



Annex III
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Intellectual Property and the Public Interest

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Summary of the Impact

International Impact

- Disseminated knowledge about intellectual property (IP) and the public interest with support from internationally well-known scholars and research institutions
- Applied my principles of public interest protection to policy debates surrounding the Regional Comprehensive Economic Partnership (RCEP), and gained support for the principles from NGOs, e.g. Electronic Frontier Foundation, Intellectual Property Watch.
- Published opinions on IP, technology, and the public interest through major media outlets, e.g. *BBC News*, *The New York Times*, *South China Morning Post*, *The Wall Street Journal*.

Local Impact

- Conducted a survey on problems with Hong Kong's IP dispute resolution system and conveyed the results to the legal profession.
- Organized many influential conferences and public lectures to disseminate knowledge about IP and the public interest, engaging law firms, governmental agencies, professional organizations, and research institutions.

Underpinning Research

- **Proposed new public interest principles for copyright protection**
 - Haochen Sun, “Copyright Law as an Engine of Public Interest Protection,” 16 *Northwestern Journal of Technology and Intellectual Property* 123–188 (2019)
- **Formulated three major public interest principles for international IP treaty negotiation**
 - Haochen Sun, “Liberalizing Use of the Three-Step Test and Copyright Limitations in the Public Interest,” in *The Future of Asian Trade Deals and Intellectual Property* 275–93 (Kung-Chung Liu and Julien Chaisse eds., Hart Publishing, 2019)
- **Re-evaluated responsibilities of IP owners and technology companies**
 - “Corporate Fundamental Responsibility: What do Technology Companies Owe the World?” 74 *University of Miami Law Review* 898-963 (2020)
 - “Living Together in One Civilized World: How Luxury Companies and Consumers Can Fulfill Their Ethical Responsibilities to the Poor,” 46 *UC Davis Law Review* 547-579 (2013)
 - “Copyright and Responsibility,” 4 *Harvard Journal of Sports and Entertainment Law* 263-317 (2013)
- **Redefined the public right to enjoy the benefits of IP and technology**
 - “Reinvigorating the Human Right to Technology,” 41 *Michigan Journal of International Law* 279-326 (2020)
 - “The Fundamental Right to Technology,” 47 *Hofstra Law Review* 445-481 (2020)
 - “Fair Use as a Collective User Right,” 90 *North Carolina Law Review* 125-202 (2011)

3

Underpinning Research

- As PI, I have been awarded major research grants, including:
 - “Building a robust trademark fair use mechanism in China” (01/07/2018–01/07/2020); GRF HK\$540,500
 - “Promoting the fashion industry in Hong Kong and Mainland China: The role of intellectual property” (01/08/2012–31/07/2015); ECS HK\$577,657
- I have published in leading journals and with university presses, including:
 - *Michigan Journal of International Law* (A* law journal ranked by the Australian Research Council) and *Georgetown Journal of International Law*
 - Cambridge University Press, Oxford University Press
- I have been invited to present at leading conferences and law schools in North America, Europe, and Asia.

4

Underpinning Research

Leading scholars' endorsements

- “Haochen Sun offers a related concept of ‘cultural power’ in arguing that copyright law should reflect the responsibilities of copyright holders to society given the importance of authors’ works in empowering the public at large to discuss and critique social issues.”
 - Lea Shaver in the *Washington University Law Review*
- My Statement of Public Interest Principles for Copyright Protection under the RCEP is discussed in detail by Anupam Chander & Madhavi Sunder in the *UC Irvine Law Review*.
- In the recent Mock RAE exercise, reviewers gave my papers four stars, commenting, “Another exceptional paper. Responsibility ethics brought into the heartland of trade marks law” and “Outstanding article. Responsibility angle is original and highly significant.”

5

Engagement

In collaboration with numerous institutions, I have organized events and conducted research projects to disseminate my ideas about IP and the public interest:

- Baker McKenzie
- Deacons
- DesVoeuxChambers
- May Brown JSM
- Asian Pacific Copyright Association
- Hong Kong International Arbitration Centre
- International Trademark Association
- Legal Hackers
- Google
- MARQUES (The Association of European Trade Mark Owners)
- Engelberg Center on Innovation Law & Policy at New York University School of Law
- Center for Technology, Innovation & Competition, University of Pennsylvania Carey Law School
- Georgetown Institute for Technology Law & Policy



Impacts Achieved

International Impact

In February 2017, I issued the *Statement of Public Interest Principles for Copyright Protection under the Regional Comprehensive Economic Partnership (RCEP)* on behalf of the HKU Law & Technology Centre. <https://www.lawtech.hk/rcepstatement/>



LAW & TECHNOLOGY CENTRE
The University of Hong Kong

Statement of Public Interest Principles for Copyright Protection under the Regional Comprehensive Economic Partnership (RCEP)

Haochen Sun, Associate Professor of Law and Director, Law and Technology Centre, The University of Hong Kong

This Statement is open to endorsement and comment. Click [here](#) to sign the Statement.

