

Indigenous Knowledge

and biodiversity in India and Australia



Forum Program

1-3 August 2012

UTS Faculty of Law, Sydney NSW, Australia

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Wednesday 1 August 2012

Registration:

2:00pm-3:00pm UTS Faculty of Law Foyer Quay St Haymarket

Welcome Ceremony:

3:00-3:30pm Moot Court UTS Faculty of Law Ground floor

*A welcome to country by **Aunty Joan Tranter**, Elder in Residence, Jumbunna Indigenous House of Learning, University of Technology, Sydney will open the forum.*

Aunty Joan is a murri woman from Wakka Wakka country about 180 kms north-west of Brisbane and holds strong connections to the Kamalori people in New South Wales through her mother. Aunty Joan has lived in Sydney for almost 50 years. Aunty Joan has a teaching degree and post-graduate degree in Adult Education with 40 years' experience in adult education and training and 25 years specifically in Indigenous education, employment and training.

She has been employed at the University of Technology, Sydney on and off for 14 years, with 11 years in the Equity & Diversity Unit, where she held two senior positions, firstly as Manager of Indigenous and Cultural Diversity programs/initiatives relating to both staff and students and during the last 2 years as Manager of Education and Training for the Equity Unit organising training in line with discrimination/legislative requirements and Indigenous Cultural Awareness for university staff.

As an Indigenous Elder she is widely known as Aunty Joan at UTS and within the local community. Aunty Joan is committed to the advancement of Reconciliation between Indigenous and non-Indigenous Australians. She strives to advance cultural diversity and understanding through community engagement and participating in groups such as Lane Cove Residents for Reconciliation group, the Wollie Creek Society Inc. and the Cooks River Valley Association, story-telling at local schools and speaking at functions during Reconciliation Week and NAIDOC week.

Aunty Joan also strives to promote Aboriginal advancement and to educate the wider community about Aboriginal heritage through delivering Cultural Awareness training sessions and Acknowledgements of Country.

*Aunty Joan is an Elder and Co-Chair on NSW Reconciliation Council and Chair the Aboriginal Advisory group to Canterbury Council. Currently Aunty Joan is **Elder in Residence** at the University of Technology, Sydney. She is also the recipient of UTS' Human Rights Awards 2010 and Citizen of the Year 2011 Award from Canterbury Council.*

This will be followed by an opening address by:

Arun Kumar Goel Consul General Consulate General of India, Sydney

Mr Arun Kumar Goel is a career diplomat. After obtaining a Master's degree in Economics from Panjab University Chandigarh (in 1975), he started his working life, at the age of 21 by joining the State Bank of India as a Probationary Officer in 1975. After 4 years of banking (1975-1979), he left SBI (when he was a Branch Manager) to join the Indian Foreign Service in 1979. In his diplomatic career, he has served in various capacities at Indian diplomatic missions in Bonn, Baghdad, Prague and Dakar. He was the Consul General of India in Hamburg (2000-2004) and High Commissioner of India in Seychelles (2004-2008). Prior to taking charge as Consul General in Sydney, he was working in the Ministry of External Affairs in New Delhi as Joint

Secretary responsible for India's bilateral relations with the countries of South-East Asia and Pacific, including Australia and New Zealand.

Ian Goss General Manager, Business Development & Strategy Group IP Australia

Dipen Rughani National Chairman of the Australia India Business Council

Innes Ireland Executive Manager, International and External Engagement, UTS

MC: **Professor Natalie Stoianoff**, Director Intellectual Property Program, UTS

Opening plenary: What is Indigenous knowledge?

3:30-5:00pm Moot Court UTS Faculty of Law Ground floor

Session Chair: Lydia Miller Executive Director Aboriginal and Torres Strait Islander Arts, Australia Council for the Arts

Lydia Miller is a Kuku Yalanji woman. She joined the ATSIA Board in July 2005 with over twenty years' experience as a performer, artistic director, producer, administrator and advocate. Lydia has held many Council, Board and Committee positions.

Speakers:

Dr Frances Bodkin-Andrews, Botanist & Indigenous Education Officer, Mount Annan Botanic Gardens

Frances Bodkin (Aunty Fran) is a D'harawal elder of the Bitter Water Clans and knowledge holder, storyteller, and teacher of Aboriginal knowledge. She is also a botanist, and Indigenous Education Officer with Mount Annan Botanic Gardens having degrees in climatology, geomorphology and environmental science. She works tirelessly to teach traditional Indigenous 'science' and enable a deeper understanding of, and an ability to care for, our natural environment. Frances received her Aboriginal knowledge from her mother, who was also a storyteller, and her grandmother and great grandmother, who were medicine women. She is the author of Encyclopaedia Botanica, which has over 11,000 entries on Australian native plants. Her Western scientific training combined with her invaluable knowledge of D'harawal creation, history and law, provides Frances with a truly holistic approach to understanding our earth.

The intention of the presentation is to demonstrate the methods of passing on traditional knowledge to inheritors, and how that knowledge is protected. The major initial transmission of such knowledge is through story, and includes not only the plant uses, medicines, climate and weather, and human activity, but also travel routes.

