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BRANDS' FROSTY RECEPTION FOR KEYWORD SEARCH POLICY CHANGE

Search engine Google has made a significant policy change to its online advertising facility – AdWords – in the UK and Ireland, allowing open bidding on all keyword search terms, including those protected as Trade Marks.

The change brings the UK and Ireland into line with the US and Canada, where there has been an open bidding policy since 2004. Keyword advertising allows advertisers to buy the right to be associated with a particular keyword term. When a keyword is typed into the search engine, advertisements belonging to those people who have paid to be affiliated with such term will appear in the 'sponsored links' section of the search results page. As a result of the policy change, advertisers will not only be able to sponsor generic keywords – 'food', 'jobs', 'cars' – but also specific brands or company names, regardless of any official connection with the brand or brand owner. But is Google's open bidding policy lawful?

The current UK approach

Although the UK Courts have yet to decide directly on the legality of Google's latest change to its AdWord system, they recently considered the issue in the context of an equivalent online advertising facility owned by Yahoo!

In **Wilson v Yahoo!** Mr. Wilson alleged that Yahoo! and its sister company, Overture Services Ltd, (together 'Yahoo!') had infringed his registered Trade Mark for MR SPICY. Mr. Wilson claimed that when the term "MR SPICY" was typed into Yahoo!'s search engine, it produced sponsored links to unrelated websites, including Sainsbury's and Pricegrabber.

The Court ruled in favour of Yahoo!, finding no infringement of the MR SPICY Trade Mark. This was for two main reasons:

- The owners of the sponsored results – Sainsbury's and Pricegrabber – had sponsored the generic keyword 'SPICY', not 'MR SPICY', as alleged.
- Secondly, and with wider relevance, was the Court's finding that when a person typed a Trade Mark protected term into a search engine, and the search engine generated results, the search engine was not 'using' the Trade Mark during this process.

The Court went further, stating that even if Yahoo! had sold the search term 'MR SPICY', this, by itself, would still not amount to an infringement since it had only been used as a search term and not to designate the origin of the advertiser's goods. The Court concluded that unless MR SPICY was being used by Yahoo! in a true Trade Mark sense – to indicate the origin of the goods – then Yahoo! were not infringing Mr Wilson's rights in that Trade Mark.

So for the time being it is unlikely search engines in the UK will be prevented from selling another's Trade Mark as keyword search terms to third parties. The Trade Mark owner must look at the sponsored advertisement in each case to see if there is an infringing use of its Trade Mark,

although in such circumstance the claim will be against the owner of the sponsored advertisement, and not the search engine provider.

Conclusion

The recent decision of the UK Court in *Wilson v Yahoo!* highlights that Trade Mark owners do not have absolute control over their Trade Marks when it comes to online advertising. As a result of this decision, Trade Mark owners are in a much weaker position to prevent search engines from selling keyword search terms consisting of their Trade Marks to unrelated advertisers. This decision is of concern to the brand owners because there are situations where a Trade Mark owner would legitimately expect to restrict others from using his Trade Mark as a keyword search term.

For instance, assume a consumer wishes to buy a particular branded product. The branded product is only sold in selected outlets. The consumer is not aware which outlets these are, so types the branded product name into a search engine. Under Google's and many other search engines' current policy, any intermediary site advertising the branded product alongside competitor's products could sponsor a keyword term consisting of the branded product.

As a consequence, there is every likelihood that the consumer could click on the sponsored link of an intermediary site to be faced with a barrage of promotions for competitor products with little visibility for the branded product. The consumer may then spend time on that intermediary's website searching for the product and, for the sake of convenience, may end up making other purchases through this website which they would not have made had they gone direct to the site of the Trade Mark owner. This is just one scenario where the use of a Trade Mark as a keyword would seem to allow a third party a free ride on the reputation of a Trade Mark, and there are many other conceivable examples.

The decision does not rule out the possibility that the Trade Mark owner may have a cause of action against the advertiser who has sponsored a keyword consisting of their Trade Mark. Each case will, of course, depend on its own facts, but an advertiser may be liable for infringement where they have sponsored a keyword identical to another's Trade Mark which links to an advertisement for identical goods or services to that Trade Mark owner.

