

Workshop: Regulating the Digital Circular Economy

Date: 24th October 2024

Time: 09:30–12:30

Venue: University of Lapland (Yliopistonkatu 8, Rovaniemi), Room D156LY and online via Microsoft Teams.

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Law fostering the digital circular economy is one of the fastest-developing, most challenging legal disciplines, and the EU has become a key global actor in this field. Yet, law and sustainability transitions in general raise complex pressing questions. What can law and regulation do to help tackling the climate crisis and incentivizing relevant technologies? What does the legal framework to foster the transition to a circular climate-neutral Europe should look like? How can you ensure the digital and green transitions will be socially fair DEVELOPING COUNTRIES? This workshop sheds light over some of the key fields of law that are both deemed essential and controversial to incentivize the digital circular economy. It brings together top international experts in the fields of trade secrecy, data governance, to intellectual property rights, competition law and AI and tech regulation, engaging into a thorough discussion on the role of law for the digital circular economy.

The workshop is organized by the University of Lapland, Faculty of law and is kindly supported by the profiling area project ATLAS. The workshop is open for all.

Information for students:

Students can gain 1 ECTS (under the general optional studies, Code ONVAL9999 or OTMVAL9999) by attending both seminars and submitting a learning diary. The learning diary should summaries two key issues learned during the seminars. It should be around 3–5 pages (Times New Roman, 12) in length. It shall be sent to Rosa Ballardini (rosa.ballardini@ulapland.fi) by the 30.10.2024.

Programme

Opening

9.35-10.05 *Trade Secrets and Deep Secrets* (Rochelle Dreyfuss, New York University)

10.05-10.30 *Right to repair: a global north and global south perspective* (Rosa Ballardini and Beata Mäihäniemi, University of Lapland)

Coffee break

10.45-11.15 *Upcycling and trademarks* (Martin Senftleben, University of Amsterdam)

11.15-11.45 *Upcycling and Copyright – Towards a Sustainable Transformativeness* (Peter Mezei, Szeged University)

11.45-12.15 *Legal personhood, AI and sustainability transitions* (Rob van den Hoven van Genderen)

Summing up and closing (Ballardini and van den Hoven van Genderen)

About the speakers:

Ballardini Rosa is Professor of Intellectual Property Law and Vice Dean (research) at the University of Lapland, Faculty of Law. Rosa's research interests focus on the interface between law (with focus on private law), technology and sustainability. Currently, she also investigates the role of empathy in law, as well as issues related to law as a tool to foster inclusion and participation in decision-making processes. She has written extensively and has led several multidisciplinary consortia on these topics and in various technological contexts. Her research approach is multidisciplinary, combining law, technology, business and ethics via using different types of methodologies. <https://research.ulapland.fi/en/persons/rosa-ballardini>

Dreyfuss Rochelle is the Pauline Newman Professor of Law Emerita at New York University School of Law and co-Director of NYU's Engelberg Center on Innovation Law and Policy. She is a member of the American Law Institute and was a co-Reporter for its Project on Intellectual Property: Principles Governing Jurisdiction, Choice of Law, and Judgments in Transnational Disputes. She was a consultant to the US Federal Courts Study Committee, the Presidential Commission on Catastrophic Nuclear Accidents, and the Federal Trade Commission. She served on the Secretary of Health and Human Services' Advisory Committee on Genetics, Health, and Society and National Academies Committees on Intellectual Property in Genomic and Protein Research and Innovation, on Intellectual Property Rights in the Knowledge-Based Economy, and on Science, Technology, and Law. Her writings include *A NEOFEDERALIST VISION OF TRIPS: BUILDING A RESILIENT INTERNATIONAL INTELLECTUAL PROPERTY SYSTEM* (Oxford University Press 2012) (with Graeme Dinwoodie); *BALANCING WEALTH AND HEALTH: THE BATTLE OVER INTELLECTUAL PROPERTY AND ACCESS TO MEDICINES IN LATIN AMERICA* (Oxford University Press 2014) (edited and partly co-written with César Rodríguez-Garavito), and papers on patent law, trade secrecy law, procedural law, international intellectual property law, and the impact of investor-state dispute resolution on intellectual property rights. She is co-editor (with Justine Pila) of *THE OXFORD HANDBOOK OF INTELLECTUAL PROPERTY LAW*.

Mezei Peter is a professor of law at the University of Szeged (Hungary). He was awarded an honorary adjunct professorship (dosentti) at the Faculty of Law, University of Turku (Finland) in December 2014. He is a chief researcher at Vytautas Magnus University (Lithuania) and a professor invité at the Université Jean Moulin Lyon III (France). He coordinates the Comparative Intellectual Property Law

LLM of the University of Szeged, and the joint IP LLM of the Technical University of Dresden and University of Szeged on the Szeged side. His courses and research focus on comparative law, as well as comparative, digital, International and European copyright law. He is a member of the European Copyright Society and the Hungarian Copyright Expert Board. He is the Copyright Vice President of the Hungarian IP Association. His key English articles are available via SSRN at https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=1697918. ORCID number: <https://orcid.org/0000-0003-4832-2079>.

Mäihäniemi Beata is a University Researcher in sustainable transition at the Faculty of Law, University of Lapland. She also holds an Adjunct Professorship in law and digitalisation from the University of Helsinki. She currently researches how green transition affects operations of online platforms and which legal changes this requires. She is interested in digital circular economy and the role of competition law & data governance in sustainable transition. She has a background in research on legal tech, digitalisation as well as automated decision-making.