For thousands upon thousands of years, the Dreaming stories were used as a teaching tool to impart to the youngest members of the clans the laws which governed the cultural behaviour of clan members. The successive attempts to destroy the Koori culture and assimilate The People into the Euro-centric population were unsuccessful, and the Dreaming Stories were able to continue in their guise as charming legends where animals became the heroes and the heroines. Each story contains several layers of knowledge, the first of which are the secrets. Which can only be passed on or discussed with persons of the same level of knowledge or higher than the story teller.

These secrets are never told within a legend, but are remembered separately from the legend itself. These are very important components of any legend, and it is the knowledge of the secrets which determines the level of the person's worthiness to ownership of that story.

The next layer of knowledge within the stories was the law, or laws, to be obeyed. The laws of the stories were told and often repeated after the telling of each story, after which the laws were discussed and their application in life demonstrated in a variety of ways.

The third layer of knowledge contained in each story was the lessons which could be learned from the story and the lessons were taught to all members of the group as well as visitors. These lessons introduced Peoples to the means to live in harmony with each other, and the land and its resources.

It is hoped that our present society is now mature enough to be able to accept the Koori Dreaming stories as they were, as they are, and as they were always destined to be; tools to teach the Children of The People about living with Earth, the Mother, in peace and harmony.

Henrietta Marrie, Traditional Knowledge Research Centre, United Nations University

Henrietta Marrie has worked for many years as an academic with over 30 publications to her credit on issues relating to the protection of Indigenous cultural heritage, intellectual property and the bushfood industry. She took up a position in 1997 with the United Nations Secretariat for the Convention on Biological Diversity (SCBD), an international environmental treaty under the UN Environment Program, researching and drafting documents on issues relating to traditional knowledge, access to genetic resources and benefit sharing, protection of traditional knowledge as intellectual property, and the conservation and management of biological diversity. In 2003 Henrietta accepted a position as Program Manager for North Australia with The Christensen Fund, a California-based private philanthropic body which makes grants to Indigenous and local communities in a number of regions around the world. She has also written grants in support of local Indigenous artists and exhibitions of their work at KickArts. Henrietta is working to establish a Traditional Knowledge Research Centre, as part of the United Nations University, to be based in northern Australia.

Kanchi Kohli, Member, Kalpavriksh Environmental Action Group, India

Kanchi Kohli works on environment governance and biodiversity conservation related issues Over the years , she has worked with Kalpavriksh Environmental Action Group and several other organisations lik to carry out action research, campaigns, and advocacy outputs related to environment, biodiversity and agriculture and its interface with the industrial, infrastructure and energy scenario in India. Her recent work has sought to explore the aspect of commodification of nature and its implications on conservation and environmental governance. Writing and information dissemination are key components of Kanchi's work. She writes regularly in several newspapers, magazines, journals and website and has also been guest editor of a few publications related to her area of work. Since 2004, she co-coordinates an Information Dissemination Service for Forest and Wildlife cases in the Supreme Court of India. Kanchi has also been campaign and research advisor to national level networks and organisations related to Environment Justice, Coal and Climate, Genetic Engineering as well as conservation of agro-biodiversity, especially millets. She has also been part of teams, which have put together several publications on regulatory regimes, and decision-making processes around environment, forests and biodiversity related policy framework. Kanchi is presently an Honorary Associate Researcher with the Indian Ocean South Asia Research Network (IOSARN) and the Faculty of Arts and Social Sciences,University of Technology, Sydney. She has also recently been on the International Visitor's Leadership Program is considered to be a premier professional exchange program of the US government for International Opinion Leaders.

In India there is a continued debate about the use of the word "indigenous" and attributing it to a few communities and their knowledge systems. Their knowledge and practices are inter-changeably referred to and defined as tribal knowledge, traditional knowledge and people's knowledge for legal, policy and administrative purposes. This does not mean that they don't encompass a unique set of codes, rituals, cultural and spiritual attributes, but the contention is about who will then constitute the non-indigenous categories of people. This logic relates to the specific colonial history that the country has had where there have been a

range of colonizers and the nation building project post-independence asserts that we completed the process of decolonization when the British left the country. Therefore a clear distinction between outsiders and native occupants of the land as made in the countries of South America, in USA, Canada and Australia may not be possible. However, some parts of India, especially the north-eastern states and predominantly scheduled tribe area for political reasons have asserted "indigenous" identity and also connected with international conventions around indigenous rights and self-assertion. Kanchi Kohli attempts to highlight the complexity of the debate in India.

Welcome Cocktails:

5:00-7:00pm UTS Faculty of Law Ground floor foyer and courtyard

Forum participants are invited to join us for light refreshments following the Welcome plenary.

Thursday 2 August 2012

Early morning plenary: Biodiversity Access & Indigenous Knowledge

9:00-10:40am Moot Court UTS Faculty of Law Ground floor

Session Chair: Kamal Puri

Professor Kamal Puri is a professor in the School of Law at Queensland University of Technology. He has established an international reputation in the fields of intellectual property and contracts. He has successfully completed numerous research projects at international level at the invitation of UNESCO and WIPO and several other national and regional organizations/institutions, including Oxford and Cambridge universities. His seminal work in the field of protection of cultural and intellectual property rights of indigenous peoples has helped him to gain an international reputation that has led to numerous funded invitations at international conferences.