However, the prospect of having to bring an action against the advertiser may not please all Trade Mark owners. They will have lost the quick and cost effective remedy of requiring the search engine to cease selling their Trade Mark as a keyword. Instead, brand owners will now have to review sponsored search results and take action on a case by case basis.



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President's Diary

This will be my last Diary as President. My two years as President have flown by, leaving me with many happy memories. My term started with the Pan European

Conference in Glasgow and will finish with the Annual Meeting in London. In between times, last year's Annual Meeting was a joyous affair in Dublin. But though I had organised Glasgow, Dublin and London are actually the result of very hard work by a team led by Nigel Jones.

One of the ways in which LES differs from other professional societies and bodies is in its international dimension. This was driven home to me at the International Delegates Meeting that I attended at the beginning of May in Chicago. It was good to see so many friends from around the world and to hear LES B&I being talked of so positively. Particularly, the innovative approach to pricing the Fundamentals Course at Cranfield was much remarked upon.

In Chicago, I was somewhat surprised to be approached again about holding an LES International Meeting in London. But it seems that, having gone for Manila in 2009 and South Africa in 2010, LESI would like to hold the 2011 meeting in the Northern Hemisphere, and in a major European business centre; it had previously been proposed that LESI 2011 be held in New Zealand, but three Southern Hemisphere locations in a row did not seem sensible. After conferring with Nigel Jones, Mark Wilson and your Council, we have agreed to take on the organisation of the 2011 LESI Conference in London and I am delighted to be able to report that Anne Lane has agreed to Chair the Organising Committee. She will be looking for energetic supporters to join her committee, so please contact her on anne.lane@ucl.ac.uk if you would like to help in organising this prestigious event.

One of the other points driven home by my visit to Chicago is the work of the LESI Committees. Drawing from the full 10,000+ membership, LESI can support more diverse committees than all member societies apart from LES USA & Canada. Involvement with one of LESI's committees ensures that you will be connected to likeminded individuals around the world, many of who will be experts and all of whom will enable you to expand your network. This is potentially a large benefit to membership of LES B&I so please do ask me, or Nigel or any member of Council if you would like an introduction to the Chair of the Committee in which you are interested, or approach them directly using the details given on the revamped LESI website. It is important that we maintain good links with LESI and I am delighted to report that Christi Mitchell will be joining the Board of LESI.

Anne Lane provided the venue at UCL Business plc for an excellent presentation and interactive session entitled "Understanding IP Auctions - Processes, Benefits and Challenges" with Nicole D'Hondt, the Head of Diligence and Operations, Ocean Tomo Auctions on 14th May. Ocean Tomo have broken new ground in organising patent auctions and it was fascinating to hear how and why they did it, and to understand how quickly it has grown.

As my term as President draws to a close, I would like to thank a number of people who have contributed greatly to our achievements in the past two years. Stephen Powell, my predecessor, has provided sage advice and a link to the Board of LESI in his role as Vice President of LESI. Nigel Jones has been my tireless Vice President who has organised the Annual and London meetings, assisted by the Committee chairs, Christi Mitchell, Jenny Pierce, Robin Nott, Darren Olivier, Dai Davis and Meredith Lloyd-Evans. Council has run smoothly and effectively and this is largely due to the excellent and meticulous work of John Roe, our Secretary, Raja Sengupta, our Treasurer and David Veasey, our Membership Secretary. I am also indebted to Jeanne Kelly, Brian McElligott, Caroline Sincock, Seona Burnett, Mark Snelgrove, Ray Charig, Simon Church, Paul Bentham, Elizabeth Ward and Graeme Fearon for keeping LES B&I vibrant outside the home counties.

Gill Moore and Cara McIlwraith of Northern Networking have worked tirelessly and diligently to support us and I thank them for all their hard work on our behalf.

Finally, but most importantly in the context of News Exchange, I would like to thank Mary Elson. Not only does she edit and produce a superb publication, she cajoles us into writing, finds high quality photographs and, outside News Exchange, keeps us on our toes in thinking about the marketing, promotion and presentation of LES.

