

# Annual Report 2002

# Table of Contents

<b>1</b>	<b>DIRECTOR'S FOREWORD .....</b>	<b>1</b>
<b>2</b>	<b>OVERVIEW OF THE CENTRE.....</b>	<b>4</b>
<b>3</b>	<b>CENTRE STAFF .....</b>	<b>5</b>
<b>4</b>	<b>SIGNIFICANT EVENTS .....</b>	<b>8</b>
	GRANTS & FUNDING .....	8
	CONFERENCES & SEMINARS .....	8
	EDUCATION & TRAINING .....	11
	COURSEWORK PROGRAMS.....	11
	POLICY WORK.....	14
	VISITORS .....	16
<b>5</b>	<b>RESEARCH.....</b>	<b>18</b>
	RESEARCH & PUBLICATIONS .....	18
<b>6</b>	<b>MEDIA ENGAGEMENTS .....</b>	<b>26</b>
<b>7</b>	<b>TARGETS FOR 2003 .....</b>	<b>27</b>

# 1 DIRECTOR'S FOREWORD

I am delighted to present the 2002 ACIPA Annual Report. In only its second full year of operation, the Centre has taken important strides towards fulfilling its mandate. One of the most exciting developments of 2002 has been the consolidation of the links between the Australian National University (ANU) and Griffith University, which sees the Centre now operating as a single entity jointly based at both universities. In what has been a highly successful year, the Centre has attracted new sources of funding, achieved considerable grant success, attracted new staff of the highest calibre, and has made significant contributions through its research output and policy submissions.

In what marks a great achievement for the Centre, we were awarded three large Australian Research Council grants in 2002. ACIPA's success in gaining these grants has bolstered the Centre's ability to conduct high calibre research over the coming years.

During the year, ACIPA also secured funding for a Research Fellow from the Rural Industries Research and Development Corporation. We are pleased to welcome Michael Handler, who was appointed to the post of RIRDC Research Fellow in Intellectual Property in 2002 and who commenced duties in January 2003. Michael comes to ACIPA from the University of Sydney, where he was Lecturer in Law. He worked previously for Phillips Fox Lawyers in Sydney, where he specialised in intellectual property commercialisation and management. Michael has an outstanding academic record holding a first class honours degree in law from the University of Sydney and an LLM from the London School of Economics where he finished in the top 1% of his year.

Other grant success came in the form of ANU New Starter Grants awarded to Antony Taubman for his project on “The Doha Agreement on TRIPs and Public Health” and Matthew Rimmer for his project on “Myriad Genetics: Patent Law and Genetic Testing”. Also successful was the proposal for joint work between Robert Burrell and James Stellios on the relationship between copyright and freedom of expression, which received funding from the ANU Faculties Research Grant Scheme.

ACIPA was also successful in attracting other academic staff of the highest quality. ACIPA welcomed Robert Burrell, who took up his position as Senior Lecturer in January 2002. Robert comes to ACIPA from King’s College, London where he was Lecturer in Law. Robert brings a high level of expertise to the Centre, having taught intellectual property at the University of London, including the international and comparative aspects of the subject, for more than six years. Robert also has an extensive and wide-ranging research profile. ACIPA’s staff was further enhanced by the arrival of Stephen Hubicki, who took up his position as Research Fellow at ACIPA in June 2002. Stephen comes to ACIPA from Gadens Lawyers where he practiced in the Commercial and Technology division, specialising in intellectual property law. Stephen has an outstanding academic record, holding a Bachelor of Science with first class honours and a Bachelor of Laws with first class honours from Griffith University. Also appointed in 2002 was Dr Charles Lawson, who commenced his position as Research Fellow at the Centre in January 2003. We are very pleased to welcome Charles, who joins the Centre with a well established reputation for research. Charles holds combined Science and Law degrees from the ANU, an LLM from QUT and a PhD from the ANU. With Charles’ appointment to ACIPA, the Centre now employs seven full-time academic staff, two full-time administrators and draws upon the expertise of five adjunct research fellows.

The extensive lists of publications, presentations and conference papers, and media liaison set out in this report bear witness to the many and varied activities that are carried out by Centre members, both within the University and in the wider legal and public arena. We published thirteen refereed articles, three essays in edited collections and spoke at over twenty events.

I would also like to take this opportunity to extend our thanks to the many individuals and organisations who have helped to make the Centre such a success. In particular, I would like to thank the Grains Research and Development Corporation (GRDC), the Rural Industries Research and Development Corporation (RIRDC), the Australian National University, Griffith University and the Queensland State Government for their ongoing support. I would also like to thank the Plant Breeder's Rights Office for conference support, and IP Australia and the Plant Breeder's Rights Office for their assistance with our ARC linkage projects. Finally, I would like to thank ACIPA's Advisory Board for their guidance over the past twelve months.

**Brad Sherman**

## 2 OVERVIEW OF THE CENTRE

ACIPA operates as a single entity jointly based at the ANU and Griffith University. The Centre aims to engage in innovative, independent and critical research, whilst remaining focused on the development of pragmatic and workable solutions. While the Centre's activities encompass the whole of intellectual property, ACIPA maintains a particular focus on intellectual property law as it relates to agriculture and biotechnology.

