Intellectual Property and the Public Interest

Dr. Haochen Sun
Associate Professor of Law
Director, Law & Technology Centre
Faculty of Law

June 2020

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.


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

• Formulated three major public interest principles for international IP treaty negotiation

• Re-evaluated responsibilities of IP owners and technology companies

• Redefined the public right to enjoy the benefits of IP and technology

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.
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.”

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/]

The Statement was aimed to establish principles for copyright protection in the context of the RCEP negotiations. It was endorsed by a number of scholars from around the world, 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. Reisman, 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

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. Reisman, 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
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.

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

IV. International Updates:

- The United Kingdom’s Intellectual Property Office (IPO) has launched a “consultative” process to seek input from outside groups on controlling 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 Patents 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 areas 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 authorisation.” Read more here.

Impacts Achieved

International Impact

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

International Impact
The Statement has also garnered support from these institutions:

- OpenNet
- Washington College of Law
- The Centre for Internet & Society

Impacts Achieved

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

- BBC News
- Forbes
- The 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.

The New York Times

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.

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.
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.

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.
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.

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 Sbutoi, 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
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

“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

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