

Transcript

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KEN RANDALL: Ladies and gentlemen, welcome to the National Press Club and today's National Australia Bank address.

It is a great pleasure today to welcome Dr Francis Gurry, the director general of the World Intellectual Property Organisation based in Geneva. He took over that role just short of a year ago and he is the first Australian to hold that position, which makes him the most senior Australian within the United Nations structure.

But Dr Gurry has had a long experience with the World Intellectual Property Organisation, having joined there in 1985, and he has been a member of the senior management team for well over a decade.

Intellectual property, although most people - not in this room - but most people in the general community don't recognise the term in its full ramifications, is a hot issue in the age of the internet and a very complex one in some areas.



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Last year some 40 billion music files were shared illegally because of digital technology making it possible these days, the same thing is happening to some extent with films, books and the news industry of course is struggling to come to terms with the internet, digital technology and how to make a profit from it.

We have seen a string of high profile court cases around the world in recent years, and although some of them have settled a few scores, they haven't really resolved some of the big issues, but for a global perspective on how copyright and associated issues face the digital age, we have Dr Gurry today.

Please welcome, Francis Gurry.

FRANCIS GURRY:

Thank you very much, Ken, and ladies and gentlemen a very good afternoon to you all. It's a great pleasure for me to be here, and indeed a privilege to be here. I feel very honoured to be at the National Press Club.

I would like to commence, if I may, by giving you a little bit of background about World Intellectual Property Organisation, which is not perhaps the most well known organisation, to you all. So we are of course an international organisation. We are a member of the UN family. We have 180 member states. We are based in Geneva in Switzerland, with about 1300 staff members.



We do three main things as an organisation. The first of those is we provide a number of services to the global economy in the area of intellectual property. So if you are looking to obtain patent protection internationally in more than one country, then we have a system for that, and we have a similar system for trademarks and for industrial designs, and we have an arbitration and a mediation centre which deals with first of all, disputes for - between internet domain names and trademarks, and disputes generally in the field of intellectual property. These disputes all being between private parties rather than states.

In terms of activity, for the international patent system we had about 160,000 international patent applications last year. Notable growth coming out of North East Asia, in particular. In terms of the trademark system, we had about 41,000 international trademark applications and on our international register of trademarks there were about 500,000 such marks.

Our second main area where we work is trying to develop the international architecture for intellectual property, the international legal architecture for intellectual property. We have, we are custodians of about 24 multilateral treaties that are already in force in this area, and we have ongoing projects which are looking at developing the framework for broadcasters' rights, for audiovisual performances, or actors' rights, for access to published works on the part of the visually



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impaired or the print impaired, and for traditional knowledge and traditional cultural expressions.

That area is a particularly difficult area because of the significant controversies I think that surround intellectual property these days, with the increased value of intangibles, and because of the division in the world really between the developed countries which are the owners of most of the intellectual property in the world, and the developing countries, which are in principle, the consumers, and so it makes it a particularly difficult area in which to make progress.

Our final area of activity is as a development agency and we have a reasonably large development program, technical assistance and capacity building program, about 60 million Swiss francs a year, which is - well it's a different amount of Australian dollars every day, I think.

[Laughter]

It's roughly I think at the moment around about AUD\$70 million. And importantly, the organisation adopted a development agenda recently, the aim of which is to, as they say, mainstream development, or make the development dimension a reflex to every single activity that the organisation undertakes.



So much for background, and I suppose the only other thing by way of background to mention is that intellectual property has been a - it's actually an old field of international cooperation. We were the third international agency, it went in terms of the Telegraph, which became the International Telecommunications Unions, the Post, Universal Postal Union, and then the third was a predecessor of WIPO, which went under the inglorious acronym of BIRPI.

So it's an old field of endeavour, but I think for the first 100 years of its existence it really was a field that looked internally, it looked inside to its own policy imperators. And broadly speaking what we've seen in the course of the last 15 years, I would say, is a broadening of interest in intellectual property, probably because of the technological basis of society, the increasing technological basis of society. There is very few things that we do that don't depend on technology, and one of the consequences of that has been that property rights in relation to technology are creeping into all sorts of other policy areas.

