**Name of the Course:** EU Intellectual Property Law

**Neptun Code of the Course: JOEU433NA0**

**Lecturer:** Dr. Kovács György LL.M

**Term:** spring, autumn

**Description of the Course:**

The course - primarily targeting post-graduate law students, however Erasmus students are also welcome - provides an overview of EU intellectual property law.

**Syllabus**:

1. 1. The notion of intellectual property. Its categories; different way of recognizing of authors’ rights and related (neighboring) rights on the one hand and industrial property on the other. Differences between the concepts of copyright and authors’ right. Territoriality of exclusive rights relating to intellectual property; its historical and comparative explanation. Theoretical justifications: Natural rights; public interest; incentive and rewarding rationale. The issue of protection against unfair competition.
2. 2. Bridging territoriality by treaties, following the expansion of markets across frontiers. Bilateral and multilateral treaties. Fundamental principles: National treatment, right of priority concerning industrial property; independence of protection. Formal and material reciprocity. Basic international treaties (1883 Paris, 1886 Berne, 1994 WTO/TRIPS, 1996 WIPO). Conventions and Unions. Special treaties. The human rights approach.
3. 3. European Union Law. Competences as regards intellectual property. Respect for national systems of property ownership and the requirement of free movement of goods and services. Respect for existing multilateral treaties of the member states and the free movement imperatives of the EU. Relevant rules of EU competition law.
4. 4. The European Court on the supremacy of EU law over territorial recognition of rights under international treaties and on its application to exclusive licenses concerning industrial property and copyright. Differentiation between existence and exercise of intellectual property rights. National, international and EU exhaustion of distribution rights. No exhaustion of rights in relation to services involving the use of copyright and related rights.
5. Secondary EU legislation on intellectual property. Harmonisation; EU legal institutions of industrial property. Treaty making power of the EU concerning intellectual property.
6. 5. Harmonization of copyright and related rights. Copyright in the Digital Single Market Directive (DSM Directive). Directives on the protection of computer programs, rental rights and rights of performers, producers of phonograms, broadcasters, producers of audiovisual works. Terms of protection. Satellite broadcasting. Protection of databases: copyright and a new kind of sui generis right for investors. Artists’ resale right.

6. Harmonization and unification of industrial property. Patents: Paris Union/Patent Cooperation Treaty/European Patent Convention; UPC. New plant varieties: UPOV and related EU regulation. Directive on biotechnological inventions and related case law (e.g. Brüstle). Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

1. 7. Trade marks: Paris Union/Madrid Union on trade mark registration. Relevant new EU directive and regulation on the EU TM. Trade marks related case law (Arsenal, IP Translator, Nokia, Google France, DHL, Interflora, L’Oreal v. eBay, Louboutin, Rubik’s Cube, Textilis, Sky v Skykick, Gömböc). Community design protection: Directive and regulation. Relevant recent case law (Flos, Pepsi, Doceram, Cofemel).
2. Harmonisation of the enforcement of intellectual property rights. Civil law and penal sanctions.
3. 8. Exemptions from cartel prohibitions with regard to intellectual property. Abuse of intellectual property rights and case law relating to the abuse of dominant position in the market (Huawei v. ZTE). The relevance of the “essential facility doctrine”. Block exemptions for certain categories of vertical agreements and for technology transfer. Pay for delay agreements (Lundbeck, Servier, Generics UK).
4. 9. Protection of intellectual property on the Internet. Basics of digitization. Liability for infringement under the US 1998 DMCA as compared with the European Directive of 2000 on e-commerce. Contributory and vicarious liability of internet service providers: “safe harbors”. Development of case law in the USA: MP3, Napster, peer to peer (P2P) programs, Grokster case. EU Enforcement Directive, “INFOSOC” directive and the new DSM Directive harmonizing copyright and related right issues. Content scrambling systems (CSS) actually hindering access including thereby non protected material. Right of information and fair use doctrine versus copyright. Different opinions in the USA (Universal Studios v. Eric Corley and Reimerdes) and Norway (Jon Johansen).
5. 10. Liability of intermediaries under the Enforcement Directive, the E-Commerce Directive, and the DSM Directive, in the light of the recent case law of the CJEU (Ziggo/Pirate Bay, Tommy Hilfilger, McFadden, L’Oreal v. eBay, UPC Telekabel, Facebook, YouTube).

11. Monopoly on the market: the issue of “collective administration” of copyright and related rights: In general and with regard to the internet. Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market. Abuse of dominant position on the computer program market: Microsoft commingled own application programs (e.g. “explorer”) with its Windows operating system. Settlement in the USA: Microsoft must share information on “source code” enabling competitors to develop interoperable programs. Parallel case in the EU. Market reaction: the “open source movement”.

1. 12. Hyperlinking and digital content embedding as communications to the public under copyright law, in the light of the recent case law of the CJEU (Svensson, GS Media, BestWater). Provision of eBooks, as an act of communication to the public (Tom Kabinet).

**Course book**: William Cornis, David Llewelin: Intellectual Property, 2013, Sweet and Maxwell

**Further reading**: WIPO Intellectual Property Handbook, Geneva, 2004 <http://www.wipo.int/about-ip/en/iprm/>

<https://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf>

Keeling, D.T.: Intellectual Property Rights in EU Law, vol.I. Oxford EC Law Library, 2003.

J.H.H. Weiler: Teaching material on EU IP (<http://jeanmonnetprogram.org/wp-content/uploads/UNIT12-EU-2004-05.pdf>)

Merges, Menell & Lemley, Intellectual Property in the New Technological Age: 2007 Statutory Supplement

Martin Wilson, Art law and the business of art (2019, Elgar)

Paul Kuruk, Traditional knowledge, genetic resources, customary law and Intellectual Property (2020, Elgar)

Jani McCutcheon, Fiona McGaughey (ed.), Research Handbook on Art and Law (2020, Elgar)

Tashiko Takenaka (ed.), Research Handbook on Patent Law and theory (2019, Elgar)

Mira T. Sundara Rajan (ed.), The Cambridge Handbook of Intellectual Property in Centra-Eastern Europe (2019, Cambridge University Press)

Rachelle Dreyfun (ed.), The Oxford Handbook of Intellectual Property Law (2017-18, Oxford University Press)

Abott, Cottier and Gurry, The International Intellectual Property System (1999)

Dinwoodie, Hennessey and Perlmutter, International Intellectual Property Law and Policy (2001)

Dreyfus and Kwall, Intellectual Property: Cases and Materials on Trademark, Copyright and Patent Law (Foundation Press; 1996).

Butterworths Intellectual Property Law Handbook [Paperback]