### 3 CENTRE STAFF

In 2002, the Centre had five full-time academic staff, two full-time administrators and drew upon the expertise of five adjunct research fellows:

- Professor Brad Sherman (Director)
- Mr Robert Burrell (Senior Lecturer)
- Mr Stephen Hubicki (Research Fellow)
- Dr Matthew Rimmer (Lecturer)
- Mr Antony Taubman (Senior Lecturer)
- Ms Carol Ballard (Administrator, Griffith University)
- Mr Christopher Newton (Administrator, ANU)

ACIPA has been extremely successful in attracting academic staff of the highest quality, making a number of important appointments during 2002.

#### **Brad Sherman**

Professor Brad Sherman is Director of ACIPA. He is an internationally recognised researcher who has published widely in all areas of intellectual property law. He has carried out numerous national and international consultancies and has won a number of research grants over recent years. Brad has also worked at the London School of Economics and the University of Cambridge. His books include *Intellectual Property Law* (OUP, 2001), *The Making of Modern Intellectual Property Law* (CUP, 1999) and *Of Authors & Origins* (Clarendon, 1994).

#### **Robert Burrell**

Robert Burrell is Senior Lecturer at ACIPA. He is also responsible for ACIPA's Postgraduate Education Program. Robert worked previously at King's College London and he has taught for the University of Cambridge and the University of Sussex. His publications include articles in the *Australian Intellectual Property Journal*, *Common Market Law Review*, *European Intellectual Property Review*,

*King's College Law Journal, Modern Law Review* and the *Perspectives on Intellectual Property Series*. He is also sub-editor and co-author of the 14<sup>th</sup> edition of *Copinger and Skone James on Copyright*, the leading practitioner text on copyright law in the United Kingdom. In 2002, his work was cited on numerous occasions in academic journals in Europe and the United States, by judges in Australia and New Zealand and before the Court of Appeal in the UK. Robert is currently completing a book on copyright exceptions for publication in 2003.

### **Michael Handler**

Michael Handler started as the RIRDC Research Fellow at ACIPA in January 2003. Michael came to ACIPA from the University of Sydney where he was Lecturer in Law. He worked previously at Phillips Fox Lawyers in Sydney, where he specialised in intellectual property commercialisation and management. Michael has an outstanding academic record holding a first class degree in law from the University of Sydney and an LLM from the London School of Economics where he finished in the top 1% of his year. Michael's current research interests include comparative trade mark law.

### **Stephen Hubicki**

Stephen Hubicki has been a Research Fellow at ACIPA since July 2002. Stephen came to ACIPA from Gadens Lawyers where he practiced in the Commercial and Technology division, specialising in intellectual property law. Stephen has an outstanding academic record holding a Bachelor of Science and a Bachelor of Laws with first class honours from Griffith University. He is particularly interested in patent protection for biotechnological inventions.

### **Charles Lawson**

Dr Charles Lawson started as a Research Fellow at ACIPA in January 2003. Charles holds combined Science and Law degrees from the ANU, an LLM from QUT and a PhD from the ANU. Charles worked previously as principal adviser to Senator Natasha Stott Despoja on legal and technology issues, for the Australian

Government Solicitor as a senior lawyer in commercial, revenue and regulation and for the Commonwealth Department of Finance and Administration as an executive in financial frameworks. He is also a Visiting Fellow at the Genomic Interactions Group at RSBS. Charles' research interests include the interaction between law and genetics. His recent publications include articles in the *ACCC Journal*, *Australian Intellectual Property Journal*, *Environmental and Planning Law Journal*, *Federal Law Review* and the *Journal of Law and Medicine*.

### **Matthew Rimmer**

Dr Matthew Rimmer is a Lecturer in Law at ACIPA. Matthew holds a Bachelor of Arts and a Bachelor of Laws with Honours from the ANU, and a PhD from the University of New South Wales. His recent publications include articles in the *Australian Intellectual Property Journal*, *Bond Law Review*, *Entertainment Law Review*, *European Intellectual Property Review*, *Media and Arts Law Review* and the *QUT Law and Justice Journal*. Matthew has delivered numerous seminars and conference papers in Australia as well as talks at a number of Commonwealth Government Departments. In 2002, his work was cited in academic journals in Europe, in the Macdonald *Visual Arts Guidelines* and in the CLRC report, *Copyright and Contract*

### **Antony Taubman**

Antony Taubman is a Senior Lecturer at ACIPA. He is internationally renowned for his policy work in the field of intellectual property. Prior to coming to ACIPA, Tony was Director of the WTO Intellectual Property Section at the Department of Foreign Affairs and Trade, and Senior Advisor (Strategic Planning and Policy Development) to the Director General, and Senior Program Officer (Asia-Pacific Region), in the World Intellectual Property Organisation. He has also conducted training and teaching on IP issues and practice in many Asian countries and has published a number of articles on Asian intellectual property law. In 2002 Tony was asked to head the new *Global Issues* division of the World Intellectual Property Organisation, where he is on secondment until 2004.

## 4 SIGNIFICANT EVENTS

### GRANTS & FUNDING

Perhaps the clearest evidence of the strengths of the Centre's research capability came in 2002 when ACIPA was awarded three large ARC grants (see below for project outlines).

