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WIPO RE:SEARCH LAUNCHES

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DOMAIN NAME SPACE EXPANDS

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WIPO RE:SEARCH - IP AT WORK FOR SOCIAL BENEFIT

A pioneering initiative that promises to transform the public health landscape in developing countries was launched at WIPO on October 26, 2011. WIPO Re:Search is an open innovation research platform that brings together public and private-sector partners to catalyze research into the discovery, development and delivery of drugs, vaccines and diagnostics for neglected tropical diseases (NTDs), malaria and tuberculosis (TB). According to the World Health Organization (WHO), NTDs are largely a symptom of poverty and disadvantage and blight the lives of over a billion people around the world. Hardest hit are the poorest of the poor often living in remote rural areas, urban slums, shantytowns or conflict zones. These diseases maim, disfigure, debilitate and often claim the lives of those affected. Lacking political clout and the means to buy treatments, the needs of afflicted communities have largely been ignored. WIPO Re:Search endeavors to fill the gaps in much-needed research by putting IP to work for social benefit. WIPO Magazine explores the promise this groundbreaking platform holds in reshaping the global public health landscape.

WIPO Re:Search promises to accelerate the development and delivery of new and more effective drugs to treat NTDs, malaria and TB

The objective

The prime objective of WIPO Re:Search is to boost research into NTDs, malaria and TB – to accelerate the discovery, development and delivery of better and more effective therapies for those who need them. For a number of these diseases, effective and safe medicines are available, although increasing drug resistance is a problem. For many others the available treatments are archaic, even toxic. Against this backdrop, there is a huge need for continued research into more effective therapies to treat these diseases.

available to the global research community on a royalty-free basis to help accelerate the development of new and improved therapies. This brings the energy typically expended on diseases affecting the developed world to bear on NTDs. WIPO Re:Search is “a groundbreaking example of how a multi-stakeholder coalition can put IP to work for social benefit,” observed WIPO Director General Francis Gurry at its launch.

How it works

WIPO Re:Search has three main components:

- A fully searchable public database (www.wiporesearch.org), hosted by WIPO, containing information about available IP assets, information and resources;
- A Partnership Hub managed by BIO Ventures for Global Health (BVGH) to foster partnerships between providers (e.g., pharmaceutical companies) and NTD researchers, and provide information about available licensing and research collaboration opportunities, networking possibilities and funding options;
- Services to support and facilitate licensing negotiation, and to identify research needs and opportunities with technical advice from the World Health Organization (WHO).



WIPO Re:Search is an unprecedented collaboration bringing together a broad coalition of public and private-sector institutions, including leading pharmaceutical companies, publicly-funded medical research institutes and councils, and universities. All partners have agreed to make valuable intellectual property (IP) assets and know-how

To become a member of WIPO Re:Search – as a user, provider or supporter – an organization must adhere to the project’s Guiding Principles. These include a commitment that IP accessed through WIPO Re:Search will be licensed on a royalty-free

basis for research and development (R&D) on NTDs in any country; and on a royalty-free basis for the sale of NTD medicines in, or to, least developed countries (LDCs).

The database includes a wide variety of contributions relevant to NTDs, malaria and TB, including:

- compounds and compound libraries;
- unpublished scientific results;
- regulatory data and dossiers;
- screening and platform technologies (i.e., tools used in the drug discovery process);
- expertise and know-how; and
- patents and patent rights.

WIPO Re:Search also offers NTD researchers in developing countries access to the research facilities of and scientists working in leading pharmaceutical companies and laboratories. "This is an extremely important step in the technology transfer process," noted Mr. Gurry.

In sum, with WIPO Re:Search, researchers working on a new drug for TB, for example, that hit a roadblock can access the resources and know-how of scientists working in pharmaceutical companies and benefit from their experience and insights. "This can significantly reduce some of the error in the trial and error" that characterizes the drug development process and lead to breakthroughs more rapidly, noted Don Joseph, Chief Operating Officer of BVGH.

Advantages

WIPO Re:Search offers great promise in terms of accelerating R&D of more effective therapies to cure or treat these diseases. While many have tackled NTDs in the past with significant breakthroughs, WIPO Re:Search is unprecedented in terms of the broad range of partners it brings together from across the globe. At its launch, WIPO Re:Search counted 20 members from both developing and developed countries, including 8 leading pharmaceutical companies. Additional members are expected to join in the future. "It is a powerful mechanism for trying to enable cross-connections that we hope will generate innovation," Mr. Gurry observed. "With that scale comes more information, more critical mass that the consortium can therefore develop," noted Duncan Learnmouth, Senior Vice-President for Developing Countries and Market Access at GlaxoSmithKline (GSK).

A second clear advantage of WIPO Re:Search is the access that it offers NTD researchers. This initiative is not

just about formal IP such as patents. It makes available a wide range of information, studies and data on clinical trials providing researchers with invaluable insights into what has worked and what has not. Sharing research means that "some of the things that have been learned by trial and error can be better understood by people who want to further the research," noted David Brennan, CEO of AstraZeneca and President of the International Federation of Pharmaceutical Manufacturers and Associations (IPFMA).

WIPO Re:Search breaks new ground in that it is designed to foster connections, facilitate new research partnerships and unlock valuable information for use by the global research community. "Great science is all about making the right connections to the right knowledge," noted Mr. Learnmouth. WIPO Re:Search is an "enabling mechanism" that seeks to leverage the collaboration offered by coalition partners. Through WIPO Re:Search "we can support collaborators and... really harness much greater innovation in this area," Dr. David Jefferys, Senior Vice President, Global Regulatory Affairs, Eisai Pharmaceuticals, said. "It is the wide range of supporters, partners and potential collaborators in this initiative that really differentiates it... and can make the greatest difference," observed Ms. GERALYN Ritter, Vice President, Global Public Policy & Corporate Responsibility at Merck & Co., Inc.

The Partnership Hub managed by BVGH will guide researchers through available materials, match them with available resources and help foster new partnerships. "This is terribly important, because we all know that innovation comes not from a single person operating in isolation but from the combination of forces and the connections that are established," Mr. Gurry observed, "the Partnership Hub will be extremely important in this regard."

Pharma's commitment

Highlighting the commitment of the pharmaceutical industry to WIPO Re:Search, Mr. Brennan (AstraZeneca) said, "the innovative pharmaceutical industry really does have a significant role to play in addressing unmet medical needs and to increase access to proprietary information that will help advance NTD Research."

"I think that WIPO Re:Search has the potential to have a very real impact on global health," and "shows that IP and in particular patent rights... do not have to be a barrier to access to healthcare," he said.

AstraZeneca has agreed to make available to WIPO Re:Search its entire patent estate comprising some



NTDs and conditions covered by WIPO Re:Search

Buruli Ulcer
 Chagas disease (American trypanosomiasis)
 Cystercercosis
 Dengue/dengue hemorrhagic fever
 Dracunculiasis (guinea-work disease)
 Echinococcosis
 Endemic treponematoses (yaws)
 Foodborne trematode infections
 Clonorchiasis
 Opisthorchiasis
 Fascioliasis
 Paragonimiasis
 Human African trypanosomiasis
 Leishmaniasis
 Leprosy
 Lymphatic filariasis
 Onchocerciasis
 Rabies
 Schistosomiasis
 Soil transmitted helminthiasis
 Trachoma
 Podoconiosis
 Snakebite
 Malaria
 Tuberculosis

WIPO Re:Search currently includes the following providers:

Alnylam Pharmaceuticals
 AstraZeneca
 California Institute of Technology
 Center for World Health & Medicine
 Drugs for Neglected Disease initiative
 Eisai
 Fundação Oswaldo Cruz (Fiocruz)
 GlaxoSmithKline
 Massachusetts Institute of Technology
 Medical Research Council (South Africa)
 Medicines for Malaria Venture
 MSD (Merck & Co., Inc.)
 Novartis
 PATH
 Pfizer
 Sanofi
 Swiss Tropical and Public Health Institute
 University of California, Berkeley (USA)
 University of Dundee (UK)
 U.S. National Institutes of Health

1,400 patent families and over 25,000 patents granted or pending, and associated know-how. Mr. Brennan explained, "our view is that by contributing as much as we can from our patent estate, we are more likely to contribute to an ultimate solution." He added, "while some of our IP is not intuitively oriented towards NTDs, it may be that some researchers will find some value in it that we would not necessarily find because we weren't looking for it."

Dr. Robert Sebbag, Vice President, Access to Medicines, Sanofi, explained that the pharma industry's role was not simply to be "a provider of drugs, but a partner of public health". The industry's expertise and know-how make it an important and "mandatory partner". He elaborated that the industry was also driven by enlightened self-interest and pragmatism, in terms of its image, corporate social responsibility and future growth prospects. "There is nothing wrong with self-interest as long as it is enlightened and in the interests of global health and... of improving equity," noted WHO Director General Margaret Chan, who welcomed the WIPO Re:Search initiative.

Pfizer's Chief IP Counsel Roy Waldron said, "access to information through collaboration is the only way that we will get to the next generation of drugs." For him, WIPO Re:Search is "a testing ground for the next stage of innovation and how we look at the innovative process of drug discovery. If this is a successful model, it can be broadened to other fields... to the field of drug discovery in general."

The potential for WIPO Re:Search to stimulate innovation within the pharmaceutical industry was also hinted at by Mr. Brennan who said that his company's goal, "is always to try to improve health for patients and to try to bring the benefits of that health improvement to our stakeholders, to our business and to society, and I think that WIPO Re:Search is going to help us as a company, as well as an industry in reaching that goal."

Building R&D capacity in developing countries

In the spirit of WIPO's Development Agenda, WIPO Re:Search promises to strengthen the R&D capacity of medical research institutes in developing

countries, enabling them to set their own research agendas to meet urgent local health needs. As noted by Mr. Learmouth, Africa, for example, bears 24 percent of the world's disease burden with just 3 percent of the world's healthcare resources and just 1 percent of the world's healthcare budget.

Highlighting the opportunities presented in terms of improving regulatory frameworks and the approval of new medicines, Dr. Ali Dhansay, President of South Africa's Medical Research Council, said, "what is important for Africa... is the process. It's a question of information sharing, skills development, knowledge generation and knowledge integration," he explained. Greater access to knowledge and expertise will enable researchers in developing countries to become more efficient, broaden their own R&D efforts and develop "leads they don't always have the capacity to pursue," he said.

