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Editorial

Patenting Lives

The implications of changes to international intellectual property law for development and diversity

What is Patenting Lives?

The Patenting Lives Research Project is funded by the Arts and Humanities Research Council (AHRC), United Kingdom, and is examining international intellectual property frameworks and the interactions with social and cultural development, as well as cultural and biological diversity. It involves a core interdisciplinary expert group of intellectual property lawyers, social and cultural anthropologists, political scientists, social scientists, agricultural consultants, and non-governmental organisations.

The strong inter-disciplinarity of the expert group is one of the strengths of this Project. This cross-disciplinary perspective reflects an awareness of the need to address the wider context in which intellectual property law is developed and is applied. This will forge important inter-disciplinary collaborative links with

researchers throughout the United Kingdom. It is also hoped that the project will form the model upon which subsequent international projects can be based.

Overview of Concerns

The impact of international intellectual property standards and their harmonisation, and the obligations upon developing and least developed countries to implement those standards, are key concerns of many significant groups, including indigenous and traditional communities, intellectual property researchers, policy advisors, and non-governmental organisations (NGOs). The Doha Ministerial Declaration (Doha) and the review of the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) Article 27.3(b) (the Article dealing with the protection and patentability of animal and plant life) indicate the importance of these concerns to the agenda of harmonisation of international intellectual property. These issues are closely linked to international concerns with biological and cultural diversity, and the principles of the Convention on Biological Diversity (CBD).

The Patenting Lives Project is considering especially the relevance, of patents on life forms, to other international frameworks, including biodiversity, the environment, and human rights. The project is examining whether intellectual property protection is compatible with the facilitation of social, cultural, and economic development of non-industrialised countries in the context of international principles of trade.

Of particular interest to the project is the relationship between patents and the protection of and access to genetic resources, and the particular impact on developing and least-developed countries, as well as traditional and indigenous groups. In September 2004, the Geneva Declaration on the Future of the World Intellectual Property Organization (WIPO) was launched with over 600 signatures. The Brazil/Argentina proposal on the WIPO Development Agenda was tabled at that meeting and subsequently adopted at the World Intellectual Property Organisation (WIPO) General Assembly. In the context of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO has assumed an emphasis on patent law in the recognition and protection of genetic resources. At the Seventh Session, staged in November 2004, mandatory disclosure of origin and prior informed consent were considered in detail in the context of patent law and industry access and commercialisation, and the preference for contractual mechanisms for managing that access was strenuously debated. Subsequent discussions at the Eighth Session, in June 2005, continued to construct the debate over genetic resources in the context of territory over patentable material as distinct from the questions of cultural practice raised by indigenous and traditional knowledge holders.

The Patenting Lives Project is timed to coincide with the significant international discussions currently taking place on this topic, and complements the critical input of NGOs in these discussions, particularly in the context of the Development Agenda and the Access to Treaty discussions.

Aims and objectives

The fact that the project will produce an inter-disciplinary study of the concerns and issues outlined above, gathering anthropologists, sociologists, scientists, economic

and legal policy experts, and intellectual property experts may indeed be a significant contribution made by the project to the research literature on these issues.

The working materials produced by the expert group will outline the major concerns and observations, and will provide an important resource for other researchers to consult in the course of work in this area. Participants will also produce papers towards a collection to be edited by the project manager, developing and communicating the broader outcomes and ongoing examination throughout the project, and situating these developments in the context of related concerns, including technology transfer, access to technology (including medicines), and management of local resources in a global context of intellectual property trade.

The rationale is to disseminate the research as broadly as possible because of its very contemporary relationship to the developments in international intellectual property instruments, therefore making it of significant interest to others approaching these recent issues and reforms.

Research context

The urgency of these discussions for developing countries should not be under-stated. It is essential to understand and address the impact of these anticipated reforms for developing countries and to appreciate the impact of international harmonisation upon local resources. This will include related international instruments and agencies, including the CBD and International Union for the Protection of New Varieties of Plants (UPOV), and the need to consider the context for protection more widely, addressing cultural and social development and community capacity.

Given the current and rapid developments in this area, and the considerable significance for developing and least developed countries, it is critical that research is committed to the thorough and efficient dissemination of material regarding these amendments, its expeditious publication of comprehensive peer-reviewed research, and concrete policy and socio-legal conclusions drawn. While there are competent experts researching in this field, the major objective of this project is to assemble this expertise and to concentrate on addressing these issues and developments specifically in several significant inter-disciplinary yet legally relevant documents.

This project will enhance and develop this kind of inter-disciplinary approach to these critical issues and will ensure diversity in the academic response to these legal questions. For these reasons, the outcomes of this project will be of significant interest to intellectual property experts and stakeholders, policy advisors, sociologists, anthropologists, scientists, NGOs, as well as indigenous and traditional groups, and representatives from developing and least developed countries.

