

**The Geneva Declaration:
Intellectual Property and Development
Half Day Symposium**

Friday, 17 June 2005

Program

- 9.00-9.30am **Registration**
Visions Theatre, National Museum of Australia
Lawson Crescent, Acton Peninsula
- 9.30-10.30am **Session 1**
- Chair:** Dr Matthew Rimmer
- Ian Oi:** *Copyright Law, Access to Knowledge, and the Creative Commons*
- Geoff Burton:** *IP and the International Trade in Genetic Resources*
- Tanya Spisbah:** *Knowledge Diffusion or Development Delusion - Technology Transfer in the WIPO Development Agenda*
- 10.30-11.00am *Morning Tea*
- 11.00-1.00pm **Session 2**
- Chair:** Dr Charles Lawson
- Matthew Rimmer:** *Indian Spices: Intellectual Property, Agriculture and Food Security*
- Sasha Courville:** *Protecting the Integrity of Fairtrade Labelling*
- Warwick Neville:** *Patent law, Health Care and Access to Essential Medicines*
- 1.00pm **Close**

The Speakers

Geoff Burton

IP and the International Trade in Genetic Resources

This presentation focuses on the impact of IP issues in the development of an international trading system in genetic resources.

Products derived from genetic resources found in nature generate over US\$100 billion in annual over-the-counter sales. Australia has up to 10% of the world's genetic resources. To date only a small part of that biodiversity has been explored for its commercial potential. Australian governments and Australia's growing biotechnology industry are keen to change this. Australia accordingly has a national interest in creating and participating in an international trading system in genetic resources that encourages research and development and enables it to share in the benefits of biodiscovery.

Intellectual property is recognised as the key mechanism whereby the production, sales and distribution of products derived from genetic resources are owned and managed. Yet for many countries exercising national sovereignty over their genetic resources IP is seen as both a problem and a solution. The background to these conflicting perceptions will be outlined and the creation of the political dynamic driving action at national and international level will be explained. A brief analysis of the issues at play will be provided together with a sketch of the international community's response. This will be followed by examples of changes to countries' domestic IP law introduced in response to pressures coming out of the international debate. The presentation will conclude with some speculation about likely changes to IP management over coming years.

Geoff Burton is the Director for Genetic Resources Management Policy in the Department of the Environment and Heritage and is Australia's National Competent Authority on Access and Benefit-sharing (ABS) under the Convention on Biological Diversity (CBD). In 2001 he led the Australian Delegation to the Convention on Biological Diversity meeting that developed the *Bonn Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising out of their Utilization* and played a significant role in their later adoption by the Convention in April 2002. In 2003 and 2004 he led Australia's negotiations on the Terms of Reference for the development of an international ABS regime. In March 2004 Geoff Co-chaired the APEC Workshop on Trade and the Sustainable Use of Biodiversity focused on the utilization of genetic resources. This year he is leading negotiations on the international regime.

Within Australia, Geoff was instrumental in the development of national policy on the management of Australia's genetic resources and played a key role in the intergovernmental agreement between all nine Australian governments to implement the *Bonn Guidelines*. He is also responsible for the development of federal legislation to manage genetic resources in federally managed areas and for cross-government coordination.

A history graduate of the University of Western Australia, Geoff Burton has had a diverse public service career ranging over, governance reform in China and countries in transition, environment and heritage conservation and management, aircraft accident investigation, law enforcement oversight and public administration reform and accountability. He is married with three children.

Dr Sasha Courville

Protecting the Integrity of Fairtrade Labelling

The Fairtrade Certification and Labelling system enables an alternative form of international trade, characterized by fair prices and long-term trading relationships, empowering smallholder producer groups and disadvantaged workers in developing countries to build development capacity through trade. The International Fairtrade label on a product's packaging is the consumer's guarantee that Fairtrade standards have been met and that the benefits really do reach the farmers and workers.