ACIPA's grant success in 2002 was further enhanced by its success in securing funding for a Research Fellow from the Rural Industries Research and Development Corporation (RIRDC).

Other grant success came in the form of ANU New Starter's Grants awarded to Antony Taubman for his project on "The Doha Agreement on TRIPs and Public Health" and Matthew Rimmer for his project on "Myriad Genetics: Patent Law and Genetic Testing". Also successful was the proposal for joint work between Robert Burrell and James Stellios on the relationship between copyright and freedom of expression, awarded from the ANU Faculties Research Grant Scheme.

### CONFERENCES & SEMINARS

#### Conferences

ACIPA held two highly successful international conferences during 2002. The first, "Shaping the New Agenda: Emerging Issues for Copyright" was held in Brisbane in February and focused on topical issues relating to copyright; the second, "Intellectual Property & Biotechnology: Access, Ownership & Control" was held in Canberra in November and focused on patent law and plant breeder's rights. In the two years since ACIPA was first established, we have held four conferences. ACIPA conferences have rapidly established a strong reputation, consistently attracting in excess of 100 participants. Speakers at our recent conferences have included members of the judiciary, senior policy makers and intellectual property

practitioners as well as leading academics from Australia, Asia, Europe and the United States.

**“Shaping the New Agenda: Emerging Issues for Copyright”  
February 2002, Brisbane**

This one-day conference examined a number of important copyright issues, including copyright enforcement, the impact of copyright law on free speech, copyright and the open archive movement, Crown copyright, indigenous moral rights and droit de suite. This conference provided up to date information and analysis from a range of academic, government, industry, and professional speakers, attracting interest from copyright owners and consumers, academics, practitioners, librarians and policy-makers. Speakers included: Libby Baulch (Australian Copyright Council) “Crown Copyright”; Robert Burrell (ACIPA) “New Challenges for European Copyright Law”; Tom Cochrane (Queensland University of Technology) “Copyright and the Open Archive”; Mark Davison (Monash University) “Legal Protection for Databases”; Stephen Fox (Attorney General's Department) “Copyright Enforcement”; and, Anna Ward (VI\$COPY) “Artists' Resale Royalty Rights (Droit de suite)”.

**“Intellectual Property & Biotechnology: Access, Ownership & Control”  
November 2002, Canberra**

This one-day conference explored some of the legal, social, and medical challenges associated with the patenting of genetic materials. It discussed a number of recent controversies over the ethics of patenting biotechnological inventions, focusing in particular on debates over stem cell research, battles over Myriad Genetics' patents related to breast cancer and WTO discussions on access to essential medicines. It also investigated concerns over the impact of gene patenting on the conduct of research, access to medicines and health care, the commercialisation of intellectual property and the further development of the Australian biotechnology industry, the impact of intellectual property in respect

of agricultural biotechnology and emerging fields of biotechnology. The conference attracted interest from policy-makers, government analysts, patent attorneys and other legal practitioners, academics and researchers, and the general public. Speakers included: Geoff Burton (Environment Australia) "Australia's Place in the Sun: Genetic Resources Management & the Bonn Guidelines"; Dr Mildred Cho (Centre for Biomedical Ethics, Stanford University) "The Effects of Gene Patenting on Genetic Testing & Research"; Justice Michael Kirby (High Court of Australia) "The Genome & Intellectual Property Law: Where UNESCO Angels Tread"; Dr Dianne Nicol (Centre for Law and Genetics, University of Tasmania) "Pharmaceutical Patents & Developing Countries"; Anna Sharpe (Clayton Utz) "Plant Breeder's Rights & Patent Law"; Dr Matthew Rimmer (ACIPA) "The Attack of the Clones: Patent Law and Stem Cell Research"; Professor Brad Sherman (ACIPA) "Regulating Access to Genetic Resources: Biodiscovery & Intellectual Property Law"; and Dr Jagveer Sindhu (Asia & Pacific Seed Association, Thailand) "Plant Breeder's Rights in the Asia Pacific".

## **Seminars**

ACIPA runs a very successful and popular seminar program. The Centre hosts more than thirty seminars a year in Brisbane and Canberra, attracting interest from scientists, industry, academia, rural bodies and commercial practitioners. Recent seminars have included presentations from leading academics from Australia, Europe and the United States.

Those who presented papers in 2002 included: Professor Lionel Bently (King's College, London) "Copyright in the Victorian Internet"; Mary Footer (Deputy Director, Amsterdam Centre for International Law, University of Amsterdam) "A Tale of Two Commons: Plant Genetic Resources and Agricultural Trade Reform"; and Professor Peter Drahos (RegNet, RSSS, ANU) "Developing Countries & International Intellectual Property Standard Setting".

## EDUCATION & TRAINING

### Postgraduate Education

ACIPA has recently established a number of postgraduate programs in intellectual property for both law and non-law graduates. These programs are offered in Brisbane and Canberra and are designed to draw upon the expertise of our staff in the two locations. We offer both higher research degrees and a range of coursework postgraduate degrees and qualifications.

