




**Personality Branded Business**  
ELIZABETH EMANUEL

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# Licensing Innovations

## The Inhibiting Role of the Innovator

(Why the inventor won't let go...)

**For many years now, it has been received wisdom that the UK has an excellent record in the generation of new ideas, but fails woefully when it comes to commercialising them.**

In recent years, much government attention has been paid to improving support for the commercialisation stage - better access to capital, better marketing and exporting support, and of course better availability of informed licensing and IPR specialists.

But still the commercialisation rates are lower than they should be.

After thirty years of work with a number of organisations which specialise in the exploitation of high-technology inventions, we think that we have identified some patterns of behaviour which can inhibit commercialisation. Overall, we suggest that the style and personality of the inventor – the holder of the idea – are so dominant, that all other factors are peripheral.

When the inventor is excited by real commercial use of the invention, chances of success are high. However, there are numerous inventors who have their own reasons for not letting go of their inventions – and their reasons are not always obvious. With no scientific basis whatsoever, we are offering the following categorisation.



### The Humming Bird

Like the humming-bird, this inventor flits rapidly from one idea to the next, never really exhausting what the idea could offer.

He or she is excited only by the very early stage – the new concept – of an invention, and is totally bored by routine matters like patenting, design and marketing. By the time the invention is ready to progress to this stage, this type of inventor has already found some totally new field to explore, and has lost interest in "that old thing".



### The Magpie

The magpie continues to collect materials to ornament its nest, long after its basic function is complete.

Similarly, this type of inventor wants the final product to be absolutely the best. Nothing and no-one will be allowed to take any short-cuts whatsoever, and every variant, addition and enhancement will be tested. Just at the point where external partners might be able to get involved, the inventor will find "just one more piece of work" which is all that is needed before launching this spectacular invention into the outside world.

This type of inventor is particularly prevalent in the IT world.



### The Owl

This rather fearful inventor knows that the concept might not stand up to scrutiny in the harsh light of day.

Deep down, maybe even sub-consciously, he or she knows that there are fundamental flaws in the invention, but so far no-one else has noticed. By keeping the development going, and not letting potential users, especially end-customers, get too close, perhaps the invention can retain its lustre – at least until the inventor has found a face-saving way out. This behaviour can be observed in the academic world, but is also seen elsewhere.



### The Peacock

Just as the peacock puts everything on show, this type of inventor can put up an excellent front, with real energy and conviction.

However, this inventor has a highly inflated impression of the value of what he or she has to offer, and a totally unrealistic view of what is needed to get there. Partners are anathema to this inventor: they believe that they can manage customer trials, negotiations, financing and all other aspects of development – all with minimal input from others, until they need financing... Potential investors can, however, be rather put off when they discover that the inventor believes that just being a part of the business should be reward in itself, with nothing as mundane as an early return on investment.

### So.....

Although this categorisation may have some appeal to the twitchers among the licensing community, does it have any practical use?

In our experience, identification of these traits in their clients, can suggest the most effective – or ineffective - approach. Or at least, it can save the licensing professional spending time on a strategy which will never be accepted by the inventor.

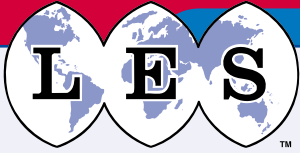
In all four cases, however, it is evident that licensing the invention, sometimes at a very early stage, may be the only way that these inventors' ideas are ever going to reach the market place.

### Sarah Galbraith and Ken Muir

Sarah Galbraith and Ken Muir are directors of The Galbraith Muir Consultancy which specialises in helping new technology businesses to reach the market place.

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## President's Diary



February 8th saw 80 members and guests gather at the Savoy for lunch, after a morning session entitled "An Overview of the Licensing of IP Rights". Our lunch speaker, Sir Jonathon Porritt, generated comments such as "the

best and most stimulating talk we've ever had". He addressed us on the need to recognise that the transition to a sustainable world needs to start now, because it will take 10-15 years just to lay the foundations for success. Another decade of relative inaction, and it may be too late to arrest the process of global warming leading to disaster for mankind. He stressed that, given the topography of China, they will be hurt more than most by a significant rise in temperature and sea level but, nevertheless, the developed world cannot lecture but must lead and persuade. He also gave the answer to the question "Why us? We're only 2% of the problem!" Simply put, as a nation, we can have a leadership role; we punch well above our weight. So, what does this mean for licensing? Look out for (hopefully British) technologies that offer carbon capture and retention!

