

The role of IP in a new post crisis world

FIDE /TIPSA GLOBAL DIGITAL ENCOUNTERS

Report Encounter n°1

Challenges of the IP system in a post-crisis environment

May 8th, 2020

Moderator and Speakers:

Prof. **Manuel DESANTES REAL** – University of Alicante (moderator.)

Prof. **Laurent MANDERIEUX** – Bocconi University (speaker)

Prof. Anselm **KAMPERMAN-SANDERS**– Maastricht University (speaker)

Prof. **Jane GINSBURG** – Columbia University (speaker)

1. The **first Encounter** brought together three world-class IP experts to discuss challenges of IP systems in a changing world, as the post-COVID19 crisis world may mean revisiting traditional approaches too often taken for granted. The three experts not only discussed the role – both current and future – of IP legal systems, but also the new issues ahead due to pressing technological, legal, policy, and economic factors.

2. **Prof. KAMPERMAN-SANDERS** highlighted - via several real-case examples - a series of concerns and questions relating to the pandemic and the role of new technical developments and social reactions to the crisis – where IP plays a crucial role.

One may consider that: (1) the purpose of the patent system is to create a competitive market for technology, not merely a reward for investment; (2) and that poverty should be relative, specially in relation to health crises, like the one we are facing now, where public-private partnerships are crucial to find solutions. These considerations impact the debate over compulsory licenses and private formulations, where patents are there to serve the public good, and besides, raise issues in terms of enforcement.

Relating to new ICT technologies, the question becomes whether the latter are going to help or whether there are concerns in relation to our liberties – eg tracking apps. Moreover, AI and IoT devices will become much more prominent and questions will arise in terms of the way of which these devices need to be governed.

The current crisis has shown new social and cultural trends. A clear example may be found in 3D printing and its interplay with both open source innovation and licensing models. Namely, 3D printing carried privately by an individual in his home, for instance, is not subject to the exclusion mechanism inherent to patent rights – eg private use exception.

Prof. Kamperman-Sanders closed by referring to the potential challenges that may arise in the field of 'investors v. state' dispute settlements settings – ie should arbitration cases between states and pharma companies be held? - specially in countries where the crisis is having a drastic impact. In line with the latter concern, should there be a kind of reassessment of the nature of property, and corollary to it, the nature of IPRs as exclusive instruments? Besides, potential issues related to tax evasion and royalties derived from exploitation of IPRs, were also brought to the table by Prof. Kamperman-Sanders, who concluded that despite sounding negative, questions must be asked.

3. **Prof. GINSBURG** approached the discussion from the copyright perspective, focusing on three specific axes: Remote; Automation/AI; Cashless society. She specified that although these specific areas were already subject to change before the virus, the advent of it has given a lot of impetus for further developments of these phenomena.

- Remote: a considerable number of things are going to be done remotely. However, this is not new, as there are universities which have been working from several years now remotely – eg Open Catalanian University. Entertainment and museums will continue to migrate online, and the production of 'home-made' products, such as 3D printing, will keep evolving.
- Automation: the world is experiencing a vast increase in automation. This is going to produce a double-edged impact. On the one hand, some professional contexts are going to become useless, and on the other hand, some other new specific professions are going to be created. Thus, due to automation there is going to be a re-allocation of workforce.
- Cashless society: to an increasing extent, people use credit and debit cards – ie 'you do not want to touch money'. Production is being steered towards a cashless society.

Prof. GINSBURG referred to several practical examples in line with her three axes of discussion, for instance: the need of developing robust ways for authors and performers to be recognized for their works; the move towards 'do-it-yourself' – eg 3D printing, in line with Prof. KAMPERMAN-SANDERS, and the derived IP vertical issues along the supply chain – eg CAD files.

All these three axes have in common one essential thing: the dependency on software, and derived from it, on connectivity and AI. This raises questions relating to the role of IP in protecting software: Is copyright the pertinent instrument for software protection? Should software be proprietary in contexts where it is deemed essential? These questions raise the paradox of IP legal systems, designed around the concept of exclusion but 're-tooled' by the market to serve as diffusion/distribution instruments – eg open source.

4. **Prof. MANDERIEUX**, approached the discussion from the angle of AI, considering its impact and current developments but also showing that largely thanks to AI, distance activities – ie learning, distance-working, caring, treating, keeping a minimum of social life – were feasible throughout this crisis.

How AI further imposes its role in this new post-crisis world, and besides, how does it affect the IP system? Back in 2001, scientific and IP publications related to AI, bloomed.

Nowadays, there are currently 340,000 patent families connected to AI-related issues. Whether we like it or not, AI is here and will profoundly shape current IP systems.

Prof. MANDERIEUX stretched out several possible definitions of AI: super intelligence – ie beyond and above humans; general intelligence – ie thinks and acts as a human; AI as intelligent agents performing several tasks.

AI brings at least two central issues regarding IP: (1) How this intelligence creates outputs? (the concept of inventorship – eg DABUS; originality; non-obviousness) IP offices struggle with it. (2) How this intelligence creates inputs? IP offices need to back themselves with AI tools more. AI may also be seen as a means-to-an-end in IP processes.

Prof. MANDERIEUX stated that there are a series of new issues on the substance of IPRs which might have to be revisited. How policy makers could establish new frameworks permitting IP to achieve its economic and social goals? Prof. Manderieux pointed, as an example, to IP references in the European Parliamentary Research Service work on the role of AI in the context of the pandemic.

The world of AI protection has moved from the Atlantic to the Pacific. Applicants getting most of the patents for AI inventions come from - or are comprised between- Eastern Asia and the US East Coast. On an average, European countries may count too marginally. Very few countries are in the club, the so-called 'Pacific club', something that Europeans should worry, and we should consider.

5. Participation was extraordinary: **832 persons** had been registered. The questions and answers part of the session are published separately to enhance discussion.

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