WIPO Re:Search has, from the outset, involved institutions from emerging and developing countries. "It is very important that the people who are going to be using this facility are involved right from the beginning and that you also... get their perspective with a view to improving in the future," noted Ambassador Mboya Okeyo of Kenya. He and Ambassador Lumbanga of Tanzania urged others to participate and support WIPO Re:Search in its mission to promote R&D in relation to NTDs, malaria and TB and to get new and improved treatments to those who need them. WIPO Re:Search, they said, is a critical first step, but cannot offer "a complete solution", as much depends on what recipient countries themselves do in improving public health capacity.

Managing expectations

The process of discovering, developing and delivering drugs is a notoriously risky affair, taking up to 15 years or more and costing billions of dollars. In spite of the huge R&D investment made by research-based pharmaceutical companies, just a few new therapies ever reach the market; hence the need for IP protection to enable them to try to generate a return on their investments and to fund future R&D. Amid the strong commitment and enthusiasm expressed in terms of the platform's potential to expedite work on new therapies for NTDs, malaria and TB, many urged caution. "We must avoid the



Photo: WHO/NTD/Lester Chisuso

temptation to look for instant results," counseled Dr. Chan. Similarly, Roy Waldron (Pfizer) cautioned that outcomes "will be guided purely by science, and we will need to exercise patience and persistence in our quest for new and improved therapies for NTDs, malaria and TB."

Technician analyzing sample in a schistosomiasis survey in Mauritania, 2008

The way forward

The initiative's future success will hinge on the sustained, long-term engagement of all partners, as well as a commitment to transparency and accountability, which are key to inspiring confidence and trust in the mechanism. Dr. Chan underlined the need for "timelines and markers" to measure WIPO Re:Search's contribution to "the overall R&D landscape."

WIPO Re:Search represents a new approach to fostering R&D and promises to "become central to attracting R&D interest in NTDs that will eventually lead to new therapies and prophylactics," noted Alissa Harbin, Head of Group IP Counsel at Novartis.

Notwithstanding the undoubted challenges ahead, as expressed by Mr. Gurry, WIPO Re:Search "is a wonderful opportunity for capacity-building in R&D and innovation, sharing and creating connections which can in turn lead to the advancement of knowledge and discoveries."

THE GLOBAL IMPACT OF THE AMERICA INVENTS ACT

On September 16, 2011, U.S. President Barack Obama signed into law (P.L. 112-29) the Leahy-Smith America Invents Act. The new law was presented to the President after six years of tireless efforts by Congress, the Administration, and stakeholders to craft a bill that makes the most significant reforms to the nation's patent system in at least 60 years. **Albert Tramposch**, Director of International and Governmental Affairs at the United States Patent and Trademark Office (USPTO), discusses the implications of this milestone in the history of the U.S. patent system.

The America Invents Act creates an innovation-friendly, collaboration-friendly and inventor-friendly patent system that will reduce costs, level the playing field for businesses small and large, and spur economic growth. The new law enables a better-resourced USPTO to grant patent rights with greater speed, predictability, clarity, and quality. We believe it also represents the optimal harmonized patent system that international negotiations have aimed for over the last 25 years.

Over the decades, patent law harmonization negotiations have contemplated a system with two major elements: (1) first-to-file and (2) a 12-month grace period (e.g., the draft Patent Law Treaty of 1991). On March 16, 2013, the U.S. will transition to a first-to-file (FTF) system to provide the transparency that banks, venture capitalists, and other investors need to invest in new businesses while establishing the stability that companies need to bring new products to globalized markets. Congress recognized the significance of a transition to first-to-file and stated in section 3(p) of the America Invents Act:

"It is the sense of the Congress that converting the United States patent system from 'first to invent' to a system of 'first inventor to file' will improve the United States patent system and promote harmonization of the United States patent system with the patent systems commonly used in nearly all other countries throughout the world with whom the United States conducts trade and thereby promote greater international uniformity and certainty in the procedures used for securing the exclusive rights of inventors to their discoveries."

Along with a transition to a first-to-file system, the America Invents Act also provides for an improved grace period, which will help secure investment. Under the current system, an inventor who discloses an invention to a potential buyer or investor without entering into a confidentiality agreement

risks losing patent rights. The new provisions allow the inventor to engage in critical negotiations with potential buyers or investors without fear of losing their right to a patent.

Provisional U.S. applications will continue to be available. Since 1995, inventors who wish to preserve their rights in their invention while evaluating its potential can do so by submitting a provisional application and paying a nominal fee (currently US\$250 or US\$125 for small entities), thereby establishing an internationally recognized priority date. The inventor may, within a 12-month period, convert that provisional application into a full U.S. application if the invention is worth pursuing.

The America Invents Act further harmonizes U.S. law by broadening the definition of prior art, eliminating the Hilmer doctrine and virtually eliminating the best mode requirement¹. The reform provides that prior art under U.S. law includes non-printed disclosures, including oral disclosures, made available to the public anywhere in the world. New provisions also provide an incentive for early disclosure (i.e., one year or less before the effective filing date) by insulating inventors who disclose their inventions against third party disclosures, if the inventor's disclosure precedes that of a third party. The elimination of the Hilmer doctrine ensures that patents and published applications filed in the U.S. are prior art as of the earliest effective filing date to which they are entitled to claim a right of priority. Additionally, the earliest effective filing date is no longer limited to only U.S. filings; it can now also originate from a foreign filing. The new U.S. law also eliminates the best mode requirement as a defense in infringement actions in court and USPTO post-grant review. As is true with all U.S. laws, these provisions will be subject to judicial interpretation.

The new law aligns U.S. prior user rights with the prevailing international norms by expanding the

¹ 35 U.S.C. 112 requires that the specification "set forth the best mode contemplated by the inventor of carrying out his invention."

doctrine to certain inventions without subject matter limitation. As the U.S. transitions to an FTF system, the need for expanded prior user rights increases. The America Invents Act provides a prior use defense to an action for infringement if the accused infringer commercially used the subject matter one year before the effective filing date and the disclosure was made within the grace period.

Procedural reforms will improve quality by allowing third parties to submit information related to pending applications, thereby increasing the likelihood that examiners have access to the best available prior art before deciding to allow a patent on the claimed invention. Additionally, the establishment

of innovation by independent inventors and universities, various fees are reduced for micro-entities². Transitioning to an FTF system will also support small businesses in attracting the investments they need to startup their operations and bring new products to market.

With adoption of the America Invents Act, the U.S. will implement the optimal 21st century harmonized patent system that international negotiations have contemplated for the last 25 years. As innovators seek to tap into global markets, it is imperative that the international patent system provide a consistent, cost-effective means to obtain reliable patent rights in multiple jurisdictions. The America

² Pursuant to section 10 of the Act, micro-entities qualify for a 75% discount on fees set or adjusted under the fee setting authority if, *inter alia*, the applicant: (1) qualifies as a small entity; (2) has not been named on more than four previously filed applications; (3) meets the stipulated income restrictions; and (4) meets the stipulated assignment limitations.



Photo: White House

U.S. President Barack Obama signs the America Invents Act September 16, 2011

of various post-patent issuance proceedings will provide a cost-effective, administrative check on the quality of an issued patent for a limited period after its grant. These procedures will serve as an efficient and timely alternative to protracted litigation.

The law supports small businesses and independent inventors by creating a *pro bono* program in conjunction with intellectual property law associations. The law also requires the USPTO to maintain a Patent Ombudsman Program to provide patent filing services to qualifying small businesses and independent inventors. Additionally, to help foster

Invents Act is a leap forward towards harmonization and an important step in achieving a standardized global patent system that spurs job creation and market growth through innovative products and services.

We encourage our global user community to engage in this effort by visiting our implementation website and commenting on the proposed rulemakings: www.uspto.gov/aia_implementation.

SAFEGUARDING CULTURAL HERITAGE –

The Case of the Sacred Wandjina



Delwyn Everard, Senior Solicitor at the Arts Law Centre of Australia discusses the challenges aboriginal communities face in protecting their cultural heritage.

About two meters tall and covered with crudely drawn representations of Aboriginal spirit figures, it sits on the verge of a property in Katoomba in Australia's World Heritage-listed Blue Mountains area. Local Aboriginal residents are disturbed by its presence. Over 4,000 kilometers away in Western Australia, the Worrora, Wunumbal and Ngarinyin Aboriginal nations are distressed and angry at its ongoing public display. Katoomba's nonindigenous community is divided over whether it is art or sacrilege.

Kimberley elder Donny Woolagoodja and local Darug man Chris Tobin in front of the Katoomba sculpture by a nonindigenous artist which is at the heart of the controversy



Photo: Reimer Van de Bunt

The source of this controversy is a work of art created by a nonindigenous artist, on commission for a nonindigenous gallery and business, which has been outspoken in its criticism of Australia's Aboriginal people. The spirit figures depicted on the sculpture are Wandjina, a fact confirmed by the work's title "Wandjina Watchers in the Whispering Stone".

The Worrora, Wunumbal and Ngarinyin Aboriginal people of the remote Kimberley region have been painting Wandjina images for many thousands of years, at sacred rock sites and in caves, on dance totems and bark, and now on canvas and paper. The Wandjina is their supreme creator, the maker of the earth and all upon it. They are recognized as the only Aboriginal nations entitled to depict the Wandjina, a right respected by all other Aboriginal groups. That explains the discomfort of the Blue Mountains Darug people, who respect the cultural totems and laws of the Kimberley nations and are themselves shamed by this blatant disregard of indigenous culture occurring on their traditional lands. Anthropologist and Emeritus Professor Valda Blundell observes:

"Depicting Wandjina is a significant way in which Wandjina-Wungurr people enact their identity as a distinct Aboriginal society and convey this identity to other Aboriginal societies as well as the non-Aboriginal world..."

"The execution and public display of the Katoomba sculpture has not been authorized by Wandjina-Wungurr people. Such an unauthorized portrayal of the Wandjina undermines the very foundation of their society in that it constitutes an attack on the specificity and integrity of their identity and the legitimacy of their cultural and religious beliefs. As an unauthorized depiction of Wandjina, it destabilizes the natural balance of their life-world which is only ensured when their laws and cultural protocols are followed".

The legal issues are complex. The copyright law protecting contemporary individual creative expressions is unhelpful. It treats artwork by an artist who died more than 70 years ago as residing in the public domain and freely available for reproduction. The unknown artists responsible for the ancient and extraordinary rock art of the Kimberleys are long gone. The images on the Katoomba sculpture are not infringing copies of particular artworks by known artists. Rather they are instantly recognizable depictions (albeit distorted and lacking the elegance and power of genuine Wandjina) of the sacred spiritual imagery of a community within which the artist, and those who commissioned him, have no authority. This is an unauthorized misappropriation of an indigenous community's traditional culture and knowledge or indigenous cultural intellectual property (ICIP).