Burns' Night is 25th January! Well, a Burns Supper does not, it seems, have to be held then. I attended a memorable and thoroughly enjoyable evening as a guest of LES Scottish Branch at their Burns Supper at the Merchants House in Glasgow on 13th February. From Alan Horn of the Kelvingrove Art Gallery and Museum, I learned that there used to be many taxidermists in Glasgow, but now they all work for him. From Lynne Cadenhead I heard that Scots around the world can test their knowledge of their heritage with Scottish Quest, the game she has developed (fastest growing board game in Scotland, 20,000 copies sold already). Don't worry if you are English; there will be a version for us soon. Finally, Andy Boddice of Think Feel Know had all tables competing to develop a brand identity for a Glasgow landmark square. It was good to see this event so well attended and to hear Caroline Sincock, the Chair of the Scottish section and compete for the evening, on such good form. I can thoroughly recommend this event to Sassenachs; the haggis, neeps and tatties were delicious and the LES Scottish branch has earned well the strapline "Informally Informative"

LES has, as part of its mission, the provision of education about IP and licensing. I am delighted therefore that we managed to run the complete, three module, Fundamentals of Intellectual Asset Management course at The University Women's Club from 28 February to 2 March. Fifteen delegates attended and the feedback we received was universally positive. A huge amount of work went into making this event so successful, from the speakers, the session Chairs, and Stephen Powell and Chris Goodman who have worked hard to "Europeanise" the LES USA & Canada-sourced material. However, I would particularly like to thank Chris Goodman, without whom this event simply wouldn't have happened; he even transported all of the course materials from Nottingham to London.

Martin Sandford President LES B&I

## IPRinBusiness

**1. Chris Sawyer v Atari Interactive Inc (02/03/07).** Counterclaim for repayment of royalties allegedly overpaid correctly found to be a restitutionary claim. Counterclaim for inducement to breach of contract to proceed to trial.

**2. Trade and Industry Minister Malcolm Wicks confirms (15/02/07)** that £5 million of new funding will be at the disposal of Trading Standards Officers to assist in their powers under section 107a of the Copyright, Designs and Patents Act 1988.

**3. John Wadlow v Henry Olusegun Adeola Samuel (AKA Seal) (28/02/07).** On its proper construction the management agreement entitled the artist's manager to royalties in respect to two music albums.

**4. Financial Times reports (20/02/07)** that Euronext-Liffe faces a legal challenge by a former employee over ownership of patent rights in the exchange's trading platform technology.

**5. Cembrit Blunn Ltd & Dansk Eternit Holding AS v Apex Roofing Services & Roy Alexander Leader (05/02/07).** Internal letter between the parties regarding the potential settlement of a claim was protected by the law of confidential information.

**6. The Patent Office confirms (05/02/07)** that there is no need to make any change to the basic law as it relates to inventive step in response to its inventive step consultation.

**7. The Patent office publishes Innovation Support Strategy (01/02/07)** and the report provides that IP audits are to be offered to small firms. This initiative will be piloted from March by the Patent Office.

Monitored by **Dr Hayley French**  
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For further details on all of the above please visit: <http://www.les-bi.org/>

## Members on the Move

**Dai Davis, who is a long standing member of LES B&I Society and a Council Member has joined Leeds firm Brooke North LLP as partner. He will be continuing his practice as a technology lawyer and Intellectual Property specialist. During his career, he has been Head of IP law, nationally, for Eversheds and Head of IT law, nationally, at Eversheds. He is primarily a non-contentious lawyer, specialising in advising on intellectual property licences, information technology agreements and outsourcing. As well as being a solicitor he is a qualified engineer and sits on the executive committee of the IET Management Professional Network.**

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# Personality Branded Business

ELIZABETH EMANUEL

**The decision of the Appointed Person on 3 November 2006 in *Emanuel v Continental Shelf 128 Ltd* finally brings to a close one of the most commercially significant trade mark cases of recent years. The result comes as a relief to all businesses trading under the name of a founding individual and confirms that such a brand can be assigned without becoming deceptive. The validity of trade marks registered to protect such a brand will not be affected even if consumers are unaware of the assignment and make their purchasing decision under the mistaken belief that the founding individual is still involved in the business.**

Elizabeth Emanuel brought actions against the marks ELIZABETH EMANUEL and EE ELIZABETH EMANUEL (and logo). Having designed the Princess of Wales' wedding dress in 1981, Emanuel developed a leading bridalwear business under the name ELIZABETH EMANUEL. After a series of business transfers the goodwill and trade marks of this business was acquired by Oakridge Trading Ltd ("Oakridge"), the predecessor of Continental Shelf 128 Ltd. There was a rift between Emanuel and the new owners and she became estranged from the business which continued to bear her name.

Emanuel argued that the continuing use of her name was misleading to the public, implying that she was personally involved in the design and creation of the clothes sold by Oakridge, and that sections of the European Trade Mark Directive which provide that a trade mark is invalid if it is, or has become, of such a nature as to deceive or mislead the public were applicable. The matter was referred to the European Court of Justice.

The ECJ held that even where a consumer is influenced in purchasing an ELIZABETH EMANUEL item by the mistaken belief that Emanuel made it, the characteristics of that item are still guaranteed by the owner of the mark. This is the essential function of a trademark and it was not therefore of such a nature as to deceive the public as to the nature or quality of the goods it designates. The ECJ accepted that a business, by intentionally creating an erroneous belief that a certain individual produced the goods, may be guilty of fraudulent behaviour. However, this behaviour would not affect the inherent registrability of the mark.