Introduction

The Regional Comprehensive Economic Partnership (RCEP) aims to conclude a comprehensive agreement that promotes free trade and investment among Australia, China, India, Japan, New Zealand, South Korea and member states of the Association of Southeast Asian Nations (ASEAN). As a hallmark of this proposed agreement, the RCEP Intellectual Property (IP) Chapter will set out a host of minimum standards for IP protection in the sixteen participating countries.

We are deeply concerned about the copyright protection standards proposed for the RCEP IP Chapter. They may cause unintended effects of stifling creativity, free speech, and economic growth. We urge that the new rounds of RCEP negotiations reconsider those standards by applying the following three principles:

1. Integrate the public interest as a core value for copyright negotiations.
2. Increase transparency of negotiations for the public interest.
3. Institute changes in copyright provisions for the public interest.

Guided by these three principles, RCEP negotiations would produce the largest mega-regional free trade agreement to procedurally and substantially protect the public interest in copyrighted works. The RCEP copyright provisions, therefore, stand to benefit nearly 50% of the world's population, who live in the sixteen RCEP participating countries.

Principle One: Integrate the Public Interest as a Core Value for Copyright Negotiations

At the national, regional, and international levels, copyright law serves not only the private interest of copyright owners, but also the public interest of society at large. It protects the economic and moral interests of copyright owners, and simultaneously affords the public with sufficient freedom in creating new works, disseminating information and accessing knowledge. The Preamble of the WIPO Copyright Treaty (WCT), therefore, stresses "the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information."

RCEP negotiators should integrate the public interest as a core value for setting copyright provisions by taking the following actions:

- **Scrutinize current protection of the public interest in using copyrighted works:** A committee consisting of negotiators and copyright experts should be set up to identify myriad public interests in using copyrighted works in RCEP participating countries. The committee will further consider whether and how the RCEP should promote those interests.
- **Examine public interest mandates under international copyright treaties:** The committee should carefully study the extent to which international copyright treaties obligate the RCEP participating countries to protect the public interest. For example, Articles 7 and 8 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) mandate protection of the public interest in technological innovation and diffusion and market competition.
- **Consider public interest mandates under international human rights treaties:** The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights protect human rights that bear direct relevance to copyright protection. These human rights mainly protect freedom of opinion and expression and promote education, participation in the cultural life of the community, enjoyment of the arts, and sharing of scientific advancement and its benefits. The committee should consider the relevance of these human rights obligations to the RCEP.

Principle Two: Increase Transparency of Negotiations for the Public Interest

Procedurally, the transparency of negotiations is key to ensuring adequate protection of the public interest by the RCEP in general and its copyright provisions in particular. The RCEP will affect the lives and livelihoods of billions of people not only in the RCEP participating countries but across the globe. The public, therefore, deserves a democratic right to know how the RCEP negotiating process has and will have adopted provisions protecting the public interest. However, the past sixteen rounds of RCEP negotiations have yet to result in the release of any substantive negotiating texts for public scrutiny.

7

Impacts Achieved

International Impact

The statement has garnered global recognition. 76 scholars from around the world have endorsed it, including:

- **Robert Burrell**, Professor of Intellectual Property and Information Technology Law, University of Oxford
- **Anupam Chander**, Professor of Law, Georgetown University Law Center
- **Dev Gangjee**, Professor of Intellectual Property Law, University of Oxford
- **Michael Geist**, Canada Research Chair in Internet and E-commerce Law, University of Ottawa
- **Peter Jaszi**, Professor of Law Emeritus, American University Washington College of Law
- **Mark A. Lemley**, William H. Neukom Professor of Law, Stanford Law School
- **Jerome H. Reichman**, Bunyan S. Womble Professor of Law, Duke University School of Law
- **Pamela Samuelson**, Richard M. Sherman Distinguished Professor of Law & Information, University of California, Berkeley
- **Madhavi Sunder**, Professor of Law, Georgetown University Law Center

8

Impacts Achieved

International Impact

In March 2017, the Authors Guild, the oldest and largest professional organization of writers in the US, reported the Statement as a major international development together with the UK Intellectual Property Office's initiative and the Court of Justice of the European Union's judicial ruling.