Article 31 of the Declaration on the Rights of Indigenous Peoples² (DRIP), adopted by the General Assembly of the United Nations in 2007, reads as follows :

"1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditio-

¹ Submission of Valda Blundell to the Land and Environment Court, April 27, 2011 (Blundell submission)

² www.un.org/esa/socdev/unpfii/en/drip.html

nal games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights."

While Australia declared its formal support for the Declaration in April 2009, it has since proven difficult to identify how Australian law protects the cultural rights involved. In 2010, when the Mowanjum Artists Spirit of the Wandjina Aboriginal Corporation (representing Worrora, Wunumbal and Ngarinyin artists) first approached the Arts Law Centre of Australia for assistance, it could not identify an obvious remedy. It was not only the sculpture that concerned Mowanjum. The gallery had also held an exhibition of paintings of Wandjina by nonindigenous artist Gina Sinozich entitled "Wandjina by Gina". As with the sculpture, many of the paintings showed Wandjina imagery incorporating mouths. This is particularly offensive to the traditional Aboriginal custodians. Wandjina are regarded as too powerful to be depicted with mouths as their power descends to Earth through the line seen as a nose. Gallery owner Vesna Tenodi had also published a book that was illustrated with the Sinozich images and espoused a thesis that the Australian indigenous peoples were a dying race suffering from spiritual atrophy³. That thesis, the book and the images were also promoted on the gallery's website⁴.

Australia's Trade Practices Act 1974⁵ prohibits misleading and deceptive conduct in the course of trade and commerce. Previously, it had been used to prosecute gallery owners selling art and artefacts purporting to be Australian Aboriginal art but which had, in fact, been created by nonindigenous artists⁶. The Arts Law Centre assisted Mowanjum in submitting a complaint to the Australian Competition and Consumer Commission (ACCC), the statutory body responsible for investigating breaches of the Act, on the basis that the exhibition of Wandjina paintings, the prominent public display of the sculpture outside the gallery, the statements and images on the gallery's website and the accompanying book all amounted to potentially misleading and deceptive conduct that was in breach of the Trade Practices Act, in that it falsely suggested an association with or license by one or more of the three Aboriginal nations and/or Mowanjum. Mowanjum argued that "such activities and the associated

misrepresentations would be likely to confuse, mislead or deceive not only a substantial number of members of our organization (and its respective groups) but numerous other Aboriginal groups and others well familiar with our values and history, including non-Aboriginal people interested in our culture and the acquisition of genuine Wandjina artworks."



Artwork by Worrora artist Donny Woolagoodja

ing. The ACCC determined that it "was unable to conclude that Ms. Tenodi has represented that she has permission to use the imagery, in circumstances where she may not need that permission."

The next step was to complain directly to the gallery owners. It was, however, becoming difficult to assert that the public would be confused or misled into thinking that these Wandjina images



Aboriginal artist Gordon Barung painting Coi Oi Wandjinas & Ungud and his completed work

were sanctioned by the traditional custodians, as the controversy was receiving considerable media attention, making it very clear that Aboriginal groups were bitterly opposed to the gallery's actions⁸. While this focused attention on the dispute, it was a double-edged sword. Indeed, by now Ms. Tenodi's website carried numerous statements to the effect that she did not need permission from the traditional custodians, because she herself was in direct communication with the Wandjina spirits who supported her actions:

"I have the right to do what I do, as given to me by the Those-who-Know, whom you also call



3 Tenodi, *Dreamtime Set in Stone: The Truth about Australian Aborigines*, Anan Press, 2010, page 116

4 www.modrogorge.com

5 Now the Australian Consumer Law

6 Australian Competition and Consumer Commission v Nooravi, [2008] FCA 2021

7 Letter from Mowanjum to the ACCC dated May 10, 2010

8 For example, www.abc.net.au/rn/lawreport/stories/2010/2939168.htm

Wandjinas... I do not speak for Aboriginal people. I speak for Wandjinas, to the Aboriginal people⁹.

- 9 Record of Blue Mountains City Council Meeting, October 12, 2010, page 30
- 10 Consultation Draft Baseline Study for Australia's National Human Rights Action Plan, June 2011, page 20
- 11 National Cultural Policy Discussion Paper, Department of the Prime Minister and Cabinet, 2011, page 14

The hoarding placed around the sculpture is being removed after the decision of the Land and Environment Court. The graffiti reflects the intensity of local feeling generated by the issue

With neither copyright law nor trade practice law providing any relief, help emerged from a surprising quarter. It seemed the sculpture required development approval from the local government body. That process required the Blue Mountains City Council to consider, among other matters, the social impact of the sculpture's public display on the property verge. Fifteen submissions opposing the grant of development approval for the site of the sculpture were filed, including by the Arts Law Centre in its own name and by the Environmental Defenders Office on behalf of both Mowanjum and the Kimberley Aboriginal Law and Culture Centre. The Council's decision to exclude the sculpture from its grant of approval stated that:

"The sculpture contains an interpretation of sacred Aboriginal images that is offensive, disturbing or distressful to some members of Aboriginal and non-Aboriginal communities, including local representatives of those communities, as evidenced in public submissions, and consequently has an adverse social impact and is not in the public interest".



Photo: Rienk van der Buit

In February 2011, Mr. and Mrs. Tenodi appealed that decision to the Land and Environment Court. At the hearing, the Arts Law Centre argued that because the sculpture had been created and displayed in breach of the traditional laws of the Wandjina custodians and in defiance of the wishes of local traditional owners, its display in Katoomba was a public expression of racial, cultural and religious intolerance and, as such, had a substantial

adverse social impact. Powerful and eloquent submissions were made by Gordon Smith Junior, a Ngarinyin man who travelled from the Kimberley region to represent his people and voice their concerns. On June 21, 2011, the Court upheld the Blue Mountains City Council's decision. The result is that the sculpture must be removed.

Ms. Tenodi has criticized the decision and the Arts Law Centre's role as an attack on freedom of artistic expression. The Arts Law Centre is a strong proponent of freedom of artistic and cultural expression and has lobbied against artistic censorship and stricter classification laws. However, fundamental freedoms are validated by rational limits which recognize that a balance must be sought where pursuit of one freedom is at the cost of another. For example, legitimate constraints are placed on freedom of expression by the laws of defamation, criminal laws relating to child pornography and laws concerning racial vilification. In our view, freedom of artistic expression should not be used to justify an indefensible misappropriation and denigration of indigenous culture.

This case highlights the difficulties Aboriginal communities face in upholding their cultural interests, and the challenges of translating political will into practical reality. Limited protection of ICIP is already available as an incident of existing laws – such as where the misuse of ICIP involves misleading conduct in trade or commerce, or copyright infringement. While there is as yet no express legislative protection for ICIP, the importance of protecting and preserving indigenous culture is a vital element of two of the government's current policy initiatives. As part of Australia's commitment to engage proactively with its human rights agenda, a National Human Rights Action Plan is currently being developed that expressly acknowledges the "important international principles" established by DRIP¹⁰. Equally encouraging is the government's recently released Discussion Paper on the development of a new National Cultural Policy for Australia, which sets as its first goal "to ensure that what the government supports – and how this support is provided – reflects the diversity of a 21st century Australia, and protects and supports indigenous culture¹¹." Well said.

IAN HARGREAVES ON ADAPTING IP TO THE DIGITAL AGE

In November 2010, U.K. Prime Minister David Cameron announced an independent review of the national intellectual property (IP) framework. The aim was to assess what needed to be done to ensure that the U.K.'s IP arrangements were well adapted to cope with changing IP realities and to support innovation and economic growth in the digital age. *Digital Opportunity: A Review of Intellectual Property and Growth*, published in May 2011, has attracted widespread international interest. Professor Ian Hargreaves, who led the review, considers why.

In commissioning the review of the relationship between the U.K.'s IP framework and economic growth and innovation, Prime Minister David Cameron said he wanted to ensure that the country's IP laws were "fit for the Internet age." He cited the workings of the "fair use" defense against copyright infringement in the U.S. and how these had been used by American companies (for example, Google) to build dynamic new businesses on the Internet.

Within the U.K., the reaction to this announcement was initially unenthusiastic. Four similar reviews had been undertaken in the previous six years, and the follow-through to implementation had been weak in every case.

One year on, the picture looks a little different. We completed the review in the six months allocated and, in May 2011, presented the government with 10 recommendations. Given the time constraints, we focused on what seemed to be the most urgent and strategically important issues. Experience from previous reviews meant we were inclined to make a small number of strong recommendations, so that no one would ignore the strategic intent of our findings by focusing on points of detail.

Following a period of reflection, in early August 2011, ministers endorsed our 10 recommendations more or less in their entirety. They established a legislative timetable for implementation involving a white paper to be issued in the spring of 2012, with a view to legislating, where necessary, in the current Parliament – that is, by 2014.

More surprising than that firm and clear political response (from a governing coalition) was the international reaction to the review. WIPO Director General Francis Gurry commented, on its day of publication, that the review would be of considerable international interest – and he was right. The review has attracted attention from every

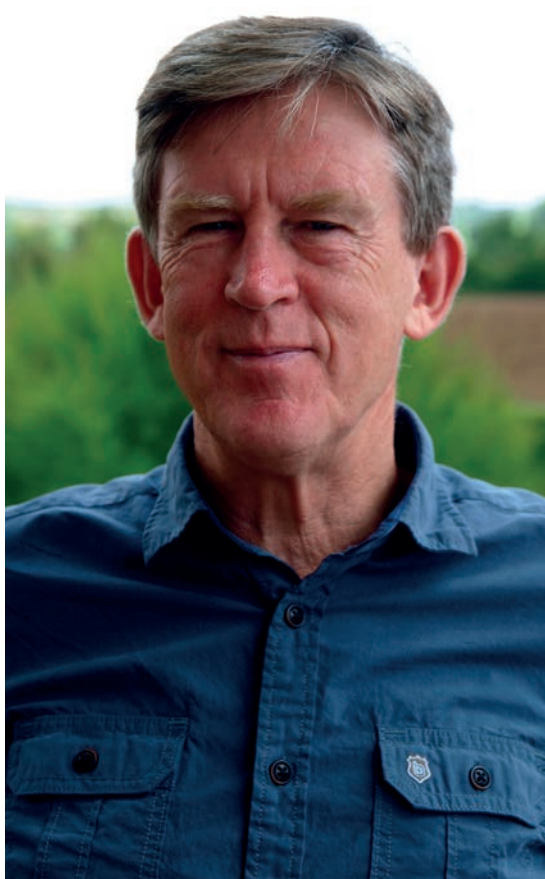


Photo: Guilhem Alandy

Ian Hargreaves

continent: from China to Brazil and from the U.S. to France and the Republic of Korea.

