

## Module II:

# Intellectual Property and the Digital Economy

**Root Number:** 446688

**ECTS:** 3

**Lecturers:** Thomas Cottier, Mira Burri, Andreas Heinemann and Philippe Lionnet and Anne-Sophie Morand

**Dates:** 27 June – 1 July, 2022 (a 24h take-home assessment will be shared on July 1 after class).

**Location:** Silva Casa Auditorium at the WTI and online via [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 module 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 27 June – 1 July 2022

Class	Date	Day	Time	Lecturer	Topic
1	27 June	Monday	09:00-12:00	Mira Burri	Copy Protection
			14:00-16:00	Mira Burri	Copyright and the Digital Economy
2	28 June	Tuesday	09:00-12:00	Mira Burri	Copyright and the Digital Economy
			14:00-16:00		Reading time
3	29 June	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	30 June	Thursday	09:00-12:00	Philippe Lionnet	Digital Trade and Electronic Commerce
			14:00-16:30	Anne-Sophie Morand	The EU General Data Protection Regulation (GDPR) and its global impact
5	1 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	2 July	Saturday			Take-home assessment

## Lecturers

### Mira Burri

Mira Burri is Professor of International Economic and Internet Law at the Faculty of Law of the University of Lucerne, Switzerland. She teaches international intellectual property, media, internet and trade law. Mira's current research interests are in the areas of digital trade, culture, copyright, data protection and data governance. Mira is the principal investigator of the project 'Trade Law 4.0' (ERC Consolidator Grant 2021–2026). She consults the European Parliament, UNESCO, the WEF and others on issues of digital innovation and cultural diversity.

Prior to joining the University of Lucerne, Mira Burri was a senior fellow at the World Trade Institute at the University of Bern, where she led a project on digital technologies and trade governance as part of the Swiss National Centre of Competence in Research (NCCR): Trade Regulation.

Mira has co-edited the publications *Trade Governance in the Digital Age* (Cambridge University Press 2012) and *Big Data and Global Trade Law* (Cambridge University Press 2021). She is the author of *Public Service Broadcasting 3.0: Legal Design for the Digital Present* (Routledge 2015).

Mira's publications are available at [SSRN](#) and [Researchgate](#).

**Anne-Sophie Morand**

Anne-Sophie Morand is an associate in the Regulated Markets, Competition, Technology and IP team at the law firm Walder Wyss. She advises on all aspects of data protection, information, and technology law. Anne-Sophie Morand regularly publishes scientific papers in her fields of expertise and is also active as a lecturer. Anne-Sophie Morand studied law at the Universities of Lucerne and Neuchâtel (BLaw 2009; bilingual double master 2012). After graduating, she worked as a research assistant at the University of Lucerne and wrote a doctoral thesis in the field of personal rights protection and sports sponsoring. The doctoral thesis was honoured with the Swiss Sports Law Award. After completing her dissertation, Anne-Sophie Morand worked for the Swiss Parliament and for the Swiss Data Protection Authority (FDPIC), among others.

More information are available on [LinkedIn](#).

**Andreas Heinemann**

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**

Philippe Lionnet is 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.

**Thomas Cottier**

Thomas Cottier, former Managing Director of the World Trade Institute, is Professor Emeritus of European and International Economic Law at the University of Bern, senior research fellow at the WTI and associate professor of law, University of Ottawa. 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 numerous GATT and WTO panels and is a member of the pool of ten appeal arbitrators under the MPIA of the WTO.

### 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 and the global impact of the EU General Data Protection Regulation (GDPR).
- 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 2 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, JUNE 27, 2022 AND TUESDAY, JUNE 28, 2022

**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.

The lectures 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, 4<sup>th</sup> edition 2019, 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, JUNE 29, 2022

**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, JUNE 30, 2022**

**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, E15 Initiative", 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 – 16:30

**Lecturer:** Anne-Sophie Morand

### Topic: The EU General Data Protection Regulation (GDPR) and its global impact

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, Privacy and Data Protection became topics that are suddenly being intensively discussed in the media and on highest management levels. The GDPR sets out detailed requirements for companies and organisations on collecting, storing and managing personal data. Additionally, the data-protection landscape experienced a major disruption in July 2020. The Court of Justice of the European Union (CJEU) issued a ruling with wide-ranging implications. The ruling, *Data Protection Commissioner v. Facebook Ireland and Maximilian Schrems* (called "Schrems II"), has cast doubt on all personal-data transfers between the European Union (EU) and other markets with lower levels of data protection, most notably the United States. The ruling created significant uncertainty for organizations that have personal data on customers, employees, or other data subjects in Europe and also have any connections or data transfers outside the European Union – that is, virtually all global organisations. This lecture will address this ruling and explore the basics of the GDPR, as well as explain and discuss recent global Privacy and Data Protection developments from the practical perspective of a global acting company.

### 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)
- COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL

COMMITTEE AND THE COMMITTEE OF THE REGIONS; Safeguarding Privacy in a Connected World – A European Data Protection Framework for the 21st Century: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0009&from=EN>

- At a glance – The CJEU judgement in the Schrems II case: [https://www.europarl.europa.eu/Reg-DATA/etudes/ATAG/2020/652073/EPRS\\_ATA\(2020\)652073\\_EN.pdf](https://www.europarl.europa.eu/Reg-DATA/etudes/ATAG/2020/652073/EPRS_ATA(2020)652073_EN.pdf)
- European Data Protection Board, Statement 01/2022 on the announcement of an agreement in principle on a new Trans-Atlantic Data Privacy Framework: [https://edpb.europa.eu/system/files/2022-04/edpb\\_statement\\_202201\\_new\\_trans-atlantic\\_data\\_privacy\\_framework\\_en.pdf](https://edpb.europa.eu/system/files/2022-04/edpb_statement_202201_new_trans-atlantic_data_privacy_framework_en.pdf)

### Optional Materials

- 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>
- COUNCIL OF THE EUROPEAN UNION EN Council conclusions on the Communication from the Commission to the European Parliament and the Council - A comprehensive approach on personal data protection in the European Union: [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/119461.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/119461.pdf)
- DE HERT P./CZERNIAWSKI M. (2016), "Expanding the European data protection scope beyond territory: Article 3 of the General Data Protection Regulation in its wider context", *International Data Privacy Law*, Vol. 6, No. 3: 230 ff.

## FRIDAY, JULY 1, 2022

**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)
- US-China Relations in the Biden-Era: A Timeline (2022); <https://www.china-briefing.com/news/us-china-relations-in-the-biden-era-a-timeline/> (and updates)

### Optional Materials

- Thomas Cottier, The Common Law of International Trade and the Future of the World Trade Organization (2015)
- Thomas Cottier, The Rule of Law in International Economic Law (2022)
- Gregory Shaffer, Henry Gao, China's Rise: How it Took on the U.S. at the WTO (2017)

## **SATURDAY, JULY 2, 2022**

Take-home assessment due Saturday, July 2 at 20:00 pm CET