Speakers:

John Scott, Programme Officer for Traditional Knowledge, Innovations and Practices, Focal Point for Indigenous Peoples and Local Communities, Social, Economic and Legal Matters, Secretariat for the Convention on Biological Diversity, Montreal, Canada

Through his Father (Jack Scott) and his Grandmother (Catherine Maud Evans), Mr. Scott is a descendant of the Iningai people (Indigenous Australian) of central Queensland (Barcaldine area). They are Freshwater Murris.

Mr. Scott has a significant background in education, social policy, law, indigenous rights and traditional knowledge. He has moved through various incarnations to get where he is today including as a leading senior high school teacher, Aboriginal Education Advisor, Chief Educational Officer for Aboriginal Programs, Senior Policy Advisor (Office of the Aboriginal Social Justice Commissioner, Australian Human Rights Commission), Deputy Director for the School of Indigenous Australian Studies at James Cook University, Manager of the Cultural Rights Unit of the National Policy Branch with National Aboriginal and Torres Strait Islander Commission (ATSIC), Indigenous Human Rights Officer with the United Nations High Commission on Human Rights (OHCHR), and second in charge of the Secretariat of the United Nations Permanent Forum on Indigenous Issues. Currently Mr. Scott is the Programme Officer for Traditional Knowledge for the United Nations Convention on Biological Diversity since 2004.

Mr. Scott's education: Diploma of Secondary Teaching (Arts/Humanities), Graduate Diploma in Aboriginal Education (with Distinction), Master of (Indigenous) Legal Studies.

Ben Philips, Director, Protected Areas Policy and Biodiscovery, Parks Australia

Ben Phillips has been engaged in the access and benefit-sharing negotiations under the Convention on Biological Diversity since 2005. He is responsible for the access and benefit-sharing regime of the Australian Government, and is the JUSCANZ representative on the Bureau for the Intergovernmental Committee on the Nagoya Protocol.

Implementing the Nagoya Protocol

Australia signed the Nagoya Protocol (an access and benefit-sharing agreement under the Convention on Biological Diversity) in January 2012, and is now pursuing its implementation and ratification. The presentation will discuss the existing legislation implementing access and benefit-sharing obligations under the

Convention on Biological Diversity, provide an update on amendments currently being developed in relation to the Hawke Review of the EPBC Act, and explore possible means to effectively implement the Nagoya Protocol.

Shalini Bhutani, Co-ordinator, Campaign for Conservation and Community Control over Biodiversity

Shalini is trained in law from the University of Delhi. She has been working on issues of trade, agriculture and biodiversity since 1995. After a brief stint at practising in the Supreme Court of India, she moved full-time into the development sector. She has worked in several NGOs including the Centre for Environmental Law at WWF-India, Navdanya and across Asia through the international group GRAIN. In India alongwith Kalpavriksh environment action group she co-coordinates the Campaign for Conservation and Community Control over Biodiversity. She is an active member for the Forum Against FTAs (Free Trade Agreements). She is also associated with the Pesticide Action Network (PAN) Asia Pacific through its office in Malaysia. Last December she helped PAN with an International People's Tribunal against the big six agrichemical TNCs, whereat she was the expert witness giving evidence on intellectual property. She has often lectured in different colleges including law schools and at several also CSO fora. With her parental roots in what is now Pakistan, she considers herself a South Asian. She truly believes that another world is possible, but also that we all will need to play our parts for it.

In the Knowledge Bazaar - 'Protecting' India's (biodiversity) know-how?

A critical look at laws and policies on traditional knowledge and intellectual property

India is being seen as both an 'emerging' economic power and a powerhouse of knowledge. As biological resources and the know-how of them come to be commoditised in the global trade, real questions of protection arise. For protection itself implies different things to diverse 'stakeholders'. The meaning of protection can fundamentally vary depending on whether so-called protection regimes are constructed from the perspective of informal knowledge systems or from that of the formal market. High-level policymakers in India are now working to leverage the country's knowledge capital. National-level laws and macro-economic policies endeavour to 'protect' this knowledge through rules for products and services derived from it. How does this translate for knowledge-holders on the ground? And are the relatively 'new' intellectual property systems helping people to develop and sustain age-old wisdom cultures? With these questions, this presentation seeks to trace where the country is on the issue of knowledge protection. It draws from some recent experiences of small farmers and local communities in different parts of India. It hopes to raise some broader questions on the validity of intellectual property rights in nurturing and safeguarding innovation. For there are honest concerns about both the bazaar and its rules and the heritage they put on sale.