On a personal note, I have recently taken on a new role outside the worlds of IP and Licensing, becoming the Executive Director of The Mission to Seafarers, a charity which provides spiritual and pastoral care for seafarers wherever and whenever it is needed, regardless of race, colour or creed. It operates in nearly as many countries as LES and provides excellent welfare services to seafarers. Please consider it if you are minded to make a charitable donation.

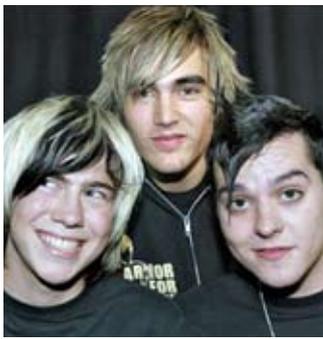
It remains only for me to wish you all well for the future. I am confident that LES B&I will prosper under the leadership of Nigel Jones and Mark Wilson, your President and Vice President for the next two years. Thank you all for your support in the past two years.

Martin Sandford
President LES B&I

LICENSING UPDATE

WHAT I GO TO (LAW) SCHOOL FOR? COPYRIGHT OWNERSHIP IN BUSTED CASE

Royalty disputes between members of successful musical acts are likely to remain a regular, although infrequent, feature in the courts. In early June the High Court handed down its judgment in another music copyright case, involving the pop band *Busted*. The original band was formed in 2001 but had little success, and had disbanded by the end of that year. A new band under the same name reformed in 2002 however, with two of the original members and one new one, and this became (moderately) successful.



The dispute surrounded the ownership of copyright, and royalty entitlements, in six *Busted* songs in particular, including "What I Go To School For" and "Year

3000". In 2002, the original four members had entered into a settlement agreement, under

which it was agreed that two of them, Kiley McPhail and Owen Doyle, should jointly own the copyright in two of the songs, whilst the remainder of the songs were to be owned by the other two members, James Bourne and Mat Sargeant (aka Mat Willis).

McPhail and Doyle claimed that this settlement agreement should be set aside by the court. They argued that undue influence had been applied by the band's manager at the time of signing it. Instead they contended that the relationship between the four band members was a partnership, and that all four members were entitled to equal shares in all the songs.

The court disagreed that there had been any partnership in the early days, or indeed any intention then to have a legal relationship at all. The court also rejected the suggestions of undue influence. As a result the settlement agreement was still applicable. The court was therefore able to dodge the difficult task of ascertaining exact copyright ownership in the songs. McPhail and Doyle have said they will appeal, however.

Putting the undue influence issue aside, what might have caused this case? The settlement agreement itself cannot really be blamed. It was a fairly short and straightforward document, by all accounts, but quite possibly it needed to be in the circumstances. Instead, perhaps the problems were stored up at the very outset, in that key issues of who would own the results of the joint endeavour of composing and song-writing, and the legal basis of that joint endeavour, were not formally agreed and documented. This case is yet another good illustration of the potential dangers of not doing so

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Welcome!

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

Dr Noel Bagnell, Genzyme Ireland;
Mr Simon Bates, Appleyard Lees;
Miss Anna Blest, Withers;
Mr Richard Bonfield, News International;
Mr Jon Calvert, ClearviewIP Ltd.;
Mr Charles Clark, Edwards Ltd.;
Mr Mark Clifford, Westgate Biological Ltd.;
Mrs Janet Crabtree, Infineum UK Ltd.;
Dr James Ellis;
Dr Paul Entwistle, PACE Micro Technology Plc.;
Dr Quinton Fivelman, London School of Hygiene & Tropical Medicine;
Miss Anna Forster, McDermott Will & Emery;
Miss India Forsyth, Withers; Ms Maxine-Jayne Horn, British Design Innovation;
Ms Susan Knowles, Vincent Sykes & Higham;
Mr Phillip Meyer, NPL Management Ltd.;
Dr Angela Miller, St George's University of London;
Dr Angela Oldacres, Birmingham City University;
Dr Nayan Patel, Birmingham City University;
Mr Andrew Smith, University of Bolton,
Mr Leslie Stokes, London Associates Product Designers;
Mr Peter Sykes, Azrights Solicitors;
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Miss Shona Tennant, Linsdays WS;
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OF WOLVES, PIGS AND IPRS

***“Wolfe-like devourer of the Common wealth
That robs by Patent, worse than any stealth”
(anon. 17th century)***

This year a new LESI Public Interest Group has been formed, chaired by Britain & Ireland council member Barry Quest. Popularly referred to as the PIG Committee, it has already raised much interest and a great deal of controversy. The objective of the Committee is to monitor and respond to adverse public attitudes to IPR. We are now in especially turbulent times. IPR is under threat, often emotively, from those who publicly endorse the naive view: ‘IP good, IPR bad’, and who can even be found referring to protection as a force for evil.