Why have reactions been so positive, even enthusiastic in places? This is certainly not a tribute to my personal command of technical or legal detail. My background is in journalism and academia, not in IP law or the younger subject of IP economics. For some of those with whom I have debated the issues, this was, and remains, a subject of suspicion: how can someone without a lifetime of experience in IP provide sound guidance on strategic policy direction in this area?

That response, I believe, misses two important points: that the U.K. review was underpinned by the expertise of the U.K. IP Office, which provided



the team that helped me conduct the review; and that the review's task was in substantial part political with a small "p", rather than technical. The debate about copyright law and its enforcement has turned into an energy-sapping stand-off, which does not serve the interests of consumers, right holders or other business interests, let alone those of economic prosperity. The broader debate about copyright, patents and other forms of IP (not least design rights) lacks clear thinking about the strategic economic issues at stake.

I was surprised to discover that, around the world, IP authorities have only recently built their own economic centers of expertise, with, for example, both the U.K. and U.S. IP offices recruiting their first professional economists in the last five years. At a time when national economies in Europe, North America and parts of Asia depend increasingly upon intangible assets, IP has been subject to insufficiently searching economic analysis.

The review's 10 recommendations (set out in full at www.ipa.gov.uk/ipreview) are intended to reset the U.K.'s strategic policy course, without any violent or sudden lurches, and to benefit the creative industries and the host of other businesses emerging as the Internet's reach expands.

The most controversial issues involve copyright. The review's starting point was to ask why markets for digital content are not working better. Why are consumers so confused and/or rebellious about the way material is sold to them? Why are so many artists and creators equally frustrated? If the legal framework is sound (as some contend), why is it subject to such heavy evasion? Why are medical and other researchers now finding their work blocked by copyright restrictions on data and text mining – today a basic tool in the researcher's kit? Why do would-be licensors of rights say they find the system for buying rights slow, impenetrable and too costly? Why is there such dissatisfaction with dispute resolution procedures?

At a more theoretical level, how sure are we that the incentives inherent in copyright law are not in contradiction with the growing duration of protection for certain rights? How well do we understand the economic trade-offs involved? What effect would resetting them have?

Viewed from a technological perspective: can we imagine a copyright system that does not require constant reconstruction with every advance in technological delivery systems and services? Can we find a way to "future-proof" our legal framework, so that it adapts to advances in technology and shifts in market structures and business models?

There are many reasons why we might want to tackle these questions with some energy. In the context of the U.K. review, the primary motivation was to try to understand whether a shift in our framework would encourage greater innovation, along with a more rapid rate of growth in productivity for stronger economic growth.

A digital copyright exchange

The specific ideas put forward in the review will be familiar to anyone who follows IP issues. In copyright, I start by imagining a Digital Copyright Exchange, through which content rights can be freely traded at digital speed and across global markets. The digital databases that would form the heart of such an exchange already exist to a considerable extent: it is a question of ensuring their interoperability and setting some simple rules for how they should work so that all stakeholders agree that the Exchange operates fairly and according to clear protocols. A Digital Copyright Exchange would help make markets more open, accessible and fluid, which would improve market signals for buyers, sellers and investors. It would also reduce transaction costs, which continue to rise.

The concept of a Digital Copyright Exchange is not new. A number of electronic registers of rights and new mechanisms for linking buyers and sellers through agreed protocols exist. The Google Books Agreement, which has been blocked by American Courts¹, is one current example. WIPO's work on copyright licensing in Africa is an example of a different type. Markets demand more efficient ways of trading, and these will happen whatever governments do. However, I believe that governments do have a limited window of opportunity to shape the conditions in which such market exchanges work, as they did with equity and other financial markets.

¹ See: "The Amended Google Book Settlement: Judge Chin's Decision" – (www.wipo.int/wipo_magazine/en/2011/03/article_0003.html)



The logic of the review is that, if we can get digital content markets to work better, the digital world will become less threatening to right holders. This will help bring other aspects of copyright law in line with the needs and expectations of consumers (for example in personal format-shifting of files or the use of musical and video material in parody).

Future-proofing copyright law

The more ambitious goal of “future-proofing” copyright law by building in an over-arching exception (in the European context) where copying is for “non-expressive” purposes and where it does not jeopardize the interests of right holders, would require a change in the EU Information Society Directive. This is a longer-term goal, but a high-value one that it may be possible to reach if we adopt the thinking advocated by the review.

If we take these two steps – towards more efficient market structures and legal structures that make better sense to consumers – it is much easier to imagine progress being made on a third issue: more effective enforcement of digital rights. This, unsurprisingly, is the top priority for right holders. The review argues that right holders will only be able to secure the desired enforcement regime in the context of a three-step process involving more efficient markets and more widely respected laws.

The review spends more time on copyright than on other aspects of IP, because this is where current problems are most intractable. On patents, we have explored approaches to patent backlogs,

international work-sharing and the growing problem of patent thickets², especially in the area of digital communications. This involves issues that IP regulators with an eye on economic consequences will need to keep under close scrutiny. In relation to design, the review recommends a rethinking, from first principles, of the confusing patchwork of rights currently applied in this economically important sector.

At an overarching level, the review makes the case for a stronger evidence base for IP policy. It advises the U.K. Government to provide its IP authorities with a legal mandate to focus on the economic consequences of IP policy decisions, and to trigger timely interventions where IP markets generate problems warranting the attention of competition authorities. The review also offers guidance on improving the dissemination of IP advice to smaller firms, which are so crucial to innovation and employment across the economy.

An economic impact assessment of the review, undertaken just prior to its publication, concludes that the review’s 10 recommendations would boost U.K. economic growth by between 0.3 and 0.6 percent.

It is not difficult to see why the government is ready to harvest such a gain from a relatively modest series of technical adjustments to the supply side of the British economy. These impact figures are not implausible. We all know that the Internet has had a big effect on every aspect of our lives, including economically. Recent studies, such as the one by McKinsey, estimate that around 6 percent of output in the U.K. economy derives from Internet use. Certainly, the digital communication revolution driving these changes is nowhere near to running out of steam: two-thirds of the world’s population has yet to achieve direct Internet access.

An IP system better suited to the Internet age would offer Europe and other countries whose digital and creative economies are increasingly important, clear opportunities to improve rates of innovation, productivity and growth. That, perhaps, is the clearest reason why this short, sharp review of IP issues in the U.K. has attracted such interest from around the world.

² An overlapping set of patent rights that require innovators to reach licensing agreements with multiple patent holders.

THE FUTURE OF PUBLISHING – A VETERAN’S PERSPECTIVE

Earlier this year, the acclaimed publisher Jason Epstein participated in the WIPO High Level Dialogue on the Book and Publishing Industry. He shared his views about the future of publishing, and the need to fine-tune copyright law to the demands of the digital environment. Throughout a distinguished career spanning 50 years, Mr. Epstein’s foresight and entrepreneurial flair have helped push forward the frontiers of publishing. In addition to serving as Editorial Director of Random House¹ for 40 years, he co-founded the *New York Review of Books*, launched the paperback revolution with the creation of Anchor Books, and was a founder of the Library of America and the Reader’s Catalogue, the precursor to online bookselling. The following are excerpts of his remarks at the WIPO event.

What I know about copyright is only what I needed to know as Editorial Director of Random House. Of one thing I was sure: our industry and the writers on whom we depended, and the culture which they helped create, could not have survived without effective copyright. Writers must eat. Without well-fed writers contributing over millennia to human knowledge, we would know practically nothing about who we are, where we came from and where we may be going. Of ideas, the great J.M. Keynes said “the world is ruled by little else.”

The onrushing digital future, a radical departure from the 500-year-old Gutenberg system, while a blessing to readers and writers, presents a complex challenge to copyright theorists not only to contrive new systems of protection but new means of policing.

Gutenberg’s press mechanized copying and made copyright necessary. Digitization makes copying instantaneous and viral, and renders existing laws obsolete. I leave it to experts to find a solution and hope they succeed, for – to put it bluntly – they must.

Our civilization has been enriched, preserved, interpreted and handed down to us mainly by writers. Our future too is in their hands. Copyright is the *sine qua non* of their survival. Without it, writers cannot afford to write, and how then shall we learn who we are?

The publishing industry... is in the early stages of a radical transformation that will render all traditional functions, procedures and infrastructure technologically obsolete, including traditional copyright

law. The 500-year-old Gutenberg system, with its physical inventories, costly warehouses and fixed retail locations, is being replaced by a radically decentralized, digital world market served by a virtually unlimited and largely unfiltered, multilingual and rapidly expanding digital inventory, stored and delivered at virtually no cost and which can be downloaded with the click of a mouse practically anywhere on earth.

In the digital future, anyone, anywhere, can be a published writer, and anyone can become a publisher. The traditional filters – agents, editors, reviewers – will continue to identify talent, for this is a function of human nature. However, even the great, undifferentiated mass of content made possible by digitization requires protection, for who knows in advance when other Shakespeares will emerge from the digital chaos?

Tomorrow’s publishers will be very different from today’s multinational conglomerates with their many imprints, costly and time-sensitive physical inventories, layer upon layer of management, costly midtown premises and, in the United States, a shrinking retail marketplace. Today, an edited manuscript ready for production is assigned a place on a publisher’s production schedule whose stages – copy editing, design, legal vetting, galley proofs, galley corrections, market planning (including publicity arrangements, manufacturing, shipping and so on) – will consume months before the book is finally put on sale. In the digital future these functions will be eliminated or compressed so that most content will be posted online for instantaneous worldwide distribution and evaluation within days of completion.

¹ Random House is the largest English-language general trade book publisher in the world. In 1998 its ownership passed to the German private media corporation Bertelsmann.

The radically decentralized marketplace and the proliferation of content providers in the digital future are at once a blessing for readers, millions of whom may never before have had access to books much less in their own languages, and to writers who will now have access to armies of new readers.

