

Impact case study (REF3)

Institution: Anglia Ruskin University		
Unit of Assessment: UoA 18		
Title of case study: Influencing policy development across the digital divide		
Period when the underpinning research was undertaken: 2014-December 2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Dr Rohan Kariyawasam	Professor	01.09.2014-present
Period when the claimed impact occurred: 2014-July 2020		
Is this case study continued from a case study submitted in 2014? No		
1. Summary of the impact (indicative maximum 100 words)		
<p>Kariyawasam's research in the digital economy and digital divide focused on the dominant ownership of digital content and infrastructure by major communication services suppliers (major suppliers - China Telecom, AT&T, BT, Google, Microsoft). His research has directly changed the understanding of key stakeholders in China and the World Trade Organisation (WTO) around digital copyright, and the influence those stakeholders have had on the policy debate of introducing appropriate legal controls in Chinese and WTO law on such suppliers, leading to recommendations for legislative change sent by the Intellectual Property Research Institute, Xi'an Jiaotong University (China) to the Chinese State Council (China's highest legislative body), and recommendations considered by the Director of Intellectual Property (TRIPS, WTO) to the WTO's Secretariat.</p>		
2. Underpinning research (indicative maximum 500 words)		
Digital Divide and Open Internet Content		
<p>In 2015, Kariyawasam was awarded an AHRC Newton grant to investigate exceptions and limitations (fair use) of open internet content and copyright in the digital domain for the Third Revision to China's Copyright Act. Kariyawasam led the research, in partnership with Peking University and Xi'an Jiaotong University.</p> <p>The project examined the existing Chinese copyright law, completed comparative analyses with the domestic copyright regimes of nine states which are leading trade partners of China, and evaluated the digital economy and copyright terms of 30 Chinese bilateral and regional trade treaties. More than 5,000 stakeholders responded in China, including 200 corporate organisations, lawyers, academia, the judiciary, NGOs, and end-users. This remains the largest survey of its kind on fair use of copyright in the digital domain in China. Results showed that:</p>		
<ul style="list-style-type: none"> • A high percentage of those surveyed (46%) wanted an expansion of fair use terms in China • 50% of those surveyed wanted new mandatory terms for digital copyright exceptions • 53% wanted the inclusion of a reverse engineering obligation in good faith • 47% wanted the inclusion of a compulsory-take down counter-notice. 		
<p>In April 2018 at the conclusion of the project, the research was finalised in a study (Output A) sent to the Chinese Government's highest legislative arm, the Chinese State Council/National People's Congress Legislative Affairs Working Committee. Output A proposed a specific legal clause for each of the key findings of the survey to be incorporated as amendments to Sections 40-50 of the Third Revision to China's Copyright Act. This included, amongst others:</p>		

- IP management methods such as requiring users to submit a request when accessing content
- Introduction of a non-profit clause for copyrighted content used in educational material
- New provisions on the use of User Generated Content on social media
- Differentiation between the rights and obligations of Internet Content Providers and the Internet Service Providers (informed also by **Outputs B and C**)
- A change on current Chinese copyright provisions for reverse engineering of software interfaces
- Provisions for a virtual copyright mark (if approved, this would be a novel, unique-in-the-world tool).

Open Internet Infrastructure

In 2015 Kariyawasam was invited to become a member of the World Economic Forum's (WEF) E-15 Digital Economy Expert Group. Between 2015 and 2018 he completed research on trade in the digital economy and digital divide in developed and developing nations, including China. The key findings are that current WTO rules on defining dominance on telecommunication infrastructure, specifically the WTO's regulatory reference paper, need to be improved to take account of dominant ISPs' ownership of both content and infrastructure on the internet (**Outputs A, B, C**). Also, that major suppliers of communication services (including internet) leverage their dominance of infrastructure into content. Research insights showed that the current operation of the digital economy is disrupted in significant ways. In particular:

- Major suppliers are discriminating against traffic and data from third party operators across their networks (**Output B**)
- Operators are using conventionally accepted data management practices, such as traffic control, to redirect, slow down (throttle) third party traffic (**Output B**)
- Operators are using techniques, such as deep packet inspection, for commercial surveillance in targeting the usage of end user applications, protocols and content on the Internet (**Output B**)
- Operators are using their dominance of the different layers of the Internet protocol stack from the network layer to the content layer (combining control of infrastructure and copyrighted content) to restrict competition on the Internet (**Outputs A, B, and C**).

The last insight is highly novel and has resulted in a completely new layered approach to regulation suggested by the author (**Output B**). The research has been circulated to trade missions, the WTO secretariat, and business, and was presented at conferences in New York and Geneva with over 150 delegates in total, including WTO participants. The Director of the WTO's IP, Competition and Procurement Divisions invited Kariyawasam to complete a chapter ('Information and Communications Technologies: Bridging the Digital Divide through the right mix of competition policy and intellectual property') for the Director's forthcoming book ('Competition Policy and Intellectual Property Rights in an Interdependent World Economy (eds Antony Taubman, Robert Anderson, Nuno Pires De Carvalho, WTO), CUP, Spring 2021).

