

Patenting and Ownership of Genes and Life Forms

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Introduction

This special issue presents an overview of the differing ways that ownership and patenting of genes and life forms are handled around the world.

The articles were written by panellists who took part in the Committee L (Intellectual Property and Entertainment) session at the Business Law International Conference in Barcelona in September 1999. The articles compare and contrast the legal issues and protections available in North America, Asia, Europe and Australia. The different ways that various jurisdictions have addressed these challenging concepts provides insight into how the law in this and related areas may evolve.

Furthest developed is the law in North America, particularly the United States and Canada. Kate H Murashige of Morrison and Foerster, Washington DC provides a detailed guide to the precedents that establish protection for genes and life forms in these forerunning jurisdictions. Several key cases are explored in detail to demonstrate how courts have parsed through the difficult legal and ethical issues that any decision either way will entail. Ms Murashige also provides predictions of where the law is headed from her vantage point as an expert in these fields.

Orijit Das, of PricewaterhouseCoopers in Mumbai, presents a fascinating exposition on biological piracy. India has recorded over 81,000 species of fauna and 47,000 species of flora, of which 15,000 are unique to India. This rich biodiversity, coupled with lack of awareness in certain parts of the world, have led some multinational companies to seek (and obtain) patent protection for genetic material in these indigenous plants. In addition, some long-known folk remedies are being patented in other parts of the world, to the consternation of the Indian people and the detriment of all except the exploiters.

Trevor M Cook of London's Bird & Bird provides a contrasting view of the developing legal protections in the United Kingdom and Europe. He explores the unique and challenging European Patent Convention exclusions enacted in 1973, before biotechnology existed in its modern form and how the more recent EC Biotechnology Directive changes (or should change) the debate. The key exclusions Mr. Cook examines include the 'products of nature' problem, which, although it applies to other areas of technology as well, as given rise in biotechnology cases to unique issues and creative solutions. Mr. Cook also explains the plant 'varieties' problem under the Convention and how that is being sorted out in the cases. Finally, Mr. Cook addresses the 'morality' and 'ethics' issues that are used by some to challenge any protections that they deem inappropriate.

Finally, Lisa Taliadoros and Anthony Muratore of Freehill Hollingdale & Page in Sydney provide an overview of the developments in protecting biotechnology and life forms in Australia and Asia. The contrast with Europe and North America provides insight into how the laws affecting important new biotechnological innovations may develop.