Anthony Watson Chairman, Kimberley Regional Economic Development Inc., Jarlmadangah Community Representative, Mudjala Aboriginal Medicine Project

Anthony Watson is a Nyikina/ Mangala leader from the West Kimberley who has represented his people in numerous forums. Anthony joined the Kimberley Land Council as an Executive Board member in 1994 and has also served on the Executive Committees of the Kimberley Aboriginal Law & Culture Centre and the Kimberley Appropriate Economies Roundtable. Anthony is a cultural director of the Yiriman Project and chairman of Kimberley Regional Economic Development, an Aboriginal Charitable Trust dedicated to building and sustaining independent Aboriginal economic development of the Kimberley. Anthony represents the interests of the Jarlmadangah Burru Aboriginal Community in the commercialisation arrangements for the traditional analgesic derived from the Mudjala plant.

and **Paul Marshall** Mudjala Aboriginal Medicine Project Coordinator

Paul Marshall has an environmental science and land management background, and currently works as a Natural Resource Officer in local government. Paul has a 27 year association with Kimberley Aboriginal people; since he was Administrator of the Kimberley Land Council in 1985-86. He wrote the acclaimed Kimberley Aboriginal oral history book 'Raparapa' first published in 1988 and a revised edition in 2011, with a foreword by Hon Michael Kirby AC CMG. Paul has been a Board member of Landcare Australia, Queensland Water and Land Carers, and the Mary River Catchment Coordinating Committee. He has coordinated the Mudjala Aboriginal Medicine Project on behalf of Jarlmadangah Burru Aboriginal Community since its inception in 1987. Paul is married to Aboriginal solicitor and conference presenter, Virginia Marshall. He is currently undertaking a research Master's degree in Environmental Science.

Partnership engagement towards the commercialisation of Indigenous Traditional Knowledge.

This presentation provides insights into the uniquely equitable partnership between Griffith University and Jarlmadangah Burru Aboriginal Community and their commercialisation of a novel class of powerful analgesics; a project that holds the promise of sustainable development for a remote Aboriginal community.

Morning tea:

10:40-11:00am UTS Faculty of Law Ground floor foyer and courtyard

Late morning plenary: Environmental Stewardship, Agriculture & Managing Country

11:00am-12:30pm Moot Court UTS Faculty of Law Ground floor

Session Chair: Balwant Singh

Balwant Singh is an Associate Professor in Soil Chemistry in the Faculty of Agriculture and Environment at the University of Sydney. Balwant's research interests include the study of mineral-organic carbon interactions in the soil, particularly in the context of increasing carbon sequestration in soils. He leads the biochar research program at the University of Sydney and has completed a research project on the carbon sequestration and dynamics in degraded land under saltbush plantation in NSW.

Speakers:

Sam Johnston, Institute for Advanced Studies, United Nations University

Sam Johnston is a Senior Research Fellow at the United Nations University Institute of Advanced Studies - a policy think tank for the United Nations based in Japan - where is a member of the management team. He is also a Senior Fellow at the Law Faculty of the University of Melbourne. Sam's research interests include International Environmental Law, Law of the International Areas and Resources, International Finance Law and International Regulation of Biotechnology. He has raised over \$10m in research funding from governments, international organizations and philanthropic organizations. He has written 7 books, published over 40 Articles, Chapters and Monograms and prepared over 60 official intergovernmental policy documents.

The Use of Indigenous Knowledge in Climate Change

UNU and the Intergovernmental Panel on Climate Change (IPCC) with the collaboration of a number of other partners has organised a series of international workshops on Indigenous Peoples, Marginalized Populations and Climate Change. The first workshop focused on Vulnerability, Adaptation and Traditional Knowledge and was convened in Mexico City, Mexico (19-21 July 2011). A second workshop focusing on climate change mitigation was held in Cairns, Australia from 26-28 March 2012.

The aim of the workshops is to identify, compile and analyze relevant indigenous and local observations, knowledge and practices related to understanding climate change impacts, adaptation and mitigation. The workshops will provide a key opportunity to ensure that experience, sources of information and knowledge (scientific, indigenous and local), along with data and literature (scientific and grey), focusing on vulnerable and marginalized regions of the world are made available to the authors of the IPCC 5th Assessment Report and the global community. Information on the second workshop will be provided at a later date. This presentation will provide a summary of the outcomes of these workshops.

Professor Dr T. Vidya Kumari, Dean of Law, Osmania University, Hyderabad, India

Prof.T.Vidya Kumari is presently serving as the Dean, Faculty of Law, in Osmania University, Hyderabad, Andhra Pradesh, India. Her passion for research on the fascinating subject of Intellectual Property Rights has prompted her to present papers on the multi-dimensional facets of Intellectual Property across the world.

The present paper unfolds the Indian scenario on the complex legislations that mire the Indian Farmers who seek respite through the regime of Intellectual Property rights to establish his rights on a knowledge that has perpetuated through ages.

Farmers Rights in the Labyrinth of India's Intellectual Property Regime

India thrives on paradoxes Profuse Legislations and litigations have created a labyrinth for the Indian Farmer in his pursuit to seek an independent identity and sustainable development. Indigenous knowledge is the source of the farmers' rights. These rights link the past with the present for future prosperity.

This paper brings to light the Government policies in establishing a legal status to the Indian farmer and the measures taken to protect his rights from the onslaught of new technologies and the "public purpose" activities of the State.

Peta-Marie Standley, Program Manager, Cape York Natural Resource Management Ltd, CSIRO Atherton

For the past thirteen Peta-Marie Standley (BA Arts Mj Ed. MA Env. Mgt) has worked both in Government and Indigenous organisations in North Queensland focused on Community Natural Resource Management. She has been part of the Indigenous led co-generative action research team for the TKRP Kuku Thaypan Fire Management Research project for the past seven years. Her work promotes the use of connected and collective action learning, multiple knowledge sets and collaborative spaces on and off country in undertaking respectful solution generation for solving complex social-environmental problems. She currently holds the position of program manager for Cape York Natural Resource Management Board and oversees service delivery contracts and program development.

