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"Who Let the Trolls Out?"

Speculative Invoicing, E-Discovery and the Changing Costs of Litigation

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WP 3D.3

IP Dispute Resolution: Digital evidence, e-discovery and the changing costs of litigation

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of EDINBURGH

“Who let the trolls out?”

Speculative invoicing, E-Discovery
and the Changing Costs of Litigation



WP 3D.3 (1 Oct 2013 – 30 Sep 2016)

Professor Burkhard Schafer and David Komuves
The University of Edinburgh

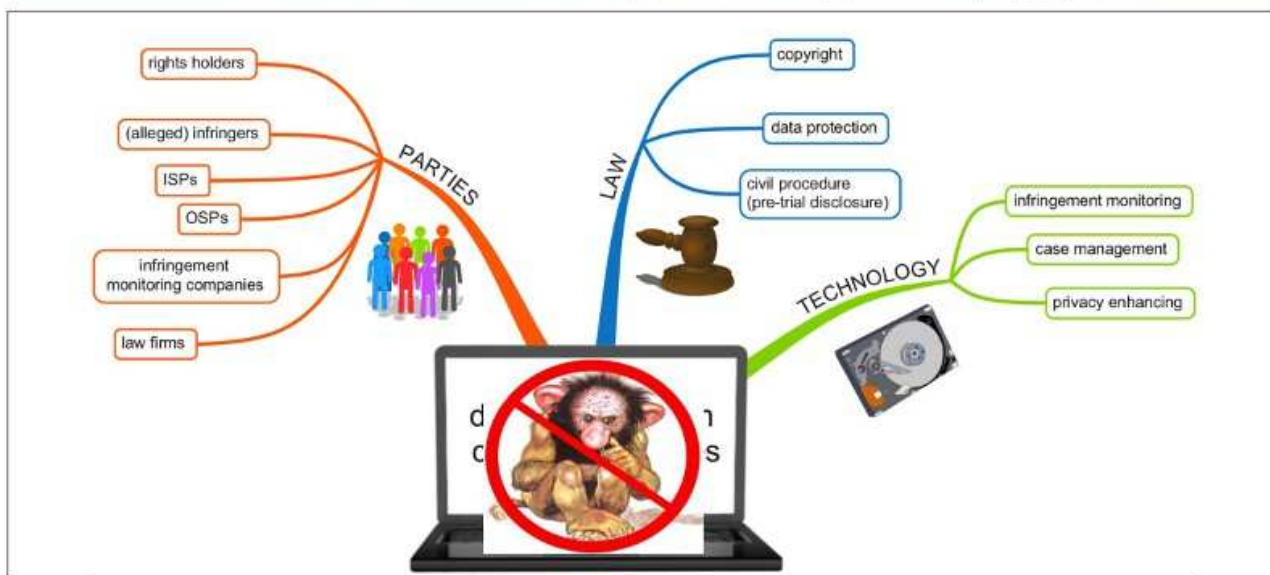


Research Aims

- Analyse the risks and costs that are created for the digital creative economy through advances in e-discovery
- Identify “best practice” in terms of procedures and use of technology
- Identify needs for reform in procedural law where unnecessary burdens are created for industry through inadequate or outdated approaches to electronic evidence
- Study the contribution that software technology can make to reduce costs and increase business opportunities through better and more intelligent computer aided e-discovery tools

Findings

- “Copyright trolling” or “speculative invoicing” is the dark side of increasing efficiency of e-discovery tools, and increasing efficiency of computational litigation
 - Data quality requirements, and tensions between data protection and copyright law, create inconsistencies especially in cross border litigation.
 - holistic solutions are needed that involve technology support for defendants and regulation through professional bodies
- Schafer, B. Forensic Information Quality: The Janus face of copyright. In: L. Floridi: The Philosophy of Information quality. Springer 2014



Challenges

- Rapidly changing legal environment: e.g. recent and upcoming changes to data protection and data retention laws
- Rapid developments in technology create new, unregulated business practices in law firms that traditional professional rules don't capture
- Reliable empirical evidence and case law on pre-trial disclosure / settlements is limited

Next Steps

- Evaluate the state of the art of information retrieval tools and their possible application to copyright infringement
- Explore “equality of arms” through software support for Victims of speculative invoicing
- Evaluate comparatively the reaction of professional bodies (law societies etc) to speculative invoicing



(<http://www.create.ac.uk/posters/media/JPEG-web/WP3D3 - IP Dispute Resolution.jpg>)

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This resource was prepared as part of CREATE's All Hands Conference, held in Glasgow in September 2014.

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