#### Coursework Programs

- Master of Laws (LLM) for law graduates
- MA in Intellectual Property Law/Master of Intellectual Property Law (for non-law graduates)
- Graduate Diploma in Intellectual Property Law (for law & non-graduates)
- Graduate Certificate in Intellectual Property (for law & non-law graduates)

All of the coursework programs are taught intensively, usually over a four or five day period. The courses are ideal for practitioners, managers and researchers as well as those who have a more general interest in intellectual property. The programs are designed so that students can undertake their studies either exclusively in Brisbane or Canberra, or in a combination of the two locations.

The courses offered as part of ACIPA's postgraduate programs cover all of the major branches of intellectual property. The courses couple an understanding of legal principles with insights into how intellectual property rights are administered, exploited and managed. Emphasis is also placed on broader policy debates.

## Supervision

ACIPA staff have supervised the work of a large number of undergraduate and postgraduate research students from universities across Australia and around the world.

Those supervised by Brad Sherman included: Catherine Banks, "A Historical Analysis of Moral Rights in Australia", PhD Thesis, Griffith University; Kerrin Anderson, "The Human Rights Challenge to the Global Harmonisation of Intellectual Property Regimes", PhD Thesis, Griffith University; Patricia Goebel, "Copyright and the Public Domain: Governing Legal Rights from Print to Film", PhD Thesis, Griffith University; Sandra Henderson, "The Regulatory Spaces of Patent Law and Implications for Contemporary Misunderstandings", PhD Thesis, Griffith University; Jacklyn Lieboff, "Reconstructing the Role of Cultural Significance in the Protection of Movable Cultural Heritage Act 1986 (Cth)", PhD Thesis, Griffith University; and Godage Kariyawasam, "Effective Legal Protection for New Plant Varieties in Sri Lanka", PhD Thesis, Griffith University. Brad also acted as an External Examiner for three LLM dissertations from the University of London.

Those supervised by Robert Burrell included: Emily Liu, University of London, LLM Dissertation, 2002; Nikolaus Kraft, University of London, LLM Dissertation, 2002; Jan Dormann, University of London, LLM Dissertation, 2002; Foezullah Dewan, Honours Thesis, ANU, 2002. Robert also acted as an External Examiner for two LLM dissertations from the University of London.

Those supervised by Matthew Rimmer included: Ishtiaque Omar, "The Copyright Term and International Harmonisation", Summer Research Scholar, 2002-2003; Greg Bodulovic, "Regulation Of GM Food", Honours Thesis, Faculty of Law, ANU, 2002-2003; Dot Pawlukowski, "Genetic Privacy", Honours Thesis, Faculty of Law, ANU, 2002-2003; Georgia Price, "Journalist's Duty To Protect Confidentiality Of

Sources", Honours Thesis, Faculty of Law, ANU, 2002-2003; Alex Hutchens, "Tech Wreck: Do The Anti-Circumvention Provisions Confound Copyright Law?", Honours Thesis, Faculty of Law, ANU, 2002; Scobie Mackay, "Biotechnology And The Place Of Ethics In Patent Law: Suggestions For Australia", Honours Thesis, Faculty of Law, ANU, 2002; Nick Parmeter, "Biodiversity and Bioprospecting: Protecting The Traditional Knowledge Rights Of Indigenous Australians", Honours Thesis, Faculty of Law, ANU, 2002; Thomas Powell, "The Cash For Comment Affair", Honours Thesis, Faculty of Law, ANU, 2002; Christine Henry, "Access to Genetic Resources", Summer Research Scholar, 2001-2002; Fleur Davis, "Copyright Law and Film Composers", Honours Thesis, Faculty of Law, ANU, 2001-2002; and, Harry Saddler, "Intellectual Property and Traditional Crops", Honours Thesis, School of Botany and Zoology, ANU, 2001-2002.

## Training

A key part of ACIPA's mandate is to raise Australia's intellectual property skills base, particularly in the rural sector. 2002 has been an important year for ACIPA in terms of training, with the Centre initiating the preliminary phase of its training program in Canberra and establishing further the infrastructure for its 2003 training program. Training initiatives for 2002 included:

October 2002. Robert Burrell, Brad Sherman, Leanne Wiseman. *Intellectual Property and the Rural Sector: Harvesting the Benefits of Science and Technology*. ARC Linkage Grant (in partnership with IP Australia). Due for completion in December 2005. The project outcomes for this linkage grant include an important training initiative in rural areas.

June 2002. Robert Burrell and Matthew Rimmer, Facilitation of half-day training course for Greenhouse Accounting, Canberra (including a number of RSBS staff).

ACIPA has also designed a series of important training programs aimed at organisations involved in the commercialisation of research, particularly in the rural sector. These training programs will commence in Canberra in 2003 and will then be offered in Brisbane and key regional centres across Australia.

## POLICY WORK

In 2002, ACIPA was involved in a substantial amount of policy work for a variety of Government agencies and departments. ACIPA's policy work in 2002 included:

2002-2003. Brad Sherman and Stephen Hubicki, Authors of *Access to Genetic Resources: Benefit Sharing Scenarios*.

ACIPA was involved in the development by Environment Australia of regulations dealing with access to genetic resources under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). It released an issues paper and helped develop a model contract. ACIPA also discussed the issues involved with access to genetic resources with the Attorney General's Department and the Department of Prime Minister and Cabinet.

