



The Internet Environment for the Judiciary

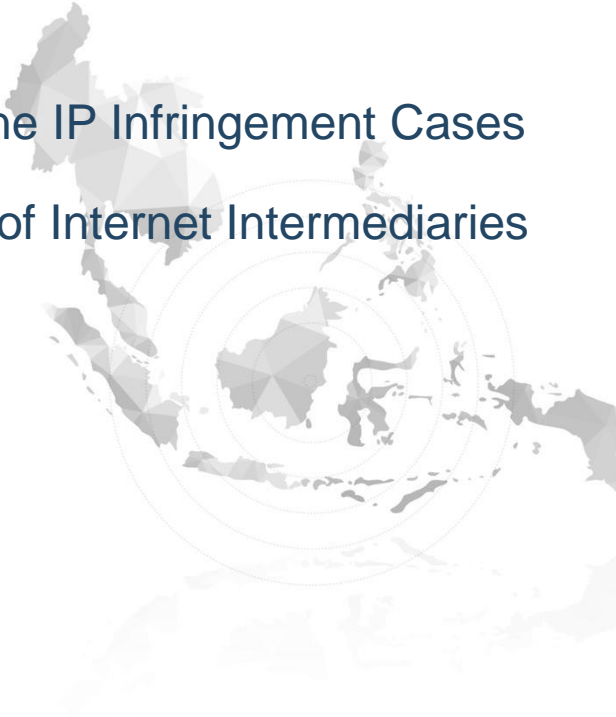
South-East Asia IP Judges' Virtual Roundtable
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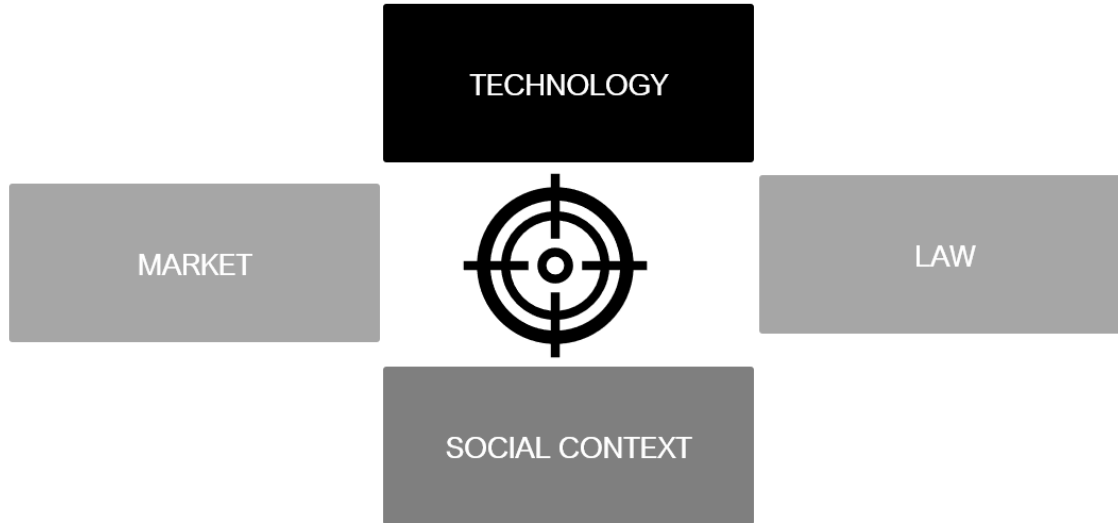