As LES members, our activities are essentially virtual – dealing in intangible rights or incorporeal property, albeit with the aim of facilitating production and distribution of tangible products. If we stand too far back from the current public debate on the desirability of protection we may well become virtual ourselves.

Over the past 30 years there has been a considerable expansion in IPR. The introduction of new routes to protection such as PCT, EPC, Community Registered Designs, Community Trade Marks; the extension of patentability, under different regimes, to cover drugs, medical-use claims, software and business methods; the introduction or extension of laws such as confidentiality and privacy; and the inclusion, through TRIPS, of more countries into the international brotherhood of rights recognition; have all contributed to the global proliferation of protection. This used to be seen as beneficially encouraging innovation and removing unfair trade barriers. There is now a considerable popular backlash and there are those who think things have gone too far.

IP protection has rarely had good press. In 1623, the seminal Statute of Monopolies, which set out the basis for the protection of inventions, had its opponents, and it was found necessary to include the overriding proviso that there must be no ‘inconvenience’ to trade. In the 19th century, Charles Dickens famously took up cudgels on behalf of working class inventors who could not afford high official fees. He was successful and the law was reformed to make patents more widely available, but not without considerable opposition. Into the 20th century, disenchanted Canadian law-makers contemplated following the (temporary) examples of Holland and China by doing away with its patent system altogether.

The warring factions are still at each others’ throats. There are technical areas which are notably sensitive: such as software, drugs and biological processes. There are activities which are sensitive: such as prolific patenting and enthusiastic commercially-motivated enforcement. There is the view that protection favours big business, is generally inconvenient to free-thinking entrepreneurs, and is, in any case, ineffective in inspiring invention or otherwise benefiting society.

On the other hand, there are those that argue that protection is necessary to underpin expensive long-term research, promote innovation, stabilise start-up enterprises, and regulate competition; and is, in any case, a human right.

The problem, as William Booth pointed out on founding the Salvation Army, is that the devil has all the best tunes.

Opposing IPR is environmentally friendly, politically correct, and meets all health and safety requirements. Contrary views are seen as being those of over-powerful corporate bosses, sinister globalizers, grey-suited accountants, and highly-paid patent lawyers with vested interests.

Greenpeace’s position is: “We oppose all patents on plants, animals and humans, as well as patents on their genes”, and they caution: “A dangerous wave of privatisation of all biological diversity is presently taking place under the label of ‘intellectual property rights’.” As *The New York Times* put it: “You, or someone you love, may die because of a gene patent that should never have been granted in the first place. Sound far-fetched? Unfortunately, it’s only too real. Gene patents are now used to halt research, prevent medical testing and keep vital information from you and your doctor. Gene patents slow the pace of medical advance on deadly diseases. And they raise costs exorbitantly”. Whereas the EPO, in somewhat more moderate fashion, is of the view that: “Today’s economy is becoming increasingly knowledge-based and intellectual property in the form of patents plays a vital role in this growth.”



Which approach is more attention-grabbing? No contest. The patent drug wars have engaged, enthusiastically, celebratory supporters. John Le Carré and Naomi Klein, who both wrote books about the evils of corporate IPR, (John Le Carré: *The Constant Gardener*, Naomi Klein: *No Logo*) have appeared alongside pressure groups such as Médecins Sans Frontières in opposing Indian drug patents. In espousing his cause Le Carré has commented: “The AIDS triple therapy drug costs

\$10,000 per year, but the same drug could be made available to sufferers for \$230 and still turn a decent profit if it was not necessary to respect patents.”