And so you saw, or we saw the tension between intellectual property and health, access to medicines, and whether patents were indeed playing a role in blocking access to essential medicines, particularly in the area of HIV/AIDS. And that policy tension I think is something that is with us as a permanent feature of the landscape now. It is



something that we will have to cope with and I think one can look at it in various ways.

The way in which I would like to look at it, I think, is that that is simply part of the challenge of the birth of the knowledge economy, in which we are going to see a much more sophisticated architecture for intellectual property rights in the future. These challenges and these policy tensions I think are something that are permanently with us.

So let me move on then to the question of the digital economy, and I'm afraid I have only questions really to put to you, and not so many answers, in this area and it is, as Ken has said, an extremely difficult area but I think a very fundamental one.

Actually, our organisation took an early stance on moving copyright into the digital environment and that was in - going back to 1996, when it concluded two treaties, they're called the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

The aim of those treaties was supposed to be to adjust copyright to the digital environment, and the main things that they did is to introduce a right of communication at the international level, and rely on, and it was the origin - these treaties were the origin of the famous technological measures of protection, which have become a feature of the bilateral trading agreements that have been



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concluded in the course of the last 10 years in particular, and also introduce digital rights management systems, or the basis for digital rights management systems, on the internet.

Now I think it's fair to say, and these treaties are alive and well, and as director general of the organisation, I certainly shouldn't say that they are redundant, but I think it's fair to say that those treaties were concluded at an early age of the digital environment, and before we really understood the full impact of the digital environment.

I think now if we look and survey what's happening at the moment, and you're all familiar with this, very briefly I think we see that 20 per cent of the sales of music now take place online, and I am talking about legitimate sales of music. Twenty per cent of the market of legitimate sales of music is online. We see film sites more frequently, and that's a question really of capacity or bandwidth. E-books are becoming available in much more attractive formats now with the Kindle reader, and other forms of simulated paper, and I think it's only a question of time before we have a large amount of published content, book content, moving to this form of expression as well.

Then within the news industry, as you all know very well, we see very different models emerging and San Francisco will soon become, I think the first capital city in the world not to have a daily newspaper. We see different forms of - in the



MEDIA MONITORS

United Kingdom I think in the course of the last 12 months, 80 regional newspapers have gone out of operation, and news content is increasingly migrating to the internet.

We have some also pirate magazine sites. One started up last year and it was closed down, and I think the latest one is called fantamag.com and that really makes available online periodicals or journals.

So we see, I think, a very fast moving migration of all content to the internet, and that's the reality of the situation. When we look at that and we look at how copyright - which is actually a very old institution, how copyright is supposed to work and if I actually deviate for one moment, the ultimate origin of copyright was in I think the seventh century in Ireland, when one monk copied the illuminations on the bible of another monk.

And the other monk complained, and complained to the abbot and brought the first monk before the abbot, and the monk who did the copying, said but I haven't done anything wrong because he still has his drawings, he still has his illuminations, I haven't stolen anything. And the abbot said, well to every cow its calf and to every book its copy, and that was the first historical origin, if you like of copyright.

But it also gives us a clue of the difficulty of the institution of copyright in the digital environment



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because the emphasis is on copying, and copying is not necessarily the problem. The right of reproduction is not necessarily the central legal weapon that we can use in these circumstances.

I have to be a little bit careful, of course, as director general of WIPO since we are the custodians of the Berne Convention for the Protection of Literary and Artistic Works which is the international, major international origin and instrument governing copyright, so I have to be a little bit careful to say that things, you know, are not working.

But in this respect I'll quote Viviane Reding, who is the EU Telecommunications Commissioner, and let me just read one quote from her: In my view, growing internet piracy is a vote of no confidence in existing business models and legal solutions. It should be a wake up call for policy makers.

It is Viviane Reding who said that.

I think what we find, of course, is that that is a realistic assessment of the situation which we face. Ken has mentioned that last year, according to the music recording industry, 40 billion files were illegally, of music, were illegally file shared or exchanged on the internet, and that was a 95 per cent piracy rate. It represented 95 per cent of the total exchanges of music on the internet.



