The ultimate question is: what does the trunk of IP tree consist of".

Is there a way to identify principles of truly horizontal validity which "cut through" the different branches of IP, ensuring that the system remains balanced and consistent? An obvious candidate for such principles is the concept of "fairness". If that is accepted as the working hypothesis, the challenge lies in →

PROFESSOR ANNETTE KUR

Senior Research Fellow and Head of Unit at the Munich-based Max Planck Institute (MPI) for Innovation and Competition, Professor Annette Kur is also involved in many universities around the world.

She is the author and editor of numerous books and articles concerning national, European and international IPR related issues. In addition to several academic prizes, she has also been awarded an honorary doctorate by the Hanken School of Economics, Helsinki, where she was teaching as a guest professor for several years in the early 2000s.

Engaged in various research projects by the decades, her latest assignment was participation in a study for the European Commission on the evaluation of the European system of Supplementary Protection Certificates (SPCs), which had not yet been published by May 2018.

the attempt to make this vague concept operable and preserve its flexibility while adding to its transparency and reliability. Indeed, it is (not only) my conviction that developing a clearer understanding of the fine-grained mechanics driving fairness-based judgment is crucial at a time when the traditional way of assessing IP-related issues by means of cleanly defined categories of rights and limitations can no longer work properly, as the new phenomena often defy such neat categorisation, and their dynamics make it impossible for the legislature to keep pace.

WHAT ABOUT YOUR CURRENT PROJECT?

Apart from my long-term project, I recently had the opportunity to participate in a study undertaken for the European Commission on the evaluation of the European system of Supplementary Protection Certificates (SPCs). The project leader and main author of the study is Dr. **Roberto Romandini**, and several other persons also contributed to it.

"ATRIP enables a discourse among academics, without the agenda being shaped by stakeholder interests".

Working together with Roberto and others gave me the opportunity to gain insight into a very special area of IP law, aspects of which are quite controversial. The Study has not yet been published but I can reveal that instead of presenting a clear-cut proposal for whether and how the current legislation should be changed, the Study points out a number of policy and regulatory options. For instance, the Study retraces the development of CJEU (the Court of Justice of the European Union) case law, showing how, based on a teleological approach, the Court deviated in many aspects from the original intentions of the historical lawmaker. This leaves the option for the lawmaker to either codify that case law or enact provisions overruling the jurisprudence. Furthermore, irrespective of which option is chosen, the Study recommends that guidelines for implementing be provided in the future, so as to foster legal certainty and consistence of practice.

Apart from CJEU jurisprudence and its consequences the Study also addresses limitations and exceptions such as the Bolar exception and the option to introduce a manufacturing waiver, and it considers regulatory options for establishing a system of unitary SPCs. ■

PHOTO: SHUTTERSTOCK

IPR research on artificial intelligence and digital technologies

Text **Taina Pihlajarinne and Rosa Ballardini**

The current research by both Professor **Taina Pihlajarinne** and Dr **Rosa-Maria Ballardini** focuses on the impact of artificial intelligence (AI) and other digital technologies – industrial internet (II) and 3D printing (3DP) etc.) – on the intellectual property system. These new technologies raise fundamental questions related to the core aims and elements of IPR, such as what kind of fundamental IPR-structures could be optimal in striking a balance between diverse legitimate interests in new situations. Core issues relate to exclusive rights in the process of human-machine co-creation and co-innovation in context of AI, as well as the regulation of information.

Notably, technologies such AI, II and 3DP drastically increase the amount of data that exists in the digital ecosystem. To encourage these technologies to grow in a stable, socially-desirable manner, it is vital to consider how data and information should be regulated. The path that will be chosen by EU-regulator concerning the structure of the IPR system is of utmost importance in achieving adaptability in front of new technologies. Should we, for instance, create coherence by flexible rules linked with fundamental principles, or shall we continue adopting narrow-scoped, fragmented rights and provisions? ■

At present, Pihlajarinne is professor of copyright law at the University of Helsinki. She leads three ongoing research projects focusing on digital content creation and distribution from copyright, competition law and contract law perspectives on one hand (funded by Academy of Finland, among others) and on legal aspects of AI on the other (funded by Helsingin Sanomat foundation).

Ballardini (University of Lapland) is currently the PI of a multidisciplinary Consortium in the field of industrial internet financed by Tekes and a senior researcher in a project on innovation and bio-economy funded by the Finnish Government. Previously, she has been inter alia the PI in a multidisciplinary Consortium on 3D printing funded by Tekes (2015/2017).

Pihlajarinne's and Ballardini's research teams are in continuous co-operation. Their projects will, for instance, arrange a joint seminar on AI and IPR in June as a part of IPR Summer School organised by the IPR University Center.

IPR as protected investments in the TTIP

– a potential threat to EU's regulatory powers ?