Research method

The project launched with the expert meeting of 11 February 2005. This meeting gathered experts and stakeholders in intellectual property, policy advisors, representatives of NGOs, political scientists, and anthropologists. This meeting provided an important opportunity to discuss the details of the research towards the collaborative edited collection. Most significantly, the assembling of experts across diverse but related fields reflects the objectives of achieving a breadth and integrity of

the collaboration in this respect, as well as the relevance of the research across to the widest range of interested persons and groups.

At this initial meeting, the form of materials to be disseminated was considered.

The meeting also commenced work on producing basic resources which will be collaboratively edited and re-drafted through a distributed editing process, using a discussion list for participants.

Participants

- Dr Johanna Gibson, QMIPRI
- Michelle Childs, Consumer Project on Technology (CPTech)
- Professor Carlos Correa, Buenos Aires
- Dr Graham Dutfield, QMIPRI
- Dr Gail Evans, QMIPRI
- Vera Franz, Open Society Institute (OSI)
- Frederick Friend, Open Society Institute (OSI) / Joint Information Society Council (JISC)
- Andrés Guadamuz, AHRC Research Centre for Studies in Intellectual Property and Technology, University of Edinburgh
- Dr James Leach, Social Anthropology, Cambridge
- Paul Leonard, IP Institute, London
- Professor Chris May, Political Science, Lancaster
- Dr Andrew Moutu, Social Anthropology, Cambridge
- Sisule Musungu, South Centre, Geneva
- Dr Paul Oldham, CESAGen, Lancaster
- Professor Marilyn Strathern, Social Anthropology, Cambridge
- Geoff Tansey, Independent Consultant, DIFID and QUNO
- Dr Brian Wynne, CESAGen

Conference

A conference based upon the Project work, entitled “Patenting Lives,” is taking place in London, 1-2 December 2005. Attracting speakers from around the world and from diverse backgrounds, including government, industry, academia, NGOs, and activists, this conference will attempt to showcase the various responses to these questions, including what may be considered non-technical or other responses. To that end, the conference has encouraged contributions from activists as well as artistic contributions, in order to characterise the breadth of the public debate and the penetration of these concerns into everyday life. The objective is to try and understand public responses to life patents and to understand the relationship between public perceptions, the creation of the market, and environmental questions. It is this

interaction that is of particular interest to the work we are doing, and will be particularly relevant at this conference.

Web-Site – www.patentinglives.org

A web-site has been created, www.patentinglives.org, upon which developments in this research group are posted. Towards achieving public input, the discussions in the expert meetings are producing working materials which are disseminated through the project web-site and through discussion lists. Further, the conference papers will be disseminated via the web-site as well as collected in a final edited collection. More details of the conference, including registration information, abstracts, and the forthcoming program, are available on the web-site

Resource Book

The Research Group is also currently producing a resource book, which will be available for downloading from the web-site or in hard copy upon request. To summarise briefly, this work will include an extended glossary, in addition to definitions and explanations provided through case studies and examples throughout the text. Each chapter will also include lists of resources, useful sites and links, and so on, in view of its intended value as a resource book. The book will have an anticipated audience of non-specialist readers, policy-makers, students, and wider. And examples and case studies will be drawn from, and relevant to, both developing and developed countries. The overall text will also make strategic links with current international activities, including civil society and intergovernmental processes. As the draft of the resource book progresses, it is anticipated that we will release the book as a draft version “discussion paper,” inviting comments by an agreed deadline, in order to ensure adequate feedback from prospective and possibly unanticipated “audiences.”

The basic contents of the resource book will include an introduction to the history of life patents and overall issues, political, economic, and consumer aspect, concepts of the public interest and public goods, human rights concerns, international intellectual property systems and TRIPS, the development dimension and TRIPS-plus protection through bilateral agreements, access to information, and alternative models and systems of open access.

It is anticipated that the research will be of key interest not only to intellectual property practitioners, stakeholders, researchers, and indigenous and traditional groups, but also to other experts, including socio-legal researchers, sociologists, political theorists, and anthropologists.

Conclusion

Dissemination of these issues at this time is crucial, because many are being re-shaped and reformed in the context of significant mobilisation of the public interest through NGO activity in particular. Expert legal opinion is required at this very important historical juncture. Therefore, the widest possible dissemination of the results will be sought, because there is a distinct need at this moment, in the history and development of international intellectual property and of WIPO itself, to provide coherent, cogent, and relevant considerations of and solutions to these questions. This project is of critical international legal and political significance, and is timed to make the most

meaningful contribution to the key developments and academic debate in this very volatile and often controversial legal area.

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