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So what is the world doing about this? Well, the dominant approach at the moment around the world really is focused on the suppression of piracy. And that we see in France, for example, where they have recently had legislation to remove access to the internet for anyone who is caught downloading illegally three times. They had a constitutional problem with the legislation because that decision was going to be taken by an administrative tribunal and the constitutional council required that it be taken by a judicial instance, but that's the approach, and that approach is being considered also in the Netherlands.

We see a fairly drastic verdict given in Sweden, for example, in respect of Pirate Bay, in which a gaol term of three years was given to the proprietor or operator of Pirate Bay. This is I think the dominant approach that we are seeing all around the world. In particular, in this approach of the suppression of piracy, the internet service provider is being used as a vehicle to affix liability. Internet service provider liability is one of the other dominant approaches that we see in many national laws. So you affix the duty, if you like, of care on to the internet service provider to maintain a policing action with respect to the content that is passing.

Now, what I would like to suggest to you this afternoon is that the approach of repression of piracy - and I certainly don't want to be understood to be condoning piracy, but the approach or repressing piracy is not necessarily going to provide



MEDIA MONITORS

us with the answer at the end of the day. It is not necessarily by putting teenagers in gaol, that we are going to be able to deal with this extremely serious problem.

And I think we need to think about what is at stake here for society, and I think what is at stake is something - is very, very fundamental and it's no more fundamental than the financing of culture. How are we going to finance culture in the 21st century and in the digital environment?

We all want books, literature, we all want music, we all want films, and free is not going to work. So how are we going to do that? And I think that formulation of the question is one that has some chance of responsabilising society, and that is part of the answer to this question. We have to responsabilise society and not have society regard this as someone else's problem while they are able to benefit from free content.

And when you look at culture, I think it's not just a cultural question, it's also a very important economic question. We have done studies in 19 countries of the contribution of the creative industries, the industries that use copyright in one way or another, to the economy. And across 19 countries, and they were very diverse countries, it comes out roughly at about 5.5 per cent of GDP is contributed by the creative industries, and on average across the 19 countries some 5.6 per cent of total employment.



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If you take just a film, an awful lot of people are involved in the production of a film, you know, 400, 500 people. So a lot of employment is at stake as well. And I don't think that this is a question that is a question simply for the industrialised countries that doesn't involve the developing countries, because if there is one thing that developing countries are rich in it is in creativity and in culture.

When you look at the film industry, and you see who are the biggest producers of feature films around the world, then the order is India, Nigeria and the United States, and those are the biggest film industries in the world. If you go further down, the fifth biggest is China, the tenth biggest is the Republic of Korea, the thirteenth are the Philippines, the fourteenth Mexico, and the fifteenth Indonesia.

So this is an area which is not subject, theoretically, to a north-south divide when we come to looking at the solutions. But I think that the starting point for the solutions has to be, as I suggested, that we have to come slowly to terms with the fact that the legal model that we've used for the financing of culture in the 20th century is becoming technologically redundant. It's not working as well as it should any more.

And what we face really is a question of market failure. Because you have the offer there; we have offer of the content from the various industries, and I think you have demand. You know, 40 billion files



MEDIA MONITORS

exchange is pretty good evidence of demand. But the mechanism in between for extracting some value from those cultural transactions and returning it to the creators, is not working or not working as well as it should.

So what do we do about this, and what are the risks of not doing anything about it? Let me say a few words about that. What do we do about this? I don't have, I'm afraid, the answer. I wish I did, but I don't have the answer. There are some experiments going on. Let me refer to one.

One experiment is just to charge a flat rate. And I'm speaking here about music. So you might - people in the United Kingdom, for example, are prepared to pay about £20 a month for football; for £20 a month they get all the football they like. So you could charge a flat rate for music, say, \$5 per month, or \$3 a month, and then you can download anything you like. You have access to the full repertoire.

The internet service providers have all the statistics on this, they have all the statistics on which ones are downloaded and the most, so you have a distribution mechanism available for the amount of money that is collected. That is similar to the mechanism that was used as a blank tape levy in the days when we were concerned about the copying of audiotapes. That is one.