Intellectual property is often included in the list of the investments protected by free trade agreements and can thus be potentially subject to an Investor-State dispute settlement procedure. Professor Christophe Geiger reflects upon possible consequences particularly in the case of the TTIP Agreement.

Text **Christophe Geiger** Photos **European Commission**

The protection of investments is becoming more and more frequent in free trade agreements. Initially, the aim has been to prevent enterprises that invest in a country's infrastructure being subsequently expropriated, specifically by means of nationalisations. Gradually, intangible assets have been included in the list of protected investments, without it being clear what the relationship between the protection of intellectual property according to the international IP rules and investments agreements would be.

COULD IPR LEGISLATION INFRINGE INVESTMENT RIGHTS OF COMPANIES?

The Transatlantic Trade and Investment Partnership TTIP contains one chapter dedicated to intellectual property. There are a few commitments in geographical indications – an area where the concepts and rules applicable in the EU and in the US differ considerably – and a limited number of specific aspects in the field of copyright. Other sections contain a list of international agreements, recall basic principles and lay down the objectives in

the field of cooperation, specifically with respect to technical assistance to third countries on the question of intellectual property enforcement. Hence, much ado about nothing?

> The copyright system of the United States and the EU and many of its Member States differ considerably.

The worries derive from the chapter concerning the investment protection. The TTIP Agreement proposes an elaborate framework to protect investments. The crucial question is: could a regulation of intellectual property by the EU or one of its Member States, which would affect the scope of intellectual property rights held by private companies, be considered as a potential infringement of their protected investments? And accordingly, could it lead to proceedings being lodged against the European Union or one of its Member States? This would considerably limit the power of European institutions to regulate to implement a balanced and effective legislative framework for intellectual property.

WILL EU BE LIMITED WHEN PASSING IPR LEGISLATION?

The enforcement of investment protection in the TTIP is entrusted to a dispute settlement mechanism between states and investors through international arbitration in a procedure called the "Investor-State Dispute Settlement" or ISDS. In the definition of the investments protected, IPR are specifically included. Towards 2010, litigation began to be brought before international arbitration tribunals, specifically in a number of well-publicised cases in the field of trademarks and patents. In all these cases, a multinational company brought an action claiming that a legislation or a judicial decision impacting on the scope of the IPR in a party state constituted an infringement of the company's protected investments, irrespective of the fact that the regulation was adopted for reasons of public health or general interest.

To date, there has not been any decision or case in copyright. Accordingly, it is only possible to extrapolate and imagine what might be the areas of friction with investment protection. The copyright system of the United States and the EU and many of its Member States differ considerably.

WHO OWNS, WHO HAS THE MORAL RIGHTS TO A CREATIONS LIKE FILMS?

The protection of moral rights, for instance, is practically inexistent in the US. It was in France that **John Huston** prevailed before the French Supreme Court by using the right of integrity of his work to prevent the post-colouring of his black and white movie "Asphalt Jungle". In the future, will Hollywood studios be able to bring an action before the arbitration tribunals, on the grounds of a danger to their investment in the film? Another area of friction could be the ownership of the work: in the US, copyright often vests ab initio in the investor or the employer in because of the doctrine "work made for hire". In Europe, on the other hand, the creator in most cases remains the holder of the rights to his creation, independently of his employment situation. Could this give rise to litigation because of the negative effect on the investments made?

Will the European Union be able to introduce specific contractual protections for creators (a so-called "EU copyright contract law"), like they already have in many EU states? →

The Transatlantic Trade and Investment Partnership TTIP

The TTIP is a proposed trade agreement between the European Union and the United States. The negotiations started in 2013 but seemed to have been put on hold since the 2016 United States presidential election. In 2017, there have been expressions of willingness to resume the negotiations. On both sides of the Atlantic, the negotiations have been criticized for secrecy and issues concerning e.g. employment, environment and consumers' safety as well as the wide investment protection combined with a mechanism of Investor-State dispute settlement procedure.

Finally, what would happen to the creation of new copyright exceptions and limitations to the benefit of libraries, educational establishments and archives or for the digitisation of out-of-commerce works, or other exceptions currently under discussion within the framework of the proposed current copyright reform in the digital single market? Will these provisions be regarded as "expropriations" in the sense of the investment protection mechanisms of the TTIP?

Many of these questions will probably remain unresolved as long as intellectual property is included in the list of the investments protected by the TTIP and other bilateral trade agreements. It is thus necessary to engage in an open and transparent debate on the appropriateness of such an inclusion and on the relationship between intellectual property and investment protection. Intellectual property law does not protect investments as such, but only those leading to a creation, thus resulting in an added value for society. Some investments can have negative social consequences as the recent financial crisis showed. Consequently, the European Union should be cautious before embracing a new logic that might significantly reduce its regulatory powers in the future. ■

In the US, copyright often vests *ab initio* in the investor or the employer in because of the doctrine "work made for hire".