The Appointed Person drew out the implicit distinction between a mark which is deceptive as a result of its intrinsic qualities and is not registrable on absolute grounds (e.g. ORLWOOLA for clothing), and one which causes confusion between undertakings and may be objectionable on relative grounds. The mark ELIZABETH EMANUEL was not inherently deceptive and so Ms Emanuel's cases failed.

This confirms that those buying and selling businesses built on a strong personal brand can assign any trade mark rights without rendering them invalid. However, this does not prevent the purchasers of such a business being liable for misrepresentation, or guilty of fraudulent behaviour, should they actively promote a belief among their customers that the named founder of the business is still involved.

**Darren Olivier and Hastings Guise**  
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## The game is up on copyright in ideas<sup>©</sup>

**To what extent can ideas be protected by copyright? Not at all, was the view of the Court of Appeal in the recent case of *Nova Productions v Mazooma and Bell Fruit Games* (decided 14th March). The *Navitaire v easyJet* decision, in which copyright protection was found not to apply to the 'look and feel' of the programmed on-line booking system, was challenged by Nova who sought to establish that copyright in the theme of its video pool game had been infringed.**

It was argued that the theme of the animated sequence of 'screen shots' of the Nova pool game was entitled to artistic copyright protection separately to the individual 'graphic works' of the screens. This was rejected. Moreover, after chastising Nova's counsel for sounding 'more like counsel in a patent case than one in a copyright case', Lord Justice Jacob accepted the High Court's original finding of no infringement in the individual graphic works on the (patent-style) basis that many of the emulated features lacked novelty or were obvious.

It was also argued that the game theme was protected through broad interpretation of the literary copyright in the program or in the 'preparatory design work' for the program, as provided for in the Software Directive. This too was unsuccessful. The suggestion that 'preparatory design work' could amount to an outline of the program

theme which would be infringed by 'reverse engineering' of the programmed game, was rejected. Jacob expressed the view that preparatory design was not a new kind of copyright work, it was simply intended to confirm protection for a conventional written work describing a program, for the benefit of EU member states not already having sensible copyright legislation like the UK. As to the reverse engineering point, Jacob recited Pumphrey's comment in *Navitaire* about copyright in a pudding recipe not being infringed by reverse engineering of the pudding.

So certain was he about all this that Jacob refused a reference to the ECJ.

With no hope of protecting program or game ideas through copyright that leaves the field wide open for copying of software 'themes', Jacob having recently ruled against patent protection for such ideas in *Macrossan*. Ironically, in the latter case, Jacob's invitation for review by the relevant European body (the EPO Enlarged Board of Appeal) has just been turned down. In an open letter (published on the UK Patent Office web site) the Board also expressed a certainty in the present position, obviating any review.

**Barry Quest**  
Wilson Gunn



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# ARE YOUR LICENSEES REQUIRED TO USE THEIR "BEST ENDEAVOURS" TO PROMOTE YOUR TRADE MARKS? WHAT DOES THAT MEAN? THE HIGH COURT SAYS ABSOLUTELY NOTHING

In the recent Judgment from the High Court in *Leofelis SA and Another v Lonsdale Sports Limited and Others* Judge Evans-Lombe has held that the commonly used clause:-

*"the licensee shall use its best endeavours at all time during the Term to create, promote and retain goodwill in the business utilising the Goods under the Trade Mark" ("the Best Endeavours Clause")*

is far too uncertain to be enforced.

This has enormous consequences for licensors who are attempting to ensure that their licensees fully exploit the whole of the territory provided under a licence.

Many licence agreements cover territories which are wide ranging. The licence agreement in this particular case was for Europe including Switzerland but excluding the UK and the Republic of Ireland. The Judge found that the licensee had been doing its best to exploit its licence throughout its territory, to the maximum possible, within its resources. This was held to be sufficient compliance with the Best Endeavours Clause.

The particular facts of this case led the Judge to this decision but these facts are common to many licences and licensees, so as Licensors, or lawyers drafting licence agreements, you should be aware of the following:-

## FIXED ROYALTIES?

If your licence agreement has a requirement that a fixed royalty be payable, and therefore the licensee is in a position to take the full benefit of any increasing turnover from the exploitation of its licence anywhere in the territory, the courts are likely to construe **any effort** by the licensee as being sufficient to comply with the Best Endeavours Clause.

The Judge held in the *Leofelis* case that it would be intrinsically unlikely that the licensee was not doing its best almost whatever it did, when the motivation was evident from this particular term.

## BUSINESS PLANS?

In *Leofelis* evidence was put forward by the licensee that its business plan was to consolidate as much as possible in its initial territory and then move into other countries. The court was happy to accept that such a business plan was reasonable and as such could not constitute a breach of the Best Endeavours Clause.

So if your licence requires the provision of business plans be careful to check that they match your expectations regarding the development of your market.

