



ROUNDTABLE DISCUSSION

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ROUNDTABLE PARTICIPANTS

Alison Brimelow	President Elect-European Patent Office
Jack Chang	Senior IP Counsel - Asia, General Electric (China) Co. Ltd
Xu Choa	Vice Director General, National Copyright Administration of China
Jon W. Dudas	Under Secretary of Commerce for Intellectual Property and Director of United States Patent and Trademark Office
Francis Gurry	Deputy Director General, WIPO
Ian Leslie	Facilitator and MC
Toshimichi Moriya	Deputy Commissioner, Japan Patent Office
Peter Roberts	Managing Editor, Business Review Weekly
Rhonda Steele	President Elect of the International Trademark Association (INTA) and Senior Trademark Adviser for Asia Pacific Mars Inc.
Hugh Stephens	Senior Vice President - International Relations and Public Policy (Asia Pacific), Time Warner Inc.
Tony Ward	President, Institute of Patent and Trade Mark Attorneys of Australia

TRANSCRIPT

Ian Leslie: Well, good afternoon everyone and welcome to the final event of Trading Ideas, a panel discussion on the future of IP in the region – an opportunity to debate some of the topics we've explored over the past few days.

Alongside me are some faces you may already know. To my right, Alison Brimelow, President Elect – European Patent Office; Jack Chang, Senior IP Counsel – Asia, General Electric (China) and Chairman of the Quality Brand Protection Committee with 164 multinational cooperative members; Jon Dudas, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office; Francis Gurry, Deputy Director General – World Intellectual Property Office; and Toshimichi Moriya from the Japan Patent Office.

To my left Rhonda Steele, President Elect of the International Trademark Association and Senior Trademark Adviser for Asia Pacific Mars. Tony Ward next to her – President, Institute of Patent and Trade Mark Attorneys of Australia. Peter Roberts, the Managing Editor, *Business Review Weekly* joins us this afternoon.

Peter is a leading writer and commentator on business and management. Mr Xu Choa, the Deputy Director General of the National Copyright Office, Administration of China and Mr Hugh Stephens, Senior Vice President – International Relations and Public Policy (Asia Pacific), Time Warner. Hugh has headed Time Warner's Asia Pacific Policy Office since January 2001 and he is based in Hong Kong.

Now over the past two days we've heard how business uses the IP system to its advantage, we've heard the IP challenges facing governments and we have heard the important role that IP plays in developing trade within the APEC region. And this morning, some startling information on the scale of counterfeiting and piracy around the globe. As Jon Dudas pointed out a \$600 billion turnover. One thing is certain. The IP world is constantly evolving. So let's now turn to our experts to get some wisdom and some answers.

We'll start with the world body represented by Francis Gurry from the World Intellectual Property Office. Francis, if you could imagine an IP system where customers lodge one application which is processed against a globally accepted set of IP laws and valid in every country in the world. Is a fully harmonised system like this a reality any of us will see in a lifetime or is it a false Utopia?

Francis Gurry: Well thank you Ian. As they say, it's always dangerous to make predictions, especially about the future. Nevertheless let me say that I think that it's not only possible but probably necessary that in the space of the next, let's say 25 years there must be some globalised procedure. That doesn't answer all of your question. I'm not sure that we will get to a point of globally harmonised laws but I think it's entirely possible and necessary that we get to a point where we have a single application as you mention, a single procedure for dealing with that application, and then it would pass into the national or regional level for a decision on grant. That would be a much more rational use of resources than we have today.

The important qualifications I think of such a system would be that national sovereignty is protected so the ultimate decision rests with a country. For that reason you might foresee that there may be slightly differing approaches to exceptions and exclusions, but a single networked procedure without a global office but using all the offices of the world, this I think is not only possible but absolutely essential.

Ian Leslie: As patent and trademark applications seem to be rising all over the world it could be argued of course that the system is over-used and in fact misused and alternative protection strategies are ignored. Alison Brimelow from the UK, are users looking to protect IP through registered rights when alternative protection strategies may be more appropriate?

Alison Brimelow: Self evidently, some of the time, yes. I am all too aware that for a long time patent offices had a vigorous approach to marketing which implied that all you needed to do was buy a patent or two and riches would follow. I think you need a much more differentiated message.