The anti-IPR brigade has the monopoly of colourful expressions, such as: patent trolls, thickets, abusive patents, tivoization and evergreening tactics; as well as snappy slogans: ‘Patenting Life is Wrong’, ‘No iPatents’. ‘Say NO to Patent Abuse’. IPR supporters do not have tunes comparable with these.



And it is not just patents which engage abolitionists. The press was recently appalled at the effrontery of the BBC in trying to enforce its design rights against an unauthorized maker of soft toys in the image of the Dr Who ‘Adipose’ creature. Similar amazement was expressed at C.S.Lewis Ltd taking action against a private registrant of the domain name narnia.mobi. Bizarrely, on the same day, the same press that criticized the BBC’s attempt at

protecting its commercial position over Adipose, carried critical reports on the BBC’s commercial acumen in spending large sums on their new (and hugely popular) iPlayer technology.

THE GREAT CONTROVERSY

Views in favour of IPR are indeed expressed, though rarely with the same popular appeal. In a public statement, Novartis bravely defended its position in India in relation to its (failed) attempt to patent the anti-cancer drug Glivec: *"Medical progress occurs through incremental innovation. If Indian patent law does not recognise these important advances, patients will be denied new and better medicines."* An article in Chemistry in Britain, May 2008, looking at the intended benefits of Indian law changes, carried the comment: *"The Promise of better patent protection has encouraged more chemists to set up their own drug discovery firms."* Though highly controversial, the debate against GM food has moved from the 'war' against Monsanto's patenting of 'improved' natural products to criticism of EU discouragement of GM research. As *The Daily Telegraph* has observed, in relation to food shortages: *"a big part of this problem is our own fault - because of our long-established and ill considered opposition to the use of genetic engineering to help us grow more food."*

Attitudes are not confined to popular debate. Inevitably, through popular repetition, they intrude into official procedure and legal decisions.



EPO President Alison Brimelow's recent statement seems to endorse assessment of patentability in accordance with 'general policy' rather than procedural impartiality: *"The EPO aims to make sure that the patents it grants are relevant. The lower number of patents published in 2007 reflects this priority and is a step in the right direction."* In a similar vein, the UK IPO, having rejected, in accordance with its current hard-line approach to Article 52 'excluded inventions', an application for a data-handling process (Symbian),

was not happy about being slapped down by the High Court (*"The Examiner took too narrow a view of the technical effect of the invention and was wrong to exclude it from patentability."*) and promptly appealed against the decision. The High Court itself has not been immune to jargon-based subjective attitudes. In *CFPH LLC's Application*, in refusing the application, the judge referred to a 'patent thicket' of wrongly granted computer software patents (said to be of the order of 40,000 at the EPO) and commented *"The only safeguard against that wrong - and it is a wrong - is the vigilance of the Patent Office"*.

Especially with TRIPS and WTO, IPR has become highly politicised, and this has brought further problems.

Peter Mandelson's White Paper on the knowledge-based economy, promoting innovation and IPR, was published at the start of Blair's first Government. Not long afterwards, the same Government established a Commission, under Clare Short, on "Integrating Intellectual Property Rights and Development Policy". The report, available on www.iprcommission.org, starts, ominously, with *"There are few concerned with IP who will find that this report makes entirely comfortable reading."*

IPR is politically entrenched. We have a Minister of State for Science and Innovation: Ian Pearson MP, and a Parliamentary Under-Secretary of State for Intellectual Property and Quality: Baroness Delyth Morgan (of Drefelin). There are increasing numbers of governmental and non-governmental organizations which involve themselves in IPR policy issues. Examples include: the newly formed Strategic Advisory Board for IP Policy (www.sabip.org.uk), the IP-institute (www.ip-institute.org.uk), The Intellectual Property Awareness Network (www.ipaware.net),

the Department for Innovation, Universities and Skills (www.dius.gov.uk) and its eager political subsidiary the UK Intellectual Property Office (formerly a working patent office) (www.ipo.gov.uk), and The Institute of Brand and Innovation Law (www.ucl.ac.uk/laws/ibil/).

The public debate about IPR is, and will continue to be, in the public eye. Globally, IPR, having become, essentially, a traded product in itself, will continue to increase in practical and political significance, perhaps as best illustrated by the recent battle between the US and Antigua which resulted in the WTO deciding that the only fitting penalty to compensate Antigua for the damage done by the US's damaging clamp down on off-shore gaming, was to allow the tiny island free rein to infringe IPR in US products.