MEDIA MONITORS

I think that probably what we have to do is to undertake an exploration of the changing value chains of production of culture and content. And this is not an easy exercise because we're dealing with a moving target.

So if we take the news industry - which you are all much, much more familiar with than I am - if we take the news industry, if you have this migration of news content to an online environment or the internet, and you have aggregators of news, and you have newspapers that are going out of business, who is going to provide the correspondence network? Are the aggregators going to start to provide the correspondence network? Who is going to - or are we all going to rely on the wires, the news houses, for them to do it?

And I think one of the difficulties in legislating in this area, as is indicated by this particular industry, is that the change is so rapid that we're trying to legislate for - or make policy for a very much moving target. I think the same can be said about music, by the way, and the music industry.

It may be that our habits of listening to music, for example, are changing very much, and music tends to be ubiquitous now. You hear it in the lift, you hear it in the shopping centre, you hear it all over the place. So the music industry and recording industry is tending now to place a lot of emphasis on what we call technically the public performance right, and collecting royalties for the performance



of music in public places, whether the supermarket, the pub, or wherever else.

And it may be that our changing habits are such that music will be a feature of our life all the time, and that will provide a revenue stream which might be sufficient. I use that simply as another illustration that habits are changing in response to the technological changes, and therefore it's very difficult to fix firm policies in this area.

A further comment I would make then, is that in trying to explore these changing value chains of production, I think one of the things that copyright has to do as a legal institution is to be technology-neutral. We shouldn't, in the copyright world, be making policies that support either the business models of the 20th century or the models of the 21st century. We should be trying to find legal mechanisms that are neutral to the business models. And that's of course a very easy thing to say as a theoretical construct, and a much more difficult thing to achieve, I think, in practice.

Let me move on then to a final point, and say, what's the risk of us not doing anything? So I've outlined how difficult it is for us to do something; we have the problem, I think we all recognise the problem. We need to formulate it properly so as to responsabilise society. We do have a difficulty in dealing with it because of the fast-moving nature of the situation. But what if we don't do anything? And I think that's a big risk.



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I think the risk there, if we don't do anything, is that technology and the market will make policy. Law and governments will no longer make policy in this area. Policy will be made by technology and the market, and I would give you the example in this respect of Google Books. So you're probably familiar with this. Google decided that it was going to put all the books online, create a digital library. It sought out, I think, cooperation from the publishers. It didn't get it, so it just said, well we're going to do it. And the publishers then sued Google.

And they came under the system of class action litigation in the United States too, a class settlement whereby Google agreed to pay \$125 million to the publishers for distribution between the publishers and the authors, and they set up what is essentially a private copyright registry. And that private copyright registry collects royalties and payments, pays some to the publishers and keeps some for itself.

Now, in that process, I would like to read you what I think is the best analysis from public policy point of view of what happened there. And it comes from Robert Darnton in an article called *The Future of Books* in the *New York Review of Books*. And what he says is this:

Looking back over the course of digitization from the 1990s, we now can see that we missed a great opportunity. Action by Congress and the Library of Congress or a grand alliance of research libraries



MEDIA MONITORS

supported by a coalition of foundations could have done the job at a feasible cost and designed it in a manner that would have put the public interest first. By spreading the cost in various ways - a rental based on the amount of use of a database or a budget line in the National Endowment for the Humanities or the Library of Congress - we could have provided authors and publishers with a legitimate income, while maintaining an open access repository or one in which access was based on reasonable fees. We could have had a National Digital Library - the twenty-first-century equivalent of the Library of Alexandria. It is too late now. Not only have we failed to realize that possibility, but, even worse, we are allowing a question of public policy - the control of access to information - to be determined by private lawsuit. While the public authorities slept, Google took the initiative.

And I think that's a very good example for us. We are faced with a dilemma here. We have a fundamental policy question, the financing of culture. It's a very difficult one to tackle because it's a fast-moving world. If we don't tackle it, then the solution will be provided, and it will be provided by the market and technology, and that may or may not produce a good answer. Google's management may be relatively benign now, but who's to say that they're not taken over next week by another news magnate, for example?