## REASONABLE COMMERCIAL DECISION?- LICENSOR'S RESPONSIBILITY TO PROVIDE EVIDENCE OF UNREASONABLENESS

The Court further noted in *Leofelis* that even if there had been evidence that the licensee was failing to exploit particular markets for the Goods within its Territory, there would need to be evidence to demonstrate that a decision not to do so was not a perfectly reasonable commercial decision.

## DRAFTING TIPS

Licensors should consider:-

1. Only granting a licensee a territory that is clearly capable of being exploited by that licensee, taking into account the resources available to that licensee, including its size and contacts and current geographical location.

In my experience it is often the beginning of any discussions with a potential licensee which are the most important time. This is the period when you should be working out whether or not this is the right licensee to exploit your Trade Marks to its full potential. If you are not sure then you need to be careful to use short term agreements, and/or flexible arrangements, and spell out exactly what your expectations are in your licence agreement.

2. Including absolute criteria which allow "best endeavours" to be judged rather than wasting time when negotiating contracts trying to make a licensee agree to the use of the unenforceable Best Endeavours Clause.

The Judge in *Leofelis* followed the decision in *Bower v Bantam Investments* in 1972 where Mr Justice Reginald Goff stated:-

"The relief must be commensurate with the duties, express or implied, of the defendants under the contract, and those at most only require Bantam to use their best endeavours to procure if practicable the development of the property for the purposes of a marina with associated recreational facilities, as shown by the declaration framed by Mr Godfrey for the plaintiff in the course of his argument. I ask myself, could anything be less specific or more uncertain? There is absolutely no criterion by which best endeavours and practicability are to be judged"

It is clear that if you are a licensor wishing to ensure that your licensee uses its "best endeavours" in relation to exploiting all of the market within its territory you must spell out what is required. For example I would suggest that you include a requirement that the licensee opens a certain number of shops in certain territories within a certain timeframe. Anything that can allow a court to assess specifically and with certainty whether or not the licensee has made more than a reasonable effort to comply with its obligations under its licence will be important.

3. Incorporating flexibility by allowing for future change. For example it can be helpful to include clauses which allow you to amend the definition of "Territory" and/or "Goods" (normally by reducing it!) where a licensee fails to exploit a particular market within a particular time period.

**Sara Ludlam**

Head of Intellectual Property, Keeble Hawson Solicitors

## Patent Office Name Change

On 2 April 2007, The Patent Office is changing its name to the UK Intellectual Property Office (UK-IPO). This change was recommended in the Gowers Report, published on 6 December 2006. The Government accepted this recommendation.

## Members on the Move

The following members have recently changed their addresses:

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# The modern face of counterfeiting

## Introduction

City dwellers are familiar with one face of counterfeiting—the rampant street-level sale of fake luxury goods and pirated DVDs. But product counterfeiting has moved well beyond this longstanding illicit market into a new world of illegal activity that can implicate not only brand identity and profitability for manufacturers of consumer goods, but also public safety and even national security. Confronting a significant expansion of both the types of products being counterfeited, and new channels and markets through which they are distributed, most notably the Internet, lawmakers have passed tough anti-counterfeiting legislation, and intellectual property owners are forced to address counterfeiting by adopting new business tactics and manufacturing methods. To the extent that invocation of the legal system and its remedies becomes necessary, brand owners must be prepared to consider litigation, as well as increased cooperation with government agencies, such as customs officials and border security agencies.

## New Developments In Counterfeiting

Today, products as diverse as auto parts, name brand jewelry, industrial replacement parts, and pharmaceuticals have become the subject of counterfeiting. Rep. Donald Manzullo, Chairman of the United States House Committee on Small Business, has noted that manufacturers of advanced industrial products, including even aircraft parts, are now experiencing the same counterfeiter-induced incursions on their brands that have long been familiar to handbag designers and recording artists. The risks to public health from counterfeit brake pads or impure knock-off prescription drugs are obvious and severe. Most counterfeit products are produced overseas in clandestine factories, with little to no quality control or regulatory oversight.

## New Methods Of Fighting Counterfeiting Via The Legal System

Brand owners naturally go to great lengths to stop counterfeiting, including by retaining investigators and inspectors; policing trade shows; training employees; participating in industry groups, and incorporating technological product tracking and tagging solutions. Government agencies, and the U.S. court system also provide avenues through which to protect brands against the threat of knock-offs.

## The Evolution Of Anti-Counterfeiting Legislation

Responding to an increase in counterfeiting activities, the United States Congress passed the Federal Counterfeiting Act of 1984 (18 U.S.C. § 2320), which for the first time made trademark counterfeiting a federal crime. Criminal penalties for individuals included a fine of not more than \$2 million, imprisonment for not more than ten years, or both. The criminal penalties provided for entities included a fine of not more than \$5 million. The Act also included enhanced penalties for counterfeiters convicted of other crimes, and allowed law enforcement officers to seize and destroy counterfeit goods.

Congress again responded to escalating counterfeiting in the 1990s by passing the Anticounterfeiting Consumer Protection Act of 1996, which increased criminal liability exposure for counterfeiters by making counterfeiting a predicate act for the Racketeer Influenced and Corrupt Organization Act and its stiff penalties. The Act allowed law enforcement officials to seize counterfeit goods and related assets used to engage in criminal counterfeiting, such as property, equipment, and storage facilities. Additionally, the Lanham (Trademark) Act was amended to include a provision affording civil statutory damages of \$500 to \$100,000 per counterfeit mark for goods and services. The Act allowed

courts to award up to \$1 million per mark per goods for willful counterfeiting.

Last year, Congress expanded the 1984 Act by amending 18 U.S.C. § 2320 under the new title of the Stop Counterfeiting in Manufactured Goods Act, which increases criminal penalties for trafficking in counterfeit goods and expands the definition of “counterfeit mark” to include falsified marks on labels attached to goods. The new law requires courts to order the destruction of all counterfeit products seized as part of a criminal investigation, and requires counterfeiters to turn over their profits and any equipment used in their operations. Armed with greater authority to seize machinery used to make counterfeit products, law enforcement officials should be more easily able to shut down operations affecting national security and public health.

Trademark owners have welcomed the new Act because its criminal provisions provide the strongest mandate yet for the government to seize and destroy counterfeit products, as well as the machinery used to produce them, whereas under the previous version of the Act, counterfeiters might lawfully retain unseized manufacturing equipment and quickly resume counterfeiting with it in a new location. While the Act still does not contain civil remedies as robust as this criminal seizure provision, the revised law may make it easier to seek larger civil damages awards under the reasoning that, if the government is empowered to destroy counterfeiting machinery outright, the specifically aggrieved civil plaintiff should be able to obtain relief commensurate with the value of such machinery. Additionally, some intellectual property owners believe that the new law signals the Congress's recognition that protection of intellectual property and brand ownership rights can be closely related to efforts to preserve public health and combat large-scale criminal organizations. Intellectual property owners and public health advocates alike share the hope that federal agencies will follow suit by stepping up enforcement of anti-counterfeiting laws.

In related efforts to address the problem of counterfeit goods changing hands through the Internet, Congress recently passed the Fraudulent Online Identity Sanctions Act. The new law amends the Lanham Act (15 U.S.C. § 1117) to provide trademark owners with an avenue to recover monetary relief from infringers who knowingly provide materially false contact information to a domain name registrar, registry, or registration authority.

## Conclusion

The temptation to counterfeit highly-profitable products, coupled with the growing sophistication of counterfeiting methods and channels of distribution, pose unprecedented challenges and threats to brand owners, law enforcement, and the public interest. Congress and regulatory and enforcement agencies, as well as the courts, have, fortunately, begun to act forcefully and in concert to provide brand owners and their counsel, as well as consumers, with a broad spectrum of protections that may help abate, if not stop, the tide of counterfeit products washing ashore in the United States market. No doubt counterfeiters will continue to adapt their own tactics in response, and continued vigilance by all interestholders in legitimate brands and accurate product marking will be necessary to prevent further worsening of the prevalence of and dangers posed by the distribution of phony consumer and industrial products.

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# News from the Regions

## LES Irish Section

### Some Reflections on the “Fundamentals of Intellectual Asset Management” Course, London, 28 February – 2 March 2007

LES has been running the “Fundamentals of Intellectual Asset Management” course since 1999. The course aims to highlight the best practices across the areas of law and licensing, intellectual asset management, valuation and negotiation and is given by specially selected LES members from various backgrounds.

Having a background as a solicitor practising in intellectual property law, I signed up for days two and three of the course, as day one was an introduction to intellectual property law and licensing. On the way to London, my flight to Heathrow was delayed in taking off from Dublin, so I arrived at the course venue fifteen minutes late. In an attempt to remain unnoticed, I had hoped to try and slip into the back row of seats, which proved quite difficult given that the room was full of round tables. Given the small class size I was spotted and since I had missed the formal introductions on the first day, I was asked to introduce myself and provide details of my background to the other attendees. It was a good way of breaking the ice.

Day two of the course involved a talk and various exercises in recognising, creating and managing an intellectual asset portfolio. This aspect of the course was good in helping one understand how to create and recognise the value in a company's intellectual asset base, to identify the gaps that may need to be filled in exploiting such assets effectively and realising that the best solutions and/or exploitation opportunities may sometimes require a third party partner. This provided the backbone for the third day of the course which was based on the valuation of intellectual assets and negotiation skills.

There were three companies involved in the exercises and role play, a biotech company, a conglomerate with a health care division and a software start up company. Each company had a patent or software capability but not the expertise to bring a particular product to market. Therefore interdependence was created amongst the companies. On the third day, the teams were given a few hours to negotiate with the two other teams and try and create a platform to exploit their respective intellectual assets. This was a really enjoyable part of the course and brought home the various talks we were given over the past two days.

Everyone took to the negotiating task at hand with great enthusiasm. Our team, the conglomerate, spent so much time trying to work out a deal with the biotech company that we were reminded twice by the course presenters that there was another team involved in the role play! Our team's conscience was cleared though when we noticed the other two teams engaging in negotiations over the lunch break? As the time limit for the negotiation was drawing to an end, and very much at the eleventh hour, all three teams managed to reach a consensus to work together in bringing the product to market. For fear of compromising future events, that particular consensus will stay on tour.

Mixing up the teams on the different days was a good way of ensuring that everyone got to meet each other and learn from each other's different background and perspective. I was surprised that the vast majority of the attendees did not have a legal background and so found myself in the minority. However, this probably improved my learning experience as I could learn from the various other players in the licensing world. Such an experience certainly assisted me in trying to live up to the old lawyer's proverb “know your client” and therefore I would recommend this course to anyone who would also like to get an introduction into the area, in particular lawyers who are going to be working in the licensing area.

**Gerard Kelly**, Matheson Ormsby Prentice, Dublin

## LES Scotland Region

Our Annual “Burns' Supper with a Difference” was held on 13 February in the prestigious surroundings of Merchants House, Glasgow. The charity, Merchant House Trust, dates from the early 1600's and it was therefore an appropriate venue for the evening “Burns – cashing in on old relics”. The arrival of the 85 guests was to the pipes played by Alastair Cameron, Scottish Chamber of Commerce Business Mentoring, and the Selkirk Grace and Address to the Haggis were provided by Fergus Neil, Paidmyre Services Ltd. We were also very grateful to Maclay, Murray & Spens LLP for the glass of wine with our meal and to Marks & Clerk for the traditional tippie to toast the haggis. But we most appreciated our “inter-course” speakers – namely Alan Horn of Kelvingrove Art Gallery and Museum Refurbishment Appeal, Lynne Cadenhead of Scottish Quest, and Andy Boddice of Think Feel Know.

The theme for the evening was the commercialisation of our historical assets, looking at innovative and challenging ways of using these assets for the good of all. Alan spoke on the assets – tangible and intangible – of the museum's collections, especially in light of the new charity set up to manage and use these assets for societal development as well as financial benefit, giving wonderful examples of the human capital in the taxidermy department and the partnerships that can be developed because of an exchange of knowledge as well as exhibits. Lynne described the development of her remarkable game, Scottish Quest, using Scotland's history to create something novel and very marketable. Lynne, ably assisted by Derek Brown of Heriot Watt University, also ran our Last Person Standing competition for the night – the winner receiving a copy of the game and the rest of us receiving a hugely entertaining education in all things Scottish! The audience was also challenged to develop a strapline for the chosen “relic”, which was George Square in the centre of Glasgow. Clues to good brand development and the difficulties in getting to the heart of brand values came from Andy. Various ribald straplines were rejected before the ultimate winners (Table 7!) were awarded with their prizes of baby haggis.

We had a wonderful, fun evening, but far better to quote from a few of the attendees – “Informative and enjoyable with a hint of Burns – a perfect balance!”, “another fab evening” and “what a superb evening it was - as ever - with the hint of something different with a great atmosphere in no way inhibited by the august surroundings in which we were entertained”.

**Caroline Sincock - Chair**

## LES West Midlands Region

Tuesday 27th February 2007 saw us back at Opus for an excellent talk by **David Barron** on licensing issues in the mobile telecoms field. The talk focussed in particular on the issues arising as a result of the need to disclose IPRs to standards bodies. This is a very active area at present with a number of court decisions expected in the next year or so and we hope to follow this presentation with another along similar lines next year in order that some of the issues discussed can be updated.

We are very pleased to welcome **His Honour Judge Fysh QC, SC** to the West Midlands on the **27th April 2007**, when he will be giving a talk entitled: “**A Mixed Bag: The PCC and the Copyright Tribunal at Work**”.

Having practiced in IP extensively in a number of Commonwealth countries (particularly India and Australia) and in Ireland, Judge Fysh became head of chambers at 8 New Square in 1993, succeeding Thomas Blanco-White QC and Lord Justice Jacob. He was appointed a Deputy High Court Judge (Chancery Division) in 1999 and in 2001 was made a Senior Circuit Judge having responsibility for the Patents County Court in England and Wales. Since March 2006, Judge Fysh has also taken on the role of Chairman of the UK Copyright Tribunal. Judge Fysh is well known as a very entertaining speaker and we are expecting a high turn out.

The event is being held at **The Copthorne Hotel, Birmingham** and in a change of format will begin at **16:00** with tea & coffee. Judge Fysh's talk is due to start at about 16:30 and will be followed by a three course meal after a brief interlude in the bar.

A notice and booking form for this meeting is being circulated. Please also note that attendees have to pre-select their menu choices using the form provided. Anyone wishing to attend should return the booking and menu selection forms by the **18th April 2007**. For further information please contact Wilson Gunn at 0121 236 1038 or [birmingham@wilsongunn.com](mailto:birmingham@wilsongunn.com).

For further details:

**Simon Church**

Email: [simon.church@wilsongunn.com](mailto:simon.church@wilsongunn.com)

**LES B&I Annual Conference**  
13-14 September 2007  
Trinity College, Dublin

## The Irish Economic Miracle

### Lessons for the Licensing Community

What is happening in Ireland?

Is the Celtic Tiger still roaring?

In June 2006 the Irish government launched its, New Strategy for Science, Technology & Innovation 2006-2013. What does that mean? How is it relevant to the licensing community?

Launching the new strategy Mr Bertie Ahern said, "...the knowledge based society will offer new opportunities for employment and social advancement, tapping into Ireland's long tradition of creativity and out talent for communication. It will bring together researchers and innovators from all disciplines, including the physical and social sciences, arts and humanities to meet the challenges and opportunities presented by an increasingly diverse world." ([www.entemp.ie/press/2006/20060618.htm](http://www.entemp.ie/press/2006/20060618.htm)).

It is clear that the Irish government is committed to supporting the enterprise economy, by promoting research and innovation as well as recognising the importance of maintaining and improving Ireland's position in the global technology and research community. Licensing and indeed intellectual property play a key roll in supporting this growing economy and hence Ireland is the perfect place to hold LES B&I's 2007 Conference.

LES Irish Region is delighted to invite you to Dublin. For two years they have been running the excellent "Second Friday" lecture series in association with Forfás, (Ireland's national policy and advisory board for enterprise, trade, science and innovation), forging and maintaining

direct links with the Irish Government and are consequently in the perfect position to show off Ireland's enterprise culture.

The conference will also provide the opportunity to learn the basics of licensing by means of the highly-recommended LESI Fundamentals Course. With workshops covering the areas of Healthcare, EC/Laws, Brands, IT & E-Commerce as well as the Plenary Sessions there will be something of interest to all LES members.

LES Annual conferences are not just about work. LES Ireland Region wants you to enjoy your stay in the fair city; experience a bit of the culture, enjoy the history and sample the food at the Conference Dinner to be held in the beautiful Dublin Banking Hall.

Bring along your partners and take in the full Irish experience.

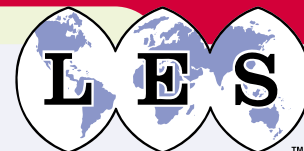
Early booking is recommended!

For further information contact Cara, email:  
[cara@glasconf.demon.co.uk](mailto:cara@glasconf.demon.co.uk)

see also: [www.tcd.ie](http://www.tcd.ie); [www.enterprise-ireland.com](http://www.enterprise-ireland.com);  
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[www.irelandhotels.com](http://www.irelandhotels.com); [www.easyjet.com](http://www.easyjet.com),  
[www.ireland.ie/golf/Golf%20Events.aspx](http://www.ireland.ie/golf/Golf%20Events.aspx)



Dublin Banking Hall



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2006-2007

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## LESI Winter Meeting 2007

Coconut Grove, Miami was the location for this year's meeting for the LESI Board, Committee Chairs and National Presidents on 19 and 20 January. In the opening session on Friday, **Abraham Alegria** and board member **Ernesto Cavalier** spoke on Licensing Issues in Mexico and the Andean Community. Ernesto explained the complicated taxes due on royalty payments in Columbia. **Russell Levine** then explained the effects of the *MedImmune v Genentech* case in the United States. To avoid the risk of treble damages and an injunction, MedImmune wish to continue paying royalties while suing for invalidity of the licensed patent. Previously, US courts had decided that there was no case to hear in such situations, but the Supreme Court allowed MedImmune to challenge the Genentech patent in such circumstances. LES US and Canada had filed on amicus curiae brief regarding this case.

On Saturday, International President Ron Grudziecki

introduced **Stephanie Silverstein** who had just been appointed as LESI's first full-time administrative officer. She will be located in the same office in Washington as the secretariat for LES US and Canada.

There followed a range of presentations and discussions on topics both old and new. Radical changes in the LESI web-site (really - go and have a look) were described by **Art Nutter** and, via a telephone link, Kevin Nachtrab who has produced detailed web-pages for the Life Sciences Committee. **Gary Nath** explored the possibilities of obtaining sponsorship for our conferences and **Peggy Moziel** outlined proposals for a new model for conducting LESI conferences. There were conflicting views on these.

**Walter Copan** then identified the other organisations active in the technology transfer field with which LES is, in effect, in competition. It was felt that our distinctive feature is the combination of ip and business.

**Stephen Powell**  
LESI Vice President

All students were presented with Certificates from LESI showing that they had successfully attended the approved LESI Course and will be eligible to attend the Intermediate course in the UK or USA .

The Course was presented by **Michael Hill- King** , **Jason Burwell**, **Christi Mitchell** , **Martin Sandford** , **Hayley French** and **Anne Lane** and Chaired on the three days by **Stephen Powell**, **Ian Hartwell** and **Chris Goodman** to whom we give thanks . It is hoped to present the course again on a regular basis.

