

Editorial

by **Thomas Dreier**

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- 1 In view of the ever-faster advancement of digital technologies, the law of intellectual property (IP) and of information technology (IT) is increasingly expanding. As a result, a journal such as JIPITEC, the Journal of Intellectual Property, Information Technology and E-Commerce Law, has to deal with an increasingly diverse range of topics. This is particularly reflected in the present issue, which rather than focusing on a particular area of law covers a wide range of legal regulations, from traditional IP law and the law of international treaties via traditional liability, and insurance law to data protection laws and the regulation providing for IT-security. This plethora of different issues is triggered, amongst others, by the paradigm shift from trading in physical objects to immaterial services, and the shift from industrial manufacturing to home production of physical objects with the help of 3D-printing, as well as by the propagation of autonomously driving vehicles.
- 2 This variety of topics creates a dilemma for the editor who – besides guaranteeing that the Journal's high quality standard is met – has to pick and choose which of the manuscripts submitted he or she considers worthy of publication. Some of the journal's readers might wish to see the focus of the article in one particular area, whereas some readers might wish to see another area highlighted. Moreover, readers who are already familiar with a particular topic or are even experts in their particular field might be looking for additional in-depth information, while those less specialized might rather wish to be confronted with an overview which just outlines the main issues of a particular area. In this respect, the present issue attempts a balancing act between a variety of topics of different legal fields, while at the same time integrating in-depth analyses with other articles that just provide a quick overview, or which only concentrate on a particular issue within a wider area.
- 3 Hence, the lead article by *Caterina Sganga*, Associate Professor of Comparative Private Law, DIRPOLIS Institute, Sant'Anna School of Advanced Studies in Pisa (Italy), provides a very thorough in-depth analysis of the case law handed by the CJEU on the issue of digital exhaustion. In view of the CJEU's argumentation in the famous *UsedSoft*-case and following the *Ranks*-case it is still unclear to what extent the CJEU considers *UsedSoft* is limited to the Computer Program Directive, or whether the CJEU will also arrive at the same result with regard to works protected under the *InfoSoc*-Directive. Sganga develops several arguments which might serve as a basis for the CJEU's decision in the pending *Tom Kabinet*-case, and she makes a convincing argument in favor of "tertium genus" in between the distribution of physical copies on the one hand, and the provision of immaterial services on the other. This model would allow the application of the doctrine of exhaustion also to the distribution/communication of some content, which is protected by the *InfoSoc*-Directive and which is communicated online.
- 4 In a similar way, the following article by *Christophe Geiger*, *Giancarlo Frosio* and *Oleksandr Bulayenko* – respectively, Director General and Director of the Research Department, Senior Researcher and Lecturer as well as Researcher and PhD Candidate of the Centre for International Intellectual Property Studies (CEIPI) in Strasbourg, France – seek to give advice to the European legislature as regards the

adoption of a suitable legal regime for out-of-commerce works. While generally being supportive of the legal rules proposed in a possible Directive on Copyright in the Digital Single Market, the authors provide some suggestions for improvement, notably concerning the definition of the scope of search required for establishing the out-of-commerce status of works, the requirement of the representative character of collective management organisations, and the non-application of the mechanism to third-country works. It thus wants to help make Pico della Mirandola's dream of having all knowledge accessible in one place eventually come true.

- 5 The somewhat shorter article by *Nina Natalia Baranowska*, Researcher at the Civil Law Institute at the Faculty of Law, Administration and Economics at the University of Wrocław (Poland), presents the technology of 3D-printing and the disruptions this technology is likely to entail for existing business models, due to the shift from industrial to private home production. The main focus of this article is on the repercussions this shift may have on trademark law and, even more, on the producing firm's trademark policies. Concluding, Baranowska gives advice to trademark owners as well as to legislatures.
- 6 With these three articles the section of this Journal which focuses on specific issues of particular intellectual property laws already comes to a close. With the article by *Clara Ducimetière* – Researcher within the EIPIN Innovation Society European Joint Doctorate programme at the CEIPI in Strasbourg (France) – on Free Trade Agreements and IP tribunals, the readers' attention is directed at a much lesser known area of law. Since most FTAs contain sections on IP, which is qualified as “property” and “investment” for the purposes of the FTAs, the issue arises regarding how to define the relationship between litigations amongst private entities as well as between private entities and states which are brought before the FTAs' IP tribunals, the WTO panels, and national courts. Although, as of yet, only few such IP cases were brought before the FTAs' IP tribunals, such cases may increase in the future.
- 7 Immaterial information is no longer confined to intellectual property as defined by traditional IP laws. Rather, the wider focus is on data and on information in general. In his article, *Gábor Szalay*, Doctoral candidate at the Department of Business and Commercial Law of the University of Pécs (Hungary), undertakes a comparison between the rules governing access to public sector information in the EU and in Hungary. This sheds some light on both the growing general acceptance, as well as the current conflicting trends in Member States such as Hungary.
- 8 With *Keri Grieman*, LLM Candidate at London's Queen Mary University (UK), the focus of this issue shifts to self-driving autonomous vehicles. In her article entitled “Hard drive crash”, Grieman examines the different liability regimes that are available for application to scenarios of damages caused by self-driving vehicles. In this respect, she analyses both statutory solutions and the – albeit small – body of existing case law, and she summarizes the main arguments on a policy level.
- 9 Closing the articles' section, *Wolfgang Kerber*, Professor for Economic Policy at the Philipps-Universität in Marburg (Germany), likewise tackles an important issue raised by autonomous, self-driving vehicles, namely the “Data Governance in Connected Cars”. The fact that even absent a property title in data, car manufacturers can by way of technical means retain exclusive control of the data generated during the operation of connected cars. This, however, may lead “to serious concerns about negative effects on competition, innovation and consumer choice on the markets for aftermarket and other complementary services in the ecosystem of connected and automated driving”, as Kerber explains. In view of this, his article offers an overview of the policy discussion while analyzing the issue from an economic perspective and using a market failure analysis. Likewise taking into consideration issues of data protection, the article examines solutions through data portability, data rights, competition law, and finally recommends a sector-specific regulatory approach.
- 10 Finally, the current issue of JIPITEC contains a reappearance of a book review section. To begin with, Severine Dusollier presents and shares her thoughts on *Gustavo Ghidni's* book “Rethinking Intellectual Property”, published by Edward Elgar. In a similar vein, Alain Strowel discusses *Daniel Gervais' proposals* in “Re-Structuring Copyright”, also published by Edward Elgar. Thomas Dreier examines the parallel book edited by *P. Bernt Hugenholtz* entitled “Copyright Reconstructed: Rethinking Copyright's Economic Rights in a Time of Highly Dynamic Technological and Economic Change”, published in the Netherlands by Wolters Kluwer. In addition, Veronika Fisher has a look at the new “Research Handbook on Intellectual Property and Creative Industries”, edited by *Abbe E.L. Brown and Charlotte Waelde*. Finally, Eric Steinhauer submitted his views on *Thomas Eger's* and *Marc Scheufens' book* entitled “The Economics of Open Access – On the Future of Academic Publishing”, both likewise published in the UK by Edward Elgar.
- 11 I hope you will once again enjoy reading the new issue of JIPITEC.

Thomas Dreier