Carrying and Communicating Fire: Building Relationships and frameworks for creating change

The Traditional Knowledge Revival Pathways (TKRP) and the Kuku Thaypan Fire Management Research project (KTFMRP) support the ambitions of the Indigenous Elders to benefit changes in recognition of the value of TEK to contemporary resource management in Australia. The TKRP Kuku Thaypan Fire Management Research Project and the Importance of Campfires have been undertaking successful on country training programs since 2004 in Cape York Peninsula, Australia. The evolution of this program has culminated in development of the TKRP Indigenous Fire Workshop training program in 2010. This program is educating both Indigenous and non-Indigenous natural resource management practitioners and researchers from diverse communities in Traditional fire management and research practices derived from the recordings and teachings of two Kuku Thaypan Elders, Dr. Tommy George and the late Dr. George Musgrave. In each new community knowledge is shared and re-invigorated through on-country action.

Indigenous led co-generative action research of the TKRP KTFMRP and the CAMPFIRES research practitioner model bring Indigenous knowledge of fire and biodiversity into re-shape the wicked problem spaces of contemporary fire management and research practice. The emergent theory and the practitioner model applied in co-generation provide united ways to do research and culturally appropriate ways to bring

Indigenous knowledge of fire and biodiversity into contemporary environment and resource management. The emergent Indigenous research theory embodies an ancient way to undertake cultural practice, where the right people have a voice to ensure that interactions with country and people are undertaken according to protocol, kinship and lore.

Cape York Natural Resource Management board respect this approach when engaging with Indigenous people. Cape York NRM's Board of Directors have formally recognised the rights of the Indigenous peoples of Australia by adopting a Governance policy based on the United Nations Declaration on the Rights of Indigenous Peoples. Cape York Peninsula is the last region to establish a community Natural Resource Management board in Australia. Several attempts have been made in the past with the most recent efforts resulting in the establishment of the board in October 2010. The board is supporting innovative Indigenous projects in building and maintaining resilient communities in Cape York through partnership with the Rural Industries Research and Development Corporation funded "Transformation for resilient landscapes in Far North Queensland project" working with Paul Ryan and Rod Griffith.

Lunch:

12:30-1:30pm UTS Faculty of Law Ground floor foyer and courtyard

Early afternoon plenary: Ethical Knowledge Management & Intellectual Property

1:30pm-3:10pm Moot Court UTS Faculty of Law Ground floor

Session Chair: Jill McKeough

Professor Jill McKeough is currently Commissioner in charge of ALRC Copyright Inquiry, on leave from UTS Law School. She has been Dean of the Law Faculty at UTS since 2005 and has extensive university leadership and management experience. Jill has written and taught primarily in intellectual property (copyright, designs, patents, trade marks, confidential information, biotechnology and indigenous cultural heritage) as well as torts, commercial law, consumer protection, legal system and legal history.

Speakers:

Michael Davis ARC Postdoctoral Research Fellow Department of History, University of Sydney

Michael Davis is currently a postdoctoral research fellow in the history department at the University of Sydney. His research interests include the relationships between Indigenous and other knowledge systems, intangible cultural heritage, Indigenous knowledge, ecology and place, and ethical research and protocols. Prior to taking up his present post Michael spent several decades as an independent policy specialist, scholar and sometime lecturer. He has wide ranging consultancy experience in Indigenous knowledge, intellectual property and biodiversity issues, having worked with Aboriginal land councils and community organisations, and government and academic institutions. Michael's recent projects include (in 2010) a comprehensive review and revision of the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Guidelines for Ethical Research in Indigenous Studies. Michael has also published widely on Indigenous knowledge and heritage, including a major work Writing Heritage: the Depiction of Indigenous Heritage in European-Australian Writings (2007, Australian Scholarly Publishing, Melbourne, and National Museum of Australia Press, Canberra).

Guidelines, Statements and Protocols: Can these offer some lessons in developing a new approach for recognition and protection of Indigenous knowledge?

Over recent decades there has been a proliferation of guidelines, protocols and similar documents aimed at encouraging greater awareness of, and adherence to ethics in working with Indigenous biodiversity and other knowledge. I review some of these endeavours, and explore in some detail a comprehensive revision that was conducted of the *Guidelines for Ethical Research in Indigenous Studies*, a key document in the work and operations of the Australian Institute of Aboriginal and Torres Strait Islander Studies. These *Guidelines* provide important obligations for those working in Indigenous studies across all disciplines, to ensure equity in participation in projects, and just and ethical approaches. They require, among other things, that researchers recognise and respect Indigenous knowledge, and that free, prior and informed consent processes are followed. I then ask the question: what role might these kinds of documents have in developing new ('*sui generis*') approaches that can more effectively incorporate Indigenous peoples' rights and interests in legal and policy regimes for recognition and protection of Indigenous knowledge, biodiversity and genetic resources? As a basis for further discussion, I take a brief look at some early attempts in Australia to develop such approaches. Some of these appear to have had the potential for a more 'inclusive' or 'holistic' regime that connects elements such as intangible heritage, or Indigenous knowledge, sacred sites, land, and arts and cultural expressions, that are too often fragmented in the dominant legal/political system.

Virginia Marshall Solicitor & Member, Indigenous Issues Committee Law Society of NSW

Virginia is Wiradjuri Nyemba and is connected in kinship with Nyikina Mangala. She is a solicitor in NSW, Australia and is an active Law Society committee member in the recently formed Indigenous Issues Committee, Litigation Practice and Law Committee, and with the Human Rights and Dispute Resolution Committees.

Virginia has practised in criminal and civil law and various degrees in law. Her doctoral thesis at Macquarie University is on Aboriginal water rights and interests in Australia. The thesis develops original frameworks such as intellectual property, reframing Indigenous research, conceptualising difference in Indigenous water values and Western legal concepts.

Conceptualising Ethical Practice: Indigenous Knowledge Management in a Legal Paradigm

Navigating the ethical guidelines in Indigenous Knowledge Management is a complex process, for Indigenous communities, the researcher and the lawyer. In the past decade Australia has produced various guidelines for intellectual property, Biocultural heritage and conducting research. In legal practice, preparing agreements and contracts for Indigenous Knowledge requires a cross-cultural approach. This session provides key elements and processes to encourage ethical practice in cross-cultural dealings.

Steven Bailie Assistant Director International Policy and Cooperation Business Development and Strategy Group IP Australia

Steven Bailie works in IP Australia's International Policy and Cooperation Section. IP Australia's roles are to (i) administer the patents, trade marks, designs and plant breeder's rights regulations, (ii) conduct IP public education and awareness activities and (iii) provide advice to government on IP issues. Much of Steven's IP policy work involves biodiversity and Indigenous peoples' knowledge. Steven is currently engaging with domestic stakeholders on these issues and has represented the Australian government at international meetings, including the Convention on Biological Diversity and the World Intellectual Property Organization. Prior to his current role, Steven worked in a university technology transfer office and has done both laboratory research and patent examination in biochemistry.

Finding the Way - Intellectual Property and Protecting Indigenous Knowledge in Australia

Traditional Knowledge, culture and genetic resources are important to indigenous people all over the world. In Australia there is growing interest in protecting Aboriginal and Torres Strait Islander peoples' culture and knowledge and improving the lives of Indigenous Australians. The Australian government is currently engaging with stakeholders to seek their views about how Indigenous Knowledge can work with the IP system. Steven will present on this engagement and share some of IP Australia's domestic and international experiences with IP and Indigenous knowledge.

Rajul Joshi Assistant Professor, Symbiosis International University, India

Ms. Rajul Joshi is pursuing doctoral studies at UTS Business School having been an Assistant Professor at Symbiosis International University in India. Her work in Entrepreneurship and Strategic management has been recognized by various institutions in India and abroad. She is certified by the London Business School, Goldman Sachs and Wadhwani Foundation as a Mentor in Entrepreneurship. She is also accredited as an entrepreneurship educator by the All India Management Association (AIMA), the National Science & Technology Entrepreneurship Development Board (NSTEDB), Entrepreneurship Development Institute of India and the Maharashtra Centre for Entrepreneurship Development. Over the last five years. Rajul has conducted numerous workshops for first generation and second generation entrepreneurs. As an Entrepreneurship Educator, Rajul has trained 20 faculty members in teaching entrepreneurship in remote colleges in India. She is currently mentoring five entrepreneurs and is on the advisory board of two new ventures. Rajul is also associated with Maharashtra Centre for Entrepreneurship Development and Bhartiya Yuva Shakti Trust to support grass-root innovation and local entrepreneurship. She has co-edited two books and has presented papers in national and international conferences. Rajul's PhD research covers the area of value creation aspects of Indian traditional knowledge and grass-root innovation.

Traditional knowledge and value creation

Traditional knowledge (TK), practices and innovations had been popular source of value in the field of natural resource management, health care, farming and others. Over the past twenty years, TK has taken centre stage in the discourse of sustainable socio-economic development and poverty alleviation in developing countries. In 2001, India set up a Traditional Knowledge Digital Library (TKDL) to protect, document traditional medicinal treatment and prevent the wrongful granting of patents. India became the first country to undertake such institutional measures to protect TK and innovation and is also acclaimed world-wide for the TBGRI-Kani benefit sharing model. It was the first model to provide benefit sharing to TK holders and innovators such as through cash benefits to traditional medicines knowledge holders and the original innovators. Such institutional mechanisms are very important for the developing countries and it is clear from the case of India that at the national level, institutions shape the path of growth and national system of innovation embodies such institution.

This paper presents an overview of the evolution of the models that conserve, develop and diffuse TK towards a market-driven system in India. The paper will explore how value-creation occurs through the interaction of knowledge holders, innovators, scientists, development agencies and private companies. Using Roger's (1994) Diffusion of Innovation theory it attempts to conceptualise the activities of scouting, validating, value addition, product and enterprise development, intellectual property rights protection, licensing and dissemination of TK and GRI.

Afternoon tea:

3:10-3:30pm UTS Faculty of Law Ground floor foyer and courtyard

Late afternoon plenary: *Implementation of Rights, Holding Rights & Native Title*

3:30pm-5:00pm Moot Court UTS Faculty of Law Ground floor

Session Chair: Henrietta Marrie**Speakers:**

Kanchi Kohli Member, Kalpvriksh Environmental Action Group, India

The Regulatory Design of People's Knowledge Protection in India's Biodiversity Regime

India's biodiversity regime comprises of a range of rights and access based laws which have

informed how the dynamic nature of people's knowledge around biodiversity is to be governed and used. While the actual frameworks of some of the newer legislations having significant bearing on people's knowledge protection were arrived at in the last decade or so, complex discussions have preceded their formalisation. The presentation seeks to explore the processes and practice laid out in two Indian laws namely the Biological Diversity Act, 2002 and The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) and how they relate to people knowledge and in particular traditional knowledge protection in the country. On the one hand the BD Act looks to centralise decision making around bioresources and knowledge and on the other the FRA relies heavily on the recognition of individual and community rights with respect to forest area in the country. In the midst of all these are efforts of databasing of informal knowledge systems as attempt to create biodiversity related prior art. The presentation attempts to look at the design of these laws and the processes that followed to locate the powers related to knowledge protection and regulation. Moreover, whether the framework of these laws are robust to deal with issues conservation, commercialisation and inter-generational transfer of this evolving tribal and other local knowledge systems in the country.

Mark Allen Executive Lawyer, Bartier Perry

Mark is a corporate and commercial lawyer, practising in Sydney with significant expertise in the commercialisation of intellectual property.

Over the last decade, Mark has assisted a number of Aboriginal communities in Australia with the commercialisation of traditional knowledge and resulting intellectual property.

Mark was a partner of the Sydney law firm Henry Davis York for almost twenty years and managing partner of that firm for four years between 1994 and 1998. For the last seven years, Mark has been an executive lawyer (partner equivalent) of the incorporated law practice Bartier Perry.

Mark is Chair of the Sydney Film School, a private college based in Waterloo, Sydney. He is the author of 'Ecommerce, the Law and You' (Pearson Education).

and **Virginia Marshall** Solicitor & Member, Indigenous Issues Committee, Law Society of NSW

Conceptualising Ethical Practice: Indigenous Knowledge Management in a Legal Paradigm

In the midst of the debate about the nature of Indigenous Knowledge rights and the means by which such rights should be protected, there is still a desire and need to commercialise knowledge. This must be done within the existing domestic legal framework and in the context of international law principles.

In this presentation, Mark and Virginia will discuss the lessons to be drawn from their experiences in dealing with the negotiation of arrangements for the commercialisation of Indigenous Knowledge; including the preparation of complex long-term contracts that are fit for purpose – contracts that meet both community expectations and the needs of the commercial arrangement that has been negotiated.

Patricia Adjei Indigenous Communications Coordinator and Legal Officer, Copyright Agency Limited

Natalie Stoianoff Professor & Director, Intellectual Property Program Faculty of Law, UTS

Natalie Stoianoff is a Professor in the Faculty of Law at the University of Technology, Sydney, and the Director of the Master of Intellectual Property Program. She is the Chair of the Faculty Research Network for Intellectual Property, Media and Communications, and the Convenor of the China Law Research Group.

*Natalie's interdisciplinary research is concerned with the legal, ethical and commercial aspects of biotechnology. In particular, her research interests range from the Patenting of Living Organisms, Technology Transfer and Environmental Taxation. She is a co-author of the Federation Press publication, **Intellectual Property Law: Text and Essential Cases**. She has been the author of numerous Patent Law Bulletins and has*

*edited the multidisciplinary book, **Accessing Biological Resources, Complying with the Convention on Biological Diversity**, published in 2004 by Kluwer's International Environmental Law & Policy Series.*

Implications of the WIPO Draft Articles for the Protection of Traditional Knowledge

It is over a decade since the World Intellectual Property Organisation (WIPO) published its Report on the Intellectual Property Needs and Expectations of Traditional Knowledge Holders. Since then an Intergovernmental Committee was established and the work of that committee has led to the development of two sets of draft provisions for the protection of traditional cultural expressions/folklore (TCEs) and for the protection of traditional knowledge (TK) against misappropriation and misuse. This presentation concentrates on the provisions regarding the protection of traditional knowledge, its implications for patent law and plant breeder's right, and considers the expectation that a competent authority at national or regional level be established by member nations to administer the rights of traditional knowledge holders according to their customary protocols, understandings, laws and practices.