Some people most certainly need a patent. Some people need lots of patents. Even more people I suspect need trademarks. But there are other solutions. There are other strategies. And I think a more sophisticated spelling out of what options are and indeed a sophisticated engagement with professional advisers one of whom is sitting along there, will help to ensure that people don't waste their time and money

pursuing a patent when they don't need them, and we don't waste our time examining a patent that is not actually going to be very useful.

But equally, and I made this point when I spoke yesterday, the market is a lively and flexible thing and one of the reasons we're inundated with applications for patents and why they are stacked up in queues is that people are finding ways to make money out of that process. And I'm not sure that it is very sensible for regulators or anybody else simply to say — well, actually you're causing us a bit of bother. Would you mind going away and finding something different — when actually you were thus coming between an entrepreneur and a possible profit.

So I think a modulated response there but by all means do think about the alternatives because they may be more effective.

Ian Leslie: How do you see the work share concept evolving?

Jon Dudas: The work share concept to us is really the ultimate answer. So what we see right now is we're necessarily hiring examiners at a high rate – 1,200 a year well out into the future.

But we want to do two other things. First and foremost give every applicant and everyone in the public both the opportunity and responsibility to participate more because they have an interest in the patent system, and secondly, share work throughout the world. So right now our current thought is that we want to share our results and receive the results – search and examination results, from every office throughout the world that we possibly can and use them to the maximum extent possible – the maximum extent practicable. Rather than set out a target for the kinds of things we'll use them exactly this much or we'll make certain that there's full faith and credit – something along those lines. What we want to then do is make certain that every office has use of work that's already been done.

Ian Leslie: Let's get a viewpoint from a representative of the IP profession. Tony Ward, how is the increased use of the system do you think affecting the profession?

Tony Ward: I believe that the patent professions around the world have to push harmonisation because although it looks in the short term as a loss to our income there are some nice earners as we say in the patent profession to do with the filing and the prosecution of patents individually in each country and it props up nice industry.

I think the patent professions have plenty of opportunity to improve the services that they offer to their clients by concentrating on the much more significant issues of the patent system for instance, that is a return for the investment that you get for filing a patent, the success rate. The sad part about patents is that the failure rate in terms of lodging a patent and never making money out of it is enormous and I think that harmonisation may well allow the patent profession to revalue the services offer and give our clients a better chance of getting a return from the investments they make in intellectual property.

Ian Leslie: Jack Chang. As a significant user of the various IP systems, Jack does the IP system meet GE's needs?

Jack Chang: GE has a large legal team. We have a team of lawyers over 1,000 in the world. In the region we have over 130 and in China we have close to 40 lawyers. So GE is very, very interested in supporting the local government that we make investment, to shape the IP policy, to change the IP environment.

Of course harmonisation is something that we are really interested. And to make the answer a little bit shorter that we are trying to be part of the IP system reform. And of course different systems have pros and cons but we try to provide our inputs to make it user friendly and effective.

Ian Leslie: The copyright industry is interesting in that lobby groups such as The International Federation of The Phonographic Industry, The Motion Picture Association and the Business Software Alliance have taken a strong lead role in public education and awareness on behalf of IP or copyright owners.

What results are you seeing from this initiative and do you think that this kind of work will continue?

Hugh Stephens: Well thank you Ian. Yeah, I think it's true that the various industry groups have done an excellent job of being creative and putting resources behind the public education effort and I think this needs to continue.

I would add that they're not the only groups of course. There are many other business groups. The US Chamber of Commerce recently has mounted a major initiative in this area, the QBPC that Jack and I are associated with and so on. So there are many business groups that are working on this. Business is a key stakeholder.

Government also is a key stakeholder clearly from discussions over the last couple of days whether it's in terms of innovation, jobs, foregone taxes or respect for the law, and I think that there's probably scope for more partnership here. Some excellent has been done. Jon Dudas this morning talked about the initiative to make SMEs aware of their patent rights. We talk about innovation and I know some very creative work has been done here in Australia on the education side.

But I think as government goes about its work as part of its day-to-day work there are many things that could be done. Education is an obvious one starting at consumer education, high school levels and so forth. But even things like making the travelling public aware of what they should or shouldn't do or making people aware of or making them understand the law. Ignorance of the law is no excuse but at least people need to understand what's acceptable and what's beyond the pale. So I think working together industry and government can make a really strong team and it's something we need to continue to do much more of.