The transnational, digital marketplace will obliterate traditional territorial boundaries so that content generated anywhere may be downloaded everywhere, directly from content provider to end user. Much of this content will be of no value, commercially or culturally. Nevertheless, any future protocol must provide worldwide protection to all content, regardless of its merit or origin, from the moment of first distribution. It must also allow for legitimate worldwide sharing.

For content printed on demand at the point of sale, policing will not be a problem since the sale is instantly recorded, payment received and distributed and the file deleted as the book is printed.

For content downloaded onto portable devices or computer screens, the file is vulnerable and policing will be a problem. Digital Rights Management - software designed to protect digital files from unauthorized copying - is penetrable not only by pirates but by self-described public benefactors who believe that content should be free, as well as by legitimate researchers.

The doctrine of first sale² and secondary markets must be reconsidered. I leave it to experts to solve this problem and pray that they succeed, for if they don't the entire digital enterprise becomes problematic, and there will be no prior infrastructure to return to.

Reference materials – dictionaries, atlases, manuals and similar compendia – whose content is dated the moment it is printed need no longer be published in book form but made accessible online by subscription and downloaded item by item, protected by password. The same will be true of journal content and similar technical and scholarly materials. File sharing among friends and professional colleagues willing to share their passwords will be commonplace and difficult, if not impos-

sible in some cases, to prevent. In such cases, the only possible policing may be self-policing as in the informal honor system that has always protected such works in progress.

Traditional publishing and marketing will survive for categories as yet unsuited to digital reproduction and transmission, such as the fine arts and photography, case-bound children's books and so on.

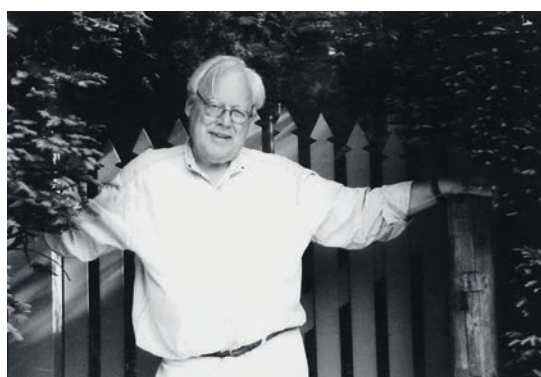


Photo: J. Epstein

Jason Epstein

Small groups of like-minded editors initially devoted to a particular subject – flower arranging, classical Chinese poetry, Indian cookery, nuclear fusion, yoga – to be marketed by websites of related interest, will be tomorrow's digital publishers. These start-up publishers will find customers by submitting their files to websites of related interest which will also serve as filters, selecting the best content and rejecting the rest. Reliable websites offering reliable content will flourish while disreputable websites will fail, according to the timeless pattern.

Titles of broader interest will migrate to social networks or general marketing websites, again in timeless fashion. Start-up digital publishers will depend upon freelance digital marketing experts until they learn the necessary skills themselves. Digital publishing groups need not occupy the same quarters or even the same city or country but, like software developers, can work online from wherever they happen to be. Since most support staff, copy editors, designers, legal experts and so on will be hired as needed and there will be no investment in physical inventory and its infrastructure, the cost of entry will be minimal.

Editorial talent will determine success or failure as it did in the Random House of the 1970s. Authors'

² Whereby the copyright holder's right to control the change of ownership of a particular copy ends once ownership of that copy has passed to someone else, as long as the copy itself is not an infringing copy.





Photo: Xerox Limited

The Espresso Book Machine automatically produces a library quality paperback within minutes at the point of sale

advance payments against future royalties may be provided by outside investors, or publishers and authors may form joint ventures. Production costs will be minimal. Editors may manage the business themselves or hire managers to handle these details for them. Systems and protocols, as always, will emerge in practice. In this way, the industry will have reverted to a traditional editorial environment adapted to the digital age.

I have outlined a very broad sketch of a likely digital future, as a 16th century Venetian might have done when contemplating the Gutenberg press that had

just arrived in his workshop. He could no more have foreseen the larger consequences of this new invention - the expansion of literacy, the proliferating Reformation and subsequent Enlightenment, scientific method, the French Revolution – than we can foresee the digital world to come. I can speak about the impact of this revolution only with respect to how literary content will be edited and sold in the digital future, which will arise spontaneously as it has already begun to do in the United States, where it will recreate the historic editorial function unencumbered by the accumulated distortions of today's industry. Existing publishers as well as Amazon have announced plans to launch such free-standing editorial groups, and one must wish them well. However, my guess is that the real impetus will come from outside the present industry, as the technological opportunity becomes increasingly apparent to would-be authors, editors and publishers.

The time is short in which to conceive and institute new worldwide uniform copyright protocols and new technology to prevent unauthorized access to the Niagara of content about to descend. I am delighted that WIPO has begun the process.

On Demand Books

Jason Epstein was quick to recognize that digital technologies would “change everything” in the publishing trade, and that it would be possible to deliver “a manuscript in electronic form directly to the end user with no intermediate step, no bookseller.” He recognized that “something like an automated teller machine (ATM) for books” would be required to make this possible.

Following a series of lectures on the future of publishing at the New York Public Library, he learned that an engineer, Jeffrey Marsh, based in St. Louis, U.S., had come up with such a machine. Mr. Epstein licensed it and, together with Dane Neller, co-founded On Demand Books, which licenses the machine, known as the Espresso Book Machine, to retailers, libraries and universities around the world.

Users access a digital file from a vast web-based catalogue of titles at the EBM (equipped with its custom EspressNet software) or remotely, and can also load their own files onto it. The files are transmitted to the machine which automatically prints, binds and trims a library quality paperback within minutes at the point of sale. All jobs are tracked, royalties are automatically remitted and the file is deleted the moment it is printed.

The EBM is helping to keep publishers in business and to draw customers into bookstores. It also holds great promise for those in regions where access to books is difficult. Characterized as a “bookstore in a box”, it offers immediate access to a vast, multilingual catalogue of titles at the click of a mouse and eliminates storage and delivery costs.

The patented EBM is the subject of an international patent application (WO/2002/045923) under WIPO's Patent Cooperation Treaty (PCT).

NAVIGATING AN EXPANDED DOMAIN NAME LANDSCAPE

Twenty-five years since the birth of the premier online commercial space – .com – the Internet is set to undergo a watershed expansion. **Dina Leytes**¹, an attorney at U.S. law firm Griesing Law, LLC considers what this means for brand owners and the steps they will need to take to defend themselves against cybersquatting in the expanded domain name space.

In June 2011, the Board of the Internet Corporation for Assigned Names and Numbers (ICANN), the self-regulated nonprofit California-based body which oversees the architecture of the domain name system, voted to open the floodgates to private entities seeking their own .anything online space. Today there are about 20 so-called generic top level domains (gTLDs), including .org, .net and .edu. This is in addition to some 250 country-code top level domains (e.g., .ch (Switzerland), .mx (Mexico)).

Many brand owners have enough trouble protecting their trademarks in today's domain name system and are extremely apprehensive about the increased risks of cybersquatting this expansion will present, particularly in a difficult economic climate. Frederick Felman, Chief Marketing Officer for MarkMonitor, cautions that the potential for consumer confusion with the introduction of new gTLDs is likely to be very high, and recommends that companies waste no time in promulgating a strategy to strengthen and defend their online brand identity in the face of new gTLDs.

A number of brand owners, such as Canon, have publicly embraced the opportunity to create a customized online brand presence. Under their own .canon space, it would be possible for the company to create custom product-oriented domain names such as cameras.canon or printers.canon; this may even include consumer-oriented domain names such as yourname.canon.

In addition to applications based on a brand (.canon), applications based on geographic terms (.nyc, .paris), terms targeting specific industries or communities (.eco, .gay, .hotel) and generic terms (.shop, .music) can also be expected. Some, however, have questioned the legitimacy of ICANN, a private entity, operating such spaces for financial gain. The ICANN application fee alone is US\$ 185,000 (excluding costs related to application preparation and legal advice). In addition, a gTLD application that successfully passes the ICANN

process will need to budget for significant technical and marketing expenditure to cover anything from search engine ranking to email delivery. While second-level domain names (brand.eco, city.hotel, band.music) may be available on commercial terms similar to today's gTLDs, the annual cost of operating a gTLD is estimated to range from US\$25,000 to US\$500,000.



Photo: JESS3 - <http://jess3.com>

¹ Ms. Leytes represents clients in connection with litigation and intellectual property (IP) and new media matters. Prior to entering private practice, she worked at the WIPO Arbitration and Mediation Center.

In January 2012 the floodgates will open on the .anything space

The application process

ICANN will accept applications for new gTLDs from mid-January to mid-April 2012. If more than 500 applications are received, ICANN will review them in batches. However, details about the batching methodology remain unclear. The gTLD application process is complex and will require that brand owners partner with experts in the area; those who are not already well-versed in ICANN's *Applicant Guidebook* may find themselves behind the curve.

The application process is not without potential pitfalls. For example, challenges can be lodged by a public-interest-minded "Independent Objector" against a gTLD application, as well as on four other grounds outlined below. In addition, for a 60-day period at the beginning of the process, ICANN's Governmental Advisory Committee (GAC) may issue a "warning" notice for an application considered potentially sensitive or problematic by governments. Any challenges could significantly increase the costs and time involved in processing an application. Given the contentiousness of the years-long ICANN process that led to the June



2011 vote to begin accepting applications, ICANN has set aside one-third of each application fee (US\$30,000,000 based on a 500-application model) to manage legal risks.

Below are some of the procedural milestones that new gTLD applicants can expect.

Initial evaluation

During the Initial Evaluation phase, a gTLD application will be reviewed to determine whether the applicant has good financial standing, sufficient technical and operational capabilities, and no history of cybersquatting. A string review will also be conducted to ensure that the gTLD in question is not similar to either an existing or applied-for gTLD. For competing strings, as a last resort, ICANN will hold an auction. Certain geographic and reserved strings (e.g. country names) will not be available. Other such strings, however, (e.g. city names) would carry conditions.

Objection filing

The formal objection period will last approximately seven months. During that time, an objector may allege that the applied-for gTLD would infringe its rights based on any of four grounds: string confusion, limited public interest, community, and legal rights (primarily trademark rights). Legal rights objections will be administered by the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center.

Transition to delegation

Once an applicant completes the Initial Evaluation and overcomes any objections, the application will go forward, resulting in a registry agreement with ICANN. In the best-case scenario, applications may be handled within nine months. Where an application encounters obstacles (e.g., disputes) the process may take 20 months or more.