The presentation will first provide an overview of the Fair Trade Movement and the international Fairtrade certification and labelling system including its standards, conformity assessment system, decision-making structures and impacts on the ground for smallholder producers and workers in developing countries. The use and limitations of trademark law to protect the integrity of the Fairtrade labelling system will then be outlined. Ironically, the success of Fairtrade Labelling in mainstreaming the concept of fair trade has led to new challenges that potentially threaten the future of the movement. These include threats from 'lower benchmark' Corporate Social Responsibility initiatives funded and influenced largely by multinationals that seek to marginalise Fairtrade labelling as a nice market option only. A second challenge is the interest by governments, including France and the EU, in establishing their own definitions of Fair Trade. The presentation will conclude with a discussion of the implication of such challenges and identification of possible ways forward to address them.

Sasha Courville is a Research Fellow at the Regulatory Institutions Network (RegNet) of the Research School of Social Sciences at The Australian National University. Sasha's research interests include exploring relationships between private and governmental regulatory frameworks for corporate social and environmental responsibility, sustainability tools to link sustainable production and sustainable consumption and building synergies between different corporate social and environmental tools. In linking theory with practice, Sasha is involved with a number of Australian and international initiatives in the areas of the regulation of organic agriculture, ensuring credibility of private certification systems and supply chain relationships, including their accessibility for small scale producers in developing countries. She recently finished coordinating the Social Accountability in Sustainable Agriculture (SASA) project of four international social and environmental verification initiatives (SAI, FLO, SAN and IFOAM) that examined how to improve social auditing methodologies and standards as well as fostering convergence between the four initiatives. She is the Chairperson and founder of the Fair Trade Association of Australia and New Zealand, the regional fair trade movement's platform, with links to international initiatives such as the Fairtrade Labelling Organizations International (FLO). Sasha holds an undergraduate degree (environmental studies) from York University in Canada, a masters degree (development economics) from the London School of Economics and a PhD from the School of Resources, Environment and Society, ANU.

Dr Warwick Neville

Patent Law, Health Care and Access to Essential Medicines

The Geneva Declaration can rightly be interpreted as a 'call to arms' by which nations and individuals are challenged to take account, in a new and concerted way, of the trials and tribulations that beset humanity and which, thus far, have been insoluble by the economic prosperity of a relatively few western countries. The Declaration seeks to shift the focus from commercial rites to the rights of the human person and the rights of the community. A significant but often ignored right in this regard is the "right to health".

Using the bifocals of history and ethics we will consider a jurisprudence of health, firstly as that has been interpreted by successive Australian Governments. In particular, we will look at the five Acts passed in the 1940s (two of which were successfully challenged in the High Court), plus a constitutional amendment in 1946, that ultimately led to the establishment of the pharmaceutical benefits scheme.

Secondly, we will look briefly at other statutory enactments (e.g., the *Therapeutic Goods Act* and the *National Health Act*) to see how they constitute part of the jurisprudence of health in Australia.

Thirdly, we will consider the historical foundations of the patent system, especially its focus on the “common good” and the sharing of knowledge. This should enable us to critique how the current focus, and use, of the patent system is often distorted so as to ensure that knowledge, notably about the manufacture of medicines, is shielded from both the community and other researchers, as well as being a tool of distorted economic enrichment.

Warwick Neville is the holder of an ARC doctoral scholarship in the Law Program of the Research School of Social Sciences at The Australian National University (ANU). He is a deputy Director of the Health and Globalisation Project the principal researchers of which are Dr Thomas Faunce and Professor Peter Drahos (ANU) and Professor David Henry (The University of Newcastle). He holds degrees in arts and law from the The University of Sydney. For a number of years he was a commercial litigation partner with a prominent Sydney law firm. He has conducted litigation before the Privy Council in maritime law and economic loss, and more recently he has been responsible for prominent litigation before the High Court in matters involving IVF and the rights of the child. He also holds post-graduate degrees in moral theology from Washington DC and Rome. For the past 12 years he has worked in public policy as well as conducting various research projects. He has written extensively on bioethical issues including the Human Genome Project, genetic privacy and non-discrimination, gene patents and human health, and cloning and stem cells. He has appeared regularly before parliamentary committees on these and other matters.