The average consumer will vary from country to country. In some cases a consumer may be more swayed by price considerations or availability considerations than in others. I think that's our big challenge is to show consumers that without respect for IP those that continue to create and bring these products that they want to consume that can't continue indefinitely if there isn't a return on investment and if there isn't protection for the content that's created.

So it's a hard question. If we did a poll I'm not sure what the answer would be. If the answer is not the way we would like it I think that's a message to us to gird our loins and do even more.

Ian Leslie: Mr Xu Choa, Sir. With China's significant economic growth and its role as a manufacturing base in recent years, what do you see as the main priorities for China in relation to copyright both domestically and in the Asia Pacific region?

Mr Xu Choa: I think the most priority in China in the field of copyright is the Chinese Central Government decisions and that means China's economy is so developed that the people have to concern to regular trends of development of the economy. That means China is not only developing the manufacturing industries but also it's ready to develop the so-called industry of intellectual property. That means the added value of industry mainly from the subject matter of intellectual properties, for example in copyright industries including the cinematographic industry, software publication and so on. You know, Premier Minister Wen Jiabao said last year speaking to Premier Blair of the United Kingdom, he said that intellectual property in China must be so hard as iron steel but we need some time to improve and develop that protection in China.

As I understand that means the trends of the Central Government are stable there's no doubt but we to protect intellectual property including copyright must be on the basis of the Chinese situation because China is also a developing country. There's a large population and many, many problems and that means it's a long way.

And secondly from the side of Asia and the Pacific region I think we can get both these priorities from information exchange and the experiment exchange, for example the symposium at this time in Sydney, and we welcome the presentations. It's constructive and objective.

Ian Leslie: Rhonda Steele, an IP rights association like INTA works on behalf of its members to influence IP policy debate and discussion. Do you see a key role for INTA in public education and awareness?

Rhonda Steele: I think as many of the panellists have already mentioned I think it falls across a number of levels. There's a government responsibility, there's a business responsibility, and certainly as part of its mission INTA has as a core element protecting the interests of consumers. As a consumer myself I've had many lively debates with friends of mine around the dinner table about colours for example and the initial reaction you get is how can anybody own a colour? But if you spend time with people and you help them understand the issues there's a certain realisation that yeah, maybe that's a possibility.

So I think yes, INTA certainly has a role to play. In fact a year or so ago we formed a task force to actually look at the issue of whether trademark owners in particular were perhaps overreaching with some of their rights, to see how best we could respond to that type of issue. We developed a number of recommendations and core to that report was actually looking at what services through our Education, Information and Services group that we could actually provide at the general public level to help overcome some of those issues and perhaps misunderstandings about that overreaching.

Question: My question's addressed to Hugh Stephens. My understanding is Hugh that there's been an attempt – I think it was by Time Warner but it might have been by another competitive company, to deal with counterfeiting issues I think in the China market by releasing DVDs in a timely manner and at a price point that actually tries to put the pirates out of business.

And the thought occurs to me that that's been an underlying issue with the counterfeiting industry all the time is the public perception that the price points of some of these products is way beyond what the consumer actually thinks they're worth and the counterfeiters have been tackling that. And it sounded to me like the industry has decided that that's right and they've found a way of trying to fight back.

And I was wondering a) have I got the wrong end of the stick right; and b) if so, is it working?

Hugh Stephens: Thank you for the question. I won't let you put words in my mouth and say that we recognise that the counterfeiters and pirates were right and therefore we're trying a low cost strategy in China.

Let's just say that I think all businesses fundamentally want to get the product out to consumers and so you have to price your product in a way that's going to be competitive in the market that you're in, recognising that you're operating in a global environment. It's quite true that to try and sell a DVD in China for the same price that you might sell it in the United States is obviously going to be extremely difficult or you're going to have a very limited market.

And the question actually was raised in one of the panels this afternoon. Well, what about the price point and is it too high and so forth? So I guess the first point I would say that just because a consumer may disagree with the price that a product is being sold at doesn't give him the right to steal that product.

