

The Economics of European Intellectual Property Law

George Mason University School of Law, Fall Term

Prof. Fernando Gomez
Universidad Pompeu Fabra, Barcelona, Spain
Visiting Professor of Law, George Mason University School of Law

Session 1

Introduction to European IP Law and Introduction to economic analysis of IP

Tritton, *Intellectual Property in Europe*, 2nd ed., London (2002), pp. 5-34

Besen and Raskind, "An Introduction to the Law and Economics of Intellectual Property", 5 *J. Econ. Perspectives* 3 (1991)

Shavell and Van Ypersele, "Rewards vs. Intellectual Property Rights", 44 *J. L. & Econ.* 525 (2001)

Session 2

Copyright I: Basic Rules of European Copyright Law

Berne Convention for the Protection of Literary and Artistic Works (Paris text), artt. 1-3, 7

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), artt. 1-14

Council Directive 93/98 /EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights (Term of protection Directive)

Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (Rental and Lending Directive)

Tritton, pp. 305-326, 336-343, 349-355

Landes and Posner, "An Economic Analysis of Copyright Law", 18 *J. Leg. Stud.* 325 (1989)

Session 3

Copyright II: Rights and Defenses

Berne Convention, artt. 9-14
Rome Convention, art.15

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (Copyright in the Information Society Directive), artt. 2-4

Depoorter and Parisi, "Fair Use and Copyright Protection: A Price Theory Explanation", 21 *Int. Rev. L. & Econ.* 453 (2002)

Landes and Posner, "An Economic Analysis of Copyright Law", 18 *J. Leg. Stud.* 325 (1989)

Session 4

Copyright III: Moral Rights

Berne Convention, artt. 6bis, 14ter

Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art (*Droit de suite* Directive)

Tritton, pp. 372-377

Hansmann and Santilli, "Authors' and Artists' Moral Rights: A Comparative Law and Economics Analysis" 26 *J. Leg. Stud.* 95 (1997)

Perloff, "*Droit de suite*", in Newman (ed.) *The New Palgrave Dictionary of Economics and the Law*, Vol. I 645 (1998)

Session 5

Copyright IV: General problems of digital Copyright

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (Copyright in the Information Society Directive), artt.6-7

Tritton, pp. 364-372

Liebowitz, *Re-Thinking the Network Economy*, New York (2002), ch. 7

Session 6

Copyright IV: Software and databases

Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (Software Directive)

Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (Database Directive)

Tritton, pp. 326-335, 356-362

Koboldt, "The EU-directive on the Legal Protection of Databases and the Incentives to Update: An Economic Analysis" 17 *Int. Rev. L. & Econ.* 127 (1997)

Session 7

Copyright V: Exploitation of Copyright, specially collective administration

Lucazeau v. SACEM [1991] CMLR 248

MacQueen and Peacock, "Implementing Performing Rights", 19 *J. Cul. Econ.* 157 (1995)

Besen, Kirby and Salop, "An Economic Analysis of Copyright Collectives", 78 *Va. L. Rev.* 383 (1993)

Session 8

Patent Law I: Basic rules and procedure

Tritton, pp. 78-123

Landes and Posner, *The Economic Structure of Intellectual Property Law*, Cambridge MA (2003) (forthcoming), ch. 11

Session 9

Patent Law II: New technologies as patentable subject matter

Directive 98/4/EC of the European Parliament and of the Council of 6 June 1998 on the legal protection of biotechnological inventions (Biotechnological patent Directive)

Commission Proposal of 20 February 2002 for a Directive on the patentability of computer-implemented inventions (COM (2002)92 final)

Gitter, "International Conflicts Over Patenting Human DNA Sequences in the US and the EU: An Argument for Compulsory Licensing and Fair-Use Exemption", 76 *N. Y. U. L. Rev.* 1623 (2001)

Lemley, Menell, Merges and Samuelson, *Software and Internet Law*, Aspen Law and Business (2000), pp. 704-721

Session 10

Patent Law III: Exploitation and infringement. Trade Secret Law

TRIPS Agreement, art. 39(2)

Krasser, "The Protection of Trade Secrets in the TRIPS Agreement", in Beier and Schricker (editors), *From GATT to TRIPS*, Weinheim (1996)

Friedman, Landes and Posner, "Some Economics of Trade Secret Law", 18 *J. Econ. Perspectives* 61 (1991)

Session 11

Trademark Law I: Basic rules and procedures

Tritton, pp. 213-245

First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (Trademark Directive)

Council Regulation 40/94 of 20 December 1993 on the Community Trademark (Trademark regulation)

Procter & Gamble v. OHIM, C-383/99 [2002], available at <http://www.eu.int>

Landes and Posner, "Trademark Law: an Economic Perspective", 30 *J. L. & Econ.* 265 (1987)

Session 12

Trademark Law II. Design protection

Tritton, pp. 245-266, 389-415

Silhouette International Schmied GmbH & Co. vs. Hartlauer Handelsgesellschaft mbH, C-355/96 [1998], available at <http://www.eu.int>

Directive 98/71/EC of the European Parliament and of the Council on the legal protection of designs (Design Directive)

Council Regulation (EC) 6/2002 of 12 December 2001 on Community designs (Design regulation)

Prime, *European Intellectual Property Law*, Aldershot (2000), pp. 137-172

Session 13

Intellectual Property and Antitrust

Tritton, pp. 833-872

TV Listing cases: *RTE v. Commission*, C-241/91 and C-242/91 [1995] CMLR 718

Commission Staff Working Paper, "Possible abuses of trademark rights within the EU in the context of Community exhaustion" (SEC (2003) 575)

Shapiro, "Navigating the Patent Thicket: Cross Licenses, Patent Pools and Standard-Setting", Working Paper, University of California at Berkeley, available at <http://www.ssrn.com>

Session 14

Enforcement of Intellectual Property Law

Commission Proposal of 30 January 2003 for a Directive on measures and procedures to ensure the enforcement of intellectual property rights (COM/2003/0046)

Copyright in the Information Society Directive, art. 8

Blair and Cotter, "An Economic Analysis of Damages Rules in Intellectual Property Law", 39 *Wm. and Mary L. Rev.* 1585 (1998)

Landes and Lichtmann, "Indirect Liability for Copyright Infringement: An Economic Perspective", University of Chicago Law School, Law and Economics Working Paper Series, n. 179 (2003), available at <http://www.law.uchicago.edu/Lawecon/index.html>