Technology and Law



Technology and Law

Lawrence Lessig's Code Theory



Technology and Law

The Yin and Yang Metaphor

IP PROTECTION

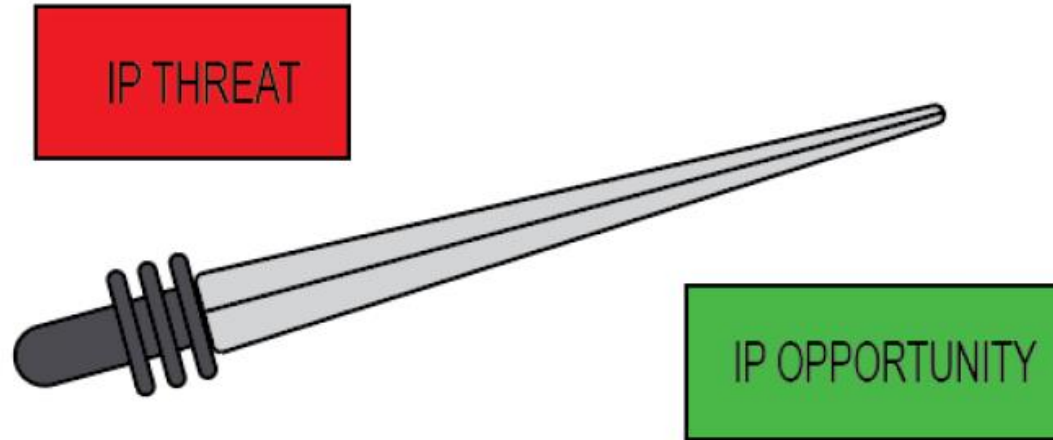


IP INFRINGEMENT



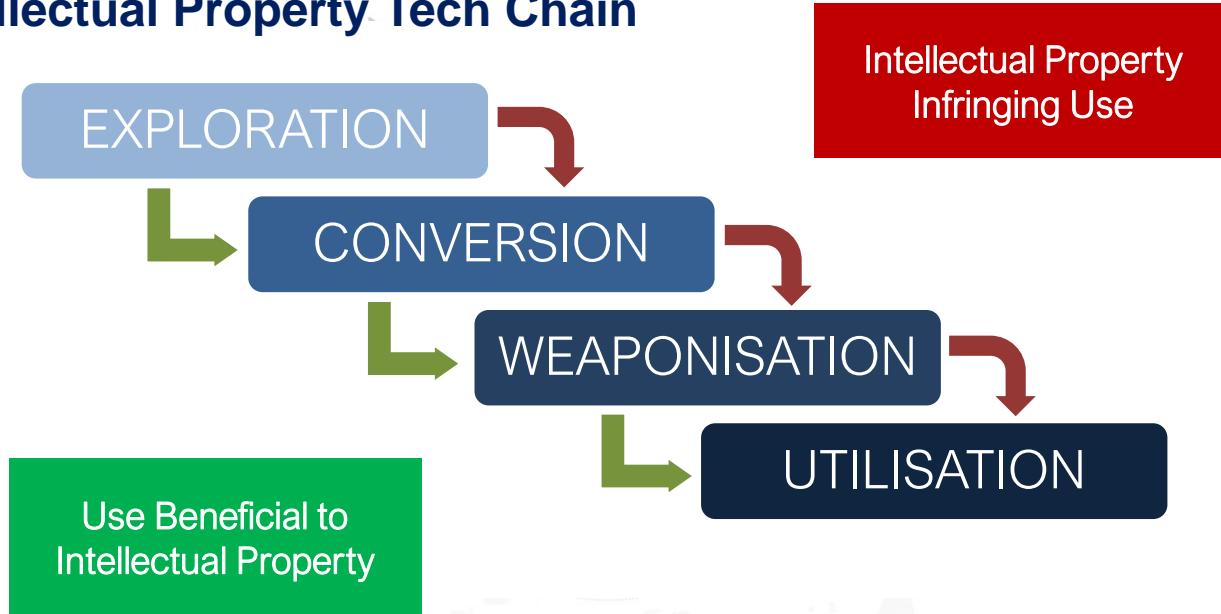
Technology and Law

Any Technology is a Double Edged Sword



Technology and Law

The Intellectual Property Tech Chain



Civil and Criminal Online IP Infringement Cases



Civil and Criminal Online IP Infringement Cases

Difference between civil online cases and criminal online cases

- Civil cases
 - Commercial cases about conflicts between two legitimate companies
 - Civil case with criminal overtones when perpetrator can be identified (e.g. by way of right of information targeting an internet intermediary)
 - Disruption cases targeting intermediaries (e.g. blocking order injunctions against internet access providers)
- Criminal cases
 - Crime conducted on the Darknet
 - Organised transborder crime (e.g. Swefilmer case)
 - Cases with unidentified perpetrator (e.g. Swefilmer case)



Role and Civil Liability of Internet Intermediaries



Role and Civil Liability of Internet Intermediaries

Types of Civil Liability

- *Primary Liability:*

Monetary liability for a defendant that is a primary wrongdoer that has engaged in a unjustified tortious activity by means of own acts or omissions by which legal or equitable duties has been breached.

- *Secondary Liability:*

Monetary liability for a defendant that has causally contributed to a prima facie wrongdoing by a third party.

- *Injunctive Liability:*

Liability for a defendant to comply with a non-monetary obligation even if no wrongdoing has been committed.



Role and Civil Liability of Internet Intermediaries

Safe Harbour

- *Internet Access Provider:* Almost complete safe harbour, E-commerce Directive, 31/2001, Article 12; CJEU in Case C-521/17: *...activity...is of a mere technical, automatic and passive nature, which implies that that service provider has neither knowledge of nor control over the information...*
- *Hosting Provider:* E-commerce Directive, 31/2001, Article 14 'Hosting': *"...the service provider is not liable for the information ..., on condition that: (a) the provider does not have actual knowledge of illegal activity or information ...; or (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information."*



Role and Civil Liability of Internet Intermediaries

Injunctive Liability Remedies

(1) All Internet Intermediaries

- Disclosure of customer information
- Asset seizure (including domain name transfer) and asset freezing

(2) Mere Conduit Providers (Internet Service Providers)

Notification to customers

- Blocking of customers access to specific Internet services
- Disconnection of customer access to the Internet itself

(3) Search Engines

- De-indexing (and de-prioritization) of search results

(4) Hosting Providers

- Removal of content



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