

CONFERENCE ANNOUNCEMENT:

CIPIL Annual Spring Conference 2017 – Intellectual Property and Human Rights

Faculty of Law, University of Cambridge, 10 West Road

Saturday, March 11th 2017, 10.00am-5.00pm

FOR BOOKINGS [CLICK HERE](#)

Twenty years ago, the relationship between intellectual property law and human rights was largely an obscure topic of discussion amongst academics. Today, there seem to be few parts of intellectual property that do not need to be considered in terms of whether they effectively vindicate, are consistent with, or unduly restrict, human rights and fundamental freedoms. Locally, one major impetus was the Human Rights Act 1998 (HRA), requiring the English courts to take into account the jurisprudence of the European Court of Human Rights in Strasbourg. The Strasbourg Court has, in a series of decisions, applied the right to property under the 1st Protocol of the European Convention to intellectual property (IP), essentially aiming to safeguard IP rights against undue state interference. More recently, the Court has also scrutinised IP enforcement measures as to their compliance with other human rights, such as freedom of expression. The effects of the European Convention and the HRA are, however, minor compared to those of the Charter of Fundamental Rights of the European Union, proclaimed initially in December 2000 and rendered legally binding from 2009. The Court of Justice of the European Union, made up many judges at ease with constitutional and human rights law, quickly grasped the opportunity to ‘constitutionalise’ intellectual property. As a result, a legal regime formerly understood as comprising legislative rules, underpinned largely by instrumentalist political philosophy, is rapidly being reinterpreted and reconfigured as one involving balancing between, and proportionate restriction of, human rights (Charter, Art 52). This presents significant challenges in terms of understanding a new array of sources, refocussing on different fora and becoming competent with different methodologies.

Although Article 17(2) of the EU Charter states that ‘intellectual property shall be protected’, this offers little guidance on the scope of protection afforded to IP rights from a constitutional perspective – beyond the case law on proportionality and balancing of the Strasbourg Court and the CJEU. One therefore turns to other human rights in search for guidance. Here, the most obvious right that informs the interpretation of EU and national copyright and trade mark law is ‘freedom of expression’ (ECHR, Art 10; Charter, Art 11), including the right to receive information and ideas. This has proved an important consideration in interpretation of concepts such as ‘communication to the public’, ‘quotation’, and ‘parody’ (C-145/10 *Painer* [134], C-201/13 *Deckmyn*, Case C-160/15 *GS Media*, [31], [45]) and in the context of enforcement (C-70/10 *Scarlet Extended*, [50]-[52]). The case-law on enforcement has also touched on other rights such as that to private life (ECHR, Art 8; Charter Art 7) as well as protection of personal data (Charter, Art 8; *Promusicae*, Case C-276/06, [61]-[70]; C-70/10 *Scarlet Extended*, [50]; Case C-580/13, *Coty Germany*; *Golden Eye* (2012), [117]); and the right to conduct a business (Charter, Art 16; C-70/10 *Scarlet Extended*, [46]; *Cartier v BSB* [2016] EWCA, [125]). The freedom from discrimination (ECHR, Art 14; Charter, Art 21) has been relied upon in cases concerning immoral trade marks (T-526/09, [15]), similarity of marks (C-147/14) and, more controversially, in interpreting the notion of ‘parody’ (C-201/13, [30]-[31]). Procedural safeguards (Charter Art 41) have also been invoked against Community bodies such as the EUIPO: C-43/15P *BSH*). To date, the CJEU consideration of patent law has been more limited, but even there the Court has invoked the right of human dignity (Charter, Art 1; Cases C-34-10, *Bruetle*; C-364/13, *International Stem Cell*). It is notable, here, that the UPCA acknowledges the importance of fundamental principles of EU law, including the Charter. The impact of a number of other fundamental rights on IP, the freedom of the arts and sciences (Charter, Art 13), the right to education (ECHR, P1, Art 2; Charter,

Art 14); the right to engage in work (Art 15; and the integration of persons with disability (Charter, Art 26), has yet to be fully explored. Some of these have been influential in national jurisprudence (a matter that has interpretive importance under Charter, Art 52(4)), and comparative experience.