Intellectual property enforcement

Exponential growth of the domain name system means increased risks for brands and consumers, but as Erik Wilbers, Director of the WIPO Arbitration and Mediation Center, observes, "trademark owners cannot afford to shoot at everything that moves in the domain name system today, let alone in a vastly expanded space." Mr. Wilbers anticipates that brand owners' enforcement strategies will focus on the most serious instances of abuse complemented by an increased positive concentration on the core identity of brands online.

The gTLD process envisions several newly-created rights protection mechanisms. Agreeing on the details of these mechanisms has been a contentious process, with some asserting that the mechanisms are overreaching, and others claiming that they are inadequate and unduly compromised. These mechanisms are intended to complement the existing Uniform Domain Name Dispute Resolution Policy (UDRP). Adopted by ICANN following a WIPO initiative, the UDRP provides a relatively inexpensive alternative to litigation for trademark owners seeking to recover domain names that are identical or confusingly similar to their own mark from opportunistic, bad-faith actors. All new gTLDs must offer the UDRP, as well as the following mechanisms.

Trademark clearinghouse

The Trademark Clearinghouse will be a central repository of authenticated information on registered word-only trademarks. How the Clearinghouse will function remains unknown; in October 2011, ICANN requested comments from potential operators. The Clearinghouse must be used in connection with both (i) Trademark Claims and (ii) Sunrise services.

Pre-delegation objections

Trademark owners or intergovernmental organizations (IGOs) that believe an applied-for gTLD would infringe their rights may file an administrative "Pre-Delegation" proceeding with the WIPO Arbitration and Mediation Center. The Center has worked with ICANN in creating the substantive and procedural modalities of this "Legal Rights Objection" procedure.

Objections will be filed electronically, and cases will be resolved, in principle, in a single round of pleadings. Parties may seek settlement under the WIPO Mediation Rules.

An independent expert panel will determine whether the applied-for gTLD would take unfair advantage of, unjustifiably impair or otherwise create an impermissible likelihood of confusion in relation to the objector's trademark or IGO's name or acronym.

The UDRP: Keeping cases out of court

The WIPO-initiated UDRP is a proven and highly successful mechanism for resolving clear cases of cybersquatting. In the context of a constantly evolving domain name system, the UDRP has kept thousands of cases out of court, benefitting right owners as well as registrants and registration authorities.

Brand owners in all areas of global commerce rely on the UDRP for a cost-effective solution which, at WIPO's initiative, became paperless in 2009. Nearly one-quarter of WIPO UDRP cases are settled by party agreement, resulting in substantial further savings.

WIPO is the global leader in quality UDRP services. Unique among providers, it offers freely-available online filing tools and jurisprudential resources that can be consulted around the world.

A Trademark Claims service will notify a prospective registrant that a domain name matches a trademark in the Clearinghouse database. If the domain name is then registered, the Claims service would then alert the trademark owner that a domain name corresponding to its trademark has been registered. This service is narrowly limited: a trademark owner will only receive notice if the domain name is an "identical match" to its mark. This means, for example, that if Omega submitted its "omega" trademark to the Clearinghouse, it would receive notice if a third party registered omega.watches, but not if buyomega.watches were to be registered.

A Sunrise service allows brand owners whose trademark is contained in the Clearinghouse to preemptively register - usually for a fee well in excess of normal registration fees - a domain name corresponding to its trademark for a limited period before general public registration in a new gTLD opens. As with the Claims service, Sunrise registrations are narrowly limited to exact matches.

Uniform Rapid Suspension (URS) system

The URS is intended to operate on a track more or less parallel to the UDRP. While it employs essentially the same substantive elements as the UDRP, there are differences brand owners should consider in weighing the potential utility of the URS. While the URS is nominally designed to be faster and cheaper than the UDRP, under the URS the burden of proof is greater than under the UDRP. However, unlike the UDRP, the URS provides a cost-free opportunity for a registrant's response to be filed up to 30 days after a decision has been issued. A registrant can also seek *de novo* (new) review of a decision for up to six months after it has been issued (and may also request a further six-month extension). In addition, a complainant prevailing under the URS will not acquire the infringing domain name. Instead, the domain name will be

suspended (meaning that the page will resolve to a dispute notice) until the end of the registration period, at which time it will be available once more for public registration, unless the complainant pays to extend the suspension for one year. At the time of writing, ICANN had not announced details concerning potential URS providers.

Post-Delegation Dispute Resolution Procedure (PDDRP)

The purpose of the PDDRP is to enable brand owners to bring an action against a gTLD registry operator (as opposed to multiple individual domain name registrants) whose operation or use of their gTLD causes or materially contributes to systematic trademark abuse. The PDDRP would not, however, provide recourse for brand owners merely because infringing second-level domain names exist in the gTLD. Instead, the PDDRP is meant to address situations in which a practice of "affirmative" registry conduct is evident; one example would be a registry operator actively inducing widespread infringement by others.

Phillip V. Marano, an attorney with the Washington, D.C., law firm Silverberg, Goldman & Bikoff LLP, has long followed industry debates about new gTLDs and now counsels clients on how to prepare for the launch. He recommends a bifurcated defensive approach focused at the top level (to the right of the "dot") and at the second level (to the left of the "dot"). "While there are many shortcomings with ICANN's second-level rights protection mechanisms, most brand owners will still be well advised to participate in Claims and Sunrise services to safeguard their valuable brand names," Mr. Marano says.

While there is certainly no shortage of speculation on the degree to which ICANN's program will spur innovation or confusion, one thing is clear: uncharted waters lie ahead.

DESIGN IN POLAND TRANSITION TO MODERNITY

Polish design is alive and kicking. This was evident at a recent exhibition displaying the groundbreaking work of some 30 Polish industrial designers and featuring products ranging from household appliances to medical equipment and from vehicles to furniture and toys. The event, organized on the sidelines of this year's annual meetings of WIPO Assemblies, offered delegates a taste of Polish creativity at its best. Entitled "Design in Poland – Transition to Modernity" the exhibition was organized by the Patent Office of the Republic of Poland and the Permanent Mission of Poland to the United Nations (UN) Office at Geneva, in cooperation with WIPO.

The importance of design

The exhibition was opened by His Excellency Ambassador Henczel of the Permanent Mission of Poland to the UN Office at Geneva, Dr. Alicja Adamczak, President of the Patent Office of the Republic of Poland, and WIPO Director General Francis Gurry.

Ambassador Henczel underlined the "enormous importance" of industrial design "for the economy and culture as well as its influence in all spheres of our lives." He said that Polish design was synonymous with "modernity and growth," and that the "originality", "ingenuity" and "sense of form" displayed by Polish designers made them "advocates of the Polish culture and artistic creation," contributing to a "new perception" of the country.

Dr. Adamczak pointed to the importance of design in knowledge-based economies, saying it "is undoubtedly one of the stimuli for economic growth." She underlined the importance of design in influencing consumer choice and explains, in the foreword of the exhibition brochure, that "the legal protection of a product within the area of industrial designs should be an indispensable strategic element of each company" in commercializing its products. "Such protection... will stimulate and protect innovation and creativity ensuring economic profits as well as the exclusiveness and uniqueness of the results of creative ideas and activity." Dr. Adamczak said that "investing in design in Poland as a national brand" is a priority of the Polish Government, noting that the exhibition "is not only proof of the great progress that has occurred in our country in the transformation period which started 20 years ago, but also of the extraordinary role of design in that transformation, influencing the image of Polish projects and the Polish economy."

Applauding the "rich and varied display of Polish design, WIPO Director General Francis Gurry said that the exhibition, "demonstrates why the 'Made in Poland' label has earned such international recognition and respect." He underlined the commercial importance of industrial designs, noting that, "when the functional elements of an object do not differ significantly from product to product, their design or appearance is likely to be one of the major determinants of success in the marketplace." Some 700,000 applications for industrial designs are filed around the world each year in many areas of industry and commerce. WIPO's Hague System for the International Registration of Industrial Designs (www.wipo.int/hague) offers designers and companies a rapid, cost-effective route for protecting their designs against unauthorized copying and imitation in international markets.

A voyage of discovery

A centerpiece of the exhibition was the spectacular Whaletone piano, presented by its creator, pioneering designer Robert Majkut.

Inspired by a dream, the elegant form of the Whaletone resembles a whale arching its body as it breaks the waterline. An advanced digital piano, the Whaletone offers an "interpretation of the shape of a classic grand piano in the language of modern design."

"I saw this very strange and beautiful form in my dream – a whale rising from the water in a strange form resembling a piano," Mr. Majkut told WIPO Magazine, drawing a parallel between the melodious calls and majestic beauty of marine mammals and that of a classical grand piano whose form has changed little over the years. "When I saw this form in my dreams, I decided I had to build it," Mr. Majkut said.

About Whaletone

Whaletone offers a wide range of musical possibilities in terms of musical parameters, individual selection of acoustic equipment and sound control. It combines technologies that are available commercially, including Super Natural Piano technology allowing for the creation of authentic piano tones, a PHA III Ivory Feel keyboard emulating the feel of a classical grand piano keyboard, and high-end B&W loudspeakers. A range of additional options are also available including a CD player, piano card upgrades, additional sound software modules, LED display and internal sound processor with equalizer. Full details are available at www.whaletone.com.

Photos: Robert Majkut



After three years of hard work, Robert Majkut's dream became reality. The Whaletone is a bespoke musical instrument combining "high-end musical components" with "exquisite beauty of form." First launched during Design Week in Milan, Italy, in April 2011, it has attracted widespread attention and is fast becoming "the new icon of Polish design". "We didn't expect such a warm reception," the designer revealed, "but I think people like this product because there is a romantic and poetic story behind it. I think that is the power of this product."

Mr. Majkut noted that the conceptualization of the Whaletone was one of those rare occasions where "the idea found me; I did not find the idea." The typical work of a designer, he noted, involves careful analysis of a range of elements, including function, form, technology and economic aspects which are "put together in a better way to make the next best step towards what you are focusing on."

The designer is keenly aware of the importance of protecting his work through the intellectual property (IP) system. "If you establish something original," he noted, "you have to protect it... to protect your business interests." As a seasoned interior and industrial designer, Mr. Majkut has had firsthand experience of others copying his work. "If I see a good copy, a result of inspiration" he confesses, "I am a little proud, because I was the first. It means my work was important and influential for somebody else." But, "when I see a bad copy, I am absolutely furious. It is unacceptable – copying is a waste of people's creativity. Everyone has

the ability to find their own creative solutions," he explained. Stressing the importance of "design honesty," the designer acknowledged that there are situations in which "ideas and forms develop at the same time in different parts of the world," observing, however, that "a work undertaken with an intention to be original is always a little different."