As licensing executives we are committed to IPR. We do not side with specific parties, and we do not wish to embarrass members who operate in sensitive areas and might wish to keep a low profile, but we do need to promote the view that IPR is important and beneficial if properly regulated; and, to remain relevant, we do need to engage impartially, but actively, in the public debate on IPR issues.

The principal objective of the PIG Committee, therefore, is to make LESI more relevant, and even politically involved, by monitoring important issues, bringing them to the attention of members, channelling information about licensing and the benefits of IP to public bodies, and, where appropriate, commenting on specific issues.

In practice, the function of the Committee is to update members on what is happening across a broad spectrum, and to be prepared to provide information on the merits of licensing to consultative bodies. Members need to know what is going on, and LESI needs to be able to tell external bodies how these things affect licensing. More specifically, the activities of the Committee will involve:

Information collection by:

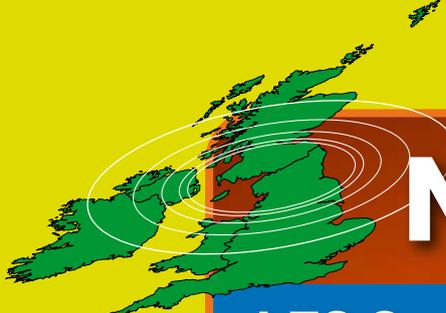
1. Monitoring controversial areas. (eg US patent law reform, European software patents).
2. Monitoring press comment on IPR issues.
3. Monitoring activities of anti-IPR pressure groups.
4. Interacting with LESI members and LESI Member Societies to collect feedback on national issues, as well as getting feedback on benefits of IPR.

Responding by:

6. Interfacing with other LESI Committees, particularly the External Relations Committee, to provide information for use by the Committees.
7. Providing pre-prepared hand-outs, eg for the press, on benefits of IPR, particularly in specific response to IPR-critical stories.
8. Running Workshops to inform LESI members and debate the issues, particularly involving external organisations whether pro- or anti-IPR.

The PIG Committee is an LES International Committee. However, interest in it has also been expressed within Britain & Ireland - under the auspices of the Laws Committee.

We need to become more relevant, more engaged and more visible. Anyone interested in helping compose better tunes to counter the anti-IPR backlash, either at the international or national level, please contact Barry Quest at barry@ipr.co.uk.



News from the Regions

LES Scottish Branch

Our June event, "How is © coping with the digital age", held at Pinsent Masons LLP proved very popular with nearly 50 attendees. In the world of illegal file-sharing, amateur uploaders, unauthorised downloading and ever-growing demand for free content, copyright as an economic right is no longer something anyone can take for granted – the LES (Scottish Branch) addressed this complex issue thanks to 4 experts in the field.

John Salmon, partner at Pinsent Masons and also founding partner of the e-commerce service Out-Law.com, spoke on how case law has struggled to keep up with digital technology, and the variations between UK, European and US law. He discussed copyright issues of:- 'mash-ups' (mixing different pieces of copyrighted software in one application); when blending of proprietary and open source software (usually free, but with licence conditions which limit how users can benefit commercially from it); the regulation of peer-to-peer music downloading sites; and territorial and technology differences in relation to digital rights management for video and film.

Craig Hunter – Chief Executive of project and software management consultancy Insurgent Studios Ltd spoke of his very hands-on experiences with Copyright in the video games market (worth \$37.5 billion in 2007). With games (costing up to £50m to develop) usually involving a mix of new intellectual property and licensed-in IP, Craig described how production processes have to involve a series of checks and balances to avoid copyright problems. However, copyright infringement checks often take place (too late?) in quality assurance process just prior to commercial release.

He discussed recent copyright issues such as user generated content (commonplace in virtual worlds such as SecondLife) and "modding" where companies actively encourage the hacking of a game's code to alter the gameplay, but also highlighted how games companies must consider national and international copyright and infringement issues relating to characters, events, text, images, audio and video. As a result, Craig described how more and more games companies are coming to realise the "huge task of copyright" earlier in the development process, so as to avoid legal action, which will hurt company finances and product release schedules.

