MAX PLANCK INSTITUTE
for comparative and international
PRIVATE LAW HAMBURG

"The Watershed Between Tort Law and Intellectual Property Law Protection: The Boundary in Japanese Law in Light of the Supreme Court of Japan's Band Score Decision"

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with a response by
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Thursday, 12 November 2026, 11:00 a.m. (CET)
Hybrid Lecture

Please register no later than Wednesday, 11 November 2026 for the lecture using this LINK.

All employees and guests of the institute as well as other interested parties are cordially invited to the lecture.

Ruth Effinowicz

Abstract:

Where intellectual property law denies protection, can general tort law fill the gap? As Japanese law has no general regulations against unfair competition, it raises the question of how Article 709 of the Japanese Civil Code, on the compensation for loss or damage in tort, and intellectual property law divide their respective domains. In 2011, the Supreme Court of Japan held that the use of something that does not qualify as a copyrighted work does not constitute a tort unless there are "special circumstances", the admittance of which being narrowly restricted. Since then, the possibility of protection of intellectual property under tort law appeared to be effectively closed. On October 9, 2026, however, for the first time ever, the Supreme Court of Japan specified these "special circumstances". This presentation examines the reasoning of that decision, its relation to the 2011 decision, and the dividing line between intellectual property law and tort law.

About the Speakers:

Ayuko HASHIMOTO graduated from the Faculty of Law and the School of Law of Kyoto University and was admitted to the Japanese bar. Currently she is a lawyer at KOTTO DORI Law Office, specializing in copyright law. In 2023, she was a visiting researcher at the Max Planck Institute for Innovation and Competition in Munich, researching "Grand Rights" in music copyright, and during that stay she completed an internship at GEMA, the German music copyright collecting society. Ayuko HASHIMOTO currently teaches as a part-time lecturer at the Kobe University Graduate School of Law, Meiji University (Intellectual Property Law Seminar), and Tokyo University of the Arts. As a member of the Japan Society for Digital Archive, Ayuko HASHIMOTO also researches cultural preservation from the perspective of copyright law, and intends to pursue this theme in greater depth.

Dr. Pascal T. SIEREK is a senior research fellow at the Max Planck Institute for Comparative and International Private Law. His research interests include European digital law, with a focus on data and artificial intelligence, as well as IP law, legal theory and interdisciplinary legal research. He studied law at Bucerius Law School (Hamburg) and Stellenbosch University (South Africa) and completed his doctorate at the University of Bonn with a thesis on data trustees.