Recreating Copyright Law - Redesigning Design Law - Rebranding Trademark Law - Reinventing Patent Law

There have been, and continue to be, many efforts—perhaps too many—to reform IP law. Those efforts tend to go into two, somewhat opposite directions. One is to reform the laws that have been on the books for decades or more, though efforts to change fundamentals or historical aspects of copyright, trademark and patent law are rarely successful. Perhaps this inertia can be seen as a positive feature of the IP system. The other is to add rights beyond the historical “core” of primary rights.

This Call for Paper Proposals uses the term primary rights to refer to rights in international copyright, trademark, design and patent law that have been part of both treaties and many national laws for more than 50 years—in many cases for well over a century. Adding new rights to the primary rights instead of changing it produces what this Call refers to as secondary rights. The term ‘peripheral rights’ could also be used in this context.

Adding secondary rights inevitably raises a number of questions, including what it means for primary rights. Why do we need to add new rights to the primary rights? One example of a secondary right approach (in the field of copyright) is contained in the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Those treaties added a ‘making available right’ (about which not all countries agree that it is new), and rights against circumvention of Technological Protection measures (TPMs) and removal or alteration of Rights Management Information (RMI). Those rights are sometimes referred to as ‘para-copyright’. Those treaties follow efforts the 1950s and 1960s that led to the adoption of rights “neighboring on copyright” (now usually referred to as related rights) for performers, record producers and broadcasting organizations (and ultimately the 1961 Rome Convention). Then a sui generis right in databases was added to EU law. It seems fair to say that few efforts to create sui generis rights have been met with complete success.
In the field of trademarks, courts and legislators have added new doctrines to traditional confusion-based tests. One example of such a doctrine is dilution. At international level, there remains a vigorous debate about what should be the standard for protecting famous marks. While the scope of patents and designs remains contentious internationally, these areas have seen adjuncts such as the now mostly defunct right in computer chips added to international IP law. In the pharmaceutical area, patents and rights in clinical data (data exclusivity) provide overlapping and in some cases telescoping protection.

In the case of exceptions and limitations (E&Ls), new E&Ls have been added to primary rights (such as copyright E&Ls for print-disabled users, and perhaps in the future libraries and archives). The availability and scope of these E&Ls can be restricted, however, both by overlapping primary rights and by secondary rights. For example, a DRM circumvention may prevent actual use of a copyright exception.

The 2019 ATRIP Congress will discuss reforms of primary IP rights and the impact of secondary rights on such reforms. This means looking both at the need to, and consequences of, changing primary IP rights, and whether adding secondary rights is a good idea, and if so when and how. This Congress is an opportunity to ask whether the primary rights still make sense. It is also a time to study the intended and unintended consequences of changing primary rights, and of adding secondary rights or new E&Ls. It is a useful juncture at which to propose and discuss ideas on how to add or remove secondary rights from the periphery. Finally, it is also a time to discuss rights overlaps and what rules do or should apply to such overlaps in national, regional and international law.

I invite ATRIP members to submit paper proposals on these questions including:

- Do the rights, exceptions and limitations contained in primary IP norms (patent, trademark, design and copyright) as defined above, still make sense?
- What are the intended and unintended consequences of changing primary IP rights, exceptions and limitations (E&Ls)?
- What are the consequences for primary IP rights of adding secondary rights (as defined above)?
- What are the best ideas to reform primary IP rights, secondary IP rights, or both?
- What are the consequences of rights overlaps, whether between primary and secondary rights, or overlaps between primary two IP rights?
- Does the rise of Artificial Intelligence to create works and inventions require change to the primary rights, secondary rights or new E&Ls?

Paper proposals are welcome in all areas of intellectual property.

On behalf of the Executive Committee, I invite you to submit a paper proposal, including an abstract not exceeding 350 words, the author's name, title and
affiliation. You need not send a CV. As ATRIP is an international organization we welcome the submission of proposals from around the world and care will be taken in the selection process to achieve global diversity as well as academic quality. Scholars of all levels of experience are invited to submit proposals.

Proposals received from ATRIP Members with no outstanding membership fee payment will be reviewed first.

Proposals should be sent no later than 25 January 2019 to ATRIP’s President, Professor Daniel Gervais, at the following address: president@atrip.org. Notification of the outcome of the selection process will be sent in April 2019.

Prof. Daniel Gervais, PhD, MAE
President, ATRIP, 2017-2019