PHOTO: CEIPI

PROFESSOR CHRISTOPHE GEIGER

Director General and Director of the Research Department of the Centre for International Intellectual Property Studies (CEIPI), University of Strasbourg (France)

Affiliated Senior Researcher at the Max Planck Institute for Innovation and Competition (Munich, Germany)

Spangenberg Fellow in Law & Technology at the Spangenberg Center for Law, Technology & the Arts, Case Western Reserve University School of Law (Cleveland, US)

In 2018, he is also visiting professor at the Hanken School of Economics in Helsinki (Finland).

PHOTO: SHUTTERSTOCK

Awards and grants to IP students

In 2018, the Finnish Association for Industrial Property Rights STY granted thesis awards to three students on their studies on IP enforcement. The yearly application term for the thesis awards ends in February. In addition, students are encouraged to apply for travel and project grants within the field of IP annually by end-February or end-August.

READ MORE ON OUR WEB SITE WWW.STY.NET.

Text compiled by **Päivi Helander**

IPR is part of the competitive edge of global companies

In business, managing intellectual property on a global level is in a state of constant change. IPRinfo asked Karoliina Junnila from KONE and Teija Kopio from Fiskars to tell about their work in IPR management in these internationally renown Finnish companies.

"It is satisfying to see a new employee meeting the expectations and growing into new challenges."

PHOTO: PÄIVI HELANDER

KAROLIINA JUNNILA
HEAD OF PATENT MANAGEMENT, KONE

1 My weeks and days vary a lot. My responsibility is to keep Patent Practices in line with the strategic direction of KONE. This includes budgeting, target setting, competence development for the team, running the Patent Board and some other Patent Steering meetings. The past weeks, for example, have included patent portfolio management related tasks, target setting discussion for the team members, recruiting a summer trainee and running a Patent Board meeting.

2 After 14 years at Nokia in various IPR related tasks, I was ready for some change in my professional life. Then this position at KONE opened. It has given me an opportunity to focus on the thing I enjoy most: the operational management of the whole patenting function.

3 I am happy to tell you that I need not travel much. I usually make one or two business trips a year. During my Nokia days I travelled a lot and got my share of that. Even though KONE is an international company, most things can be managed through for example Skype-calls and emails.

4 A challenging question! As urbanization is a megatrend all around the world, KONE is trying to make cities better places to live. With elevators, escalators and related services and solutions, the company ensures excellent people flow solutions. In the patent department, we aim to ensure competitive advantage and freedom to operate in these strategic areas.

5 The role of IPRs in global business? Hard to say. I would say it depends on the industry we are talking about. In some areas patenting might be too slow a tool to gain competitive advantage whereas in some other industries it might be justified. Moreover, trade secret considerations are now getting more attention. What comes to the bigger change in Europe and the unified patent court UPC, I am somewhat sceptic. Let's wait and see.

6 There are many moments from both Nokia and KONE which I cherish. If I must pick one, I say that I have been proud of many recruitments I have done both at Nokia and KONE. It is always satisfying to see a new employee starting to meet the expectations, growing into new challenges and roles and making a good fit to the existing team.

1 What is your work comprised of?

2 How, why and when did you obtain your present job?

3 How much travelling does your work require?

4 What is the impact of your work in making the world a better place?

5 How do you see the role of IPR in [global] business in the next 10 years?

6 Describe the top moment in your career so far.

"In the future, 3D printing, IoT and AI will have an impact on the role of IPRs."

TEIJA KOPIO
GLOBAL IPR SPECIALIST, FISKARS

1 My work varies a lot daily and weekly. I am responsible for managing the IPR portfolio, which comprises patents, designs, trademarks and copyrights globally. I have, therefore, plenty of different assignments from the IPR protection perspective like filing, prosecution and enforcement. Recently, the new IPR strategy and its implementation throughout the corporation has kept me busy.

2 I have twenty years' experience in the IPR field, first at the Foundation for Finnish Inventions (Keksintösäätiö) and then 15 years at Nokia in a number of IPR related roles and responsibilities. About five years ago Fiskars was hiring the first inhouse IPR specialist in the company's history, and I thought it might be something new and interesting for me. At the time I was working for Nokia IT. This position at Fiskars was my comeback to the IPR field. I have enjoyed working for Fiskars and expanding my earlier IPR experience into the operative management of whole IPR portfolio.

3 Luckily, I do not need to travel in business more than 5–8 times per year. Nowadays there are so many other contact and communication options like Skype video and audio meetings that it is no longer necessary to travel a lot – at least not in my job.

4 A good question! In Fiskars, we focus on building a family of iconic lifestyle brands. Fiskars's vision is to create a positive, lasting impact on the quality of life by making the everyday extraordinary. The main competitive edge of our products results from strong brands, unique and compelling designs and craftmanship as well as from innovations that make the products more efficient and easier to use. This is the outcome of a very long and consistent product development. The way to protect these results of intellectual achievements is to utilize various IPRs – trademarks, registered designs, patents and copyright.

