

Prosumerism and IP (Part I)

The EPU Joint Research Project on “Prosumerism and IP” – Summary Report

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Due to the rapid development in the field of information technology, it has become rather common to produce, distribute and consume intellectual creations through digital technologies. From a legal, economical and sociological perspective, this paradigm-shift rigorously challenges the classical doctrine of IP-Law systems, which are based on the principle of territoriality and which inherently reflect an “analogue-world”.

The joint research project on “Prosumerism and IP” (PIP), funded by the Eurasian-Pacific Uninet, was based on a partnership among legal scholars and practitioners from the Vienna University of Economics and Business (Clemens Appl, Principal Investigator, Philipp Homar, Co-Investigator), the City University of Hong Kong (Wenwei Guan, Co-Investigator) and the University of Hong Kong (Yahong Li, Co-Investigator). It focused upon the various legal perspectives of the “Prosuming-Paradigm” and its context in relation to Intellectual Property Law. This summary report outlines the main issues which have been tackled throughout the papers found within the joint research project.

1 Background

In the light of a global knowledge society, an altered socio-economic environment and a rapid development in the field of information and production technologies, an extraordinary paradigm-shift has occurred. The traditional divide between the roles of producer and user have slowly faded out, steadily converging into a new role model, that of the ‘prosumer’.

The role of the prosumer has already become centralised amongst the different markets. For instance, an example of the practice of prosuming in the entertainment sector, is the so-called “user generated content”, a socio-technological phenomenon, having a tremendous impact on and challenging the traditional production and distribution of media content. However, it is not only producers and distributors of digital goods who are being challenged. Due to the widespread availability of 3D printing technologies, manufactures of corporal goods will eventually have to redefine their business models. 3D printing technologies are no longer reserved for use by large companies, but they have also been penetrating into the private sphere. Consumers can easily reproduce corporal goods through the facilitating individual use of various 3D printing technologies or via 3D printing services.¹⁾ Private printing (or copying) of corporal goods (for e.g. of spare parts, articles of merchandise, fan art etc.) – irrespective as to whether they are IP protected or not – has already become a reality. Digi-

talization, social networks and a vast field of new technologies are not only challenging copyright law, but also patent law, design protection and trademark law. User generated content and 3D printing technologies are two recently created concepts, which reflect a progressive economy, one in which consumers can actively participate as prosumers.

From a doctrinal perspective, this development raises various issues. For instance, the mere private non-commercial usage of industrial property (patents, designs and trademarks) is typically beyond the scope of the respective IP rights.²⁾ If the production of digital or corporal goods for private use happens within private homes, such a “production” will not fall under the scope of IP protection. Thus, traditional IP approaches are faced with a challenge and their particular significance may be partially lost.³⁾

The tension between prosuming and IP has increasingly become the focus of legal research in the field of copyright and industrial property law. Thus, this joint research project on “Prosumerism and IP” aimed at identifying the requirements for the modernization of national and international IP-law systems, which equally consider the interests of creators, right holders and users. In particular, this project focused upon a pressing concern: the paradigm of a „Prosuming Culture“, which describes the convergence of usage (consumption) and creation (production) in a digital and globalized environment. The main themes of this project were: User Generated Content, 3-D-printing and the role of digital platforms.

2 The Vienna Workshop in March 2016

The 1st PIP-Workshop was held at the WU Vienna from the 7th March till the 8th March of 2016. On the first day, a welcome reception took place at the law firm DLA Piper

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2) Göbel, *ecolex* 2014, 344; Hofmarcher, *ipCompetence* 2014 (11), 24.

3) Cf Göbel, *ecolex* 2014, 344.

1) For example, www.shapeways.com or www.imakr.com.

Weiss-Tessbach, and provided an excellent opportunity for researchers to get input on the aspects of prosumerism from a practitioners view. *Sabine Fehring* (Partner, Head of the Austrian Intellectual Property & Technology Practice at DLA Piper Weiss-Tessbach) gave the opening speech.

