

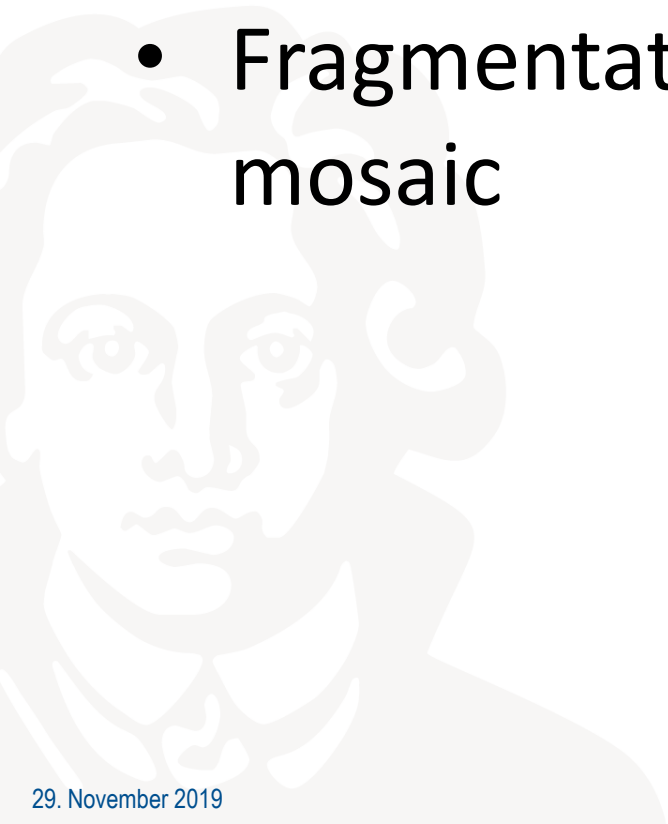
## The Law of Global Digitality

# Private IP Ordering Online

Prof. Dr. Alexander Peukert  
[a.peukert@jur.uni-frankfurt.de](mailto:a.peukert@jur.uni-frankfurt.de)

- Structure of the presentation
  - Global enforcement?
  - Global licensing?

- Fragmentation of IP laws/rights → mosaic



- Territorially limited private ordering enforcement schemes
  - Eg EU MoU 2018 “on online advertising and IPR”:
    - No ads on ©/® infringing sites that have no substantial legitimate use
    - Decision of a court or other enforcement authority required
    - Applicable to ad-services provided in EEA States

## Global IPR enforcement

- But court injunctions with global effect based on one IP law
  - Take down ≠ blocking orders
  - But ILA Guidelines IPR/PIL 2020:
    - “The scope of an injunction is limited both by the extent of the jurisdiction of the court and by the territorial reach of the intellectual property right enforced.”
    - Consequence: no recognition or enforcement of global injunctions

- Global NTD policies of host providers and search engines
  - U.S. DMCA<sup>+</sup> procedures
  - Global take down/stay down
  - New wave of fragmentation through increased national standards (EU ©)

- ICANN's Uniform Domain-Name Dispute-Resolution Policy (UDRP)
  - Cancellation or transfer of generic top-level domain (.com) from “cybersquatter” to TM holder
  - Outlook: Cancellation of pirate/counterfeiting domains?

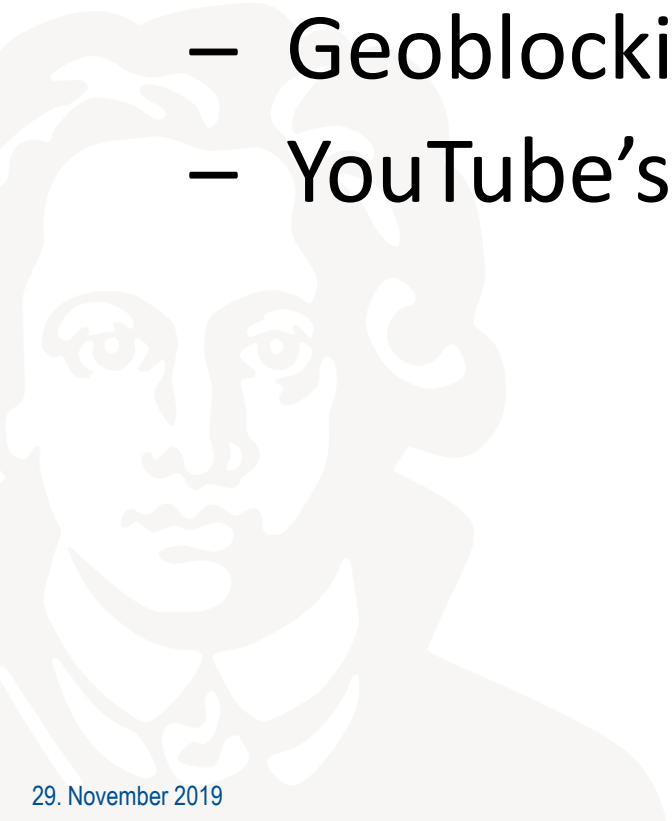
- International Anti Counterfeiting Coalition Inc.'s RogueBlock®
  - Termination of payment accounts of “rogue” website operators irrespective of their place of residence or market activity



## Global licensing

- The right holder can grant a global license, which is governed by one contract law.

- But in practice, right holders prefer price discrimination
  - Geoblocking access to licensed content
  - YouTube's Content ID



- Open Content Licenses
  - Global contract network
  - But limits of traditional contract law
    - Eg license “update” of Wikipedia 2009
- Implied license as an alternative

- Two characteristics of the Internet and “cyberlaw”
  - 1) Scale  $\leftrightarrow$  Code
    - Global code: UDRP, platform standards
    - Fragmented code: digital rights management

- Two characteristics of the Internet and “cyberlaw”
  - 2) Globality ↔ Private ordering
    - Global enforcement against rogue websites and Open Content Licensing
    - Fragmented IP markets

## Summary

- Overall result:
  - Two coexisting communication cultures on the Internet
  - Global ↔ Fragmented