[Laughter]



MEDIA MONITORS

And who's to say that the control of access - the cost of access will not change radically at that stage?

So I leave you with those thoughts. I'm sorry that I haven't got any clear answers for you. I'd be very happy to take any questions, not only on this area, but on any other areas of intellectual property or WIPO or the UN system as it relates to us, that you might like to put. Thank you.

[Applause]

KEN RANDALL:

Thank you, Francis. I might pre-empt a bit of the action and ask you the first question. I take it from what you've said that you're fairly convinced that the solution to the issues that you've raised today has to come from business models rather than the law, because of the relative speed of legal processes and legislation, as against technology. Some of the examples you raised were interesting.

I mean, music has used a number of quite innovative systems on the internet to give away music, to boost the income from concerts, for example. In the news business we don't have any rights. Do you have any thoughts on how the sorts of developments that you've already outlined are likely to affect news coverage, in the sense that as the available revenue to finance quality journalism goes down, so will the availability of content?



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FRANCIS GURRY: I'm not sure I would say that - I think business models have to evolve, certainly. I think the ideal situation for the law would be - let's put it at its most broad general principle - content producers have to receive remuneration. Then you have to, I think, take that broad general principle and find how it can be applied in each particular industry.

I mentioned one example that has been spoken about, the flat rate for music. It's not going to work for other areas. It's not going to work for news, for example. So thus, I think what we have to do is actually take each individual creative industry and explore, analyse - it's a bit like a systems analysis that you do when you're about to automate a business - analyse what are the key components of this particular creative industry, what are the key factors, and how is that going to be reconfigured in the digital environment and have a legal model that aims to implement that broad general principle of returning some value to the creators?

What that means in terms of the news industry, I don't know. I mean, I'm certainly not an expert on the news industry, but you have news collection and you have news analysis, if you like. And the way in which that's taking place, we have to find a way of being able to reward that and not simply have it aggregated in such a manner that all of the value is returned to the aggregator through advertising without anything to the analysts or the collectors.



MEDIA MONITORS

QUESTION:

Simon Gross from sciencemedia.com.au. I'm going to bowl up a double-barrelled question. You talked about financing culture. The big issue in copyright at the moment in Australia is the Productivity Commission's recommendations to end Australia's system of territorial copyrights. I wonder if you could just put that in the international context and just kind of give us a view of that?

You also enverbed a reasonably sober adjective when you talked about responsabilising society. I wonder if you claim any intellectual property over the enverbing of responsible? And you talked about it's now being done through private litigation. Is that going to change?

FRANCIS GURRY:

Well, on the first one, I was hoping you wouldn't ask that. But obviously that's a question that's under consideration by the Australian Government, so I need to stay out of that. But what's happening internationally? What's happening internationally is that they couldn't solve that question as a policy position internationally at the time when the TRIPS Agreement was concluded in the early '90s. And so the TRIPS Agreement leaves freedom to any country to have national exhaustion - meaning that if you sell the book then you exhaust your rights for the national market only - or regional exhaustion, or international exhaustion. So any policy choice is out there under the international regime.

It's a difficult one to solve internationally, I think. Let me give you one example, and it's from a



MEDIA MONITORS

different area. You wouldn't be able to supply low cost drugs to Sub-Saharan Africa if you couldn't territorially divide up markets. So if you had international exhaustion, it would be very difficult to subsidise sub-Saharan Africa with low-cost drugs, subsidise it by charging higher prices in North America and Europe. So that goes against the trend, if you like, of economic rationalisation into one single global market.

And I think it's a clue for perhaps Australia. You know, the policy issue is it's not just economic rationalisation, it is what do you want to do with your domestic book industry, and how do you want to use the international freedom that you have to choose whatever policy response position you want, in order to encourage what your national objective is? And if the national objective is to secure a healthy domestic publishing industry, then the parallel importation restrictions maybe serve that purpose. But you have to then look at whether they are efficient in serving that purpose.

Or you may come to the opposite view that, you know, this has to be opened up to international competition because consumers having books at a lower price is a more important policy objective to achieve.

So I hope I've successfully avoided answering your question. Yes, responsabilising? I'm sorry, I apologise. I generally don't like - what are we - I'm sorry I missed your third...