5 I wish I had a crystal ball. The future depends on the business where you are operating. I think that the 3D printing, Internet of things and artificial intelligence will have an impact on the role of IPRs. In Europe, we also have other changes in the IPR field, for example Brexit and Unified Patent Package/Court. The final impact of those changes remains to be seen.

6 It is difficult to name one specific top moment of my career. However, I am proud and lucky that I had the opportunity to be a part of "the IPR Academy of Nokia". At present, I am excited about that I can expand my IPR experience and knowledge in a different business with different challenges and contribute to the development of Fiskars IPR management into the next level. ■

PHOTO: PÄIVI HELANDER

The copyright modernisation package

Regulation **(EU) 2017/1128** on cross-border portability of online content services in the internal market (Portability regulation)

Regulation **(EU) 2017/1563** on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled (VIP regulation)

Directive **(EU) 2017/1564** on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print- disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (VIP directive)

Proposal for a regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, COM(2016) 594 final (Broadcasting regulation)

Proposal for a directive on copyright in the Digital Single Market, COM(2016) 593 final (DSM directive)

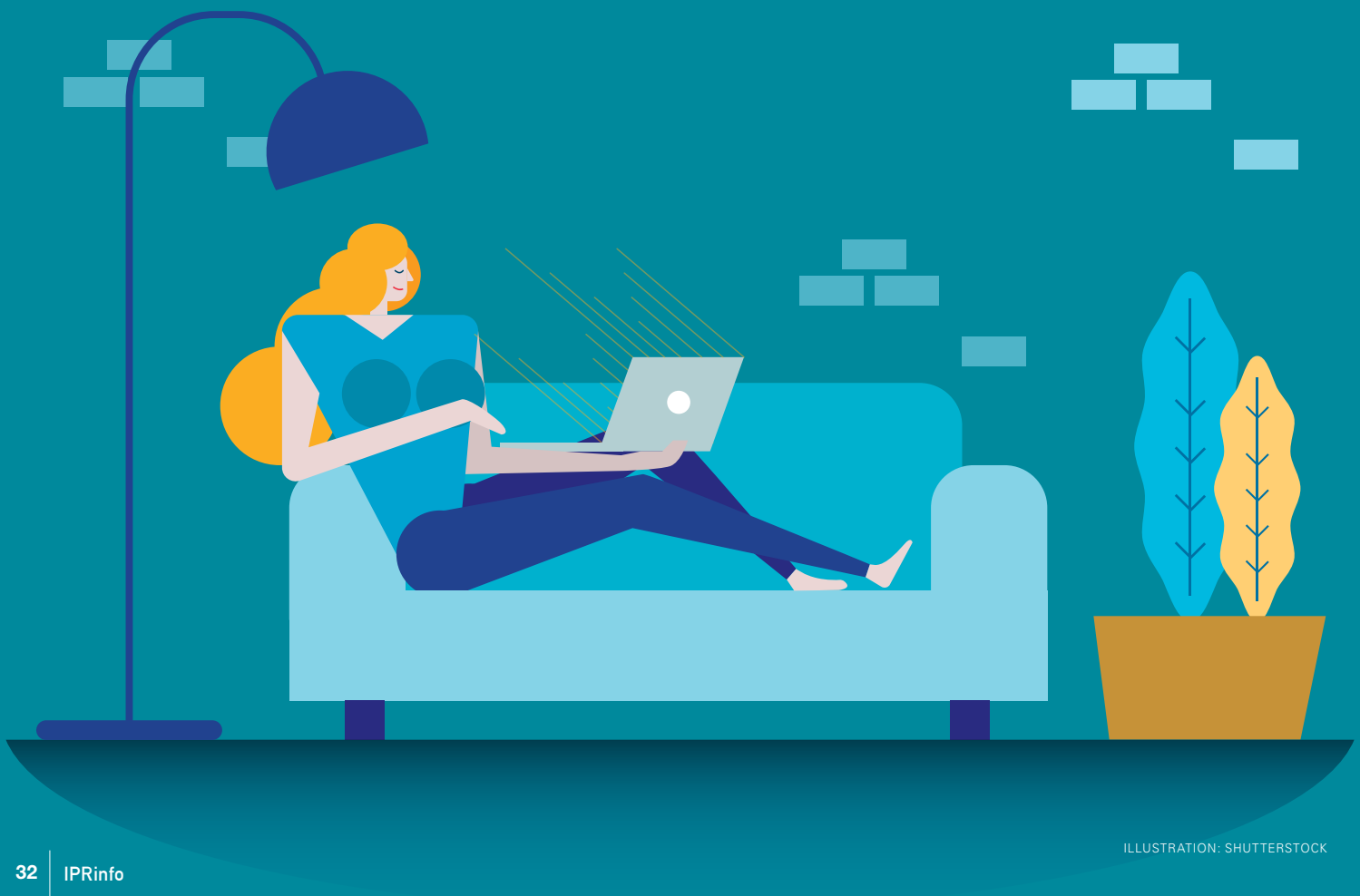


ILLUSTRATION: SHUTTERSTOCK

Viveca Still
Copyright Counsellor
Finnish Government

Reforming copyright for the digital single market

In the current copyright reform of the EU, the proposed directive on copyright in the digital single market would bring far-reaching consequences.