IV. International Updates:

- The United Kingdom's Intellectual Property Office (IPO) has launched a "consultation" process to seek input from outside groups on combatting the illicit use of streaming set-top devices such as Kodi Boxes. The IPO is also investigating whether the current legal framework is adequate for addressing these devices, in particular the 1988 Copyright, Designs and Patent Act and the 2006 Fraud Act. Read more [here](#).
- The Court of Justice of the European Union (CJEU) has **ruled** that national legislation cannot hold that the immediate retransmission of television broadcasts by cable, including via the internet, in the area of initial broadcast does not constitute copyright infringement. The ruling comes in a case between UK television channels ITV, Channel 4, and Channel 5 and a streaming service called TVCatchup. In a joint statement, the television channels said they are "delighted that the European court has ruled that our channels should not be retransmitted online or on cable without our authorization." Read more [here](#).

The Authors Guild, Content & Technology Policy Report (March 3, 2017)

Impacts Achieved

International Impact

The Statement garnered support from the major NGOs such as the Electronic Frontier Foundation and Intellectual Property Watch.



The "Statement of Public Interest Principles for Copyright Protection" under RCEP says that the RCEP intellectual property chapter "will set out a host of minimum standards for IP protection" in the participating countries. The statement has been circulated by Haochen Sun, associate professor of law and director, Law and Technology Centre, The University of Hong Kong.

Impacts Achieved

International Impact

The Statement has also garnered support from these institutions:



Impacts Achieved

International Impact

My opinions on IP and technology law have appeared on various media outlets:



Los Angeles Times



South China Morning Post

The New York Times

THE WALL STREET JOURNAL.

Impacts Achieved

International Impact

My opinions about trademark and the public interest have attracted international attention.

 **South China Morning Post**

Comment / Opinion

Why Hong Kong people are the biggest losers in the Gucci paper handbag row

Haochen Sun says the moral outrage over the luxury brand's accusation of trademark infringement has encouraged law-breaking behaviour, yet the real issue of concern, social inequality, has not been addressed

Haochen Sun

Published: 9:04pm, 11 May 2016

[Why you can trust SCMP](#)



ASIA PACIFIC | Rest in Peace ... Just Not in Gucci Loafers

Her colleague Haochen Sun, a professor who studies trademark protection of luxury brands, said Gucci might have a case under Hong Kong law if it argued that the paper offerings, sold in shops only blocks from the company's own retail outlets, blurred "the distinctiveness" of Gucci's brand or caused it harm.

13

Impacts Achieved

Local Impact

In March 2017, I conducted a survey designed to reveal problems with the dispute resolution system in Hong Kong, and have proposed solutions to these problems in the public interest.

Intellectual Property Litigation in Hong Kong

Law and Technology Centre, Faculty of Law, The University of Hong Kong

Survey

The University of Hong Kong Law and Technology Centre is preparing a report on the intellectual property (IP) dispute resolution in Hong Kong.

The Hong Kong Government is implementing a plan to make Hong Kong a hub for innovation and intellectual property trading. The Patents Ordinance has been amended to provide for local examination and grant of patents. Both developments require a robust system for enforcement of IP rights.

In order to understand the needs of local and international large, medium and small enterprises, the Centre is conducting a survey on the industry and practitioners' views of the current system for intellectual property enforcement in Hong Kong. These views will be included in the report.

The survey is being sent to industry associations and IP service providers. It is divided into two parts. Part I seeks general information. Part II, which is optional, seeks more information on more specific topics.

You may fill this survey anonymously if you wish. However, you can provide your name and/or affiliation if you wish.

14

Impacts Achieved

Local Impact

- The survey was undertaken in collaboration with Douglas Clark, Global Head of Dispute Resolution at Rouse and Adjunct Professor at HKU Faculty of Law.
- Survey questions were sent to many governmental agencies, professional associations, and law firms, e.g. Baker McKenzie and Deacons.
- I presented survey results and suggestions for associated legal reform at two conferences:
 - *Charting the New Waters of 21st Century IP Dispute Resolution*, held at the Hong Kong International Arbitration Centre (November 22, 2017).
 - *Roundtable on IP Court Reforms* hosted exclusively for the survey by the British Consulate General (June 16, 2017).
 - Esther Blythe, Deputy Consul General, chaired the event.
 - Participants included Karen Williams, Vice Consul (Economic Diplomacy), Tom Duke, Senior IP Officer, British Embassy in Beijing; and leading IP lawyers and in-house counsels from various industry sectors.

