

Tenth WIPO Advanced IP Research Forum Abstracts

Bournemouth University Centre for Intellectual Property Policy & Management (CIPPM) proposals

Matej Gera (PhD student) “State of the Extended Collective Licensing in Europe: Changes and Prospects”

Various opt-out systems are slowly but steadily paving their way from the outskirts of the copyright law to its centre. What was once a special instrument of a handful of Nordic countries has now become accepted and welcomed solution to many licensing hardships. Yet, the fact that proper introduction of Extended Collective Licensing (ECL) requires a careful setting of its parameters is not always realized. This paper offers a critical account of existing ECL mechanisms and evaluates, whether this licensing model has been properly domesticated outside Scandinavia. After the mapping of current ECL landscape, some estimates for the future of ECL in EU will be offered.

Maurizio Borghi “Is ‘the use of the work as work’ a viable test for copyright infringement?”

The notional tests for determining whether copyright in a work has been infringed rely essentially on three elements (which are spelled differently across juridical traditions), namely: the amount of taking, the kind of use that is made of the work, and whether such use is in public. The concept of ‘use’ is pivotal to copyright infringement and features expressly in important doctrines that limit the scope of infringement, such as fair use, non-commercial use or derivative use. However, the concept is nowhere defined in statutes and is rarely discussed in case law. Recent copyright scholarship has suggested that the concept of ‘use’ may provide better guidance than that of ‘copying’ in deciding controversial cases emerging with new technologies, such as the use of works in search engines, content aggregators and text mining facilities. According to such scholarship, the deciding question is not whether the work has been copied, but whether the work has been used ‘as a work’. Although sympathizing with this argument, the paper demonstrates its shortfalls in the new networked environment, and suggests an alternative understanding of the concept of ‘use’ in copyright infringement.

Sally Weston “Promoting interoperability”

This paper evaluates the existing legal regime that regulates the disclosure of software interface information for the purposes of interoperability, and suggests an amendment to the EU Software Directive to allow for the dissemination of interface information obtained by reverse engineering. The recommendation is based on the concept that software interfaces require different considerations and treatment to other subject matter in a computer program. This is because, not only do software interfaces directly affect interoperability, but also because of their indirect effects as standards. Whereas the concept that software interfaces require different treatment has been recognised in previous research and in copyright case law, the paper develops this concept beyond copyright to demonstrate that the law applied to patents and standards also justifies and supports the unique treatment of software interfaces. The argument is further supported by a case study on 3D CAD industry, which is a sector that suffers from a lack of interoperability.

Dinusha Mendis and Hayleigh Boshier (PhD) “Copyright and Punishment”

This paper considers the UK Intellectual Property Office’s proposal to align online offences with offline offences to 10 years imprisonment. It analyses copyright cases since 1999, in a bid to determine the principles applied by UK courts when applying criminal sanctions. The aim is to discuss the fairness of the proposal and to question whether this is the way forward to tackle copyright infringement in the online environment.

University of Strasbourg

Xavier Seuba, Senior Lecturer and Researcher at CEIPI ““Intellectual property enforcement: from concept to practice”

“I will introduce intellectual property enforcement norms as secondary norms on intellectual property law, and some of them secondary norms of Public international law. I will also discuss the relevance and scope of enforcement norms in light of the legal theories of Austin, Kelsen and H.L.A. Hart. This will allow me to critically assess the present international normative framework, and hold that either classic approaches toward the concept of the law are no longer enough, or that norms commonly considered enforcement-related norms belong, in fact, to a distinct class of norms.”