In the EU, copyright is undergoing the biggest reform since the adoption of the Infosoc-directive in 2001. The most far-reaching and controversial changes to the current copyright regime could follow from the proposed directive on copyright in the digital single market (the DSM directive). It may bring fundamental changes to the basic copyright doctrines as well as the liability regime applicable to service providers.

The DSM directive proposal consists of a mishmash of provisions. It introduces certain mandatory exceptions into the EU copyright acquis, including one on text and data mining for scientific research. It also proposes an EU-wide ECL (Extended Collective Licensing) system for clearing rights to out-of-commerce works to the benefit of cultural heritage institutions.

Furthermore, it introduces several measures to address the so called "value-gap" meaning that rightholders do not receive sufficient remuneration for the exploitation of their works, regarding online uses in particular. The value-gap provisions range from the introduction of rules on transparency and the possibility for authors and performers to receive additional remuneration for the commercial exploitation of their works, to a new related right for press-publishers and to rules on the responsibility for social media and other information society service providers for the content uploaded by their users.

The DSM directive touches upon fundamental issues such as the object of protection under copyright, in particular whether copyright may extend to information. It also deals with the understanding of value-creation and whether copyright should be confined to "any" use of a work and even provide a right to additional remuneration not only from revenues resulting from the commercial exploitation of the work, but also based on (any?) "benefit" resulting from the use of the work.

The new neighbouring right of press publishers, the confines of which have not been specified in the proposal, in combination with the implication that data mining requires permission from rightholders except when carried out for the purpose of scientific research, provides for a broad scope of protection. In practice, the extraction of information from a work, including data mining, could be considered an exploitation of a work that requires the permission of the rightholder. Also, collecting and analysing data regarding use of content, or arranging or optimising content could be copyright-relevant. These changes to copyright law could have serious implications for a variety of services, including search engines.

Article 13, sometimes labelled as the "YouTube provision", also seems to be going into a direction clarifying that information society service providers have the full responsibility for any copyright infringing content on their servers. This fully contradicts the current law, whose starting point is that the "user" in a copyright perspective is the person who uploads the copyrighted content with the intention of making it available to the public; a service provider becomes responsible for such content only if it refuses to take action once it has become aware of the content being illegal.

The background to these provisions is the increased share of the advertisement revenues flowing to certain US tech giants, which has upset the European media industry. Unfortunately, nothing indicates that the rules to be introduced will make the advertisement revenue streams return to the European creative sectors or increase the growth and competitive edge of the digital single market. ■

Finnish IP professors in Joensuu, Turku and Helsinki

In Finland, legal issues of intellectual and industrial property can be studied in many institutions and at many levels. Four institutions of higher education have a faculty of law: Universities of Helsinki, Turku, Lapland and Eastern Finland. In addition, law is often included in economic study programs like at Hanken and Aalto University.

Professor **Katja Weckström Lindroos** is professor of commercial law at UEF Law School, University of Eastern Finland. Her research focuses on emerging markets and development of intellectual property law. Weckström Lindroos's research links to two themes that intersect with intellectual property law: internet law and food law. Her doctoral dissertation "A Contextual Approach to Limits in EU Trademark Law" (2011) sets the theoretical framework for regulating emerging markets.

Recently, her attention has focused on liability for internet service providers for trademark or copyright infringement in digital markets. She supervises doctoral students on themes intersecting international patent protection and employment law, liability in the sale of digital goods and consumer law, as well as, intellectual property infringement and criminal law. Her focus on food law relates to intellectual property in developing economies, geographical indications, certification marks, health claims, plant variety protection and food fraud. She supervises doctoral students in law on themes intersecting IPRs and trade, development of sustainable food entrepreneurship, food security and food fraud.

Tuomas Mylly is professor of commercial law at the University of Turku. He focuses on international and European IP and competition law in the knowledge society from a constitutional perspective. His current research themes investigate the effects of fundamental rights on European copyright law and, more broadly, on intellectual property law.

In addition to giving copyright holders the right to prohibit reproductions, transmissions and performances of the protected works, European copyright law now regulates issues such as linking to content in the internet, blocking internet sites and providing open WiFi networks, among others. The Court of Justice of the EU (CJEU) has addressed these and other important questions related to copyright and fundamental rights in its recent case law. Moreover, the CJEU has resorted to fundamental rights proportionality for example in its case law on standard-essential patents (Huawei). Mylly discusses this significant development and how the CJEU has used fundamental rights in its judgments, in particular.