Similar trends are visible at an international level, where intellectual property, once solely subject to free standing international conventions (Berne, Paris), and from 1994 increasingly the preserve of trade law (the WTO-TRIPs Agreement), is now being 'systemically integrated' within a more generalised vision of a system of international law that includes human rights (recognised in the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966)). The Universal Declaration of Human Rights (1948), Art 27(2) and the International Covenant on Economic, Social and Cultural Rights, Art 15(1)(c) recognise 'creator's rights by granting everyone 'the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author'. Moreover, the Declaration and the two Covenants mandate protection of other rights and freedoms, such as the right to education (UDHR, Art 26; ICESCR, Art 13), the right to health (Constitution of the World Health Organisation (1946); ICESCR, Art 12), freedom from discrimination (UDHR, Art 2), the right to engage in work (UDHR, Art 23; ICESCR, Art 6), and freedom of expression (UDHR, Art 19; ICCPR, Art 19). The plurality of human rights considerations relating to IP invites the development of techniques to 'harmoniously' interpret IP through human rights, human rights through IP, and to resolve, where necessary, conflicts between those regimes. Examples of such interactions can be seen in attempts of WTO Members to ensure that patent protection for pharmaceuticals does not interfere with their right to protect public health (Doha Declaration on TRIPS and Public Health, 2001); and recent challenges, based on the 'right to property'-logic that underlies notions of protecting IP as an investment, to legislation requiring that tobacco products be sold in 'plain packaging' (eg *Phillip Morris v Uruguay* (ICSID, 2016), [307]).

This Conference seeks to explore the interplay between IP and human rights. Beginning with an introduction to the different human rights instruments (Ranganathan), their relations with IP protection on a conceptual level (Grosse Ruse-Khan), as well as an exploration of the methods used for aligning IP and human rights (proportionality, balancing of rights) (Griffiths), the programme goes on to consider particular interactions, tensions and conflicts: the relationship between copyright and human rights (in particular freedom of expression and science) (Senftleben); the relationship between trade marks and health in the context of plain packaging (Palmer); the relationship between copyright and a host of other rights in discussion of intermediary liability (Angelopolous); and the relationship with patents and the right to health (Thambisetty). Professor Helfer will offer a concluding keynote.

Conference Programme

Chair: The Hon Mr. Justice Richard Arnold

09.30-10.00 REGISTRATION

Morning Session

Human Rights: Background and Methodology

10.00-10.30 Surabhi Ranganathan (University of Cambridge) *The International Sources of Human Rights: The UDHR, Covenants, ECHR and EU Charter*

10.30-11.00 Henning Grosse Ruse-Khan (University of Cambridge) *Linking Intellectual Property and Human Rights: Concepts, Perspectives, and Tools for Integration*

11.00-11.15 Discussion

11.15-11.30 TEA/COFFEE

Patent Law Working Requirements and the Problem of NPEs

11.30-12.00 Speaker tbc *The Human Right to Intellectual Property in the Charter*

12.00-12.30 Jonathan Griffiths (QMUL), *The Balancing Methodology*

12.30-12.45 Discussion

12.45-13.30 LUNCH

Afternoon Session

Indicative Tensions and Conflicts

13.30-14.00 Professor Martin Senftleben (VU Amsterdam), *Copyright and Freedom of Expression*

14.00-14.30 Dr Christina Angelopolous (CIPIL) *Intermediary Liability*

14.30-15.00 Dr Siva Thambissey (LSE), *Patents and the Right to Health*

15.00-15.15 Discussion

15.15-15.30 TEA/COFFEE

15.30-16.00 Dr Stephanie Palmer (University of Cambridge), *Tobacco Legislation, Trade Mark Rights and the Right to Health*

16.00-16.40 Professor Laurence Helfer (Duke), title tbc.

16.40-17.00 Discussion

17.00- CONFERENCE CLOSES – Drinks reception to follow in Atrium.

Drinks reception kindly sponsored by Cambridge University Press

Cost: £90 (full rate), £65 (academic rate), £45 (student rate).

Booking: For further information and to book a place via the electronic booking system please see [this link](#) or email Claire Hill (ch771@cam.ac.uk).

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