

# Module II:

# Intellectual Property and the Digital Economy

**Root Number:** 446688

**ECTS:** 3

**Lecturers:** Thomas Cottier, Mira Burri, Anna Zeiter, Andreas Heinemann and Philippe Lionnet

**Dates:** 12-16 July, 2021 (a 24h take-home assessment will be shared on July 16 after class).

**Location:** In response to the COVID-19 pandemic and following the guidelines established by the University of Bern, all courses of the 2021 WTI Summer Academy will only be held online. This course will have live sessions on [Zoom](#).

## **Addressees**

The summer academy courses on IP and trade are of particular interests to student and professionals of the public and private sector interested to explore the linkages of international trade regulation and intellectual property protection in greater detail. While the first week offers foundations and well established areas in law and policy, such as access to essential drugs, the second week turn to new challenges in the digital age, many of them yet unresolved. The two weeks can be followed independently. As the second week build upon the first one, newcomers to the area of IP are recommended to take the first week and add, optionally, the second module.

## **Course Description**

This model is dedicated to exploring the relationship of international trade, intellectual property and competition law in the digital economy. Expounding the law of copyright and domain name protection, it builds upon the first module, but then turns to new challenges in the field of competition law. New and unresolved issues of big data, data protection, artificial intelligence and IP protected technical standards are discussed, also in relation to the US-Sino trade war. The module also includes treatment of enforcing intellectual property rights which is particularly challenges in digital trade. The course is taught by leading academics and experienced practioners and Swiss government officials.

### Schedule 12-17 July 2021

Class	Date	Day	Time	Lecturer	Topic
1	12 July	Monday	09:00-12:00	Mira Burri	Copy Protection Podcast
			14:00-16:00	Pre-recordings Mira Burri	Copyright and the Digital Economy
2	13 July	Tuesday	09:00-12:00	Mira Burri	Copyright and the Digital Economy
			14:00-16:00	Pre-recrodings Mira Burri	Copyright and Digital Economy
3	14 July	Wednesday	09:00-12:00	Andreas Heinemann	Competition Law in the Digital Economy
			14:00-16:00	Andreas Heinemann	Competition Law in the Digital Economy
4	15 July	Thursday	09:00-12:00	Philippe Lionnet	Digital Trade and Electronic Commerce
			14:00-16:00	Anna Zeiter	Privacy in a Global Acting eCommerce Company
5	16 July	Friday	09:00-12:00	Thomas Cottier	The Challenge of Enforcement in the digital age
			14:00-16:00	Thomas Cottier	Digital Trade in the US-Sino Trade War: Challenges for IPR Regulation
6	17 July	Saturday			Take-home assessment

## Lecturer

### Dr, PD Mira Burri

Mira Burri is a senior lecturer and managing director internationalization at the University of Lucerne. She is also the principal investigator of a research project on Big Data and trade agreements financed by the Swiss National Science Foundation (NRP75). Mira convenes and teaches courses on international law of contemporary media, international intellectual property law, digital copyright and internet law.

She has published widely on digital media, digital trade and broader global governance issues in a number of peer-reviewed outlets, such as the Georgetown Journal of International Law, the Journal of International Economic Law, and the UC Davies Law Review. Mira is the author of the publications *The Classification of Services*

in the *Digital Economy* (Springer 2012) and *Public Service Broadcasting 3.0: Legal Design for the Digital Present* (Routledge 2015). She has co-edited a number of books, amongst others: *Trade Governance in the Digital Age* (Cambridge University Press 2012) and *Big Data and Global Trade Law* (Cambridge University Press 2020).

Mira is a member of the editorial boards of the *International Journal of Cultural Property and Arts* and *International Affairs*. Mira has consulted the European Parliament and UNESCO on cultural diversity and digital trade matters. She is a founding member of the Harvard-based Network of Centers for Internet and Society.

