

Staff Seminar

The Future of Fair Use Models

Organized by: HK Commercial and Maritime Law Centre, City University of Hong Kong

Speakers: Prof Martin Senftleben
Prof Peter Yu

Date: 13 July 2018 (Fri)

Time: 10:00 am – 12:00 nn

Venue: Video Seminar Room (G5353, 5/F, School of Law,
Yeung Kin Man Academic Building, City University of Hong Kong)

The Value Gap Debate in the EU – Why the Time Has Come to Introduce a Copyright Limitation for User Generated Content (UGC)

Martin Senftleben is Professor of Intellectual Property at the Centre for Law and Internet, Vrije Universiteit Amsterdam, Visiting Professor at the Intellectual Property Research Institute, University of Xiamen, and Of Counsel at Bird & Bird, The Hague. His activities focus on the reconciliation of private intellectual property rights with competing public interests of a social, cultural or economic nature. He is an advisor to the Dutch Ministry of Justice in copyright matters and a member of the Executive Committee of ALAI and ATRIP. Martin Senftleben studied law at the University of Heidelberg. He worked as a researcher at the Institute for Information Law of the University of Amsterdam and the Max Planck Institute for Innovation and Competition in Munich. In 2004, he was awarded a Ph.D. by the University of Amsterdam. From 2004 to 2007, he was a legal officer in the trademarks, industrial designs and geographical indications law division of the World Intellectual Property Organization (WIPO) in Geneva. Besides various articles in leading European and U.S. law journals, his publications include *Copyright, Limitations and the Three-Step Test* (Kluwer Law International 2004) and *European Trade Mark Law – A Commentary* (with Annette Kur, Oxford University Press 2017).



Abstract:

In the European Union, the User Generated Content (UGC) problem features prominently in the debate about a so-called “value gap” in the online distribution of copyrighted content. Until now, EU legislation shields UGC platforms from liability for copyright infringement by offering a “safe harbour” for hosting: as long as the platform provider is not actively involved in the posting of content, he only is obliged to remove content when a rights holder informs him about infringement (notice-and-takedown). The European Commission, however, is of the opinion that this liability privilege allows UGC platforms to generate income without sharing profits with producers of creative content (value gap). Accordingly, the Commission’s proposal for a new Directive on Copyright in the Digital Single Market seeks to render the safe harbour for hosting inapplicable when it comes to copyrighted works.

The adoption of this proposal would substantially change the climate surrounding the use and dissemination of UGC. Online platforms could no longer provide access to the wide variety of content that is uploaded by users with diverse social, cultural and ethnical backgrounds. At the same time, copyright law would become a central basis for content censorship in the online world. In the light of these severe consequences, the time has come to explore alternative solutions. EU legislation could provide for a new copyright limitation that covers the creation and dissemination of UGC. To generate a revenue stream for copyright holders, this exemption of UGC would have to include the obligation to pay equitable remuneration. In this way, users could remain free to create and upload content mash-ups and remixes. Providers of UGC platforms, however, would be obliged to pay a fair remuneration for the dissemination of content that has been uploaded by users.

Customizing Fair Use Transplants

Peter K. Yu (余家明) is Professor of Law, Professor of Communication and Director of the Center for Law and Intellectual Property at Texas A&M University. Born and raised in Hong Kong, he is a leading expert in international intellectual property and communications law. He has served as Wenlan Scholar Chair Professor at Zhongnan University of Economics and Law in Wuhan, China and a visiting professor of law at Bocconi University, Hanken School of Economics, the University of Haifa, the University of Helsinki, the University of Hong Kong and the University of Strasbourg. He is currently the Co-Director of Studies of the American Branch of the International Law Association.



Abstract:

In the past decade, policymakers and commentators across the world have called for the introduction of copyright reform based on the fair use model in the United States. Thus far, Israel, Liberia, Malaysia, the Philippines, Singapore, South Korea, Sri Lanka and Taiwan have adopted the fair use regime or its close variants. Other jurisdictions such as Australia, Hong Kong and Ireland have also advanced proposals to facilitate such adoption.

Written for a special issue on “Intellectual Property Law in the New Technological Age: Rising to the Challenge of Change?”, this article examines the increasing efforts to transplant fair use into the copyright system based on the U.S. model. It begins by briefly recapturing the strengths and weaknesses of legal transplants. The article then scrutinizes the ongoing effort to transplant fair use from the United States. Specifically, it identifies eight modalities of transplantation, drawing on experiences in China, Australia, Hong Kong, Ireland, Israel, Liberia, Malaysia, the Philippines, Singapore, South Korea, Sri Lanka and Taiwan. This article concludes with five lessons that can be drawn from studying the ongoing transplant efforts.

Moderator:

Dr. Tianxiang He, CityUHK

Guest Discussants:

Prof. Sadulla Karjiker,
Stellenbosch U

Dr. Haochen Sun, HKU

Dr. Jia Wang, PolyUHK

Dr. Eugene Lim, CityUHK

Refreshments will be served