Ian Oi

Copyright Law, Access to Knowledge, and the Creative Commons

Developments in copyright law, technology and content distribution practices can simply price out much of the world’s population from access to developed nations’ publishing output. To authors, that means an untapped readership. To economists, it means ‘deadweight loss’. To human rights advocates and educators, it is a tragedy.

The Creative Commons movement was founded in 2001 in the United States, to promote the re-use of creative works and other subject-matter protected by copyright, by empowering authors and audiences. A single goal unites Creative Commons’ current and future projects: to build a layer of reasonable, flexible copyright in the face of increasingly restrictive default rules. This approach is exemplified by the motto “Some Rights Reserved”. In this way, Creative Commons uses private rights to create public goods. Creative Commons has since developed into an international movement – the iCommons – with projects initiated in over 40 jurisdictions, including in South America, Eastern Europe, Africa and Asia.

This presentation describes the relevance and application of the Creative Commons movement to the issues faced by developing nations regarding their access to knowledge. It covers the historical and philosophical context of Creative Commons as it relates to developing nations, and current Creative Commons initiatives to make it easier to expand access to knowledge and support development in those nations.

Ian Oi is a special counsel of Blake Dawson Waldron in Canberra who focuses on information technology, communications, intellectual property and cyberlaw matters. Amongst other things, Ian has a special interest in open source software and open content development and distribution issues, and advises Australian Government and private sector clients in this area. Ian is also a co-project lead for the iCommons Australia project, which has established the Creative Commons presence in Australia. He is a member of the Management Committee of the Copyright Society of Australia and a member of the Advisory Board for the Centre for Media and Communications Law at The University of Melbourne. Recent presentations by him have covered topics such as a framework for distribution of Open Source software by government in Australia (Open Computing in Government conference, Canberra, April 2005); challenges and opportunities arising from the interaction of open source software and Creative Commons (Australian Computer Society seminar, Sydney, May 2005) and comparative US, Canadian and Australian legal positions on online contracting and licensing (Victorian Society for Computers and the Law seminar, Melbourne, May 2005). Ian was awarded the 2001 Marcus B. Finnegan Memorial Award for his writing on comparative moral rights when studying for a Master of Laws in Intellectual Property Law at the George Washington University, Washington DC. Ian was also awarded the 2001 GC O'Donnell Copyright Essay Prize by the Australian Copyright Council for his analysis of American copyright in Australian cyberspace.

Dr Matthew Rimmer

Indian Spices: Intellectual Property, Agriculture and Food Security

This seminar focuses upon India, a key actor in international debates over intellectual property, agriculture, food security, and development.

India has been an innovator and a radical maverick in domestic law reform, passing *The Protection of Plant Varieties and Farmers' Rights Act 2001*. This hybrid legislation has unique features – as well as a traditional scheme to protect plant breeder's rights, there is recognition of communal ownership of plant varieties; protection for farmers' rights and researchers; a scheme for access to genetic resources and benefit sharing; and a ban on the use of terminator technologies. There has been much debate as to whether this legislative regime is compliant with the TRIPS Agreement.

India has played an instrumental role in overseas jurisdictions in opposing patents, which have claimed national genetic resources. In 1997, an Indian Government agency filed a re-examination request to the US Patent and Trademark Office asking it to revoke a patent claiming the use of tumeric to promote blood vessel growth in wound healing, again on the grounds that such techniques were well-known in traditional Indian medicine. Similarly, in 2000, the Indian Government applied to the US Patent and Trademark Office for the re-examination of a patent sought by Texas firm Ricetec in relation to Basmati Rice. In 2004, the European Patent Office announced that RAGT Genetique SA had withdrawn a patent application in respect of soft-milling wheat, which had been controversial because it had been derived from Naphal wheat. In 2005, the European Patent Office revoked a patent on an anti-fungicide product derived from the neem tree, which had been granted to US Department of Agriculture and biotechnology company W R Grace.