He is the principal investigator in an Academy of Finland funded research project "Constitutional Hedges of Intellectual Property". His future research also involves questions related to algorithmic decision-making in the areas of intellectual property and competition law. This research will also utilise constitutional perspectives.

The academic year 2017–2018 Mylly spent in Oxford, being attached to the Oxford Intellectual Property Research Centre and Bonavero Institute of Human Rights. He has recently published for example about the unitary patent system, discourse analytical view on CJEU's copyright case law and book chapters on competition law in the information society, constitutional functions of the EU's intellectual property treaties, human rights perspective on the CJEU's IP case law. ■

Rainer Oesch
Professor of Law
University of Helsinki, teaching and research in intellectual property, especially in copyright and patent law.

Old licensing models pose problems in multimedia

Professor Rainer Oesch calls for new ways of licensing new kind of educational material.

In schools and universities traditional text books are nowadays often set aside and replaced by other kind of materials – not only web materials but also specially made combination packages of different content materials like texts, music and other audio materials, images, animations, videos and interactive contents like links. These packages can be set in a cloud service to be used by the students with their mobile devices.

> From a pragmatic point of view we may ask if the regulatory framework promotes the licensing to make it easier for educational use.

As for acquiring rights for educational multimedia, the normal contracting principles of copyright law apply. Before contracting the producer usually must make a clearance about the material to be included in the multimedia. The material can be available in public domain for several reasons, e.g. time limits of protection, public documents etc. Exemptions (free use like citations) to copyright can apply, too. From a pragmatic point of view, however, we may ask if the regulatory framework promotes the licensing to make it easier for educational use. The detailed formulations of exemptions in the legislation make the task difficult. This can be explained by the narrow interpretation of exemptions. Nor is there any special one stop shop-licensing for the new media. But there are, for example, in the Finnish Copyright Act (from 1961 with several amendments) some regulations concerning so called extended collective licensing. The aim is to promote legal mass use. This form of licensing is possible on some sectors of productions only, for instance for photocopying, use in radio and tv-programs, transmission of tv-programs.

We also have one special rule in form of a mandatory license, on copyright clearance for use in works of compilation in education, meaning anthologies (Section 18 of the FinnCopAct).

Although the main rule on the freedom of making anthologies usable against remuneration seems to work beneficially for productions of multimedia for educational use, the exact wording and the narrow interpretation lead to the opposite. The rule does not apply to a work especially created for education. Therefore, this provision does not help much for using new multimedia products in schools or universities.

In the case 2016/16, the Copyright Council stated that the use of six photographs and the texts connected to them was permissible as legal citations on the basis of the general citation rule and the specific rule for free use in critical and scientific presentations (Sections 22 and 25 in the Act).

In the future, if the rules on exemptions are interpreted fairly liberally in order to promote education and research and if the rules on the extended collective licensing are further developed towards a more general formulation (maybe a one-stop-shop), this development will be welcomed for the benefit of use of multimedia both in education and research. ■

Doctoral candidates explore new areas of IPR

In 2018, there are brilliant young IPR researchers in all Finnish universities working on new issues like fashion, life sciences and robotics. Four doctoral candidates share their interests with IPRinfo readers.

Heidi Härkönen
PhD Candidate
(University of Lapland
Faculty of law)

Fashion designs can be copied more freely than for example paintings, sculptures and music. My PhD project began when I started thinking if this fair and if it is ideal for the fashion industry. From the intellectual property perspective, fashion works in an interesting manner. Trends are born through creativity but they spread via copying. Can one acquire an exclusive right to a certain style? Should one be able to?

Although imitation is required at some level, fashion designers need to stay distinguishable from their rivals. Therefore, copying that comes too close to the source of inspiration can be harmful for the original design. These controversies alone make the interface of fashion and IPR interesting. In addition, fashion designs are seldom considered as works protected by copyright on the same grounds as works of other fields of art, because these designs are regarded as useful articles or applied art.

Everyone needs clothes, and as much as about four percent of the world's GDP comes from the fashion industry. Thus, fashion is not a marginal phenomenon that only involves a small group of people. However, fashion is often considered superficial and shallow. It is perhaps partly due to these negative attitudes that fashion industry has not yet been widely researched, especially not from the legal perspective. With a background of a law degree and fashion design studies, I find the theme particularly fascinating.

The interesting collision is that fashion designs are not only potential intellectual property of their designers but also source of inspiration for other designers. It is my plan to write a PhD thesis that participates in the freshly-boomed academic discussion related to exclusive rights to fashion designs. In order to find the most suitable solutions to the problems this collision creates, my research places itself between legal sciences and fashion studies. ■

Pamela Lönnqvist
PhD Student
(University of Helsinki
Faculty of Law)

My main research interest is patent law in the life science, biotechnology and health sectors. However, in recent years my research activities have covered a wide range of questions from the patentability of computer-implemented inventions, and conflicting applications to questions relating to the unitary patent system and Unified Patent Court (UPC).