However to come to your question about China it's true that Warner Brothers as an experiment in terms of addressing this issue – addressing this concern of how do you expect people to be able to pay the price of a DVD has gone into China. There is a joint venture that has been established with a company called China Audio Video. A great deal of effort has gone into ensuring that the products are properly licensed, that they are distributed, that they are packaged and that the consumer is going to get value for money.

The products are sold for as little as 12 renminbi which is about 1.50 US up to 30 – 35 renminbi for specially packaged boxes that are for gift items and so forth. It's still impossible obviously to beat the pirates because it's pretty hard to beat free or stolen goods. So the pirate price varies but it can be as low as 5 renminbi. Usually the quality is not very good. But when you consider the challenges of doing this it's no small undertaking. I mean first of all obviously as a reputable company we have staff costs, we have the royalties to pay for the product that we are distributing for Warner Brothers or for Universal Studios. There are the distribution costs – the whole panoply of costs that go with running a legitimate business and trying to shave margins to the extent of being able to compete on a very uneven playing field.

I must say the initial signs are encouraging. There's a list I think now of something like 300 titles that are available. The comment was made about earlier release – the day and date release. *Superman Returns* in fact was released in China on DVD the

same day that it had its theatrical release in the United States in an attempt to close that window and to get the product into the market quickly.

A big challenge is distribution. I think we've probably signed up all the reputable, legitimate distributors, the major Xinhua Bookstore, Fab Video, Tesco, Wal-Mart etcetera. Now the challenge is to get into that next chain of distribution, sort of the mom and pop stores, where I think inevitably for a period there's going to be some legitimate product and some pirated product. And the challenge is at the end of the day to convert these businesses because I guess arguably they perform a useful function in the market. You're not going to put them out of business. What you've got to do is convert them.

So I think in China and elsewhere that business is very sensitive to price concerns but there is a limit as I say to the extent to which you can do this. It's got to operate clearly on a huge scale which China offers and which some other markets don't. Price, availability is obviously very much part of the equation and the industry is certainly sensitive to that.

Question: My question is primarily to Jack Chang and to Hugh Stephens as representatives of multinational American companies.

What encouragement would you give the IP community to open dialogue with our colleagues in the accounting profession to develop consistent treatment of intellectual property as a commercial asset?

Jack Chang: Well I personally think that's a big conflict because on the one hand we said intellectual property is the foundation of the future – innovation, economy development. But on the other hand the accounting colleagues do not think that the value should be accounted into the books. So I think that we talk about harmonisation. How do we harmonise in this particular regard? I think only when people realise the true value of intellectual property and there's no such conflict of opinion I think that we will gradually move forward.

Hugh Stephens: All I know is that frankly if you look at a company like Time Warner our value is basically what we produce. If that is not protected and if that's not worth something then I'm not sure why we're in business. So I think it's – I don't know what the ins and outs of it are in terms of the accounting profession but clearly without protection of IP we'd be out of business tomorrow.

Question: Dale Watson. I'm an Australian patent attorney. Tony, just following up on one of your observations that the Australian IP system would be possibly more readily utilised if the litigation costs weren't so high and Justice Bennett noted in her session earlier today the importance of focusing argument on those issues that really are in dispute. And I know some decisions in the US have also highlighted that point.

How possible do you think it is that the expense of litigation can be reduced and is there anything that for example the patent profession can be doing to push that? And what sort of timeframe are we looking at?

Tony Ward: There were a few questions there, some of which I'm afraid I wouldn't be able to answer, certainly issues of timeframe. I think that the enforcement system in this country, the court system, of course is based very closely

on the British court system and there have been the same complaints that have been addressed in England. They have sped up and cut the costs of litigation in England. I wouldn't say it's been totally successful.

I think what the Australian legal profession and patent profession and governments have to do is to review the systems around the world and come up with a best practice system that is quicker, that is cheaper, and if necessary they may have to break down some of the monopolies – the issues about who represents people in court as well. I mean we have this problem with solicitors and barristers. You go into court and you've got a QC, a junior, a solicitor, a patent attorney and four others hanging on all of their clocks ticking, and you wonder why the litigation's cost you a million when the Germans tell you they can enforce a patent in Germany for US\$100,000. The Chinese can enforce a patent within a year for US\$100,000. We've got a lot to learn and I think that there needs to be a will amongst all the practitioners for that to happen. I'm not actually sure that will is there.