3. References to the research (indicative maximum of six references)

- A. Kariyawasam R., Recommendations to the Chinese State Council on reform of the fair use exception to the Third Revision of the Chinese Copyright Act. April 2018. Report to the Chinese Government (in Chinese/English) available on demand from ARU.

The research leading to this output was funded by an AHRC Newton grant (together with funding from the Chinese provincial government of Ningbo and the University of Nottingham's AHRC Centre in Ningbo), totalling £96,500. AHRC research collaboration agreements were signed with leading Tier 1 Chinese research institutions Peking University Law School and Xi'an Jiaotong University Law School.

- B. Kariyawasam R., New WTO trade rules for Bits & Bytes, WEF/International Centre for Trade & Sustainable Development. ISSN 2313-3805. Submitted in REF2.

The research leading to this 'Think-piece' was funded by the WEF/International Centre for Trade & Sustainable Development and following appointment of Kariyawasam as a member of the WEF E-15 Digital Economy Expert Group (2015-2018).

- C. Kariyawasam R. Multilateralising Telecoms: A step change in need of a step, Inter-American Development Bank/ICTSD, February 2018. ISSN 2520-2278. Available on demand from ARU.

4. Details of the impact (indicative maximum 750 words)

Research by Kariyawasam has changed the understanding of key copyright and end-user stakeholders in China; at a global level it has produced a recommendation for a new definition of internet major suppliers for the WTO to address the international digital divide between main and third-party operators.

Influence on Intellectual Property stakeholders in China

Kariyawasam held a legal drafting workshop in Beijing in April 2017 with 30 key copyright and end-user stakeholders in China which included: the then chief judge of the IP Tribunal, Peoples Supreme Court, Chinese National Copyright Bureau, The Intellectual Property Research Center of Xi'an Jiaotong University, IP Publishing House, Shenzhen Library, and Xi'an Film & Television Arbitration Center. These significant stakeholders were invited to comment on the 14 legal recommendations on copyright reform in the digital economy, social media and digital divide issues, produced by Kariyawasam and the research team on amendments to the Third Revision of China's Copyright Law. These were later included in **Output A** to the Chinese State Council. The event effected a change in awareness of these stakeholders on how copyright can enable the further promotion of innovation and creativity, while also allowing copyright owners to gain returns on their work (evidenced by their testimonials below).

A preliminary report in October 2016 by China's National Copyright Bureau (NCB) illustrating the downstream impact of this research stated: "Derivative works created by various users pose challenges to copyright owners, administrative supervision, dispute resolution and judicial trial. In order to cope with such a change, the seminar on fair use in the digital domain co-sponsored by Anglia Ruskin University, Peking University Law School, and the School of Law Xi'an Jiaotong University was held in Beijing. Scholars from both China and Britain carried out in-depth discussions on the rights of works on the network and digital conditions as well as the fair use under the Copyright law." [1]

The Managing Editor of the *Intellectual Property Publishing House* (IPPH) in China said: "The recommendations changed my thinking on copyright law and as an end-user of copyright, I felt it is important that the recommendations were adopted into Chinese law (...). Also, I agreed with the Fair Use Project's suggestion that the range of fair use examples should be expanded. This was an extremely important suggested amendment as it suggested introducing the idea of 'transformative works' (as seen in US copyright law) into Chinese copyright law, where such an example of a work does not currently exist "[2].

Senior judicial opinion has also changed. For example, the then chief judge of China's Supreme People's Court IP Tribunal (China's highest court) said: "The fair use project has had very meaningful impact in changing my judicial opinion on Chinese copyright law." [3] The judge of the *Shenzhen Intermediate People's Court* said: "Professor Kariyawasam's fair use project has been extremely useful in demonstrating how judges can view fair use cases in the digital domain. Prior to being introduced to the fair use project, I had not previously appreciated the scope and extent of the use of fair use in China...The recommendations for legislative copyright change suggested by the fair use project are extremely helpful." [3]

The AHRC project impacted the *Intellectual Property Research Institute* of Xi'an Jiaotong University. The Director of the Institute stated that before Professor Kariyawasam's work, they had not investigated the fair use terms for copyright. They became aware of the need for such

provisions, including for a virtual copyright notice, reverse engineering of software interfaces, and for regulation of user-generated content on social media. Also, the project impacted on the academic training of the Institute's 20 Masters and 5 PhD students, as it provided guidance on how to design and conduct research questionnaires, not available elsewhere in the highly specialised digital economy area, and to complete field research on digital IP. The Director said the AHRC project produced: "...the largest survey of its kind of fair use of copyright in the digital domain in China at the time." [4].