2002-2003. Brad Sherman and Stephen Hubicki, Authors of benefit sharing agreements for Part 8A of the Environment Protection and Biodiversity Conservation Amendment Regulations 2001.

September 2002. Brad Sherman and Robert Burrell, Prepared first draft of the AFFA Draft Policy Paper, *Intellectual Property in the Rural Sector*.

September 2002. Matthew Rimmer, Submission to Advisory Council for Intellectual Property (ACIP) Inquiry. Author of *Submission to the ACIP Inquiry into the Patenting Of Business Systems*, [http://www.acip.gov.au/bus\\_submissions/anu.pdf](http://www.acip.gov.au/bus_submissions/anu.pdf)

September 2002. Matthew Rimmer, Submission to ACIP Inquiry. Author of *Submission to the ACIP Inquiry into the Innovation Patent - Exclusion Of Plant And Animal Subject Matter*.

In its submission to the ACIP inquiry ACIPA argued that innovation patents should not include plant and animal subject matter, maintaining that such subject matter was better protected by plant breeder's rights.

April 2002. Robert Burrell and Brad Sherman, Authors of RIRDC Policy Paper, *Intellectual Property Commercialisation and Management Strategy*.

February 2002. Brad Sherman and Matthew Rimmer, Submission to the Australian Legal Reform Commission (ALRC) and Australian Health Ethics Committee (AHEC) Inquiry. Authors of *Submission to the ALRC and AHEC Inquiry into the Protection of Human Genetic Information*.

ACIPA was instrumental in the establishment of an inquiry into gene patenting by the Australian Law Reform Commission. It discussed such issues with Biotechnology Australia, Department of Health, and Environment Australia. ACIPA recommended that there was a need for an investigation into gene patenting in light of the ongoing inquiry into the protection of human genetic information. It was also successful in promoting the need for a separate inquiry into patent law and stem cell research by the Australian Law Reform Commission.

2002. Antony Taubman, Principal Author of *Intellectual Property & Biotechnology: A Training Handbook*, Department of Foreign Affairs and Trade, Canberra.

While ACIPA has been involved in a substantial amount of policy work during 2002, as outlined above, it has also had an important influence on policy matters in a less formal capacity. For example, ACIPA's annual conference in Brisbane

highlighted emerging issues in copyright law reform and in particular, emphasised the need for director's copyright, indigenous moral rights and droit de suite. All of the latter are issues currently under examination by the Department of Communications, Information Technology and the Arts (DCITA).

## VISITORS

Professor Lionel Bently visited the Centre for several weeks in 2002. Lionel Bently is Adjunct Research Fellow at ACIPA and Professor in Law at King's College, London. He is an internationally recognised researcher and has published widely in all areas of intellectual property law. Lionel's research interests include intellectual property law, especially history and theory of intellectual property. During his time at ACIPA, Lionel worked on his project tracing the relationship between British colonies and Britain in the late 19<sup>th</sup> and early 20<sup>th</sup> century, particularly in relation to intellectual property. He also gave a paper entitled "Copyright in the Victorian Internet" as part of the 2002 ACIPA Seminar Series.

Mr Paul McGinness worked at the Centre during March 2002. Paul McGinness is a Partner at Minter Ellison Lawyers with over 15 years experience advising public sector research organisations, cooperative research centres, universities, research and development corporations and private sector high growth enterprises on commercialising their intellectual property. While at ACIPA, Paul worked on completing his book on intellectual property and commercialisation, *Intellectual Property Commercialisation: A Business Manager's Companion* (Lexis Nexis Butterworths, 2003).

Ms Mary Footer, Deputy Director, Amsterdam Centre for International Law, University of Amsterdam and Associate Professor in the Department of International Law and International Relations at the University of Amsterdam, gave a paper entitled “A Tale of Two Commons: Plant Genetic Resources and Agricultural Trade Reform” in August 2002 as part of the ACIPA Seminar Series.

Dr Mildred Cho, a Senior Research Scholar from the Stanford University Centre for Biomedical Ethics, visited ACIPA in 2002, presenting a paper entitled “The Effects of Gene Patenting on Genetic Testing and Research” at ACIPA’s November conference “Intellectual Property & Biotechnology: Access, Ownership & Control”. Dr Cho’s major areas of research are the ethical and social impacts of genetic testing and gene therapy, and how conflicts of interest affect the conduct of academic biomedical research.

Dr Jagveer Sindhu, Director of the Asia Pacific Seed Association (APSA), Thailand visited ACIPA in November 2002. He presented his paper “Plant Breeder’s Rights in the Asia Pacific Region at ACIPA’s “Intellectual Property & Biotechnology: Access, Ownership & Control” conference. As Director of APSA, Dr Sindhu is engaged in promoting the cause of quality seed production and marketing in the Asia and Pacific region.

## 5 RESEARCH

The Centre has a very strong research profile. At present it manages a number of major research projects, including three large ARC grants. Recent publications of ACIPA staff have appeared in leading journals in Australia, Europe and North America. These publications cover a wide variety of topics, including aspects of copyright law, patent law, the history of intellectual property and trade mark law.