The second day of the workshop started with a few opening remarks by *Clemens Appl* and *Martin Winner* (WU Vienna), followed with a keynote speech by *Dominik Göbel* (Gassauer-Fleissner Attorneys-at-law) on the topic of “3D-Printing challenges the European IP-System”.⁴⁾ A discussion then followed, in which *Dominik Göbel*, *Johannes Werner* (Austrian Patent Office) and *Leonhard Reis* (Attorney-at-law, Vienna) debated on the recent challenges of prosumerism under European IP-Law, together with the participants of the workshop. The programme of the workshop further consisted of four scientific presentations, which were held by members/partners of the cooperation. *Philipp Homar* (WU Vienna) gave a presentation on the subject of “Moral Rights and Prosumerism”,⁵⁾ *Yahong Li* (University of Hong Kong) elaborated on the topic of “User-Generated-Content from an International and Chinese perspective”,⁶⁾ *Wenwei Guan* (City University of Hong Kong) talked about “User-Generated-Content and Hong Kong’s copyright amendment”⁷⁾ and finally, *Sang Wha Lee* and *Veronika Treitl* (both from the WU Vienna) gave their presentation on “User-Generated-Content under European Copyright Law”.⁸⁾ Scientists affiliated to partner institutions commented and gave their remarks on each presentation.

3 The Hong Kong Workshop in May 2016

The 2nd PIP-Workshop took place in Hong Kong from the 5th May to the 6th May of 2016. On the first day of the workshop, the researchers were invited to visit the Hong Kong Intellectual Property Department (HKIPD). At HKIPD participants were welcomed by Director *Ada Leung Ka-Lai* and other officials. In this meeting researchers acquired a good insight into Hong Kong’s IP law system and recent

4) *Göbel*, MR-Int 2016, 155.

5) *Homar*, MR-Int 2016, 164.

6) *Li*, MR-Int 1/2017.

7) *Guan*, MR-Int 1/2017.

8) *Lee*, MR-Int 2016, 170 and *Treitl*, MR-Int 2016, 160.

policy issues. The first day of the workshop was concluded with a welcoming reception given by the City University of Hong Kong, and hosted by *Wenwei Guan* (City University of Hong Kong). Involved researchers and legal practitioners from Hong Kong participated in this opening event, and provided a great opportunity for informal talks on recent IP-related issues in Hong Kong and Europe.

The workshop progressed to its second day, at the Hong Kong University – Faculty of Law and was chaired by *Yahong Li* (University of Hong Kong). Officials of the HKIPD, *S.K. Lee* and *Jasmine Kun*, gave an overview of Hong Kong’s copyright law amendment, which was followed by a roundtable discussion on prosumerism and Hong Kong’s copyright law. The debate was overseen by *Martin Winner* (WU Vienna), *Frank Wan* (Director, HK Policy Research Institute), *Geoffrey Lau* (Head, Media Licensing, CASH) and *Ronald Yu* (VP, IIPCC). The speeches and the roundtable were followed by four scientific presentations given by *Jyh-An Lee* (Chinese University of Hong Kong) on “Copyright Divisibility and the Anti-Commons”,⁹⁾ *Clemens Appl* (WU Vienna) on “Multi-Authoring in User Innovation”, *Wenwei Guan* (City University of Hong Kong) on “Antitrust Enforcement of SEP’s FRAND Terms in TRIPS Context” and *Stefan Holzweber* (WU Vienna) on “A Competition Law Perspective on Prosumerism”.¹⁰⁾ The presentations were thoroughly remarked upon by, inter alia, *Haochen Sun* (University of Hong Kong) and *Kelvin Kwok* (University of Hong Kong).

4 Outlook

By establishing this collaborative research amongst the WU Vienna, the City University of Hong Kong and the University of Hong Kong, an opportunity arose for the creation of a foundation on further scientific exchange between Austrian and Chinese researchers. Thus, the continuance of this joint research initiative is envisaged, with an aim of expanding the team of researchers.

Following this summary report, this issue of MR-Int contains, as indicated above, excerpts of scientific presentations held in the course of both workshops and is going to be continued with MR-Int 1/17.

9) *Jyh-An*, MR-Int 1/2017.

10) *Holzweber*, MR-Int 1/2017.

The Rise of the Prosumer

**Philipp Homar/
Sang Wha Lee**

An Introduction into Prosumerism and Participatory Culture

The recent technical developments have massively contributed to the dismantling of boundaries between formerly distinctive spheres: online and offline, amateurs and professionals, producers and consumers. Thereby, the foundations have been laid for an unfolding ‘participatory culture’, whose characteristic feature is the active participation of users as ‘prosumers’. This article provides an introduction into the phenomenon of ‘prosumerism’ and discusses its most vivid manifestations, User-Generated-Content and 3D-printing.

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