### **Anna Zeiter**

Dr. Anna Zeiter is Associate General Counsel and Chief Privacy Officer of eBay Inc. Before joining eBay in 2014, Anna had been working as a lawyer for two international law firms in Germany, specializing in data protection, IT and ecommerce law. Before working as an attorney Anna Zeiter did her Ph.D. in the field of free speech and media law at the University of Hamburg, she also holds an LL.M. in Law, Science & Technology from Stanford Law School. Anna Zeiter is regularly giving speeches at international data protection conferences and teaches at several universities, i.e. at the University of Bern. In 2020, Anna had been appointed as member of the IAPP (International Association of Privacy Professionals) Board of Directors and as Committee Member of the Global Tech DPO Network in Ireland. Besides that, Anna is member of the Digital Transformations Working Group of the World Economic Forum, co-leading the workstream Business of Data & Data Valuation.

### **Andreas Heinemann**

Prof. Dr. iur. Andreas Heinemann, Diplom-Ökonom, DIAP (ENA, Paris), is Professor of Commercial, Economic and European Law at the University of Zurich and permanent visiting professor at the University of Lausanne. After studies in economics and law he was awarded the Diplôme Supérieur de Droit Comparé from the Faculté Internationale de Droit Comparé in Strasbourg, and the Diplôme International d'Administration Publique (DIAP) from the Ecole Nationale d'Administration (ENA), then in Paris. He passed his bar exam in Berlin and completed his PhD and Habilitation at the University of Munich's faculty of law. His research focuses on Swiss, European and International Economic Law with a special emphasis on competition and intellectual property law. He is a member of the board of the Europa Institute at the University of Zurich and a member of the Bureau of the OECD Competition Committee. He is a member of the Swiss Competition Commission since 2011, and its president since 2018. More information is available at:

[www.ius.uzh.ch/de/staff/professorships/alphabetical/heinemann.html](http://www.ius.uzh.ch/de/staff/professorships/alphabetical/heinemann.html)

### **Philippe Lionnet**

Legal counsel for International Economic Law at the Swiss State Secretariat of Economic Affairs SECO, Foreign Economic Affairs Directorate. Philippe has been involved as a trade negotiator in various bi- and plurilateral fora, in particular on trade in services and legal affairs. In particular, he represented Switzerland in the course of the plurilateral Trade in Services Agreement (TISA) process and as a delegate to the WTO, OECD and UNCTAD. Currently, he is responsible for the annual reporting of the Swiss Federal Council to both chambers of parliament and the public on foreign economic policy. Before joining SECO, he focused on European Affairs as a policy advisor at the Federal Department of Foreign Affairs FDFA, and worked in the private sector and for a number of NGOs. Having studied in Switzerland and the US as well as Russia and China, he holds master's degrees from the Universities of Basel and Zurich.

He was awarded the Schulthess International Economic Law Award of the University of Zurich in 2018.

### **Adrian Lobsiger**

After his studies in Bern and Basel, Adrian Lobsiger, born on 27 December 1959, obtained a master's degree in European law from the University of Exeter (GB). In 1992, he began his career in the field of international private law at the Federal Office of Justice. In 1995, he joined the Federal Office of Police (fedpol), where he became deputy director. As head of the Staff Section and of the Legal Affairs and Data Protection Service, he was responsible for ensuring that personal data was processed in conformity with the law in exchanges with national and foreign authorities. From 2000 - 2005, he established and was part-time director of the postgraduate course of studies on combating white-collar crime and the Competence Centre for Forensics and Business Crime at Lucerne University of Applied Sciences and Arts.

Adrian Lobsiger was elected by the Federal Council in November 2015 and confirmed by Parliament in March 2016. He has been in office since June 2016. At its meeting on 10 April 2019, the Federal Council confirmed the re-election of Adrian Lobsiger as Federal Data Protection and Information Commissioner (FDPIC) for a second term of office until the end of 2023.

