#COMIPinDigiMarkts2024
IP & Competition in an era of AI and Data:
Assessing global trends from a comparative & interdisciplinary lens

Call for Papers

Dates: 6th September 2024 (9.00 am) – 7th September 2024 (17.30 hrs)

Venue:
Maastricht University (*in-hybrid mode*)

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Scientific Committee (in alphabetical order, click on committee members to follow full profile):
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A comparative & an inter-disciplinary perspective on IP & Competition

Call for papers

The accelerated pace of innovation in the era of Generative AI (Gen AI) brings forth many questions at the intersection of intellectual property, competition and regulation. The role of platforms and data, and more recently the rise of Gen AI, shape our increasingly digital economy in a way that requires a reconsideration of conventional wisdom about the working of markets as well as of competition law on multiple regulatory fronts.

The romanticized human author that sits at the core of intellectual property rights since the foundational Berne Convention finds himself on a shaky ground with the rise of Gen AI that has literally put automated creativity on steroids. Consider for instance the case of music and even mainstream content generation. Not only intellectual property, but the world of competition and regulation too is feeling the tremors. The European Commission, the UK Competition and Markets Authority (CMA), the German Bundeskartellamt and the US antitrust agencies are currently exploring the anti-competitive potential and pro-innovation impact of Gen AI. One major concern among government officials is whether a few large incumbent technology firms may be able to protect and extend their existing market power through acquisitions, partnerships, control of critical inputs, or exploiting their positions in consumer-facing (or business-facing) markets. Another question is whether competition agencies have the tools to address pressing issues, such as "algorithmic collusion" and information exchanges made possible through AI and machine learning. There are also additional concerns relating to privacy and consumer protection. Finally, some of the use cases for Gen AI also show additional risks that transgress competition and data protection law. For example, Gen AI may help companies develop more effective sales and marketing programmes through content creation, lead generation, increased engagement and better information about consumer's preferences. These same features could, in turn, also be used to target and influence voters, including via misinformation campaigns, and determine election outcomes.

On the competition law front, the antitrust enforcers are revamping their toolbox. The EU has been notably active on the regulatory front. The EU Commission recently published a new Market Definition Notice to account for the multi-sided nature of the platform economy. The national competition enforcers too are exploring new avenues of enforcing competition law in innovation markets with novel national rules on unilateral conduct. The rules on relative dominance as a concept to capture harms that go uncaptured by the rules on monopoly and abuse of dominance is a case in point. The European Commission appears to be treading on an unfamiliar territory by increasingly relying on Article 102 (a) and exploitative abuse to lubricate its enforcement against the big tech.

Complementing the traditional competition law toolkit is the EU's enhanced focus on transparency and openness as a mechanism to better understand and get more control over the effective functioning of digital platforms as well as to encourage data-driven innovation. The EU Platform to Business Regulation (P2B Regulation) tried to remedy this to a certain degree. However, its scope remains limited to imposing information duties. The P2BR is further complemented by the Digital Markets Act (DMA). EU's latest legislative instruments – such as the DMA, the Digital Services Act, the Data Act and the AI Act - include provisions requiring market players to open up their systems and share data. A key question for an effective implementation of these provisions is how to strike a balance with intellectual property rights and particularly trade secrets, as large Gen AI companies are increasingly choosing to protect their knowledge via trade secrets.

Overall, there emerges a complex interplay between competition, intellectual property, trade secrets and regulation. Different jurisdictions are responding distinctly to these emerging challenges. Whereas the EU has been active on the regulatory front, the US seems to tread a cautious approach, and is still in an early legislative stage.

The paucity of critical raw materials that serve as key inputs to the digital economy adds a geo-political dimension to the debate. These raw materials form the basis of the digital infrastructure (such as large graphic processing units) that in turn forms the basis of Generative AI. Thus, as the Schumpeterian innovation takes a geopolitical turn with legislative measures such as the US Inflation Reduction Act, the return to industrial policy too seems in sight. Patent law enforcement, replete with anti-suit, anti-anti-suit injunctions by leading jurisdictions is a case in point. As the race to 5G and now 6G standard

setting picks up, and the EU's proposed Standard Essential Patents' (SEP) legislative measure gathers momentum, the debate on SEPs, competition, innovation and geopolitics too merits discussion.

The legal responses and the enforcement activities require new conceptual and theoretical frameworks, grounded in sound law and economics principles, in order to create an effective and cohesive framework for the digital economy.

To unknot this complex debate on innovation in the digital age, we encourage participants to submit abstracts dealing with and related to the above-referred issues from an inter-disciplinary perspective.

Suggested topics include:

Topic 1: Artificial Intelligence, IP and Competition
Topic 2: Regulatory Policy for our AI-fueled Digital Economy Future
Topic 3: Geopolitical aspects of innovation
Topic 4: The Role and Economics of Digital Infrastructure in the Age of (Gen) AI
Topic 5: New forms of competition analysis for digital markets: market definition, monopsony power, exploitative abuses
Topic 6: Balancing openness versus protection and secrecy
Topic 7: Relative dominance and market power
Topic 8: Theories of harm in the Digital Markets
Topic 9: Generative AI Use Cases and (Mis)-use Cases
Topic 10: Privacy and Consumer Protection
Topic 11: Information Exchange and "Algorithmic Collusion"
Topic 12: Standard Essential Patents, Competition and Innovation

How to join?
Please submit an extended abstract here, of about 1000 words latest by **30th June 2024**. The abstract should clearly state the research question, methodology, and key findings. Please also identify which amongst the above-referred topic best align with your proposed research paper.

Important dates:
Submission of abstracts: 30th June 2024
Notification of acceptance: 12th July 2024
Submission of final papers: 25th August 2024
Date of conference: 5th & 6th September 2024 (hybrid – online & in-person, registration available as of July 2024)

References
The revised Market Definition Notice for competition cases (Feb' 2024) *European Commission*, available here.
Proposal for a Regulation on Standard Essential Patents (COM (2023) 232) *European Commission*, available here.
Opening remarks at the American Bar Association (ABA) Chair's Showcase on AI Foundation Models (April 2024) *Competition and Markets Authority*, available here.
In Comment Submitted to the U.S. Copyright Office, FTC Raises AI-related Competition and Consumer Protection Issues (November 2023) *Federal Trade Commission*, available here.
Enforcement of intellectual property rights (March 2024), *European Commission,* available here.
Edelson, Graef & Lancieri (March 2023) 'Access to data and algorithms: For an effective DMA and DSA implementation', *CERRE report*, available here.
Grunes (2021) 'Of Antitrust and Patents: the Quiet Return of the Status Quo at the DOJ's Antitrust Division', *Promarket,* available here.
Cauffman & Goanta (2021) 'A New Order: The Digital Services Act and Consumer Protection', *European Journal of Risk Regulation*, available here.
Lehr & Stocker (2024) 'Next-generation networks: Necessity of edge sharing', *Frontiers in Computer Science*, available here.
Tyagi (2024) 'Copyright, Text & Data Mining and the Innovation Dimension of Generative AI', *Journal of Intellectual Property Law & Practice*, available here.

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