Pioneering designer Robert Majkut presents the Whaletone



For Robert Majkut, design is about developing pioneering and progressive solutions to "change our reality for a specified, meaningful and good purpose." It is a "mission to shape the world that surrounds us, making it more comfortable and aesthetic and positively influencing our emotions." Design, he notes, "has an enormous influence on people's lives. It enriches our lives and makes them more interesting, safer and better."





Other designers featured in the exhibition included:

1. Noti is a family business born of a passion for modern design. Noti creates user- and environmentally-friendly furniture that is “simple and elegant, multifunctional, comfortable and durable”.

2. Grzegorz Sowinski of Otus Design Studio believes design is much more than shape. He strives to break design stereotypes and to “promote the vision of design as an interdisciplinary domain that reaches far beyond the mere stylization of the product.” His goal is “to improve the environment that surrounds a human being by creating innovative products.” The stairwalker is a type of exoskeleton that reduces the load on knee joints and legs using pneumatic actuators that create dynamics similar to those of human muscles.

3. The Puff-Buff brand, developed by Anna Siedlecka and Radek Achramowicz in 2005, is known, in particular, for its air-filled lamps and chandeliers made from inflatable elements and

LEDs which “bring a sense of humor to life and a little bit of poetry.” A unique advantage of the Puff-Buff lamps is their exceptionally low mass and minimum energy consumption.

4. For Joanna Rusin, design is a way of life. The company aims to ensure that carpets become a “meaningful element of any interior design” that moves the imagination of users.

5. The Malafor company’s “blow sofa”, made from 100 percent recyclable air bags, is inexpensive and easily transportable. “One only has to inflate the bags to start using it, and when the cushions get dirty, they are simply replaced with new ones.”

6. Trzy Myszy believes that good design “emerges from the beauty of simple and little things.” The company strives to make toys that inspire children to discover the world in a creative way. For them, “good design is an attractive appearance, user-friendliness and perfect quality.”



HOMAGE TO STEVE JOBS - A PIONEER OF FUNCTION AND FORM

One of the icons of our age, Steve Jobs, co-founder of Apple Inc. – the world’s most valuable technology company – and of Oscar-winning Pixar Animation Studios, died on October 5, 2011, after a long and courageous battle with cancer. His quest “to put a dent in the Universe” generated a host of pioneering innovations that have transformed the high-tech business, brought new vigor to the entertainment sector and improved countless lives. This article explores the extent of Mr. Jobs’ genius and his impact on our lives.

In a tribute to Mr. Jobs, U.S. President Obama said, “Steve was among the greatest of American innovators – brave enough to think differently, bold enough to believe he could change the world and talented enough to do it.

A relentless drive to make sophisticated technology easy, simple and fun to use was the hallmark of Steve Jobs’ success. He helped usher in the era of the personal computer (PC), launching his company – and the Apple II computer – from his parents’ garage in the 1970s with his business partner, Steve Wozniak. Within a decade, Apple became a serious player in the high-tech arena. “We worked hard, and in 10 years Apple had grown from just the two of us in a garage into a US\$2 billion company with over 4,000 employees,” Mr. Jobs told students at Stanford University in June 2005. The launch of the Macintosh in 1984 continued to break new ground at a time when computing was the realm of a handful of specialists. Its graphical user interface made it easy to use and possible to do what no other computer had ever done before. “The genius of Macintosh is that you don’t have to be a genius to use it,” a company advertisement observed.

Undaunted by his departure from Apple in 1985, a few months later Steve Jobs founded NeXT, a computer platform development company specializing in higher education and business markets. “I didn’t see it then, but it turned out getting fired from Apple was the best thing that could have ever happened to me. The heaviness of being successful was replaced by the lightness of being a beginner again, less sure about everything. It freed me to enter one of the most creative periods of my life,” he said.

This proved fortuitous for a number of reasons, not least the fact that Tim Berners-Lee used a NeXT



Photo: istockphoto / David Paul Morris

Steve Jobs presenting the ultra-thin laptop MacBook Air

computer at CERN – the first web server on the Internet – to develop the World Wide Web. Apple’s buy-out of NeXT in 1996 brought Steve Jobs back to the company he had co-founded and in which he served as CEO until shortly before his death. This meant that a great deal of NeXT technology subsequently found its way into Apple products, serving as a foundation for the development of the MAC OS X operating system, the Apple Store and the iTunes store.

Before heading back to Apple, Mr. Jobs bought the ailing computer graphics division of Lucasfilm Ltd., later renamed Pixar Animation Studios, that went on to create the world’s first computer-animated feature film, *Toy Story*, which he co-produced. A slew of box office hits followed including *A Bug’s Life* (1998), *Monsters, Inc.* (2001), *Finding Nemo*



(2003) and *The Incredibles* (2004). The Walt Disney Company bought Pixar in 2006 in a deal worth US\$7.4 billion, making Mr. Jobs the largest shareholder in Disney.

On his return to Apple in 1996, Steve Jobs turned the company's fortunes around by spearheading an era of sleek, simple and clean design. As one commentator put it, he proved that by focusing on human intuition and beauty of form it was possible to create products that would become "objects of desire" across the globe. One of his first moves was to develop the iMac, a commercial hit that underlined the company's new emphasis on design.

Having a strong empathy for consumers and their wants and needs and continually seeking to improve and perfect Apple's products in the quest for simplicity and clean design have produced an array of high-tech products that are easy and fun to use. These icons of contemporary culture - the iMac in 1998, followed by the iPod in 2001, the iPhone in 2007 and the iPad in 2010 - have each spawned a new series of ever-more refined and sleek devices that are a pleasure to use.

The impact of these innovations which have set new industry standards is far-reaching. In the entertainment sector alone, the landscape has changed beyond recognition. The introduction of the iPod, for example, transformed the way listeners experience music. The availability of user-friendly and affordable software programs (e.g., Logic and Garage Band) made it easier for aspiring musicians to record and produce their music and the launch of iTunes in 2003, effectively legitimized digital music sales making it quick, easy and affordable to download music. Apple was the first online distributor to secure deals with the major record labels. Within 16 days of its launch, iTunes had recorded 2 million downloads and, in early 2010, it recorded its 10 billionth download. Similarly, the iPad, the fastest selling technical device ever, is changing the way people read books and newspapers and surf the web.

A true visionary, Steve Jobs believed that design and technology could improve the world. He recognized that form was as important as function and succeeded in marrying high technology with elegant, sleek design. "Design is the fundamen-

tal soul of a human-made creation that ends up expressing itself in successive outer layers of the product or service," he said. "I love it when you can bring really great design and simple capability to something that doesn't cost much," he told his biographer, Walter Isaacson.

Intuition is a hallmark of Apple's products - strikingly, they never come with a heavy instruction manual. "The main thing in our design is that we have to make things intuitively obvious," he told a group of designers. For many, he is one of the most influential industrial design figures of the last century.

"Steve Jobs stood out because he recognized that the appearance of an innovative product is an important part of its success," noted WIPO Director General Francis Gurry. "His focus on the design of new objects in establishing market acceptance is one of the principal drivers of his success," he added.

Steve Jobs' laser focus and quest for perfection were a driving force in Apple's product development. The large number of patent and design rights held by him - 317 such rights in the U.S. alone, together with some 30 international applications filed under WIPO's Patent Cooperation Treaty (PCT) - is a clear indication that he was at the epicenter of Apple's product development. "Steve's brilliance, passion and energy were the source of countless innovations that enrich and improve all of our lives," noted Apple's Board of Directors.

The creations masterminded by Steve Jobs have generated a digital lifestyle that was inconceivable when he started out in his parents' garage. He has put the virtual world at our fingertips, made the unbelievable affordable and revolutionized film, music and the way we communicate.

A passion for technology, a single-minded drive to make it appealing to anyone that might otherwise be daunted by its capabilities and a thirst to influence rather than be influenced have earned Steve Jobs "folk hero" status in many quarters. His remarkable self-belief, drive, honesty and vision are an inspiration. He certainly achieved his ambition to "put a dent in the Universe."

THE ART OF BINOCULAR PERSPECTIVE

Every year artists from around the world display their works at the headquarters of the World Intellectual Property Organization (WIPO) in Geneva, Switzerland. These colorful and varied exhibitions offer a glimpse of the depth and breadth of creative talent that exists within WIPO's 184 member states. Earlier this year, the program featured the striking still life paintings of Swiss artist Albert Sauteur. WIPO Magazine met with the artist to find out more about his novel technique.

Mr. Sauteur's art reveals a remarkable realism that invites the viewer to take a fresh look at the objects he presents – a bowl and a withered leaf, a juicy apple and a violin, a clove of garlic beside a cooking pot. Far from "still", his works emit a singular energy and capture the life and quintessential character of the objects he paints.

A hallmark of the artist's work is the juxtaposition of organic and inorganic objects, bringing each object into relief and infusing it with an arresting and palpable physicality. "By using contrasting quantities and colors, it is possible to create an interesting interplay between the objects and to give life to my paintings," he notes.

What is so different about Albert Sauteur's approach? His technique is revolutionary and sheds new light on our understanding of how the human eye perceives and reconstitutes three-dimensional visual space. In his work, he strives to capture on canvas the world as seen through human eyes.

Binocular vision

Since the discovery of perspective over 500 years ago, artists seeking to capture a model or a scene typically close one eye to reconstitute an image and proportion the elements of the painting appropriately. The resulting image, so the theory goes, presents a single vanishing point towards which the lines of the work converge on the horizon – something along the lines of two parallel train tracks converging in the distance.

Mr. Sauteur's keen eye, unflinching tenacity and perfectionism, however, led him to call this received wisdom into question. He observed that what an artist sees with one eye differs greatly from that seen with both. "When you close one eye you lose the richness of reality," he notes. He also realized that the established rules of linear perspective did not take into account the fact that works of art and the models and scenes they depict are, in fact,

perceived with both eyes. He concluded that the accepted understanding of linear perspective is an oversimplification of reality.

Mr. Sauteur realized that the vanishing points in works of art are not unidirectional but multidirectional – convergent, divergent, cross-cutting and parallel. "I paint things as I see them with both eyes open, but when I come across an anomaly – a line that does not follow the traditional theory, then I have to explain it. This enables me to refine the technique," he notes. "This involves many sleepless nights, and a great deal of research; it is a painstaking process that calls for a lot of energy and concentration," he confided. On the basis of his observations, Albert Sauteur has developed a new geometry that enables him to capture on canvas the three-dimensional nature of space.