### **Thomas Cottier**

Prof.em. Thomas Cottier, former Managing Director of the World Trade Institute, is Professor Emeritus of European and International Economic Law at the University of Bern. He published widely in the field of international economic law, with a particular focus on constitutional theory and intellectual property. He directed the national research programme on trade law and policy (NCCR International Trade Regulation: From Fragmentation to Coherence) located at the WTI from 2006-2014. He is an associate editor of several journals. He was a visiting professor at the Graduate Institute, Geneva, the Paris I Sorbonne, University of Barcelona, and regularly teaches at the Europa Institut Saarbrücken, Germany, at Wuhan University, China, at the University of Torino and more recently at the University of Ottawa, Canada. He was a member of the Swiss National Research Council from 1997-2004 and served on the board of the International Plant Genetic Resources Institute (IPGRI) Rome during the same period. He served the Baker & McKenzie law firm as Of Counsel from 1998 to 2005. He held several positions in the Swiss External Economic Affairs Department and was the Deputy-Director General of the Swiss Intellectual Property Office. Prof. Cottier has a long-standing involvement in GATT / WTO activities. He served on the Swiss negotiating team of the Uruguay Round from 1986 to 1993, first as Chief negotiator on dispute settlement and subsidies for Switzerland and subsequently as Chief negotiator on TRIPs. He has served as a member or chair of several GATT and WTO panels and on a high level panel reviewing the International Health Regulations of the World Health Organization.

### **Learning Objectives**

- To discuss and understand the implications of digitization for IP rights protection, in particular in the field of copyright.

- To understand and navigate current developments in field of copyright law and its application and enforcement online.
- To understand some of the policy dilemmas in fostering innovation in the digital economy.
- To understand the implications of competition law and policy on the digital economy and on related IPRs
- To understand the efforts to regulate electronic commerce in digital trade in a plurilateral agreement and the conceptual challenges in interfacing GATS and TRIPS disciplines in the field
- To understand the implications of data protection in the digital economy, the global impact of EU law in the field, in particular relating to digital trade and currencies.
- To understand the underlying issues of digital technology leadership in the interface of the western market economies and state capitalism of China driving today's trade war and international economic relations, with a view to interfacing these systems In WTO law.

### **Exams**

Exams will be a take-home exam will be distributed on Friday after class and submitted on Saturday 17 July at 20:00 pm CEST. It will consist of an essay on a core issue discussed. The take-home assessment is open for everyone to take but is only compulsory for students who which to receive ECTS credits for the course.

### **Certificate**

Successful participants attending the course and passing the exams will be awarded a certificate or accreditation of ECTS.

**MONDAY, JULY 12, 2021 AND TUESDAY, JULY 13, 2021**

## Podcast

**Lecturer:** Mira Burri**Topic:** Copyright Law & Copyright in the Digital Economy

Digital technologies and the Internet in particular have triggered disruptive changes in long-established modes of creating, distributing and using works, ranging from literature and music to scientific publications and computer software. International and national copyright law has adapted, at least partially, in an attempt to reflect these changes. Yet, the jury is still out on whether these changes are appropriate and there is an intense ongoing debate on the proper scope of copyright and the means of its enforcement in the digital space. On the one side, there are strong voices, especially from the entertainment industries, that claim that the digital revolution has seriously undermined copyright protection that is essential to encourage the creation and distribution of new works. On the counter side, there are those who believe that strong and ever stronger copyright protection in fact inhibits technological innovation, hampers creativity and chills freedom of expression. It is the purpose of these two days to clarify the stakes in this debate and thematize the challenges that stand before policy- and rule-makers in the field of digital copyright law.

Day One will first provide an introduction into the basics of copyright by introducing the international legal framework and looking at the law and practice of selected national jurisdictions, in particular the US and the EU. Building upon this fundament, the course participants will be introduced to the specific features and the implications of digital media for copyright law. The course will then trace legal adaptation through changes in the legal systems, both national and international and through changes in the jurisprudence. We will use contemporary developments, such as the Google Books case and the Creative Commons licence, and discuss key questions on the liability of Internet intermediaries, so as to understand the current state of global copyright law and the challenges it faces.

**Compulsory Reading Material**

- F. Abbott, T. Cottier and F. Gurry, *International IP in an Integrated World Economy*, Wolters Kluwer, 2015, Chapter 4.
- S. Bechtold, 'Law and Economics of Copyright and Trademarks on the Internet', in S. N. Durlauf and L. E. Blume (eds) *The New Palgrave Dictionary of Economics*, 2013.
- Berkman Center for Internet and Society, *Copyright for Librarians: The Essential Handbook* (2012); abridged version.