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QUESTION: Well, you were talking about responsabilising society, and you quoted that quote saying it's only happening now through private litigation.

FRANCIS GURRY: Yes.

QUESTION: Do you see that changing in any way in the next five, ten years?

FRANCIS GURRY: Yeah, well, it's a very difficult one, I tell you - and it's difficult not the least because a number of governments around the world are aware of the fundamental nature of this problem and how important it is. But it's too difficult for them to tackle as a domestic political issue. There are more consumers in a society than producers of culture.

So it's not a popular thing to be going out as a government and to say, well, we are stopping illegal downloading of music, and we're going to do this in whatever way possible. That's not going to win very many votes, frankly. So that's the problem with tackling this issue as a domestic political issue, nobody wants to take it on.

Which means that the ideal solution would be to have an international process which explores what might be the possible options or solutions, and bring it back to the national level as a more global solution. And that's the theory of it. It's harder of course to do in practice, to get such an international process of reflection. Because it's not a negotiation.



I think what we're doing here is trying to analyse what is an appropriate policy response, and it's quite a difficult thing to do.

In the meantime, the danger is, I think, as you say, that we're just going to go ahead putting the task of making policy onto courts, instead of legislatures - it's too hard for legislatures - and onto the market to develop models that are going to return remuneration. And what does that produce? Well, we're not quite sure yet. It's not necessarily going to produce the best solutions. Markets haven't necessarily been producing the best solutions in the last two years.

QUESTION:

Tony Melville, the director of the National Press Club, but in the context of this question also the director of the Australian Industry Group, exporters amongst our members of course. And the question is about China, and what more can be done about China? A couple of examples. One member of ours got a contract closed to exporting cheese to China. And the first question they got was, if they could deliver the cheese in the same size as the package of their biggest competitor, so it could be repackaged.

The other was a paving company, and I've seen their brochures myself. There was an Australian paving company, and the Chinese paving company had the same brochure with different words put in it. What more can be done about it?



And a second question, related. Is it getting worse with the global financial crisis, the whole issue of copyright? Are companies getting more desperate, stealing more ideas and things from people?

And I guess a third question is, FTAs, is there a role in FTAs as well, Free Trade Agreements? Should we be looking, particularly as we are seeing more FTAs in Australia rolling in some of these issues in at the top of that list?

FRANCIS GURRY: Great, thank you.

[Laughter]

So China? Look, my view on China has made absolutely extraordinary progress in intellectual property.

Okay, it was 1984 that they enacted a patent law. That's 25 years ago only, 25 years ago. And they enacted a patent law, interestingly, before the enacted an economic law. The only other country to have done that was Japan after the Meiji Restoration. And so they, in 25 years, have gone from not having anything to having the third largest patent office in the world, and having a rate of growth of technology production which is something astronomical.

So if you look at the first six months of this year, during the economic crisis, what we see is that



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Chinese applications domestically - Chinese patent applications filed by Chinese nationals, have increased by 23.1 per cent. And foreign applications into China have decreased by 7 per cent.

And I think that China now has such stakes as a producer of technology and a producer of films that their interests are more aligned with the industrialised countries, and they have every interest in getting to a situation in which they are protecting intellectual property, and abiding by the rules.

So how do we account for the enforcement difficulties? And I would say there that we are dealing with a very large country, and a diverse country. It's first world and it's third world. So the Eastern seaboard is one thing, and then the provinces are another thing. And part of the problems that we see - we tend to regard China as, you know, controlled by a monolith, but I think it's more complex than that in reality, and I think that the problems we see are problems of unevenness of economic development across the country.

That said, there are plenty of people, of course, anxious to see China pay much more attention to respect for intellectual property, whether it's in the physical goods or the digital goods area. But, you know, the general message, I think, is that China has arrived as a technological power, and their rate of increase is extraordinary. It's really astronomical.



MEDIA MONITORS

And the other area, I suppose, that I could mention in that regard is France, and what you see Chinese companies doing now, of course, is buying brands like Pierre Cardin to add value to their own products.

Worse in the economic crisis? