

IPRIA New Zealand Developments in IP Update September 2007

We are pleased to introduce a new IPRIA Bulletin on New Zealand Developments in IP. We would like to thank Dr Owen Morgan from the Department of Commercial Law at the University of Auckland Business School. Dr Morgan is an intellectual property specialist with a particular interest in indigenous rights, copyright and related rights. He is a Research Associate of IPRIA and of the Mira Szaszy Research Centre for Maori and Pacific Economic Development.

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COPYRIGHT

Commerce Committee recommends the Copyright (New Technologies and Performers’ Rights) Amendment Bill be passed with amendments

On **27 July 2007**, the Commerce Committee released a report that it recommended the Copyright (New Technologies and Performers’ Rights) Amendment Bill be passed with a number of amendments. The amendments include that the Bill’s name be changed to a less cumbersome and more accurate Copyright (New Technologies) Amendment Bill. The Bill amends the Copyright Act 1994 to clarify the application of existing rights and exceptions in the digital environment and to incorporate various aspects of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The Bill also seeks to create a more technology-neutral framework for the Copyright Act 1994. Submissions to the Commerce Select Committee closed on 9 March 2007 and the Bill had its first reading on 12 December 2006.

To view the report of the Commerce Committee on the Bill, click here
http://www.parliament.nz/NR/rdonlyres/FCCEC06B-15EA-41D0-8169-438F48FA83A4/59845/DBSCH_SCR_3848_5268.pdf

Discussion papers released by the Ministry of Economic Development regarding commissioned works and the interface between copyright and contract law

The New Zealand Government is considering two specific issues of copyright law, namely section 21(3) of the Copyright Act 1994 which deals with commissioned works and the interface between copyright and contract law. As part of this exercise, the Ministry of Economic Development released a Discussion Paper titled ‘The Commissioning Rule, Contracts and the Copyright Act 1994’ on 31 March 2006, and submissions were received up to 31 May 2006. On the issue of copyright and contract, it was announced that no further action will be taken. Regarding the commissioning provisions, on 24 July 2007, the Ministry released another Discussion Paper titled ‘The Commissioning Rule and the Copyright Act 1994: Second Paper’. This Paper examines issues raised by submissions to the first Paper and explores options for change. Submissions were invited from a restricted range of interested parties and the Discussion Paper was not made available on the Ministry’s website. Submissions were due by **27 August 2007**.

For more information, click here

http://www.med.govt.nz/templates/ContentTopicSummary_____18836.aspx

Discussion Paper released by the Ministry of Culture and Heritage regarding a resale royalty right for visual artists

The New Zealand Government has been examining international developments relating to a resale royalty right for visual artists, and the possible impact of applying such a right in New Zealand. The resale royalty right allows visual artists to receive a royalty payment each time their original art work is resold on the secondary art market. In April 2007, the Ministry for Culture and Heritage prepared a Discussion Paper titled 'A Resale Royalty Right for Visual Artists: Options for its Possible Application to New Zealand'. The Discussion Paper provides an overview of these international developments and looks at a number of options that could form the basis of a resale royalty right scheme in New Zealand. Submissions on the Discussion Paper closed **22 June 2007**. Of the more than 200 submissions made, most were either in favour or neutral regarding the establishment of a mandatory resale royalty right in New Zealand. The Ministry is currently finalising its analysis of the submissions. The analysis will inform advice to the Minister for Arts, Culture and Heritage, and to Cabinet.

For more information, click here

<http://www.mch.govt.nz/publications/resale-royalty/index.html>

TRADE MARKS AND OTHER INDICATIONS

Geographical indications for New Zealand wines and spirits

The Geographical Indications (Wine and Spirits) Registration Act 2006 received its royal assent on 21 December 2006. It repeals and replaces the Geographical Indications Act 1994 which was passed to provide the requisite protection under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights for geographical indications for wines and spirits. While it was intended that the new legislation would take effect mid-2007, as at 28 August 2007 it has not yet come into force.