- US Court of Appeals for the Second Circuit, *The Authors Guild v. Google, Inc.*, 804 F.3d 202 (2015).

### Optional Materials

- J. Grimmelmann, *Internet Law*, 9<sup>th</sup> ed. Semaphore Press, 2019, Chapter 7.
- N. Netanel, 'Why Has Copyright Expanded? Analysis and Critique', in: *6 New Directions in Copyright Law*, F. Macmillan ed., Edward Elgar, 2008.
- Statement of D. Keller before the US Senate Committee on the Judiciary, *How Other Countries Are Handling Online Piracy*
- C. Graber, 'Tethered Technologies, Cloud Strategies and the Future of the First Sale/Exhaustion Defence in Copyright Law', *Queen Mary Journal of Intellectual Property* 5:4 (2015), 389–408
- The New Copyright Directive: *A tour d'horizon* – Part I by João Pedro Quintais
- The New Copyright Directive: *A tour d'horizon* – Part II (of press publishers, upload filters and the real value gap) by João Pedro Quintais

## WEDNESDAY, JULY 14, 2021

**Lecturer:** Andreas Heinemann

**Topic:** Competition Law in the Digital Economy

### Compulsory Reading Material

European Court of Justice, 16 July 2015 – Huawei, Press Release No 88/15  
<[https://curia.europa.eu/jcms/jcms/P\\_170246/de](https://curia.europa.eu/jcms/jcms/P_170246/de)>

European Court of Justice, 21 January 2016 – Eturas  
<<http://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=;ALL&language=en&num=C-74/14&jur=C>>

European Commission, 27 June 2017 – Google Shopping, Press Release IP/17/1784  
<[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_17\\_1784](https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1784)>

### Optional Materials

Crémer/de Montjoye/Schweitzer, Competition Policy for the Digital Era, European Commission 2019 <<https://op.europa.eu/en/publication-detail/-/publication/21dc175c-7b76-11e9-9f05-01aa75ed71a1/language-en/format-PDF>>

Lundqvist/Gal (eds.), Competition Law for the Digital Economy, Edward Elgar 2019

UNCTAD, Competition Issues in the Digital Economy, Document TD/B/C.I/CLP/54, 1 May 2019  
<[https://unctad.org/meetings/en/SessionalDocuments/ciclpd54\\_en.pdf](https://unctad.org/meetings/en/SessionalDocuments/ciclpd54_en.pdf)>

**THURSDAY, JULY 15, 2021**

**Morning session: 09:00 -12:00**

**Lecturer:** Philippe Lionnet

**Topic:** Digital Trade and Electronic Commerce

Today, digital transactions play a key part in commercial exchanges. The increase in the volume of transactions and the rise of new players and business models have the potential to change even those sectors of the economy that have so far been less affected by globalisation – in particular services. All over the world, regulation of the digital economy is developing very rapidly, largely in an inconsistent manner and in a wide range of areas. As there is an underlying conflict between the global nature of the Internet and national legislation bound to territory, internationally agreed rules may contribute decisively to legal certainty in the digital economy. Accordingly, multilateral fora (such as OECD, G20, WTO) have been addressing the issue for some time. To date, though, international economic law has primarily been regulated by bilateral and regional economic and trade agreements

That Multilateralism is at risk has become a truism underlying global politics and, more specifically, the international regulation of trade. Besides the ongoing escalation of measures impeding international trade between nations, a decisive and well-recognized risk to economic multilateralism as we know it also stems from the growing emergence of plurilateral regulation formats. Governments are seeking to deepen international regulation in areas where they find common interests - and such progress has proven to be very difficult to achieve after the successful conclusion of the WTO Uruguay-Round. The most disputed issues fall in an area of international trade law, which is directly concerned with state sovereignty and disciplines on domestic laws and regulations. The rules that are decided and implemented in jurisdictions that regulate economic activities are highly normative political decisions and notoriously tricky to assess with regards to their impact on cross-border commercial exchanges.

The course provides an overview of the issues at stake in the regulation of digital trade, the existing approaches and their potential implications for the future of the digital economy.