15

Impacts Achieved

Local Impact

I co-organized with the New York University School of Law the Limitations on Trademark Rights from Comparative and Interdisciplinary Perspectives Conference (January 7 and 8, 2019).



The conference featured a sharing panel designed for practitioners and students. Speakers were:

- **Sir Robin Jacob**, Sir Hugh Laddie Chair of IP Law, Faculty of Laws, University College London
- **Denis Croze**, Director, Singapore Office, World Intellectual Property Organization
- **Andrew Liao**, GBS, SC, JP, Senior Counsel, Past Member of the Executive Council, Hong Kong SAR
- **Mayank Vaid**, Intellectual Property Director – Asia Pacific & China (Civil), Louis Vuitton

The event had a wide reach, with around 380 legal practitioners and law students participating and benefiting from the knowledge exchange.

16

Impacts Achieved

Local Impact

I organized three conferences with Des Voeux Chambers, as follows:

- *Charting the new waters of 21st century IP dispute resolution*, Hong Kong International Arbitration Centre (November 22, 2017)
- *Evolving issues in brand protection in the digital marketing era*, Mayer Brown JSM (March 24, 2018)
- *New Technology & Changing Legal Ecosystems: The Good, the Bad & The Ugly*, Hong Kong Bankers Club (May 20, 2019)

About 450 legal practitioners directly benefited from these events.



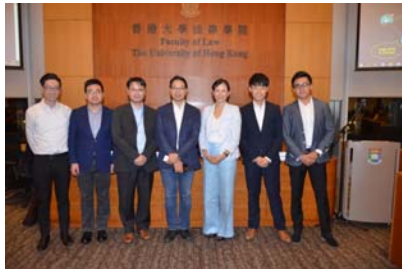
17

Impacts Achieved

Local Impact

I co-organized LegalTech Day events with the HK Legal Hackers (September 21 and October 24, 2017).

About 240 legal practitioners and law students participated and benefited from the knowledge exchange.



Key speakers were:

- **The Hon. Charles Mok**, Legislative Council member on IT Functional Constituency
- **Carrie Suen**, Head of International Legal, Ant Financial Services Group
- **Bastien Douglas**, Founder and Director (Community), Open Data HK
- **Pádraig Walsh**, Partner at Bird & Bird
- **Urszula McCormack**, Partner at King & Wood Mallesons
- **Joseph Wang**, Chief Science Officer at Bitquant Research Laboratories
- **Paolo Sbuttoni**, Partner at Baker McKenzie
- **Henri Arslanian**, Fintech/Regtech leader at PwC
- **Daniel Walker**, Founder and CEO of Dragon Law
- **Jonathan Voo**, Legal Project Manager at Baker McKenzie

18

Impacts Achieved

Local Impact

I organized *Superwomen in Intellectual Property: A Sharing Session* (October 25, 2018). A major purpose of this event was to inform practitioners and students how the public interest could be promoted through IP law practice.

About 230 legal practitioners and law students participated and benefited from knowledge exchange.



Speakers were:

- **Anna Wu Hung Yuk**, Chairperson, Hong Kong Competition Commission
- **Winnie Tam SC**, Former Chairman, Hong Kong Bar Association; Chairman, Communications Authority
- **Winnie Yeung**, Assistant General Counsel, Microsoft
- **Annie Tsoi**, Partner, Co-Head of Intellectual Property Department, Deacons

19

Impacts Achieved

I have also delivered IP training lectures to government officials.



"Dr Haochen Sun is well-recognised for his innovative approach in examining intellectual property issues from a legal and economic angle to enrich understanding of IP rights. I have had fruitful collaborations with Dr. Sun in hosting seminars and knowledge sharing sessions both at his initiation and at my own on a wide range of topics spanning, patents, trade marks, fashion law, dispute resolution and more, with much appreciation expressed by the attendees."

Winnie Tam SC, JP, Chairman, Communications Authority; Former Chairman, Hong Kong Bar Association

"Haochen is an accomplished and serious academic in the area of intellectual property law. I have been his panelist introducing intellectual property to a wide audience. These panels drew on the multiple perspectives of the panelists' life experiences. More importantly I observed that the audience was most enthused learning about the value of intellectual property from an applied perspective."

Anna WU Hung-yuk, GBS, JP, Chairperson, Hong Kong Competition Commission; Honorary Professor of Law, Faculty of Law, The University of Hong Kong

20