### RESEARCH & PUBLICATIONS

In 2002, ACIPA published twelve refereed articles, three essays in edited collections and numerous other contributions. ACIPA staff were also involved in more than twenty speaking engagements. Research and publications for 2002 included:

#### Publications

Brad Sherman. "Biological Inventions and the Problem of Passive Infringement" (2002) 13(3) *Australian Intellectual Property Journal*, pp. 146-154.

Brad Sherman. "Appropriating the Postmodern" in D. McClean and K. Schubert (eds), *Dear Images: Art, Copyright and Culture* (London: Ridinghouse, 2002), pp. 404-420.

Brad Sherman. "Australia" in Paul Edward Geller (ed), *International Copyright Law and Practice* (New York: Matthew Bender, 2002), pp. AUS1-AUS68.

Robert Burrell. "Reining in Copyright Law: Is Fair Use the Answer" December [2001] *Intellectual Property Quarterly*, pp. 361-388.

Robert Burrell (with M. Lee). "Liability for the Escape of GM Seeds: Pursuing the 'Victim'?" (2002) 65(4) *Modern Law Review*, pp. 517-537.

Robert Burrell (with L. Bently). "The Requirement of Trade Mark Use" (2002) 13(4) *Australian Intellectual Property Journal*, pp.181-198.

Robert Burrell. "The Future of Copyright Exceptions" in D. McClean and K. Schubert (eds), *Dear Images: Art, Copyright and Culture* (London: Ridinghouse, 2002), pp. 434-472.

Robert Burrell. "Copyright Defences and Compulsory Licences" (London: IBC, 2002), 52pp.

Robert Burrell. "Remedies for Copyright Infringement" (London: IBC, 2002), 48pp.

Charles Lawson. "Risk Assessment in the Regulation of Gene Technology under the Gene Technology Act 2000 (Cth) and the Gene Technology Regulations 2001 (Cth)" (2002) 19(3) *Environmental and Planning Law Journal*, pp. 195- 216.

Charles Lawson (with C. Pickering). "Controlling Access to Genetic Resources under the Environment Protection and Biodiversity Conservation Act 1999 Requires an Assessment of the Effects of the Patents Act 1990" (2002) 13(3) *Australian Intellectual Property Journal*, pp.109-120.

Charles Lawson. "Patenting Genes and Gene Sequences and Competition: Patenting at the Expense of Competition" (2002) 30(1) *Federal Law Review*, pp. 97-133.

Matthew Rimmer. "A Creature of Statute: Copyright Law And Legal Formalism" (2002) 13(2) *Entertainment Law Review*, pp. 31-38.

Matthew Rimmer. "Crystal Palaces: Copyright Law And Public Architecture" (2002) 14 (1) *Bond Law Review*, pp.2-31.

Matthew Rimmer. "Heretic: Copyright Law And Dramatic Works" (2002) 2(1) *Queensland University of Technology Law And Justice Journal*, pp. 131-149.

Matthew Rimmer. "Daubism: Copyright Law and Artistic Works" (2002) 9(4) *Murdoch University Electronic Journal of Law* (peer reviewed online journal), URL: <http://www.murdoch.edu.au/elaw/>

Matthew Rimmer (with K. Bowrey). "Rip, Mix, Burn: The Politics of Peer to Peer and Copyright Law" (2002) 7(8) *First Monday* (peer reviewed online journal), URL: [http://www.firstmonday.org/issues/issue7\\_8/bowrey/](http://www.firstmonday.org/issues/issue7_8/bowrey/)

Matthew Rimmer. "The Sequence: Inside The Race For The Human Genome: A Book Review" (2002) 24(1) *European Intellectual Property Review*, pp. 48-49.

## ARC Grants

In what marks a great achievement for the Centre, ACIPA was awarded three large ARC grants in 2002. Our ARC-funded research projects include:

Robert Burrell, Matthew Rimmer, Brad Sherman. *Gene Patents in Australia: Options for Reform*. ARC Discovery Grant. Due for completion December 2005.

Controversies over the upsurge in gene patenting, access to pharmaceuticals, biopiracy, and ownership of genetic resources, lead many to question whether patent law is appropriate for biotechnology. Do patents thwart access to beneficial technologies such as drugs, research tools and new crops, while hampering policy options for health care and agriculture? This project addresses the urgent need for a comprehensive study of the impact of biotech patenting, critically reviewing overseas developments and providing empirical analysis of patenting trends.

Robert Burrell, Brad Sherman, Leanne Wiseman. *Intellectual Property and the Rural Sector : Harvesting the Benefits of Science and Technology*. ARC Linkage Grant (in partnership with IP Australia). Due for completion in December 2005.

Recent developments in agribusiness and biotechnology promise benefits for the rural sector. However, there has been little research into the intellectual property needs and expectations of the sector. This hampers policy debate, the development of effective commercialisation strategies, and undermines the effectiveness of intellectual property education. This project, the first of its kind, addresses these problems by ascertaining the intellectual property needs of rural Australia and aims to provide the understanding necessary to support the economic and social development of rural communities.