### **Compulsory Reading Material**

BURRI M. (2017), "The Governance of Data and Data Flows in Trade Agreements: The Pitfalls of Legal Adaptation", *University of California Law Review*, 51(65): 65-132.

LÓPEZ GONZÁLEZ J. and FERENCZ J. (2018), "Digital Trade and Market Openness", OECD Trade Policy Papers, No. 217, <https://doi.org/10.1787/1bd89c9a-en>.

MELTZER J. (2015), "A New Digital Trade Agenda, E15Initiative", International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2015. [www.e15initiative.org/](http://www.e15initiative.org/).

### Optional Materials

POLANCO R. and SAUVÉ P. (2017), "The Treatment of Regulatory Convergence in Preferential Trade Agreements", *World Trade Review*, 17(3): 555.

MONTEIRO, J.-A. and TEH R. (2017), "Provisions on electronic commerce in regional trade agreements", WTO Staff Working Paper, No. ERSD-2017-11, available at [https://www.wto.org/english/res\\_e/reser\\_e/ersd201711\\_e.htm](https://www.wto.org/english/res_e/reser_e/ersd201711_e.htm).

AHMED U. (2019), "The Importance of Cross-Border Regulatory Cooperation in an Era of Digital Trade", *World Trade Review*, 18(1): 99-120.

### Afternoon Session: 14:00 – 16:00

**Lecturer:** Anna Zeiter

#### Topic: Privacy in a Global Acting eCommerce Company

Data Protection and Privacy Laws around the globe are evolving extremely quickly. Especially since 2018, when the EU General Data Protection Regulation (GDPR) came into force, followed by the California Consumer Privacy Act (CCPA) in 2020 and other comprehensive U.S. State Privacy laws in 2021, Privacy and Data Protection became topics that are suddenly being discussed in the media and on highest management levels. Additionally, the European Court of Justice issued in July 2020 a court ruling in the case Data Protection Commissioner vs. Facebook Ireland Limited and Maximilian Schrems (Schrems II) which put international transfers of EU data from one day to another at risk. This lecture will explain, assess and discuss recent global Privacy and Data Protection developments from the practical perspective of a global acting eCommerce company. As an additional excursion, the question of 'What is the value of data?' will be addressed.

#### Compulsory Reading Material

- European Data Protection Supervisor (EDPS): The History of the General Data Protection Regulation, 2018: [https://edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation\\_en](https://edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation_en)
- Judgment of the European Court of Justice, from 16 July 2020, Data Protection Commissioner vs. Facebook Ireland Limited and Maximilian Schrems (Schrems II): <https://curia.europa.eu/juris/liste.jsf?language=de&num=C-311/18>
- At a glance – The CJEU judgement in the Schrems II case: [https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/652073/EPRS\\_ATA\(2020\)652073\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/652073/EPRS_ATA(2020)652073_EN.pdf)
- California Consumer Privacy Act (CCPA): <https://oag.ca.gov/privacy/ccpa>

- California Privacy Rights Act – CCPA vs CPRA:  
<https://www.cookiebot.com/en/cpra/>

### **Optional Materials**

Putting value on data: <https://www.pwc.co.uk/issues/data-analytics/insights/putting-value-on-data.html>

## FRIDAY, JULY 16, 2021

**Lecturer:** Thomas Cottier

**Topic:** The Challenge of Enforcement in the digital age & Digital Trade in the US-Sino Trade War: Challenges for IPR and Trade Regulation

### **Compulsory Reading Material**

Thomas Cottier, Technology and the Law of International Trade Regulation (2017)  
Mark Wu, The "China, Inc." Challenge to Global Trade Governance (2016)

EU Consultation Request WT/DS549 (2018)

Anton Malkin, Getting Beyond Forced Technology Transfers (2020)

Dieter Ernst, Competing in Artificial Intelligence Chips (2020)

### **Optional Materials**

Thomas Cottier, The Common Law of International Trade and the Future of the World Trade Organization (2015)

Gregory Shaffer, Henry Gao, China's Rise: How it Took on the U.S. at the WTO (201

**SATURDAY, JULY 17, 2021**

Take-home assessment due Saturday, July 17 at 20:00 pm CET