Open doors and hidden agendas: how governments and businesses use new security threats to distort traditional trade-offs in the law
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Abstract
It is without a doubt that the developments in information technology and, in particular, the Internet have had an impact on developed (and increasingly developing) countries not seen since the industrial revolution. The “digitalisation” of everyday tasks such as reading the newspaper, listening to music and accessing public and private services has changed the life of both businesses and individuals in ways not previously imaginable. However, those developments brought with them new threats to both tangible and intangible assets of society.

Advances in IP, technology and security law are seen by many as responses to those threats - necessary steps to preserve the just balance between the interests of society and those of the law-breakers.

But there is another possible angle to this scenario which is rarely examined: namely that rather than being implemented as a response to new threats, many changes to the law have been made (or are proposed to be made) to push through existing - and often hidden - agendas of certain stakeholders which in many cases pre-date the technological revolution. This paper will investigate this premise in the context of two distinct areas of law: the protection and enforcement of IP rights and the developments in the area of public security law in the name of combating terrorism and organised crime.

The paper will show that many of the new measures are either unsuitable to protect the assets they are intended to protect or that they add little to existing protection. At the same time the paper will analyse the way in which such new measures help to distort traditional trade-offs between the rights of individuals and corporate/government interests in the relevant areas. It will show that globalisation and harmonisation is used – in many cases – to achieve legislative objectives which could not be realised by individual governments at national level and the way in which such governments use the confusion and fear created by the use of new technology to bring about fundamental paradigm shifts with little opposition.