LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES

VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

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"The Applicability of GATT Jurisprudence to the Interpretation of the TRIPS Agreement"

RESEARCH HANDBOOK ON THE INTERPRETATION AND ENFORCEMENT OF INTELLECTUAL PROPERTY UNDER WTO RULES: INTELLECTUAL PROPERTY IN THE WTO, pp. 3-23, Carlos M. Correa, ed., Edward Elgar, 2010
Victoria University of Wellington Legal Research Paper No. 33

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It has been almost 15 years since the TRIPS Agreement came into force and its relationship with the GATT has developed in that time. The relationship between the agreements has been discussed in dispute settlement and in negotiations in the TRIPS Council. As the role of TRIPS has become more widely understood, it has become clear that its relationship with other trade agreements may not be what it should be. While the GATT and GATS agreements have as their overall goal the liberalisation of trade, the protection of intellectual property is a different goal that sometimes works as a trade barrier, rather than a liberalising tool. This feature of intellectual property was known when the TRIPS Agreement was completed, but the rhetoric that intellectual property protection, within the WTO, was necessary to prevent counterfeiting in the global world won the day.

Also, there continues to be concerns over the impact of the TRIPS Agreement on innovation and technology transfer, particularly in developing countries. The flexibilities in the TRIPS Agreement have not produced results that really assist in development of local innovation and technology transfer. This chapter discusses the differences between GATT, GATS and the TRIPS Agreement and whether GATT and GATS jurisprudence is relevant to the interpretation of the TRIPS Agreement. The chapter concludes, amongst other things, that GATT principles may also be applicable to the interpretation of some TRIPS Agreement exceptions, particularly where those exceptions require external sources to give them a meaning in the TRIPS Agreement context. However, the applicability of GATT principles seems to vary according to what is at issue. As yet it is not clear that there is a consistent approach to the use of GATT principles in the interpretation of the TRIPS Agreement.

"Attempts to Protect Indigenous Culture Through Free Trade Agreements"

INTERNATIONAL TRADE IN INDIGENOUS CULTURAL HERITAGE, Christoph Graber, Karolina Kuprecht Jessica Lai, eds., Forthcoming
Victoria University of Wellington Legal Research Paper No. 34

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The fundamental purpose of Free Trade Agreements (FTAs) is to extend the commitments that members of the World Trade Organization (WTO) have made in that multilateral forum. FTAs also frequently include commitments in areas that are outside the WTO obligations. Protection of traditional knowledge is not specifically part of the WTO framework, in particular is not part of the Agreement on Trade-Related Intellectual Property Rights (TRIPS Agreement). Some FTAs are used to ensure that the parties, or at least one of the parties, retain the ability to protect certain aspects of cultural heritage, including the protection of traditional knowledge. On the other hand, other FTAs limit the possibilities for protecting traditional knowledge. This paper discusses how FTAs affect, or might affect, the aspirations of indigenous peoples, in particular, to protect their traditional knowledge.

"The Mismatch of Geographical Indications and Innovative Traditional Knowledge"

Prometheus, Forthcoming
Victoria University of Wellington Legal Research Paper No. 35

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This article is about how geographical indications (GIs) cannot deliver

the protection for traditional knowledge that indigenous peoples seek. There are three broad ways in which the protection of GIs appears to offer the possibility of providing legal mechanisms to protect traditional knowledge. These are the collective nature of the protection, the indefinite availability of GIs and the connection that GI owners associate between their products and their land. Those seeking protection of traditional knowledge also seek a collective and an indefinite interest and frequently the relationship between their knowledge and the land is important for indigenous peoples. Yet these similarities are superficial. GIs protect names and are used by western farmers and sometimes rural communities to promote their products. This article concludes that GIs cannot deliver the protection that indigenous peoples seek in order to benefit from their traditional knowledge.

"Trademarks and Traditional Knowledge and Cultural Intellectual Property Rights"

TRADEMARK LAW AND THEORY: A HANDBOOK OF CONTEMPORARY RESEARCH, Graeme B. Dinwoodie and Mark D. Janis, eds., Edward Elgar Publishers, 2008

Victoria University of Wellington Legal Research Paper No. 36

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Indigenous peoples' rights in relation to cultural traditions and the commercial exploitation of those traditions has been an issue for a considerable period of time. The increase in international trade in products or intellectual property derived from traditional knowledge has highlighted the call for protection of that traditional knowledge and the culture associated with it. In particular, the effect of the TRIPS Agreement as the strongest international agreement across the core aspects of intellectual property has intensified the debate over how much protection there should be for traditional knowledge and cultural property. This chapter considers these issues and their relationship with the law of trademarks. In particular, it discusses the uses and limitations that trademarks have to protect traditional knowledge. As aspect of that discussion is the approach of trademark systems to prevent third parties from registering culturally offensive marks. The chapter compares the approaches of the domestic systems of the United States and New Zealand with regard to culturally offensive trademarks and the grounds for opposition in the registration process.

"Some Consequences of Misinterpreting the Trips Agreement"

The WIPO Journal, Vol. 1, p 35, 2009

Victoria University of Wellington Legal Research Paper No. 37

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This short article is part of the inaugural issue of the WIPO Journal. This article discusses how the TRIPS Agreement has been interpreted and misinterpreted and the consequences of that misinterpretation. The article concludes that the rules-based dispute settlement system has failed to provide proper guidance on interpretation of TRIPS that reflects the object and purpose of the Agreement. This failure has a number of consequences for the international intellectual property system and should be corrected in future decisions of the WTO dispute settlement body.

"Limits of Free Trade Agreements - The New Zealand / Australia Experience"

INTELLECTUAL PROPERTY ASPECTS OF FREE TRADE AGREEMENTS IN THE ASISA-PACIFIC REGION, Christoph Antons and Reto Hilty, eds., Kluwer Law International, Forthcoming
Victoria University of Wellington Legal Research Paper No. 38

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This chapter discusses the several reasons why relations between New Zealand and Australia have not become closer notwithstanding the Closer Economic Relationship (CER) Agreement between the countries. The authors suggest that the experience of CER offers a salutary tale on the limits of 'old style' broad agreements in developing free trade; especially when compared to the new style FTA. The authors conclude that the differences between Australia and New Zealand intellectual property law are considerable in detail and in approach. In Australia, where intellectual property standards tend to track those in the US and Europe (even beyond those levels prescribed by the international agreements), it is often wondered why New Zealand is so intent on maintaining its own course in matters such as copyright term and parallel imports. Conversely, the attitude of many New Zealanders is that the New Zealand position is best for New Zealand, even if something else may be better for Australia.

Solicitation of Abstracts

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-

1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachussetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Judicial Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the **Law School** has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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