After these academic detours my research is again directed to questions relating to the patentability of biotechnological inventions. At present my research is focusing on the emergence of the plausibility requirement in Europe as an additional test used in connection with the assessment of sufficiency of disclosure, inventive step and industrial applicability of life science inventions, as well as the patentability of medical and diagnostic methods and the exclusion from patentability of inventions on the basis of ordre public or morality.

At present, I am also a practicing lawyer specializing in all fields of intellectual property with a particular focus on the life science, diagnostics and pharmaceutical sectors. ■

ROSCHIER ©

Vilhelm Schröder
LL.D. Candidate
(University of Helsinki)
LL.M. IP (MIPLC)

In June 2016, the European Parliament and the Council adopted the Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (TSD). With the TSD, the EU *inter alia* aims to harmonize the definition ofs and define relevant forms of misappropriation. The directive provides a harmonized approach for civil remedies available in cases of trade secret misappropriation. The deadline for implementing the TSD in all Member States is 9 June 2018.

The Finnish Ministry of Economic Affairs and Employment assigned a working group to prepare the national implementation of the TSD in Finland. In its proposal of 18 October 2017, the working group proposed a reform and consolidation of the Finnish legislation concerning the protection and civil enforcement of trade secrets. The aim is to enhance the protection of trade secrets *inter alia* by providing effective legal remedies against misappropriation. The working group suggested that the TSD be implemented by a wholly new Trade Secrets Act in Finland.

The proposed act would be the first law to regulate trade secrets in a centralized manner in Finland. It would be a welcomed amendment to the currently scattered regulation of trade secrets. The text of the working group has been commented by different stakeholders and a Government Bill (49/2018) was submitted to the Finnish Parliament on 12 April 2018.

The proposed new Trade Secrets Act has been discussed in more detail in my article recently published in Liikejuridiikka periodical (2018/1). I particularly assess questions related to the definition of a trade secret, whistleblowing, reverse engineering and trade secret litigation. Furthermore, my PhD-thesis will focus on trade secrets and IP litigation.

I also work as an attorney handling all kinds of contentious IP matters in Finland. ■

PHOTOS: SHUTTERSTOCK

Emmanuel Salami
Doctoral Candidate
(University of Lapland
Faculty of Law)

My research work involves an intersection between IT and IP law in the use of robotics/autonomous cars. As for the IP aspect of my research, it is partly geared towards addressing issues such as who deserves to hold the IP rights of data generated from robotics/autonomous cars and the internet of things attached to them.

The General Data Protection Regulation (GDPR) provides for a right to data portability which requires that data be transferred to other controllers, at the data subject's request. While this is a good innovation from a data protection and competition law point of view, there may be IP law questions arising from ownership of person al data (particularly the metadata generated therefrom) and even the possibility of disclosing information relevant to a controller's business, which is subject matter of IP protection.

Another question sought to be answered through my research is whether data generated by robotics / autonomous cars can be subject to trade secret protection. This also raises the question of whom the IP rights to inventions made by robots ought to be allocated. Also, the research work seeks to examine the necessity of introducing a separate method of application for patent protection for robotics/autonomous cars. The research proceeds on the premise that the disclosure requirement in patents may be undesirous to inventors and this may deny the society of their inventions for life hence the need to revisit the application for patent protection for robotics/autonomous cars. ■

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PHOTO HENRY HARRISON

Alf Rehn
Professor of innovation design and management
University of Southern Denmark

Chair of Organization and Management
Åbo Akademi University

Paying the cost to be the boss?

It didn't use to be this complicated. You bought something, and it was yours, easy as that. If you bought a book, you could do with it what you wished, and if what you wished to do was to use it in an art project or even trash it for the sheer hell of it, you could. If you bought a car, you could do a whole heap of things to it, without worrying which laws you might be breaking. Sometimes I miss those days.

It should, of course, come as no surprise that companies will always attempt to find an angle to protect their interests and extract a little more value in the process. So, we get things like genetic use restriction technology, digital rights management, and tractors where you in the words of John Deere buy not a tractor but "an implied license for the life of the vehicle to operate the vehicle". I no longer buy DVDs but subscribe to Netflix. As a result, my rights are what Netflix says they are – I cannot download Jessica Jones second season for offline viewing, and I have no recourse (Hello, friendly torrent!).

