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# Veni project on legal pragmatism in intellectual property lawmaking

**Dr. Stef van Gompel, Institute for Information Law (IViR)**

Last year I secured a Veni grant from NWO to conduct research on whether legal pragmatism – as opposed to legal doctrinalism – can aid in better integrating evidence-based policy in intellectual property lawmaking. There is a growing trend to base new laws on empirical evidence. This certainly is true for intellectual property law (the law on copyrights, patents, trademarks, etc.), which needs repeated adjustment to make it fit for the digital era. One obstacle to evidence-based lawmaking is that for lawyers, doctrinal legal thoughts often prevail. We have learned that laws must meet certain predetermined objectives and that lawmakers should strive for normative coherence and formal consistency with established legal principles. If empirical evidence indicates that the law must change but this change does not sit well with or even contradicts legal-theoretical foundations on which the law is built, we as lawyers get uneasy. In lawmaking initiatives, this may lead to the situation that available evidence is ignored or only partly followed. Arguably, an increased focus on evidence-based policy requires a more legal pragmatic lawmaking approach that focuses on the impact, future effects, and instrumental outcomes of legislative initiatives. While a legal pragmatic approach is more ad hoc and less predictable, it may better accommodate the law to a societal context than a legal doctrinal approach, which tends to be foreseeable and creates legal certainty, but may also lead to overly formalistic law. In my project, I will investigate whether these pragmatic and doctrinal lawmaking approaches can be reconciled in a way that combines their strengths and curtails their weaknesses. Although my focus is on intellectual property law, the research outcomes will be applicable to other areas of law where similar lawmaking difficulties may occur.

### Finding inspiration

Most of the work in writing a Veni proposal is in the design phase: the actual description of the research plan. You really need to



know what topic you want to study and how you are going to approach it. Inspiration can come from various sources, including – most importantly – your own research experience. In my case, I derived the idea for my Veni application from earlier research into the history of copyright law. During my PhD project, which was about the history, rationales and possible future of reintroducing copyright formalities (the registration or deposit of works, or the affixation of a © notice on tangible copies of works), I noticed that in the Netherlands in the second part of the nineteenth century, there was a clear legal pragmatic approach to intellectual property lawmaking. At that time, the majority of Dutch lawyers and lawmakers believed that there was no 'higher' legal principle that forced the state to protect intellectual property. As a result, there was much scope for evidence-based policy considerations, which led for example to a temporary abolition of the Dutch patent system (between 1869 and 1910) and the adoption of provisions in the Dutch Copyright Act of 1881 that diverged from internationally accepted standards. I have always been intrigued by this Dutch pragmatic lawmaking approach and when it came to drafting my Veni application I immediately knew that this was the topic that I would like to pursue and investigate further, although not in the historical setting but in a contemporary context.

#### *Counting words and counting blessings*

For readers of the ARILS newsletter it is of course most interesting to know what I have learned from the application process. There are several things to remember if you ever think of applying for a Veni or a similar grant. First, start early. Having a brilliant research idea is very important, but clearly not enough. You must be able to convey your research proposal in a clear and understandable way to a broader audience. For one thing, the committee that eventually advises on the Veni grant not only consists of lawyers, but also of researchers from political sciences, psychology and sociology. They also need to get attracted and convinced by your proposal. In drafting the application, every word counts. The space for writing a Veni proposal is limited, which means that you should choose your words carefully. This takes time. Another important point is your CV. Obviously, no one creates a good CV over night. You must have properly built it up during and after your PhD. If your CV is not outstanding (NWO indicates that the Veni funding focuses on candidates who will be among the top 10-20% of their peer group), you might consider not applying or wait for the next round and work on your CV in the meantime. After all, it takes time to write a good proposal and the success rate is low (in my round, for the area MaGW, only 34 out of 311 proposals received a grant – and few of these proposals were on a legal topic). If your CV is good enough, make sure you highlight your qualities and achievements such as prizes, articles in top journals, etc. The application form provides room for that, so you better use it. Hoping that these words are useful for future applicants, I realize that they come too late for colleagues who have applied in this year's round (the deadline was on 6 January 2015). Yet I wish for our Law Faculty to be able to welcome another Veni laureate this year!

arils  
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