

**39th Annual Congress,
Seoul, Republic of Korea
August 30 – September 2,
2020**

Call for Paper Proposals

**The Exploitation of Intellectual Property Rights: In
Search of the Right Balance**

The IP system appears as a finely-tuned instrument, with detailed rights and carefully crafted limitations and exceptions balanced on a knife's edge to promote creativity, innovation and fair commercial dealings. In practice, however, the effect of the system depends largely on how the instrument is being played: If right holders use contracts or litigation to push their rights beyond the intended limits or find themselves unable to reap their benefits then the melodies the system plays are out of tune. Similarly, if users find themselves unduly blocked from access and use of protected information, this results in disharmony.

The 39th ATRIP Congress will focus on the interplay between the substantive provisions of all IP rights and the way these rights are being exploited. Taking as its starting point that the granting of rights and the exercise of those rights constitute two sides of the same coin **the Congress will investigate methods to ensure that enforcement and contractual practices support the goals of the IP system.**

All the above concepts are understood in a broad sense: "Rights" includes both exclusive rights of rights holders and rights arising under limitations and exceptions benefitting users. "Exploitation" includes (but is not limited to) "enforcement" and "contracts". Enforcement covers both actions before traditional courts and before non-traditional enforcement agents such as platforms.

The traditional multilateral IP conventions focus on substantive rights and are not specific about what happens after the rights have been granted or limitations allowed - and, in rare cases, made mandatory. This has changed. To take two examples: the TRIPS Agreement contains detailed provisions on enforcement, and the EU has passed detailed legislation in the area as well. As far as contracts are concerned, many countries hail the principle of Freedom of Contract and leave authors and other IP holders to fend for themselves. That too is changing: the EU in its Directive on Copyright in the Digital Single Market has introduced provisions to secure fair remuneration of authors and performers. To protect users against the erosion of limitations and exceptions unwaivable Users Rights have been mentioned by some courts (notably the Supreme Court of Canada), and in the EU and the United States (among other jurisdictions) fundamental and/or constitutional norms have been used to support free speech interests. Sometimes competition (antitrust) law has been used to restrict licensing practices or principles banning "abuse of rights" have been relied upon to prevent right holders from excessive exercise of their exclusive rights. Outside of the legislative arena, right holders have long relied on collective management mechanisms to strengthen their bargaining power or reduce transaction costs. Such models have sometimes enjoyed legislative support but have oftentimes developed with few constraints from IP law. This is also changing, especially with the adoption of the EU Directive and with increased scrutiny of patent pools and Standard Essential Patents. For domain names, a whole class of trade mark conflicts have been channeled away from the traditional legislative arena and towards a private arbitration system. Even more recently, right holders have relied on platform operators and their algorithms to enforce rights on the internet and may thereby have swung the pendulum from a state of chronic under-protection to one of over-protection.

I invite ATRIP members to submit paper proposals on these questions including:

- How to make sure that measures for enforcement are fair and equitable for right holders yet do not create barriers to legitimate trade and provides for safeguards against their abuse? Should measures be the same for all rights? And how to keep the balance in cross border actions?
- What legal tools could be relied upon to make sure that platform operators take the public policy considerations which underlie IP seriously?
- Should IP law impose use requirements on right holders?
- What is the potential for competition (antitrust) law to (re)balance enforcement or licensing?
- Should Freedom of Contract be limited to protect Users' reliance on limitations and exceptions? If so: Are unwaivable Users Rights a way forward?
- Do authors need special contractual protection? If so: Should protection be provided in IP law or general contract law? Is this protection needed in any other area of IP?

On behalf of the Executive Committee, I invite you to submit a paper proposal, including an abstract not exceeding 350 words, the author's name, title and affiliation. You need not send a CV. As ATRIP is an international organization we welcome the submission of proposals from around the world and care will be taken in the selection process to achieve global diversity as well as academic quality.

Scholars of all levels of experience are invited to submit proposals. Proposals received from ATRIP Members with no outstanding membership fee payment will be reviewed first.

Proposals should be sent no later than 1 February 2020 to ATRIP's President, Professor Jens Schovsbo, at the following address: president@atrip.org.

Notification of the outcome of the selection process will be sent in April 2020.

Jens Schovsbo

President, ATRIP, 2019-2021