Jon Dudas: The cost to get a patent in the United States is \$1,000 if you're a large company, \$500 if you're a small company. The cost to prosecute a patent application is approximately \$8,000 – \$25,000. So what of the things? Harmonisation, work sharing and those kinds of issues are going to make a difference. On litigation same thing as far as the costs. The costs to litigate a patent depending on what the patent is potentially worth ranges potentially from \$50,000 to \$250,000 to \$5 million for some of the large patents that you see in the press.

What we're trying to do there quite honestly in adjusting the litigation is something called Post Grant Opposition. The European system has that. What we want to be able to do is give an alternative to litigation where you can come before experts before the Patent and Trademark Office. We have judges who handle appeals right now. This is something that requires legislation. But we believe what it will offer you is an opportunity to get through the system and be able to enforce – at least have questions about your patents resolved or the quality of the patent resolved within a year to a year and a half within our system and avoid the litigation costs that you'd have and quite honestly the price would be very low.

Alison Brimelow: Well as Tony said, the UK has made some efforts to bring down the costs quite successfully and to speed up the process though it is quite clear that Germany is showing the United Kingdom a clean pair of heels to this day.

I think too it's a point we need to remember in the context of is this system working? And I made the point yesterday about better integration between pre and post grant. If litigation is horrendously expensive one of the things that happens is that you get quiet deals not to litigate. That is not necessarily in the public interest because there are invisible consequences that are probably anti competitive and that worries me quite a lot.

Question: I'm Peter Blamey from Dynamic Hearing, a technology company in Australia. Speaking as an inventor, I've heard several times here that a patent is an agreement between an inventor and a government whereby we tell you all about the invention and you give us a monopoly.

My question is to Francis Gurry. If I submit a PCT I tell the whole world about my invention. Is that a good deal for me? What do I get out of it?

Francis Gurry: Well I think it is a good deal for you which is perhaps not a surprising answer for me to give, because what you get out of it is the security to commercialise your invention. You stake out the claim to go forward and to attract the commercial investment that you need and that investment won't come unless you have some exclusivity around the right to use that invention.

Under the PCT system I think the advantage that you do get is that you have an extra period of time, namely up to 30 months, before deciding which country and which are the markets that you want to go forward with the application in. And that's essentially the advantage of the PCT – buying some time to go forward.

Disclosure? Yes, you have to disclose in return for that. The difficulty I imagine that you're seeing is that if the grant isn't coming quickly enough then you're left out there exposed because your invention has been disclosed to the public and you haven't got a secure right yet.

Question: Andrew Christie from the IP Research Institute of Australia. My question's addressed I think most appropriately to both Alison Brimelow and Jon Dudas. And I want to pick up on a point that Tony Ward reminded us all of, a very simple but very profound point in relation to patents.

Only a very small minority of patents are ever commercially successful. Now, if the problem is one of a huge backlog of applications and the difficulty in examining them even if we have only one examination, is the following an option – that we don't examine patent applications unless and until an applicant wishes you to do so and they would need to wish you to do so if they wished to enforce it. But if they never wished to enforce their patent because it was one of the 97 that was never commercially successful they would have lodged, you would have granted but you would not allow them to enforce. There will be conditional rights attached only if it was subsequently examined and found to be valid.

And I think you both know but not all the audience would, that that's a model adopted in Australia in relation to its second tier patent system – the Innovation Patent, ie. you apply, you get grant but you don't get examined until you seek to enforce and you can only enforce if you've been examined and found valid. If you were examined and found invalid you can't enforce. If you were never examined you can't enforce.

Is that an option amongst the other options you've been considering to deal with the backlog?

Alison Brimelow: Well Andrew yes, of course it's an option, and I would be interested to know how well you think that particular course of action is working in Australia. Empirical evidence is always welcome to policymakers like me.

There is an intrinsic rationality there. It is a model that people are using. There are I think as many opponents to the idea as there are proponents. Anxieties about uncertainty in the marketplace come to the fore. I know it's been talked about. We ponder it in the context of our problems in Europe. Whether it will go that way I'm not clear not least because we find it very hard in Europe to make up our minds about anything at the moment. But I think that though I can see some of the disadvantages I would be most reluctant to shriek and jump on my chair as though this was a mouse that had come into the room when there might indeed be evidence

around that this was a rational way forward. So I am agnostic at the moment but open to persuasion.