Bruce Wood, Director, Centre for Creative Industries at Glasgow Caledonian University briefly described the difficulties encountered by students in understanding the complex area of Copyright law and good practice, describing cautionary tales from his own students' experiences at International design shows; he now uses these tales to educate new students.

Since **Peter Mowforth's, (Managing Director of website design house, Indez International Ltd)** experience in the 1980s on a project which ultimately led to the creation of the Java programming language by Sun Microsystems, Peter has been all too aware of the importance and the financial benefits of copyright.

He admits that although the software sector historically paid little attention to copyright issues or IP lawyers, his own company always attempts to raise awareness

of copyright and ownership issues. Whether it relates to companies registering key domain names and close variations, ensuring that corporate designs and logos are assigned over by design and web agencies, or covering ownership in employee contracts, he illustrated with examples, how paying attention to the basics could save management grief in the short and long term.

The evening was a fascinating look at when the consumer is king and no longer wants to pay for content, how can those whose creativity, time and money is invested in copyrighted material ensure control of their works and income? It demonstrated how Copyright is having to constantly evolve to cope with the technological demands of the digital age, and with all businesses - whether "new" or traditional - creating copyright works, how all managers need to consider the implications of new technology, government consultations and legislation.

Our next meeting is a joint event with *Glasgow Opportunities* called "We've got the T-Shirt!! - or - Licensing case studies" to be held in Glasgow on 16 September, chaired by Norman Trotter OBE. We hope to see you there! Further details are available from Cara: **Email:les@glasconf.demon.co.uk**

LES Irish Branch

The extremely successful LES/ Forfás lecture series recommences in the autumn on Friday, 12 September. Forfás is Ireland's national policy and advisory board for enterprise, trade, science, technology and innovation and we are very fortunate that, under Yvonne McNamara's term as Chair of the LES Irish Branch she was able to forge the link with Forfás.

The September lecture will be on the topic of IP and Financial Services. The speakers will be Yvonne McNamara BL, Alistair Payne of Matheson Ormsby Prentice along with a speaker from the Irish Bankers Federation.

All LES members and colleagues are welcome but we particularly recommend this lecture series to our Irish members, not only is it an excellent way to keep in touch with current issues but, of course, is an excellent networking opportunity.

Contact: Brian McElligott for further details:
bmcelligott@dfmgsolicitors.ie

LES North East Region

LES North East Branch is hosting an evening meeting on Wednesday 15 October 2008 in Leeds with guest speaker Jim Angell from FACT (The Federation Against Copyright Theft) talking on organised crime.

Contact: **ejl@virtuosolegal.com** for further information or to book your place.

THE ENEMY WITHIN



Companies spend thousands of pounds every year on external IT security systems. These are used to stop people from hacking in to a company's computerized systems,

preventing loss of confidential information and trade secrets to competitors. The market is littered with products such as firewalls and other security measures which are specifically put in place to stop systems from being accessed by unauthorised third parties.

But what happens to a company when the enemy is actually a person with authorised access who is not acting in the best interests of the company? For example, key members of staff may plan to leave a company and in doing so take valuable customer databases, trade secrets or confidential information and documents such as drawings, business plans or pricing details. Allowing a new competitor into the market with your company's confidential information can be catastrophic (if not fatal) if left unchallenged. Proving that a member of staff, or indeed a director or other senior employee, has taken such valuable information can be difficult and the remedies are almost always expensive. However there are ways of protecting your valuable company assets.

In the United Kingdom the Courts may in certain circumstances grant what are known as "springboard" injunctions to stop new businesses setting up and using confidential information which has been taken without the consent of the owner to "springboard" them ahead. Generally speaking, the Courts will not allow former employees, or even business partners, free rein to do as they wish with confidential information, especially where such valuable data is taken in breach of an employment or partnership contract containing restrictive covenants.