For a copy of the statute, click here [look under 'G' on the left hand side for Geographical Indications (Wine and Spirits) Registration Act 2006]

http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes

GENERAL IP

Bioprospecting – Discussion Paper released by the Ministry of Economic Development

On 9 July 2007, the Government released a Discussion Paper titled 'Bioprospecting: Harnessing Benefits for New Zealand'. It was prepared by the Ministry of Economic Development, in conjunction with a number of other departments. Bioprospecting is defined as 'the collection of biological material and the analysis of its material properties, or its molecular, biochemical or genetic content, for the purpose of developing a commercial product'. The focus of current consultation is on gathering information on bioprospecting activities in New Zealand and to develop a common understanding of the resources that should be accessed and the benefits that could be

captured under a comprehensive bioprospecting framework. Between July and September 2007, interested parties will have the opportunity to attend public seminars in Auckland, Wellington or Christchurch, or any of the 12 regional hui being held around the country. The closing date for submissions on the Discussion Paper is **12 October 2007**.

For more information, click here

http://www.med.govt.nz/templates/StandardSummary___46.aspx

Ambush marketing legislation

On **23 August 2007**, the Major Events Management Bill had its third reading. It is now due to receive royal assent. The Bill implements the New Zealand Government's decision to enact protections against ambush marketing for major events, and sets out controls on the sale and promotional use of major event tickets. The Bill also includes provisions relating to protection of Olympic and Commonwealth Games names and indicia. The Bill results from New Zealand's successful bids to host the Rugby World Cup in 2011 and to co-host the Cricket World Cup in 2015 as well as other major events.

To view the Bill, click here

http://www.parliament.nz/en-NZ/PB/Legislation/Bills/2/5/c/00DBHOH_BILL7762_1-Major-Events-Management-Bill.htm

Anti-spam code of practice for internet service providers

The Unsolicited Electronic Messages Act 2007 comes into force later this year. InternetNZ, the organisation which manages the .nz domain name system (through the Office of the Domain Name Commissioner) and owns the .nz domain name registry (.nz Registry Services) has prepared a draft 'Internet Service Providers Spam Code of Practice'. The Code seeks to establish industry wide practices and procedures relating to those electronic messages (as that term is defined by the Unsolicited Electronic Messages Act 2007) that are spam email. Public submissions on the Draft Code of Practice closed **18 June 2007**.

For more information, click here

<http://www.internetnz.net.nz/issues/current-issues/anti-spam>

The indigenous flora and fauna and cultural intellectual property (Wai 262) inquiry

From **5 to 15 June 2007**, closing submissions were heard at the indigenous flora and fauna and cultural intellectual property (Wai 262) inquiry. Wai 262 is a Treaty of Waitangi claim brought against the New Zealand Crown in 1991 by the members of six 'iwi' (Maori tribes). There are four statements of claim for Wai 262, which generally assert exclusive and comprehensive rights to flora and fauna, cultural knowledge and property as taonga protected by Article Two of the Treaty of Waitangi. The evidence presented by claimants revealed that the focus of the concerns are mainly two-fold:

- First, the adverse effects intellectual property rights can have on traditional knowledge and associated cultural property and biological resources. The key concern here is the granting of intellectual property rights to third parties for

creations or inventions based on traditional knowledge or practices (where there is in fact no novelty) and the resulting commercialisation (that occurs in some cases).

- Secondly, the inability of indigenous people to obtain or use intellectual property rights to enable them to protect or commercially exploit (where appropriate) their traditional knowledge, cultural property and biological resources.

Claimants' refresher evidence was heard in August-September 2006, interested persons or groups evidence in late September 2006, and finally Crown evidence in December 2006 and January 2007. The Tribunal is currently in its report writing phase.

For more information, click here

http://www.med.govt.nz/templates/Page_____1207.aspx