Editorial

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1 This issue is my first as editor, and I'm delighted to be part of JIPITEC. It is also a pleasure to be able to publish such an interesting set of articles. The common feature of all of them is that they investigate known problems and identify that the solution to those problems requires some fundamental rethinking about the basis of the current law.

2 This is also an opportunity to welcome Professor Dr Karin Sein of the University of Tartu, Estonia, to the Editorial Board, and it is particularly appropriate that the issue begins with her article on digital content, and how we should treat it for liability purposes when it is inextricably mixed with physical products. The problem she identifies is that the nature of a 'product' has changed. Physical products used to be fixed in nature, changing only over time through decay or wear and tear. Now they are malleable and capable of exhibiting new characteristics as their embedded digital content is updated. To determine the liability obligation of a product supplier, we need first to understand this change in the nature of products.

3 A similar shift in understanding is necessary to deal with the problem of non-contractual liability for content made available online. The application of offline liability law to intermediaries was so problematic that immunities, such as those of the Electronic Commerce Directive, had to be introduced as an interim measure to ensure that the fear of liability claims did not, effectively, close down the internet. Carsten Ulrich argues that it is time to reconsider those immunities. But this reconsideration cannot limit itself to liability, but has to identify how far we expect intermediaries to take an active role in detecting and preventing dissemination of legally problematic content. Ulrich's insight is that different vertical sectors of the economy require different approaches, and that there is no universal and simplistic liability solution. Later in the issue Gerald Spindler's report on the new German Act on Responsibility of Social Networks returns to this topic. At first sight the law is a purely vertical measure, as Ulrich recommends, and purportedly only relates to notice and take-down of content. But as Spindler notes, the issues at stake go far beyond this, in particular the countervailing interests of content posters (such as free speech and the rights of journalists) which have been largely ignored by the law.

4 The nature of a book is questioned by Liliia Oprysk and her co-authors. An e-book has no physical property element, which means that the book purchaser no longer has the same freedoms to dispose of their copy. This raises the question whether a secondary market should be encouraged in order to give e-book buyers the same freedoms as purchasers of conventional books. The answer to the question is not simply one of copyright law, but rather a political decision based on a number of factors including the consumer's expectations. Just like the content liability question, this raises issues of knowledge, assignation of responsibility, and preservation of fundamental rights.

5 The re-evaluation of copyright law continues with Pekka Savola's article on liability for internet linking. Copyright used to be about controlling copying, but

is transforming itself into control of accessibility, a very different concept. In doing so, the law is having to ask difficult questions about knowledge, intent and markets which never arose in the case of physical copying. I am increasingly starting to believe that copyright law is no longer about copying, and thus badly misnamed, and Savola's analysis will be helpful in deciding what copyright law *is* actually about.

6 Elsewhere in the intellectual property field patents come in for re-examination, and again the real questions turn out not to be those which the law purports to address. Lodewiyk Van Dycke & Geertrui Van Overwalle examine the highly controversial issue whether patents for GM cotton should be granted under Indian law. Although this is ostensibly a patent law question, their analysis demonstrates that it is really a mixed political and social question involving rural development policy, food security and environmental sustainability, and that patent law is almost irrelevant to the solution.

I hope that you enjoy reading this issue as much as I enjoyed editing it.

Chris Reed, September 2017