Brad Sherman and Matthew Rimmer. *Protection of Botanical Innovation: A Legal Analysis of the Scope and Operation of National and International Plant Breeder's Rights*. ARC Linkage Grant (in partnership with the Plant Breeder's Rights Office). Due for completion in December 2003.

Plants play a crucial role in Australian society: they are a major source of nutrition, shelter, clothing, fuel, medicines and aesthetic pleasure. They also make an important contribution to the Australian economy. The legislative regime established under the 1994 Plant Breeder's Rights Act was designed to promote research, investment and innovation in Australian plant breeding. A lack of familiarity and widespread misunderstanding mean that the system is under-utilised with adverse consequences for plant innovation and Australia's economy. This groundbreaking project will provide a comprehensive analysis of plant breeder's rights in Australia to maximise understanding and awareness amongst key stakeholders.

Other research projects currently under way include:

Robert Burrell, Michael Handler and Leanne Wiseman. *Copyright Exceptions*. Due for completion in December 2003.

It now appears that the next major disputes in copyright law are likely to centre around the copyright exceptions, that is, around the "defences" or "permitted acts" or "users' rights" that all modern copyright systems provide so as to privilege certain acts that would otherwise amount to an infringement of copyright. This project seeks to provide a comprehensive analysis of the history of the copyright exceptions in Anglo-Australian law, the justifications for the different types of exception and why the exceptions have attracted so much attention over recent years. This project has already lead to a number of publications:

Robert Burrell. "The Future of Copyright Exceptions" in D. McClean and K. Schubert (eds), *Dear Images: Art, Copyright and Culture* (London: Ridinghouse, 2002), pp. 434-472.

Leanne Wiseman, "Digital Copying and the Statutory Licences in Australian Universities", *Learned Publishing* (2002) 15(2), pp.137-150.

Robert Burrell, "Reining in Copyright Law: Is Fair Use the Answer", *Intellectual Property Quarterly* December [2001], pp. 361-388.

A number of additional publications are planned for 2003 as this project nears completion.

### **Conference Papers & Speaking Engagements**

Brad Sherman. *Regulating Access to Genetic Resources: Biodiscovery and Intellectual Property Law*, ACIPA 2002 Annual Conference, Canberra, November 2002.

Robert Burrell. Visiting Lecturer, European Law Program, Cambridge University, Warsaw, November 2002.

Robert Burrell. *Three Dimensional Trade Marks in Europe & Australia*, ACIPA Seminar Series, Brisbane, October 2002.

Robert Burrell. *Intellectual Property and Price Discrimination in the European Union*, Competition in Property Rights and Information Markets Workshop, Centre For Competition and Consumer Policy (RegNet) and the National Institute of Government and Law, Research School of Social Sciences, ANU, Canberra, August 2002.

Robert Burrell. *Three Dimensional Trade Marks in Europe & Australia*, ACIPA Seminar Series, Canberra, June 2002.

Robert Burrell. *The Requirement of Use in Trade Mark Law*, ACIPA Seminar Series, Brisbane, May 2002.

Robert Burrell. *Update on the New European Copyright Directives & their Importance for Australia*, Presentation to the Commonwealth Department of Communications, Information Technology and the Arts, Canberra, March 2002.

Robert Burrell. *Recent Developments in European Copyright*, "Shaping the New Agenda: Emerging Issues for Copyright" Conference, Brisbane, February 2002.

Charles Lawson. *Patenting Genetic Materials' Unresolved Issues & Promoting Competition in Biotechnology*, Competition in Property Rights and Information Markets Workshop, Centre For Competition and Consumer Policy (RegNet) and the National Institute of Government and Law, Research School of Social Sciences, ANU, Canberra, August 2002.

Matthew Rimmer. *Gossip We Can Trust: Defamation Law And Biography, Mediating Law: Theory, Production, Culture*. 11th Law and Literature Conference, University of Melbourne, December 2002.

Matthew Rimmer. *Crystal Palaces: Copyright Law And Public Architecture, Mediating Law: Theory, Production, Culture*. 11th Law and Literature Conference, University of Melbourne, December 2002.

Matthew Rimmer. *Attack Of The Clones: Patent Law And Stem Cell Research, Intellectual Property and Biotechnology*, Intellectual Property & Biotechnology: Access, Ownership & Control Conference, Canberra, November 2002.

Matthew Rimmer. *Copyright Law, Moral Rights And Cultural Institutions*, Australian Library and Information Association (ALIA), ANU, Canberra, August 2002.

Matthew Rimmer. *Genentech And The Stolen Gene: Patent Law And Pioneer Inventions*, Bio-forum, Research School of Biological Sciences, ANU, Canberra, August 2002.

Matthew Rimmer. *Moral Rights*, Guest Lecture, Principles Of Intellectual Property (Undergraduate), Faculty of Law, ANU, Canberra, August 2002.

Matthew Rimmer. *Rip, Mix, Burn: The Politics Of Peer To Peer and Copyright Law*, Australian Competition and Consumer Commission, Canberra, June 2002.

Matthew Rimmer. *Intellectual Property & Indigenous Cultural Property, Indigenous Australians and the Law*, ANU, Canberra, May 2002.

Matthew Rimmer. *Moral Rights, Selected Issues In Intellectual Property*, University of New South Wales, Sydney, April 2002.