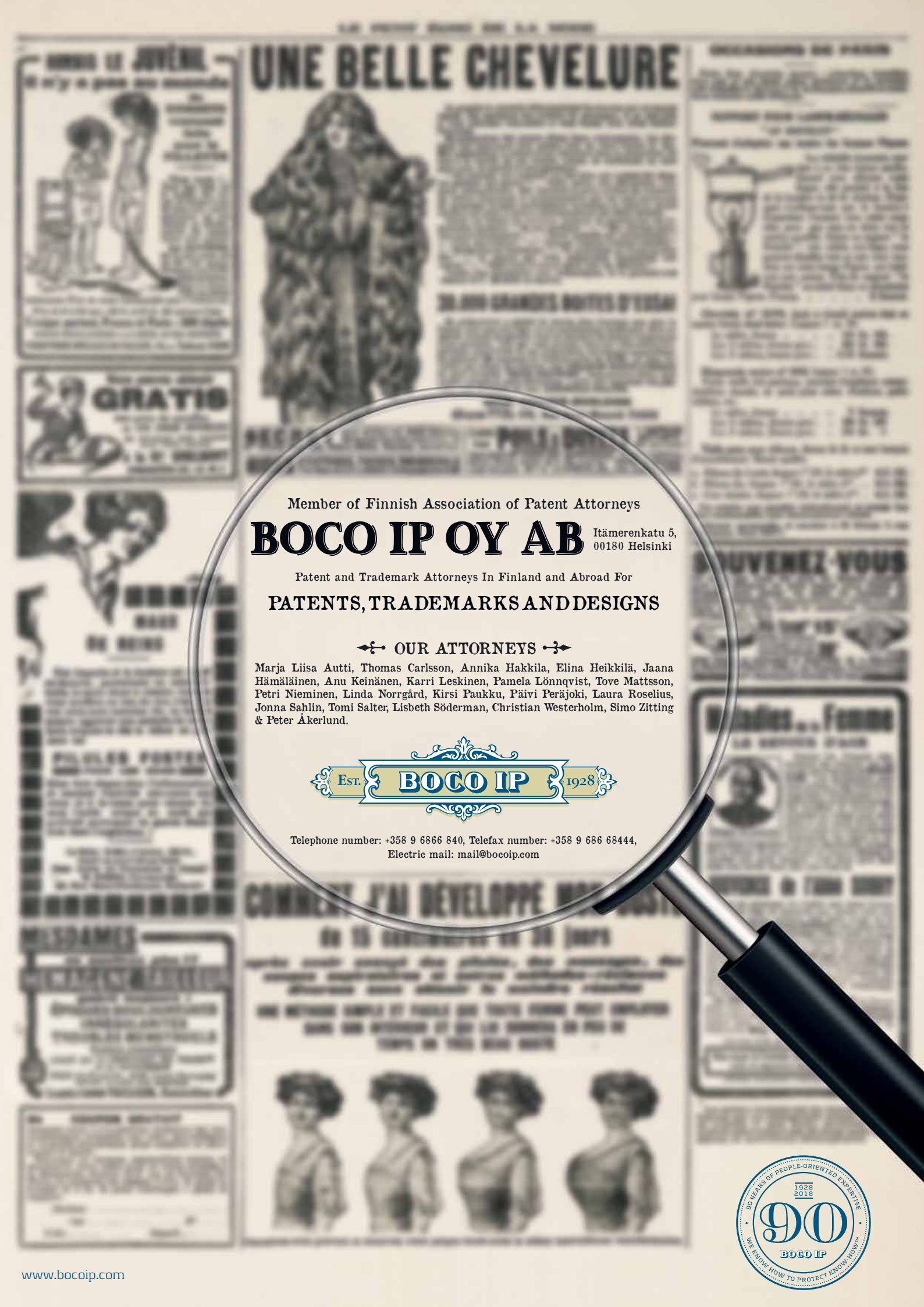
Ownership used to be one of the core tenets of general morality. It is even written into the Ten Commandments, if you're into those kinds of rules. Today, however, companies do covet our property, and they've got the lawyers to make that property theirs – sometimes without even telling us. And yes, there are a few who fight back against this, with laws introduced regarding e.g. right to repair, and IPR bullying being at least circumscribed. Still, there is a more fundamental issue at play here, one having the potential to undermine ideas about law as well as morality.

> In this age, we may need something akin to an Owner's Bill of Rights.

What has happened – with digitalization, with business model innovation, with the rising importance of immaterial rights – is a disconnect between how laymen view their ownership rights and how companies capitalize upon the legal scholasticism surrounding e.g. underlying digital rights. And as it often is easier for the company if the farmer doesn't know that he doesn't really own his tractor but rather a right to use the same, such central issues of morality and fairness get cloaked behind complex verbiage regarding code rights and attempts to brand "tampering" and "hacking" as inherently immoral.

In this age, we may need something akin to an Owner's Bill of Rights. A document, written in plain language, that establishes what it means to own something in an age of subscription models, freemium, and platform economies. A statement about what rights users shall have in order to use, modify, test, hack, and generally muck about with what they have parted with their money to get. Not consumer rights, as the idea of being a consumer is far narrower than the idea of being an owner. Instead, rights in an age where ownership is becoming challenged and companies more coveting.

If we don't, we need to get ready for an age of increasing ownership inequality, one where the poor pay for access but never own, and only the rich can truly pay the cost to be the boss. ■



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