Predinner drinks:

6:00-7:15pm Wentworth Galleries Bligh Street, Sydney

Forum dinner:

7:30- 10:30pm Radisson Blu Hotel, O'Connell Street, Sydney

Dinner speakers:

The Hon. Justice Brian Preston Chief Judge, Land and Environment Court of NSW

Dr. Balakrishna Pisupati Chairman of National Biodiversity Authority, India (TBC)

The Hon. Justice Brian Preston

Justice Preston was appointed the Chief Judge of the Land and Environment Court in New South Wales in November 2005 having previously practised as a solicitor since 1982, barrister since 1987 and senior counsel since 1999 in environmental, planning, administrative and property law. He is a pioneer in environmental and biodiversity law and is the author of Australia's first book on environmental litigation (in 1989) and 72 articles, book chapters and reviews on environmental law, administrative and criminal law. He holds editorial positions in environmental law publications, including General Editor of the Local Government Planning and Environment NSW Service and Title Editor for the Laws of Australia, Title 14 – Environment and Natural Resources and has lectured in post-graduate, environmental law for 20 years, principally at the University of Sydney, but also at other universities in Australia and overseas. He established two law courses: environmental dispute resolution and biodiversity law and is currently an Adjunct Professor at the University of Sydney. His research in the 1990s acknowledged the significance of the role of property rights and intellectual property in the conservation of biological diversity.

Justice Preston has been involved in a number of international environmental consultancies and capacity-building programs, including for the judiciaries in Indonesia, Kenya, China, Trinidad and Tobago, Thailand and Sri Lanka. Specifically, in 1995-1996, Justice Preston was a member of a three person consultancy team to the World Bank and the Government of Trinidad and Tobago in relation to the National Parks and Watershed Management Project with a brief to draft National Parks and Wildlife Conservation legislation for Trinidad and Tobago. He is a member of the Adhoc Advisory Committee of Judges, United Nations Environment Programme

(UNEP) Judges Program; Chair of the Environmental Law Standing Committee of the Law Association for Asia and the Pacific (LAWASIA); member of the Environmental Law Commission of the International Union for Conservation of Nature (IUCN) and member of the Australian Centre for Climate and Environmental Law (ACCEL). He is the recipient of a Commendation in the 2010 Australasian Institute of Judicial Administration, Award for Excellence in Court Administration, for his work in implementing the International Framework for Court Excellence in the Land and Environment Court of New South Wales, and in the same year received an award by the Asian Environmental Compliance and Enforcement Network (AECEN) in recognition of his outstanding leadership and commitment in promoting effective environmental adjudication in Asia.

Dr. Balakrishna Pisupati

Dr. Balakrishna Pisupati is currently the Chairman of National Biodiversity Authority. He was the Head of Biodiversity, Land Law and Governance Unit of United Nations Environment Programme's Division of Environmental Law and Conventions (UNEP-DELC) based in Nairobi prior to joining the NBA. At UNEP he was managing UNEP's biodiversity related environmental conventions such as the Convention on Biological Diversity (CBD), Convention on Illegal Trade in Endangered Species (CITES), Convention on Migratory Species (CMS) as well as those of World Heritage Convention (WHC), Ramsar Convention on Wetlands, International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the Convention to Combat Desertification (UNCCD). He led UNEP's efforts for successful negotiations under these Conventions and Agreements besides working as the focal point for their implementation at national, regional and global levels. He also facilitated the final negotiations on Access and Benefit Sharing (ABS) under the CBD that was adopted by 194 countries as the Nagoya Protocol on ABS in October 2010 during CBD's tenth Conference of Parties (COP 10) at Nagoya, Japan.

Previously, he held positions such as the Programme Coordinator for Biodiplomacy Programme of the United Nations University-Institute of Advanced Studies (UNU-IAS) based in Japan where he supported development and implementation of UN wide actions on policy making on issues of biodiversity and development. He also served as Head of the Asia Regional Biodiversity Programme of the International Union for Conservation of Nature (IUCN) based in Sri Lanka during which time he helped several countries in Asia region develop national policies and regulations on conservation, use and development. He also served as the Head of the Biodiversity and Biotechnology Programme at M S Swaminathan Research Foundation laying foundation for the technical programmes at the Foundation. He has more than 20 years of direct experience in global, regional and national policy making and implementation besides serving as an advisor to many Governments, UN Agencies and institutions in policy and law making. He is a Senior Visiting Fellow of United Nations University, Visitor at Minzu University and Ningxia International University on Desertification, China. He has published widely on issues of conservation, biotechnology, development policy, law and sustainable development through more than 80 papers and articles as well as 30 books. His special area of interest includes Access and Benefit Sharing (ABS), where he worked at different levels in helping guide discussions related to ABS.

Friday 3 August 2012

Early morning workshops

9:00-10:40am

Ethics and Consent: Moot Court UTS Faculty of Law Ground floor

Workshop convenor: John Chelliah

Cultural expressions and art: B317

Workshop convenor: Devleena Ghosh

Biodiversity and medicine: B318

Workshop convenor: Ben Philips

Morning tea:

10:40-11:00am UTS Faculty of Law Ground floor foyer and courtyard

Late morning workshops

11:00am-12:30pm

Implementation of Rights: Moot Court UTS Faculty of Law Ground floor

Workshop convenor: Steven Bailie

Education and language: B317

Workshop convenor: Frances Bodkin

Environmental stewardship: B318

Workshop convenor: Sam Johnston

Lunch:

12:30-1:30pm UTS Faculty of Law Ground floor foyer and courtyard

Discussion of workshop outcomes

1:30pm-3:00pm Moot Court UTS Faculty of Law Ground floor

Concluding remarks and forum close

3:00-3:30pm Moot Court UTS Faculty of Law Ground floor