By breaking with tradition and taking a fresh look at life, Mr. Sauteur has found a way to produce works of still life brimming with energy.

Binocular vision explained

Healthy binocular vision is part of normal human vision, contrary to a camera which has just one lens. Binocular vision produces important perceptual visual effects that reveal an object's volume and depth.

When both eyes work together and focus simultaneously on the same target, each takes a unique view of the object from its own perspective. These two images are sent to the brain where they are superimposed to become three-dimensional with added depth.

Mr. Sauteur noticed that each eye has its own vanishing point but that blurring occurs when an image is viewed by both eyes simultaneously. This, he notes, engenders a third vanishing point that is common to both eyes and fluctuates according to the depth of vision. This is what Mr. Sauteur paints



with such precision. "What fascinates me and what I want to reveal to the world is this infinitely rich depth," he said.

The effects of this revelation are quite surprising – straight lines appear broken, billiard balls which are rigorously spherical become oval, and so on.

In his quest to capture objects as they really are, Mr. Sauteur has found a way to represent artistically what humans actually see.

In sum, he represents on canvas the process the brain automatically undertakes in someone with healthy binocular vision. In the same painting, he portrays the object each eye perceives before their fusion into a unique image. By creating a mir-

ror effect and through careful use of shading he harnesses the visual depth of things as they appear in reality.

The artist recounted the story of a young diplomat who was visibly moved when she realized she suffered from a binocular visual impairment and observed, "looking at this picture, I am seeing for the first time what my friends see."

What Mr. Sauteur has achieved on canvas is akin to what filmmakers accomplish when making a 3-D movie. If you take off your glasses during a 3-D movie, you will have noticed that the images on the screen are somewhat blurred.

This is because these movies use binocular vision by forcing the viewer to see two images created from slightly different positions or points of view.

Painting and drawing have been Mr. Sauteur's lifelong passion, although it was not until later in life that he became a full-time artist. He began life as a farm boy and then, more by necessity than choice, he became an apprentice precision engineer – training which, given the painstaking detail of his work, stood him in good stead for the future. He then turned to teaching, but still had a burning passion for art. He knew he had to paint. Sorely disappointed with his formal arts course, he decided to pursue his own path in search of perfection and beauty. He set about understanding the mechanics of painting and sought to resolve the many questions that filled his mind. An exhibition at WIPO which works to support artists' rights was, in Mr. Sauteur's opinion, a fitting venue to celebrate his work and everything it represents.

His untiring efforts produced dividends and brought with them a revolutionary new insight, namely, that "if you want to fix reality, you need to adopt the binocular perspective." "This is the only way to represent reality artistically; it's the only way to breathe life into a work," he mused. "When you close an eye you lose the richness of reality."

"The more you paint the image of life the more emotional a work becomes," he explained, referring to the story of Proust and the Madeleine, which inspired the canvas that was to reveal the secret of binocular perspective to him.

Such is the mastery of Mr. Sauteur's technique, and his attention to detail, that a violin-maker was able to view his works and spot the difference between the depiction of an instrument costing CHF3,000 and another valued at CHF300,000.

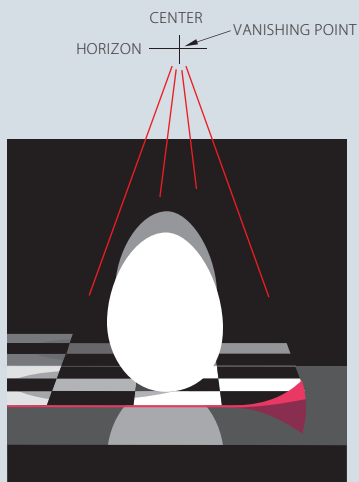
In his quest to understand and subsequently explain the binocular perspective – each of his works is, in fact, an explanation of his theory - Mr. Sauteur has built a series of apparatus that travel with him and his roving studio. "It is hard to go against an established idea" he sighed, "and it is very difficult for people to understand that the established wisdom of the last 500 years is false. That is why I use different apparatus so that members of the public can experience firsthand what I am talking about."

**Poppies and
Porcelaine, 2004
Oil on canvas**



Traditional perspective

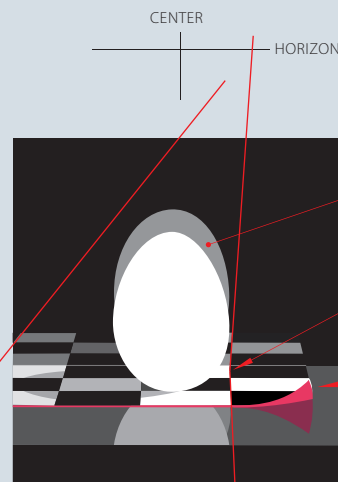
In the silence of his studio, Mr. Sauteur realized that the image constructed in this way does not correspond to the way people visualize it



The vanishing point at the edge of the square, which does not appear when using one eye, crosses the center of the canvas.

Binocular perspective

Mr. Sauteur's approach produces some surprising effects



The egg's reflection does not have the same form as the egg that creates it.

The line is broken

The overlap of the white square, which does not appear when using one eye, creates a specific blurring.

This line, after it is broken, diverges from the center.

For Mr. Sauteur, his art is a "tainted pleasure". He notes, "thought flies but words move slowly. It's fascinating to have a model in place, but executing it is very hard." He adds, "every painting has a life of its own, each still life model has infinite possibilities and the process of fixing these in a painting reveals some amazing and fascinating details. By the time it is completed, I know it by heart, and this gives me the freedom to redirect my energy to refining to bring out its full richness and depth."

Albert Sauteur's paintings not only capture the physical reality of objects as seen by humans, they also harness their spirit and essence. As one commentator wrote, "he puts daily objects side by side in a way that destabilizes the conventional images of reality." The apparent lack of connection between the objects represented calls out, drawing us into a different universe.



Madeleine and Steinway. While working on this canvas the artist identified for first time, thanks to its network of lines, the third vanishing point which characterizes the binocular perspective that he has progressively adopted

Quietly provocative, Albert Sauteur's work offers a "lightly transformed vision" of the familiar, infusing it with a powerful and seductive energy that is fascinating by its simple complexity.

IN THE NEWS

Television turns 75

The world's first regular television (TV) service, offered by the U.K.'s flagship broadcaster, the British Broadcasting Corporation (BBC), began broadcasting just 75 years ago at 3 p.m. on November 2, 1936, from a hilltop at Alexandra Palace in North London.

The first broadcast lasted two hours and covered the formal launch of the service, a Movietone newsreel, a variety show and a 15-minute documentary entitled "Television comes to London", set to an excerpt of Dvorak's New World Symphony and which provided a behind-the-scenes view of the preparations leading up to the launch.

For the first six months, the studio tested two competing technical systems, a mechanical system developed by John Logie Baird which produced images of 240 lines, and an electronic system developed by EMI-Marconi which produced images of 405 lines. In comparison, today's digital

high-definition TVs offer picture resolutions of 1,080 lines. Winning on the toss of a coin, the Baird system was used for the inaugural broadcast, although it was dropped after the trial period in favor of the EMI-Marconi system. The studio's hilltop location meant that its programs could be reliably picked up by some 20,000 homes within a 25-mile range.

Although the dream of television became a reality in the 1930s, inventors from many different countries had been working on it as far back as the 1850s. Today, television is an extremely powerful means of communication and the world's most popular form of entertainment. As noted by Matt Cooke, Chair of the Alexandra Park and Palace Trust, the first broadcast "paved the way for a new kind of social entertainment, but it also prompted technological advancements in the way we communicate with each other which still impact on us today." ■

Copyright industries driving U.S. economy

Copyright industries added over US\$ 930 billion in value to the U.S. Economy in 2010, according to a recent study released by the Washington-based International Intellectual Property Alliance (IIPA). In addition to their almost 6.4 percent contribution to gross domestic product (GDP), the industries account for some US\$134 billion in foreign sales and exports, and

employ nearly 5.1 million workers, offering salaries 27 percent above the average. The study, prepared by Stephen Siwek of Economists Incorporated for the IIPA, updates 12 previous studies that track the impact of U.S. industries that create, produce and distribute theatrical films, TV programs, home videos, DVDs, business software, entertainment software, books,

journals, music and sound recordings. The IIPA's Steven J. Metalitz noted, "the 2011 edition of our study shows once again how significantly the U.S. copyright industries contribute to U.S. jobs, wages, economic growth and international competitiveness," according to an IIPA press release. The full report is available at: www.iipa.com/copyright_us_economy.html. ■

A low-tech irrigation solution for arid regions

A low-tech sub-surface irrigation system for growing crops in arid regions caught the attention of judges to win this year's annual James Dyson Award which seeks to "encourage the next generation of design engineers to be creative, challenge and invent."

Edward Linacre's "Airdrop Irrigation" technique harvests moisture from the air and delivers water directly to plant roots. Solar panels are used to charge small battery-powered wind turbines that draw heated air underground where it cools, condenses and is collected in an underground trap. Solar

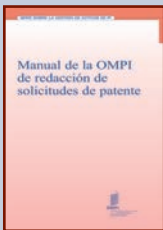
energy is used to pump the water directly via underground dripper pipes to plant roots. The system includes an LCD screen that displays tank water levels, pressure strength, solar battery life and overall system health.

Mr. Linacre, a former industrial design student at Melbourne's Swinburne University of Technology in Australia, said his system is "a response to the devastating effects of drought." He explained that it works on the principle that even the driest air contains water molecules that can be extracted by lowering the air's temperature to

the point of condensation. The system is easy to install and maintain. "There are very few low-tech solutions" for harvesting water, he said, and "I wanted farmers to be able to install this themselves."

With £10,000 in prize money that comes with the award, Mr. Linacre now aims to develop and roll out his ingenious solution. "Winning this award means that I can develop and test the Airdrop system. It has the potential to help farmers around the world and I'm up for the challenge of rolling it out," he said. ■

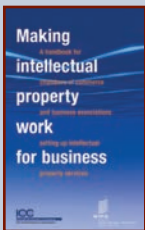
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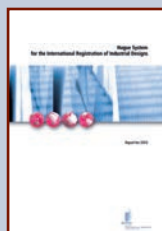
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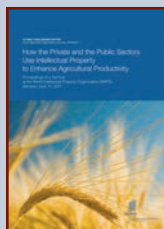
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