



ATRIP

INTERNATIONAL ASSOCIATION FOR THE ADVANCEMENT OF TEACHING AND RESEARCH IN INTELLECTUAL PROPERTY

45th Annual Congress, York University, Osgoode Hall Law School, Toronto, Canada

June 27 – June 30, 2027

Call for papers proposals: <https://atrip.org/call-for-papers-toronto/>

The good use, misuse and abuse of intellectual property

Background

Intellectual property is not a neutral legal concept. Like most laws, it is shaped by many forces, including political, a point underscored at last year's ATRIP congress. Many scholars have also debated whether "property" is the right word for protecting intangible endeavours, with "right(s)" or "protection" seen as more neutral alternatives. Regardless, the term "intellectual property" has been established at the international, regional, and national levels for over a century, and intellectual property rights (IPR) can be used for **good**, **bad**, and even **ugly** purposes. **This year's Congress will explore that full range of possible uses and how the best applications of IPRs can be enhanced and the worst minimized or eliminated.**

The Good Use (the Good)

At its core, IPRs incentivise creation and invention, rewarding authors, designers, and inventors financially and reputationally while fostering free expression, cultural dissemination, education, health, and the quality of life more broadly. Trademarks prevent consumer confusion, encourage investment in quality, guard against harmful counterfeits, and support healthy competition.

Beyond these traditional functions, IPRs can also be used creatively and inclusively: free and open-source software and the GNU GPL licences, Creative Commons licences, patent pledges and commons, trademarks and designs protecting cultural heritage, and FRAND-licensed standard-essential patents. Some patent regimes offer extra incentives for specific inventions, such as faster applications for green technologies. IPRs can even serve as a remedy in trade disputes between powerful and small sovereigns. In all these cases, IPRs serve good causes.

The Misuse (the Bad) and The Abuse (the Ugly)

Built-in limits for IPRs (protected and excluded subject matter, protection requirements, authorship and ownership rules, duration, rights and exceptions and limitations, and exhaustion) normally keep rights owners in check. But these limits do not always hold.

For example, copyright terms have significantly expanded with little rational justification. Trademark law has accumulated added functions, such as communication, investment, and advertising, without full regard for the market impact. Repair exceptions are inconsistent across IPR and across jurisdictions, and international exhaustion remains unharmonised. These cracks and gaps open the door to misuse and abuse of these powerful rights.

Misuse generally refers to the assertion or exercise of a right for purposes beyond those for which it was granted. **Abuse** is worse. It involves the exercise of an IPR in a way that harms others or the public interest, and is a notion recognized internationally in Article 8(2) TRIPS. The two concepts overlap and are difficult to delimit precisely, but they capture situations in which right holders exploit the system's cracks and gaps to extend their reward or market power beyond the intended scope of the exclusive right.

Abuse and misuse can arise in a variety of contexts, among others:

Acquiring rights: bad-faith or knowingly invalid registrations, false copyright notices, using divisional applications to deter competitors;

Maintaining rights: evergreening, pay-for-delay agreements;

Exploiting rights: patent and copyright trolling, refusals to license, trademark bullying, using copyright to suppress whistleblowing, using one or several IPRs to trump another IPR's limit, planned obsolescence, wrongful threats and other procedural tactics to silence opponents.

Call for Proposals

Proposals may address the **good**, the **bad**, or the **ugly** of IPRs from a general perspective or within a specific subject area (copyright, patents, plant variety rights, trademarks, geographical indications, designs, etc.), exploring questions including the following:

- What features constitute “good” versus “bad”/“ugly” use of IPRs? Are these concepts culturally contingent? Should (and do) different jurisdictions define good, bad and ugly uses of IPRs differently? What are the consequences of divergent approaches?
- How do international, regional and national norms enable the good use, misuse or abuse of intellectual property (e.g. art. 8(2) TRIPS v. no maximum rights, functional exclusions in trademark and design law)?
- How can intellectual property be used creatively for the public good?
- How can the current ‘good mechanisms’ be used in other intellectual property fields? How can they be enhanced?
- Can certain bad, ugly or misuses of IPRs *in fact* be beneficial to or advance the public good?
- How can existing mechanisms in other areas of law be used in intellectual property fields to further the good use and curtail the misuse and abuse of IPR?
- What types of overlaps in intellectual property protection are good, bad or ugly?
- To what extent is “misuse” and “abuse” of IPRs different? Are the concepts different in common law and civil law countries, at national, regional and international levels? What problems or opportunities does this raise? To what extent can and should we find an international consensus on the two notions?
- Are current remedies for misuse and abuse adequate, if not which others do we need?
- What are the most effective remedies for abuse and misuse of IPRs? Are they legal or practical such as using the press or social media to shame the IPR holder? Is a combination of remedies better?

- What can the abuse of right doctrines in civil and common law systems do to prevent abuses of intellectual property?
- What role should competition law and criminal law play?
- To what extent are these external legal regimes useful or should internal mechanisms be used instead such as exceptions (e.g., public interest in copyright law, bad faith in trademark and design law or unjustified threats (e.g. UK's Intellectual Property (Unjustified Threats) Act 2017))?
- Should new forms of intellectual property be created to address new problems (e.g. protecting against deepfakes, protection of TK and TCEs) or on the other hand, should some be reformed or even deleted alone or in combination (e.g. database sui generis right, computer-generated inventions, utility models, geographical indications, unregistered design rights, trade secrets)?

All research methodologies (e.g. doctrinal, empirical, comparative, historical, interdisciplinary) and perspectives are welcome. Papers focusing on strictly descriptive national developments will be considered only if they offer insights of broad relevance to the Congress theme.

In addition to the conference theme, there will be a session on **teaching and assessment focusing on the issues raised by Artificial Intelligence (AI)**. You are welcome to submit an abstract for this session instead of the general theme. The theme of this session will not be connected to the conference theme, but papers will not be excluded if they relate both to the conference theme and this session's theme. The following topics are welcome:

- Ethics about using AI in learning, teaching and assessing law students
- Should AI be used or banned, if used, how (and which AI tools) and when? Should law schools/universities prepare students to using AI or should this be done afterwards when students start employment?
- Issues around the weakening of critical thinking and more generally cognitive skills and how to mitigate this
- Issues relating to equality, diversity and inclusion in the students' use of AI e.g. to what extent does AI equalise/democratise learning or on the contrary reinforce inequalities? As some tools are not free, should universities provide certain AI tools free of charge, ban those which are not?
- How should AI policies be drafted for teaching and/or evaluating students (via coursework or online exams) including PhD theses - this can include editorial policies for journals and books
- To what extent are any of these issues specific to intellectual property law?
- Challenges and methods in detecting AI use in assessment – again this can include challenges encountered as a journal or book editor – and enforcing AI policies
- The future of AI use in learning, teaching and assessing law students

Interdisciplinary, practical and empirical papers are particularly welcome, including early evidence of using AI in learning, teaching and assessing students.

Submission Guidelines

On behalf of the Executive Committee, I invite you to submit a paper proposal on a topic related to the above call. The 45th ATRIP Congress will be held in a strictly in-person format. Care will be taken in the selection process to ensure global diversity.

Proposals from ATRIP Members with no outstanding membership fees will be given priority.

Doctoral students will **not** be invited to present at the main Congress and may present **only** in collaboration with a senior researcher; however, they are encouraged to apply to the specific ATRIP call for Doctoral Student presentations.

Submissions must include an abstract (**maximum 400 words**) clearly outlining:

- The author's name, academic affiliation, official website, and the title of the presentation.
- The research question addressed, the methodology used, and the anticipated contribution to the Congress theme, *with a clear focus on the good use, misuse or abuse of intellectual property*.
- The intention to submit the paper for publication in the edited volume to be published after the Congress (optional).
- A CV.

Proposals must be submitted **no later than Monday 25 January 2027** via the online form at <https://atrip.org/call-for-papers-toronto/>

Notification of the outcome of the selection process will be sent by **end of February 2027**.

Prof. Estelle Derclaye, ATRIP President (2026-2028)