A key stakeholder of the research has been the *Quality Brands Protection Committee* (QBPC) in China, a coalition of 200 corporate members, among which 186 are well-known foreign multinationals (e.g., Apple, Samsung, Intel, IBM, L'Oréal) in China. The QBPC recommended Kariyawasam's work to its membership in China and requested its corporate members to complete the fair use survey. The organisation stated that the survey has created awareness on the need for copyright and social media reform among its members [5]. The Vice-Director of the *Xi'an Film & Television Arbitration Center* stated that "...participation in the research questionnaire made him aware that the copyright law in China needed change to cover areas like cloud technology usage and the introduction of a definition for "new media" [2]. Both the QBPC and the Xi'an Film & Television Centre play significant roles in shaping IP policy in China. Kariyawasam's influence in shaping their thinking on the Third Revision has led to both organisations' increased awareness of the need for expanding fair use provisions in China's copyright law as evidenced by testimonials [2, 5].

Influence on the Third Revision of China's Copyright Law

As co-investigator in the project, the Director of the Intellectual Property Research Institute at Xi'an Jiaotong University was invited by the *Shaanxi Provincial People's Congress* (the federal legislative body in the province) to submit the results of the research. The Shaanxi Congress wrote very approvingly of the research submitted and sent the report directly to the *Chinese National People's Congress*, for approval at national level [6].

In a project report in April 2018, Kariyawasam's AHRC Newton research on fair use of copyright in the digital domain was presented to and considered by *China's National People's Congress Legislative Affairs Working Committee*, the highest legislative arm of the Chinese Government. Kariyawasam and co-investigators have asked for amendments to the section on fair use exceptions (draft Articles 44-50). The proposals were welcomed by the Working Committee and at the time of submission in April 2018 were to be considered by the Legislative Affairs Committee of the National People's Congress. If the suggested amendments are approved (the final Copyright Act is not expected to be published by the State Council until June 2021), they will result in changes to national law, directly impacting circa 840 million internet users in China, as well as circa \$2.3 billion of e-commerce trade. Even if the recommendations do not influence the Act, the State Council may still incorporate them in secondary regulations following once the Act is published, as is customary in Chinese law-making.

Proposal of a new definition of internet major suppliers for the WTO

Building on AHRC digital economy research in China and for the World Economic Forum E-15 Digital Economy Expert Group, Kariyawasam produced two 'think-pieces', which set out required reforms by the WTO to the regulation of digital services (**Outputs B and C**). The recommendations proposed a new definition of a dominant telecommunications provider (a major supplier).

The findings were presented at three World Economic Forum E-15 conferences on the Digital Economy in New York (2015, 2016) and Geneva (2017). Evidence shows that these changed the thinking of decision-makers at the WTO Secretariat (such as Director of the WTO IP and Competition Divisions) about how dominant operators on the internet should be regulated [7, 8]. The Director of Intellectual Property and Competition Divisions at the WTO said: "...I have made use of Professor Kariyawasam's research and his reports for the WEF/ICTSD to inform my own research on digital divide issues, in particular in a current program on 'trade in knowledge' which is retooling and rebasing our approach to trade policy questions for the benefit of developing

countries in the light of the changing landscape for trade resulting from the dissemination of digital technology.... This is why we invited him to contribute a chapter to a forthcoming volume, to be published by Cambridge University Press in [2021], entitled Competition policy and intellectual property in today's global economy. We invited him to provide a paper as we felt it essential to have an authoritative account of the significance of a balanced approach to intellectual property law and competition policy to address the digital divide.."[7]. The then Managing Director of the Geneva-based International Centre for Trade and Sustainable Development said: "Kariyawasam's research proposed a fundamental step change in how large internet operators who have monopoly power should be regulated and the advantages to developing countries of embracing the digital economy. As an NGO, we felt that Kariyawasam's ideas for regulatory change could have significant impact on policy on the regulation of dominant internet undertakings and should be widely disseminated." [8]

5. Sources to corroborate the impact (indicative maximum of 10 references)

1. Report by Chinese National Copyright Bureau
2. Testimonials of significant Chinese stakeholders: IP Publishing House; Shenzhen Library; and Xi'an Film & Television Arbitration Center
3. Testimonials of (former) Chief Judge, Intellectual Property Tribunal, China Supreme People's Court] and judge, Shenzhen Medium Court IP Tribunal
4. Testimonial of Director, Intellectual Property Research Institute, Xi'an Jiatong University
5. Testimonial of (former) Executive Director, Quality Brands Protection Committee, China
6. Testimonial of the Shaanxi Provincial People's Congress
7. Testimonial of Director of Intellectual Property (TRIPS), procurement and competition division, WTO, Geneva
8. Testimonial of (former) Managing Director International Centre for Trade & Sustainable Development, Geneva, Switzerland (referring to the WEF policy options paper (Strengthening the Global Trade and Investment System in the 21st Century (synthesis report 2015)).