Senftleben Martin is Professor of Intellectual Property Law and Director, Institute for Information Law (IViR), University of Amsterdam. His activities focus on the reconciliation of private intellectual property rights with competing public interests of a social, cultural or economic nature. Current research topics include generative AI systems and author remuneration; open science and digital autonomy of researchers; platform and digital ecosystem regulation; copyright data improvement and content recommender systems; behavioural advertising and consumer empowerment; the development of sustainable intellectual property policy. He is a member of the Benelux Council for Intellectual Property and a former member of the Copyright Advisory Committee of the Dutch State. He provided advice to WIPO in copyright, trademark and unfair competition projects. For the European Commission, he prepared studies on data access and reuse in research contexts. He is a member of the Trademark Law Institute (TLI), the European Copyright Society (ECS) and the Executive Committee of the Association littéraire et artistique internationale (ALAI). As a visiting professor, he was invited to the National University of Singapore, the Engelberg Center at NYU Law School, the Oxford Intellectual Property Research Centre, Tel Aviv University and the Intellectual Property Research Institute of Xiamen University.

van den Hoven van Genderen Rob is a Professor Emeritus on AI and Robot law at the Vrije Universiteit Amsterdam and University of Lapland. Until last year he was also the Director of the Law and information institute at the Vrije Universiteit Amsterdam. He has been visiting professor at the Kyushu University, Japan, The Taiwan University and Peking University His area of research is privacy, technology, AI and robot law. He has published several articles and books on these subjects. Currently he is involved in the HIPE research project, looking in the ethical and legal aspects of emotional AI.

Abstracts

Trade Secrets and Deep Secrets, Rochelle C. Dreyfuss. Unlike other IP law, trade secrecy protection lacks an express cut-off point. Instead, exclusivity ends through independent invention, reverse engineering, and in reliance on defenses that shield certain types of disclosure. But as trade secrecy claims have become more popular, it has become clear that there is information that is not revealed in any of these ways, which is nonetheless necessary to protect social welfare. Examples include the know-how needed to manufacture crucial medical supplies, the algorithms and training data

required to protect fundamental rights from AI-driven decision-making and the manufacturing, diagnostic, repair, and component information that facilitates the development of a circular economy. This presentation will discuss the shaky rationale for trade secrecy protection, why the current limits on protection fail to reveal important information, and the proactive ways governments can develop to require the disclosure of these “deep secrets” while fulfilling the legitimate goals of trade secrecy law.

Right to repair: a global north and global south perspective, Rosa Ballardini and Beata Mäihäniemi
TBC

Upcycling and trademarks, Martin Senftleben. Fashion upcycling offers unprecedented opportunities for the sustainable reuse of clothing: using second-hand garments as raw materials for new creations, upcyclers can transform used pieces of clothing into new fashion products that may become even more sought-after than the source material. The productive reuse of garment components in upcycling projects is socially desirable in the light of the overarching policy goal to achieve environmental sustainability. Fashion upcycling that adds new value to worn pieces of clothing can contribute to the reduction of fashion waste. The more individual fashion elements and garment components enjoy trademark protection, however, the more legal obstacles arise. Upcycling may trigger allegations of consumer confusion and unfair freeriding when fashion elements bearing third-party brand insignia become elements of the upcycled product. The exhaustion of trademark rights after the first sale does not necessarily offer a solution because the change and rearrangement of branded garment components may render the first sale doctrine inapplicable and give the trademark proprietor ammunition to oppose the resale. Therefore, the question arises whether other defences are available in trademark law to escape the verdict of infringement. This presentation answers this question by arguing that fashion upcycling constitutes an important, constitutionally protected form of free artistic expression. Upcyclers use second-hand fashion elements to convey the important message that production and consumption patterns in the fashion sector must change. Considering the overarching policy objective to ensure a circular economy, the use of fashion elements that bear third-party trademarks for this purpose can be qualified as a legitimate form of nominative or referential use. The reference to products of the original trademark owner is made for the socially valuable purpose of providing a vision of better, more sustainable production and consumption practices.

Upcycling and Copyright – Towards a Sustainable Transformativeness, Peter Mezei:

Upcycling might be defined as *transformative recycling of tangible copies of works or goods that are protected by some form of intellectual property law*. Upcycling is becoming the next conflict zone for IP rights holders and sustainability-oriented producers over the recycling of used consumables, because IP rights and the circular economy are often in conflict by relying on the same resources with significantly different logics and policies. Upcycling is far from a single dimensional activity to be approached solely from the perspective of exclusive IP rights. It represents a new philosophy for environmental consciousness, promising new bottom-up approaches to decrease the negative consequences of human activities on Earth. It can work as a case study for decision-makers to re-imagine IP policies to support green transitions at *micro* level by allowing upcyclers the reuse trash; at *mezo* level by convincing investors to renew economic models and invest in transformative recycling; and at *macro* level by allowing legislation to incentivize innovative activities. This presentation addresses the meaning of upcycling and three conflict zones for copyright law and upcycling, namely, the contrast of exclusive IP rights and inclusive sustainability and circularity; the need for a holistic IP legislation to mitigate IP overlaps in consumables; and, finally, ‘spatial conflicts’, that is, the divergent needs of waste exporters and importers.

Legal personhood, AI and sustainability transitions, Rob van den Hoven van Genderen **TBC**