Matthew Rimmer. *Rip, Mix, Burn: Intellectual Property and Digital Technology*, Legal Edge Series, Australian National University, Canberra, April 2002.

Matthew Rimmer. *Myriad Genetics: Patent Law and Genetic Testing*, ACIPA Seminar Series, Brisbane, April 2002.

Matthew Rimmer. *Myriad Genetics: Patent Law and Genetic Testing*, Department of Health, Canberra, April 2002.

Matthew Rimmer. *Myriad Genetics: Patent Law and Genetic Testing*, ACIPA Seminar Series, Canberra, March 2002.

Matthew Rimmer. *Blame It On Rio: Biodiscovery, Native Title, and Intellectual Property*, Presentation to the Department of Prime Minister and Cabinet, Canberra, March 2002.

Matthew Rimmer, *Blame It On Rio: Biodiscovery, Native Title, and Intellectual Property*, Presentation to the Native Title Division, Attorney-General's Department, Canberra, January 2002.

Antony Taubman. *The Doha Agreement and Access to Essential Medicines*, ACIPA Seminar Series, Canberra, July 2002.

Antony Taubman. *Compunctious Visitings of Nature: Access to Genetic Resources*, Department of Prime Minister and Cabinet, March 2002.

Antony Taubman. *Traditional Knowledge And Intellectual Property: Issues In The Use Of Indigenous Resources For Research And Bioprospecting*, University of Wollongong, March 2002.

Antony Taubman. *Collective Management of TRIPS: APEC Cooperation on Intellectual Property Workshop on the Harmonisation of Intellectual Property Law in the EU, ASEAN and APEC*, Centre for Southeast Asian Law, Darwin, March 2002

Antony Taubman. *International Influences on Australia's IP Law*, Federal Court Forum on IP Law, Sydney, March 2002

Antony Taubman. *Compunctious Visitings of Nature: Access to Genetic Resources*, Native Title Division, Attorney-General's Department, January 2002.

## Evidence of Impact of Research

In 2002, Robert Burrell's work was cited on numerous occasions in academic journals in Europe and the United States, by judges in Australia and New Zealand and before the Court of Appeal in the UK. His work was also cited more than a dozen times in the CLRC report, *Copyright and Contract*. Matthew Rimmer's work was cited in academic journals in Europe, in the Macdonald Visual Arts Guidelines and in the CLRC report, *Copyright and Contract*. Charles Lawson's work was cited in academic journals in Australia and Europe. Brad Sherman's work was cited extensively in academic journals in Australia, Canada, Europe and the United States.

## 6 MEDIA ENGAGEMENTS

November 2002. Dr Matthew Rimmer and Dr Mildred Cho. Interviewed by WIN TV News (Wagga Wagga).

November 2002. Dr Mildred Cho. Interviewed by Anna Salleh, ABC Science Online.

November 2002. Dr Matthew Rimmer. Stem Cell IP Law Patently Unclear – Expert. Interviewed by Judy Skatssoon, AAP National Medical Writer.

November 2002. Dr Mildred Cho. Cancer Capitalists Bad Medicine? By Deborah Smith, *Sydney Morning Herald*.

November 2002 Professor Brad Sherman. Loopholes in New Biopiracy Laws. Interviewed by Anna Salleh, ABC Science Online.

November 2002. Dr Matthew Rimmer. Interviewed by 612 ABC Radio News (Brisbane) and ABC 720 6WF (Perth).

November 2002. Dr Matthew Rimmer and Dr Mildred Cho. Interviewed by WIN TV News (Canberra).

November 2002. Dr Matthew Rimmer. Interviewed by 612 ABC Radio News (Brisbane).

November 2002. Dr Matthew Rimmer. Interviewed by ABC TV News (Canberra).

October 2002. Antony Taubman. Tribes Query Motives of Knowledge Databases by Rex Dalton, *Nature Magazine*.

July 2002. Robert Burrell. Interviewed by Belinda Aucott, ABC Radio National, Undercurrents.

March 2002. Antony Taubman. “What’s In A Name?” in *Optimus*, No. 1, 2002.

## 7 TARGETS FOR 2003

The Centre aims in 2003:

- 1 To maintain emphasis on agriculture and biotechnology while continuing with other intellectual property work;
- 2 To attain an ARC International Linkage Grant;
- 3 To consolidate links with Griffith University, including by conducting more joint research and taking steps towards offering a jointly badged degree;
- 4 To offer a full range of courses in our postgraduate program;
- 5 To establish a series of training programs aimed at organisations involved in the commercialisation of research, particularly in the rural sector;
- 6 To create an ACIPA brochure to distribute at training sessions;
- 7 To hold at least ten training sessions for key stakeholders in the rural sector;
- 8 To secure the Centre's training profile amongst key sector organisations in Canberra, specifically by completing the preliminary phase of ACIPA's training programs in Canberra, and to initiate the next phase of training programs in Brisbane and in key regional centres across Australia;
- 9 To host two conferences and at least twenty seminars;
- 10 To acquire a single domain name and to launch an improved website;
- 11 To attain accreditation from IP Australia for *Trade Marks* and *Patents* courses.