India has also been an interested participant in the debate over international trade and geographical indications. The Ministry for Commerce has obtained a certification trade mark in relation to 'Indian Spices' in the US Patent and Trademark Office. India enacted the *Geographical Indications of Goods (Registration & Protection) Act 1999*, taking an expansive view of how geographical indications are defined. It has circulated a paper in the TRIPS Council of the World Trade Organization justifying the necessity for extension of higher protection to the region-specific products of developing countries, such as 'Basmati Rice', 'Darjeeling Tea', 'Kerala Spices', 'Alphanso Mango', and 'Kanchipuram Silk Saree'.

Matthew Rimmer is an Associate Director of the Australian Centre for Intellectual Property (ACIPA) and a Senior Lecturer in Law at The Australian National University. He holds a Bachelor of Arts with Honours and a University Medal in literature, and a Bachelor of Laws with Honours from The Australian National University. Matthew received a Doctorate of Philosophy from the School of Law at The University of New South Wales for his thesis "The Pirate Bazaar: The Social Life of Copyright Law". He has published widely on copyright in journals in Australia, Europe, and the United States.

Matthew is a chief investigator in an ARC Discovery Project, 'Gene Patents In Australia: Options for Reform'. He has published in patent law, access to genetic resources and plant breeder's rights. His work has been featured in *Australasian Science*, the *Bio-Science Law Review*, the *European Intellectual Property Review*, and the *Journal of Law and Medicine*.

Tanya Spisbah

Knowledge Diffusion or Development Delusion - Technology Transfer in the WIPO Development Agenda

The issue of technology transfer has been a topic of debate in the international arena for decades, however it has gained increasing prominence since the World Trade Organisation (WTO) came into existence on 1 January 1995. Article 7 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) articulates that the 'protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology'. Developing countries, notably Brazil, Argentina and India, interpreted this 'objects clause' to be an obligation on developed countries to transfer technology to developing countries in exchange for their commitments to stark increases in intellectual property protection within their respective domestic legal frameworks. This issue was revisited with vigour at the 4th Ministerial Conference at Doha in November 2001 in which developing countries demanded 'implementation' of articles 7 and 8 of the TRIPs agreement. Whilst recognition has been made within this purview with respect to intellectual property and access to medicines as part of the public health agenda, little headway has been made in the transfer of technology from developed countries to developing and least developed countries in other industries. Recently, developing countries have shifted their lobbying on this issue to the World Intellectual Property Organisation (WIPO) and, on 4 October 2004, the General Assembly of WIPO agreed to adopt a proposal offered by Argentina and Brazil on the 'Proposal for the Establishment of a Development Agenda for WIPO'. Technology transfer is a high priority on this agenda.

This paper does not address the ethical questions of whether or not technology transfer should take place, but rather address definitional issues about what 'technology transfer' is and, by implication, what it is the developing countries are asking for. The paper will then assess the international fora in which this issue has been raised to date, and attempt to identify what can be achieved through recourse to these respective fora and, more importantly, what is actually being sought.

Tanya Spisbah is currently assistant director in the International Policy Section of IP Australia. She holds a Bachelor of Arts and a Bachelor of Laws with Honours from The Australian National University. Her honours thesis, entitled 'Does Article 7 of TRIPS Ensure Technology Transfer in a Manner Which Promotes the Interests of Developing Countries?' focused on technology transfer to least developed and developing countries under the TRIPS agreement. Tanya also has a Graduate Diploma in Legal Practice from Griffith University. She is currently undertaking her Masters of Intellectual Property Law at The University of Melbourne, focusing on IP and development.

Tanya has researched widely on issues concerning international intellectual property law at the Law School of the University of Texas, Austin, at the Università degli Studenti di Siena and for the Australian Centre for Intellectual Property in Agriculture at The Australian National University. She was also the research assistant to Paul McGinness, Technology Partner at Minter Ellison Lawyers, Canberra, on his book *IP Commercialisation: A Business Manager's Companion*. Tanya was formerly a lawyer at Minter Ellison working in the intellectual property area and contributed to Technology News on intellectual property issues. She was also an editor for the International Law Journal of Siena for four years.

In her current position, Tanya is involved in policy making on international intellectual property issues, such as technology transfer and geographical indications, arising out of recent developments in WIPO and the WTO and is involved in advising the government on intellectual property issues on the free trade agreements that are currently under consideration by the Australian government.