For information about future FIAM Courses please contact Cara, email: [cara@glasconf.demon.co.uk](mailto:cara@glasconf.demon.co.uk)

## LESI three-day Fundamentals of Intellectual Asset Management (FIAM) Course

The Course was attended by 15 students from the UK and Europe (4 countries) and was held in the Women's Club at the University of London which all agreed was a comfortable and suitable location .

The course was assessed by the students, who, again, all agreed that it provided a very good basic introduction to Intellectual Property and to evaluating and managing a portfolio and also as an exercise in negotiating a licence.





# Events Diary 2007

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For further information please contact regional officers for LES events in Britain and Ireland (see panel on the left of this page or visit the LES B&I website <http://www.les-bi.org/>) and the officers of national societies for overseas events (see LES directory or the LESI website <http://www.lesi.org>)

**13 April 2007**

### LES IRISH SECTION

#### Second-Friday Lecture Series "R&D and Licensing: Building Value through Intellectual Assets"

Speaker: Kieran Comerford  
 Wilton Room, Forfás  
 Wilton Park House.  
 Email: kate.hollis@mop.ie

**17 April 2007**

### LES BENELUX

#### "Are IP rights of any value to your company?"

NH Hotel, Luxembourg  
 For further information  
 Email: info@benelux.les-europe.org

**27 April 2007**

### LES WEST MIDLANDS

#### Speaker: His Honour Judge Fysh will be presenting a talk entitled "A Mixed Bag: The PCC and the Copyright Tribunal at Work".

For further information  
 Email: birmingham@wilsongunn.com

**2 May 2007**

### NanoMicroClub

#### "Financing Strategies for Nanotechnology Companies"

Liverpool Science Park,  
 09:00-17:00  
 For further information:  
[www.euronanotrade.com/news/Oxfordregistration.doc](http://www.euronanotrade.com/news/Oxfordregistration.doc)

**16-18 May 2007**

### LES USA-Canada Spring Meeting

Atlanta, Georgia, USA  
 For details see:  
<http://www.usa-canada.les.org/eventscalendar/upcomingmtgs.asp>

**June 2007**

### LES SCOTLAND BRANCH

#### "Science IP & Ethics – A Scottish Perspective"

Joint Event with Scottish Stem Cell Network  
 Edinburgh venue  
 Further details tba  
 Email: cara@glasconf.demon.co.uk

**17 – 20 June 2007**

### LESI CONFERENCE

Zurich, Switzerland  
 For further information see:  
[www.lesi2007.org](http://www.lesi2007.org)

**25 Sept 2007**

### LES NORTH EAST BRANCH

#### Talk by the Federation against Software Theft

(FACT)  
 In Leeds  
 Details tba  
 For further information email:  
[elizabethlock@foxhayes.co.uk](mailto:elizabethlock@foxhayes.co.uk)

## Moving Company/Changing Address?

Please remember to tell our administrator, **Cara McIlwraith**, if you change your office address so that we can continue to send you LES information and **newsxchange™**. Her address is:

LES Administrative Office, Northern Networking Ltd  
 1 Tennant Avenue, College Milton South, East Kilbride  
 Glasgow G74 5NA

Please also remember to change your contact details in the Membership Directory on the LESI website. As a service to our members the editor will print any change of company and location in **newsxchange™**. Please contact **Mary Elson**, [elison.mary@btinternet.com](mailto:elison.mary@btinternet.com)

## Membership

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A membership application form may also be found on the LES B&I website: [www.les-bi.org](http://www.les-bi.org)



## Welcome!

Council has been pleased to welcome the following new members to the Society:

**Dr Richard A'Court**, NovaThera; **Dr Khaterah Ahmadi**, Piramed; **Dr Jim Asher**, IP Solutions; **Mrs Camille Bates**, Stevens, Hewlett & Perkins; **Mr Stephen Brett**, University of Oxford; **Dr Robert Feldman**, Paramount Bio LLP; **Miss Nicola Gilson**, Extreme Group; **Dr Rachel Helmsley**, University of Leicester; **Mr James Houston**, University of Dundee; **Dr Samuel Hyde**, The Technology Partnership; **Dr Belinda Isaac**, Isaac & Co; **Mr Christopher John Kelley**, Qinetiq Ltd.; **Dr Jacqueline Maguire**, IP Solutions; **Mr Stephen McClelland**; **Mr Alan Morris**, Kuit, Steinhart Levy Solicitors; **Mr Jeremy Morton**, Simmons & Simmons; **Mr Stephen Murnaghan**, CovX Technologies Ireland Ltd.; **Ms Aoife O'Neill**, Tomkins & Co; **Ms Patricia Ponsonby**, Elan Pharma International Ltd.; **Mr Dan Richardson**, Technology from Ideas; **Dr David John Rushton**, Haseltine Lake; **Mr Edward Savage**, Hewlett Packard; **Mr Richard Wallis**, Simmons & Simmons; **Dr Helen Waugh**, Trinity College.

## LES B&I Conference

**13-14 September 2007**  
**Trinity College, Dublin**

**The Irish Economic Miracle:**  
 Lessons for the  
 Licensing Community

For further information,  
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