As with all legal cases, the preparation of evidence is the vital starting point. It is important to instruct lawyers who understand the need for proper evidence to be presented to the Court in order to obtain the relevant Court Order. The Court places a heavy onus on the Applicant to provide accurate and compelling evidence before it will grant an injunction or a search order which will allow the Applicant to search premises in order to obtain certain documents. However, many solicitors are not technologically literate themselves and do not know how to use a lot of IT which is common in businesses. Where this happens the lawyer does not necessarily know how to marshal the thousands of documents that can be retrieved from an IT system in order to prove the theft of confidential information. Although there are automated systems which can be used to catalogue vast amounts of documents these do not necessarily sieve out the key information required to take a court case forward. In this situation it pays to be very methodical and to know exactly how the IT systems have been set up and how the individuals working those systems have used the data. By way of example, by searching electronically created "metadata" within documents saved on a computer, it can be seen when the document was last opened, by whom and how

it was changed. It is vitally important to appoint a solicitor with the relevant know-how to look at the recovered information and to find out exactly where the needle in the haystack is located. Virtuoso Legal has such expertise and has applied it on a number of occasions for companies in the past 12 months. In some instances Virtuoso Legal has used its expertise when acting as a Supervising Solicitor to oversee a search order to recover data and has assisted the parties in sorting the wheat from the chaff.

Serving and obtaining such Court proceedings can be a complex business but it always pays to get the right advice in the first place and to have the relevant expertise on board to prove the case. To leave the loss of trade secrets to fate can cause enormous and incalculable damage to companies

Elizabeth M Ward

Virtuoso Legal
liz@virtuosolegal.com,
www.virtuosolegal.com

Come to Amsterdam!

We are pleased to invite you on behalf of LES Benelux to attend the Pan-European LES Conference 2008 in Amsterdam.

The conference – 'Open Innovation – The New Paradigm?' – promises to be a most interesting event because of the topical subject it will cover, the excellent program and the key speakers that will participate. Today information can be transferred so easily that it seems hard to prevent and control its exchange. The essence of the Open Innovation model is that since companies cannot stop this phenomenon, they must learn to take advantage of it. It is the business model of the company that determines what external information to bring inside, and what internal information to take outside. The options for collaboration between different types of organization – large/small, commercial/academic – are many and the key role of Licensing Professionals in forging those links is self-evident. It is against this backdrop that we have recruited our speakers and workshop leaders.

As you will see from our program, we have been very lucky indeed in attracting a mouth-watering array of high-ranking and influential contributors. In addition, the conference will provide an excellent opportunity for extending your international network, especially because an LES International Delegates Meeting will take place immediately before the conference, which is truly unique...

... and as if all of this were not enough, you have the delights of Amsterdam on your doorstep when the time comes to relax.

See you there!

Lex van Wijk
President LES Benelux
Allen Norris
Chair Program Committee

www.2008.les-benelux.org



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Events Diary 2008

Regional Officers

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>)

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7-9 September 2008

LES Scandinavia

Annual Conference
"Trends in IPR commercialisation
– Make the Most of your IP"
Helsinki, Finland
For further information see:
www.les-scandinavia.org/helsinki2008

10 September 2008

LES London Region

For further information contact:
les@glasconf.demon.co.uk

12 September 2008

LES Irish Branch

LES/ Forfás Friday Lecture
"IP and Financial Services"
Dublin
For further information contact:
bmcelligott@dfmgsolicitors.ie

16 September 2008

LES Scottish Branch

"We've got the T-Shirt!! - or -
Licensing case studies"
Glasgow
For further information contact:
les@glasconf.demon.co.uk

15 October 2008

LES North East Region

"Organised Crime"
Leeds
For further information contact:
ejl@virtuosolegal.com

17 October 2008

LES Irish Branch

LES/ Forfás Friday Lecture
Details TBA
For further information contact:
bmcelligott@dfmgsolicitors.ie

19-22 October 2008

LES USA & Canada

Annual Meeting
"Global Excellence in
Licensing and Acquisition
Through Certification"
Orlando,
Florida,
USA
For further information see:
www.les2008.org

12 November 2008

LES London Region

Details TBA
For further information contact:
les@glasconf.demon.co.uk

14 November 2008

LES Irish Branch

LES/ Forfás Friday Lecture
Details TBA
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bmcelligott@dfmgsolicitors.ie

12 December 2008

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Contact **Cara** at the
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Email: les@glasconf.demon.co.uk

LES Pan European Conference

For further information see:
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newsxchange™

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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**, elson.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