Jon Dudas: At the risk of sounding exactly like Alison I would say it's absolutely an option. It is an option with costs though, both substantive and political costs, and it is something that we are discussing as part of our strategic planning at looking at new opportunities and new ways to look at the patent system – tiered examination systems. Everything from having what you've talked about there to having a super examination. We could have teams of ten people spending six months on it. There's a variety of different areas.

It's been met with some shock and dismay. I bet that's shocking that the patent community would find a new idea to be shocking. I used a lot of shocks there didn't I? But it's something that we're looking into.

Some of the costs to such an idea as Alison alluded to – the consistency and the certainty that goes with that. The concerns we have right now in the US system with continuations. The concerns that we had before we had 20 year filing was people who will apply for a patent, wait for technology to develop and then say, "Ah ha! Now I want to enforce my patent and what my claims really meant were the following." And they encompass everything. So that's a very real concern.

There's also a concern that among large companies – among companies that engage in patenting in numbers, again it's only \$1,000 a patent. If there are no other transactions costs, which there certainly are, many times what you'll see is large companies want large numbers of patents. So it might not address that behaviour. But we are looking at that right now and actually looking at IP Australia. The Australian experience would be helpful. I would agree with that.

Francis Gurry: What does it do to the financial value of your asset if you haven't had an objective assessment by an independent authority that it is valid, and how does that affect a company's capacity to go forward as particularly a start-up with that asset?

Alison Brimelow: Francis, you are as ever and of course right but, could I just remind you all as if you needed reminding, we are looking at the world where we've got queues of patents waiting for anybody just to open the wretched dossier. What does that do to the value of your asset? It may be a cracker. It may be an absolute dead duck. I mean you're quite right Francis. I genuinely agree with the point. But please do not let us delude ourselves that keeping people hanging around for – well you saw the wretched averages that we put up yesterday, x months, is doing anything for the value of assets. But what it does do is enable a lot of people to play what I call rich man's poker which is that my stack of 500 pending is probably just as good as your stack of 600 pending. Shall we do a deal? Another form of patent system.

Ian Leslie: Francis, as our economies continue to grow and mature in relation to their IP practices, do you think the extent of piracy will be reduced?

Francis Gurry: Ah, well, you're asking me to make a lot of predictions this afternoon Ian. Yes, I think it will and I think one of the reasons why it will be reduced is because a larger percentage of the workforce will become involved in knowledge industries. And the more people you have involved in that the more the appreciation,

the more the stake there will be in the system to ensure that there is a means of effectively preserving the value of those assets. So that's one way in which I think there will be reduction.

Awareness and education – that's obviously another very important thing as a number of people have mentioned. And I wouldn't underestimate the size of this task in relation to awareness because we're really speaking about the transition of a whole set of property rights from physical capital to intellectual capital and that's a large change of mindset for the general population to be able to absorb.

Question: I'm Wong Sheng Kwai from Singapore. I think in terms of the profile of IP or the perception of IP systems by the general public that generally they are quite anti it in a sense, especially in the area of copyright. They think that it is invasive, it is inhibiting their freedom of use of content and stuff like that. And it doesn't help that IP owners in the copyright area especially, the rules are complicated, there are many disparate players and they are not even in agreement in some of this collection of royalties.

And so in terms of explaining the legitimate use of works it is a difficult process and even from people as we are encouraging people to be creative and innovative, the system and its clearance of rights of use of works so that it can create and innovate upon is again a difficult issue and it's costly.

And I think part of the response of that is that people are going to options and alternatives like Creative Commons, Open Source software and that has actually taken a lot of acceptance and popularity on the ground. So I'm wondering whether that is a reaction from the users of IP. Would that eventually impact on the general development of IP systems going forward? I think perhaps especially in the area of copyright I'm wondering whether that would actually impact on perhaps some of the difficulties users have with the system and therefore discredit the use of the system and the emergence of more alternative uses.

I know that question is a bit general but hopefully you could do more predictions in that vein. Thank you.

Francis Gurry: Well a quick answer is that of course there's a lot of evolution we're seeing in innovation models and that experimentation with innovation models can only be a good thing, and I think it's also another sign that the knowledge economy is here.

