



*International Association for Protection of Intellectual Property*

*World Congress*

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Thank you to the AIPPI for their invitation for me to speak to you.

I am sorry that I cannot be with you in person.

I represent an independent regulator, responsible for ensuring that the over 60 European institutions and bodies understand and comply with the law.

I also advise the EU lawmaker and increasingly the European Court of Justice on matters relating to the rights to privacy and data protection.

I have just returned from a week-long privacy conference in Hong Kong which, like this weekend's World Congress, also brought together practitioners and regulators from around the world.

Intellectual property and privacy are like distant relatives.

If legal tradition of IP is as old as Methuselah, then perhaps the rules on privacy and data protection may seem like adolescents.

But every culture has a notion of human dignity, and this is reflected in the new generation of data and privacy rules which are proliferating around the globe.

The core principle for these rules is this:

**if you benefit from using personal information, then you must use the information in a way that respects the person who may be identified or identifiable by that information.**

This applies as much to governments as to businesses.

121 countries have now data protection laws. And in many ways the norms established in Europe have become a model to follow.

Big data is largely responsible for this trend.

Big data is made possible by, firstly, the exponential increase in processing power, as predicted in Moore's law, and secondly the remarkable drop in storage costs.

Machine learning has enabled massive quantities of data, from multiple sources, to be analysed and connections identified.

It has led, according to the OECD, to an accelerated consolidation in digital markets, to extent that dominant tech platforms have become incredibly powerful.

This has caused problems for 'rights holders'.

By that I mean both individuals with rights to privacy and data protection and persons, legal and natural, with rights to intellectual property.

As a result of the philosophy of 'move fast and break things', things have indeed got broken too fast for regulators to prevent it.

We are now moving into a phase where companies are expected to be accountable for what they do.

That is a core notion throughout the General Data Protection Regulation, adopted last year in the European Union.

European case law – for example the SABAM cases in 2011 and 2012 – reaffirmed the need to balance the interests of IP rights holders and the right of individuals to data protection. There are of course always balances to be struck.

Around the same time, the European Parliament famously blocked the 'ACTA agreement'.

I was asked by the Parliament for my views and I said that it seemed to be a masterpiece in ambiguity.

The problem with that proposal was that, in the name of defending some rights holders, it purported to infringe the rights of millions of individuals. This was not a clear proportionate response to a genuine problem.

And it did so by means of some provisions which were unclear and confusing, with potential to create great legal uncertainty for individuals and businesses alike.

But my main point in this short message is this:

There is no intrinsic opposition between IP and data protection.

In fact privacy and freedom to create, innovate and to express oneself are, in my view, mutually dependent.

One relies on the other.

You need an intimate space in order to be free to speak and innovate.

We are aware of concerns about the effects of the dominance of tech giants on, for example, being able to port your information or content from one service provider to another.

We are aware of concerns about filter bubbles and fake news. Their effect is to restrict or distort the information which is available to people who read their news online via social media etc.

These practices are made possible by the collection and exploitation of personal data: often without the individual being aware, and it happens usually without the individual having any control over the process.

So for a sustainable long term framework for big data and artificial intelligence, which allows innovation and respects people's rights over their information and IP, I believe we need to deepen our discussion.

Antitrust also has a role to play. I notice that a session on this subject is on the conference programme. We have written extensively on the need for antitrust enforcement to adapt how digital markets have evolved.

We launched this year a Digital Clearinghouse for regulators of different aspects of the digital society to meet and discuss common concerns. For more details please see our website.

The EU in its Digital Single Market programme is negotiating a series of measures, which include the draft copyright directive as well as the reform of rules on confidentiality of communications.

One controversial area of the copyright proposal which appears to require digital platforms to monitor content systematically for potential infringements.

Like like with ACTA, the EU legislator needs to ensure that protection of one right does not unduly interfere with another.

There is also discussion about 'data ownership', paying with data, particularly in the context of another proposal for Digital Content.

We have been clear under EU that it is not possible to trade personal data. Rather, EU law requires individuals to have as much control as possible over what happens to data about them.

There are many other issues of course.

But I hope that this short address is the first of many opportunities to deepen dialogue between the IP and privacy community.

I would encourage you to get in touch with us via our website if you would like to continue the discussion.

Thank you and best wishes for the rest of the conference.