It's interesting that some of the other models that are considered by some to be against intellectual property actually rely on intellectual property. They rely on intellectual property to establish the basic rules of the licence – an Open Source licence for example. So I would tend to regard many of these other models as complementary to intellectual property protection rather than its alternatives. And I think that as we see them evolve further this complementarity will come out increasingly and we will have a space reserved for the intellectual property system as we have always known it as an incentive to innovation and creativity and other spaces being created for other incentives to innovation and creativity.

Ian Leslie: Jack Chang, if I could come to you. You spoke this morning about the lessons GE has learnt in trying to enforce its IP rights across a range of countries it operates in. You talked about the cooperative model, working with

governments – partnerships. You also predicted that it will take at least ten years to effectively combat large scale piracy to protect our IP assets. What can APEC members do to accelerate this fight back?

Jack Chang: That's a very good question. If I have the power to do two things in the region I think the first thing I want to do is to benchmark the government's incentive programme rewarding system for law enforcement agencies. I actually use that to observe a government's commitment level to IP protection. Unfortunately the law enforcement agencies that I talk with in this region in many countries they all feel frustrated when they keep listening to their leaders saying that we take IP so seriously but there is no rewarding system.

So in China actually our QBPC members you see a certain percentage they say we feel the government commitment is strong at a national level and because they've been building up the image of industry leader they've got stronger support. But how about those smaller industries – small / medium sized companies? There is not a system working at this moment. So only when there is an incentive system in place encouraging the law enforcement, they have the desire to keep on working at it then we will see a better change.

Another thing is the Customs declaration form. Demand stimulates the supply and when we see that people are buying it don't feel a sense of shame at all. They are not bad people. They just don't know this is a bad thing to do. So if the Customs in the region can all have exhibition booths like what we see in the Tokyo airport, like what we see in Germany, in Hong Kong. You have that and people keep on travelling, they realise this is the wrong thing to do. At least when they buy those things they won't feel there's nothing wrong.

And for those countries under your law you can't seize that but have that product item listed in the Customs declaration form. We see drugs, weapons, agricultural products but no counterfeiting, no pirated goods. I think that if we can do that we can seriously reduce the demand from the business traveller, from the people who are not bad people who just did not know the harm. Of course I don't have the power so I have to raise this and I really look forward to the support from the APEC leaders to make that happen.

Now let me comment on one thing on public communication. When I was working with the Chinese police on a case he was not becoming a people's hero. He's becoming people's enemy in his jurisdiction because the counterfeiters will try to mobilise the local resources and try to ask him – motivate him to give up. If he keeps on doing that they will try to coerce him to give up – back off. So every time when there's work on a case based on the book then they are facing a lot of pressure because the general public – the public opinion does not support that. When you ask people in China whether IP theft is a theft you might get a very discouraging reply because people's mindset is not yet to that level. Ten years ago when you talked about environmental protection in China people would ask you, "What do you mean?" But now people gradually accept the idea.

So public communication – I don't use "education" because a Chinese reporter taught me. He said as a foreign investment company you don't educate Chinese people. You communicate. Then I know how sensitive we should be in terms of

choosing words. And if we do that at least gradually the public opinion will be on the right side.

We actually recently under Hugh's leadership conducted a media forum and we were very, very encouraged by how the Chinese media spoke out. They even mentioned to us, which we realised that whatever programme we tried to tie in, the top Chinese leaders' policy direction is to build a harmonious society. Even the Supreme Court of China released documents – Harmonious Civil Litigation. Can you imagine that? When you file a lawsuit in the court you talk about a harmonious approach. Then, after we read it we realised it.

So we think that when we try to do public communication we partner with a supporter, we give the message that we are a supporter. We try to work with you as our partner to make China, at least Beijing and Shanghai, a clean environment before the Olympic Games and we need your brains, we need your partnership. They spoke out. The ideas that they provided to us were overwhelming.

So I believe that we probably won't be able to convince consumers not to buy through public communication. But with the partnering with the media we may gradually make the public opinion think that they should support the law enforcement agency when they do the right thing. They probably should try a little harder. Make those people who purchase at least feel well, I should not be observed by my neighbour if they saw me buy a pirated DVD. Then we have a chance to gradually move forward. Thank you.

Ian Leslie: As this symposium draws to a close I would like to end this discussion – end the day, by asking our panel for quick closing statements to leave us with their thoughts on what they believe is the most critical issue they see facing your industry right now.

So panel, if we could start with you Alison Brimelow, a brief closing statement on the most critical issue. What do you see it as?

Alison Brimelow: A mixture. Get serious about fostering our backlogs. Get serious about how on earth we are going to cope with the exploding prior art. And please, enforcement is not a part-time afterthought but integral to the success of the system.

Ian Leslie: Thank you. Jack Chang.

Jack Chang: I think the most challenging thing is people's mindset change. If the mindset can be changed a lot of things then are just the technical things – how you do it.

Ian Leslie: Jon Dudas.

Jon Dudas: I think every issue comes down to one question – whether or not people are serious about long term innovation or short term gain. So counterfeiting and piracy is very much a short term gain. You make money by stealing. In the long term it won't work and the same is true with the workload issues. Will the offices and the applicants and the public at large be able to take the political consequences now and get serious about the issue or will they just take everything as it is right now?

Ian Leslie: Thank you Jon. And moving to Francis Gurry. Just a closing statement, Francis.

Francis Gurry: I think let's find ways of separating discussion about functionality and discussion about politics. In other words don't let functionality be held hostage to or contaminated by politics. And I would make that distinction. And it is only if we can deal with some functionality questions that we'll be able to succeed in managing the demand that is there and in going forward with functional machinery for intellectual property. And there will always be political questions out there to be discussed.

Ian Leslie: Thank you Francis. Toshimichi Moriya, what is the most critical issue you see in just one final, short closing statement?

Toshimichi Moriya: Yes. I would like to [indistinct 45.36] from the viewpoint of the Patent Office. Quality is very important. And the second one is timely granting a patent and to reduce – we have to reduce the backlog with international cooperation. Thank you.

Ian Leslie: Thank you very much Toshimichi. Rhonda Steele, your view.

Rhonda Steele: For me it all comes back I think down to one thing which is consistency – consistency of approach to issues like harmonisation, consistency of approach to things like GIs, consistent examination standards and consistent application of the various laws across the various aspects of IP protection and enforcement.

So I think my key critical issue is just trying to make sure that we find ways to really focus on that consistency.

Ian Leslie: Thank you Rhonda. Tony Ward.

Tony Ward: Well I think I've made my point already.

Ian Leslie: All right, we'll move on.

Tony Ward: One thing I would like to say is that next time I want to go to a damn good conference I'm going to get IP Australia to organise it.

Ian Leslie: Thank you. Peter Roberts.

Peter Roberts: Thanks Ian. My perspective is a local one I guess and it's one that I've told in my journalism throughout my career that Australian business does need to get serious, to use Alison's word, about understanding the power of intellectual property as a driver of business and therefore they need to protect and nurture it.

Ian Leslie: Thank you. And Mr Xu Choa.

Mr Xu Choa: I'd like to give you information about website address. It's www.ipr.gov.cn where you can find very important information to show you the way to claim your right in China. And I hope next symposium we could get an opportunity to give a presentation.

Ian Leslie: Thank you, sir. And Hugh Stephens.

Hugh Stephens Ian, I would say the big challenge for the copyright industry is to get its arms around the digital challenge – to work with governments so that the legitimate exceptions, the balances that governments try to strike are not such that throw the business model. That when government is setting restrictions to enable consumers or to enable others to circumvent that they bear in mind the limits of technology and experience in business so that at the end of the day we can find a way to do business in the digital age and bring our product to the consumers in a variety of ways that have different price points so that we'll all have a better experience.

Ian Leslie: Thank you. Well that is a variety of take-out messages from our panel. Thank you very much Panel for your time, your insightful comments, your wisdom and some of your wit, Tony – sharing that with us today. And thank you also to our audience for your contribution – your questions. I sincerely hope you've found this session informative and a solid investment – a business investment into your future.

For those of you who have travelled a long way to be here I trust that you've enjoyed your visit to a beautiful city and we hope that you'll come back some time soon and pay us another visit. And of course we wish you all a very safe journey home.

Thank you for attending Trading Ideas. Thanks again Panel and good afternoon everyone.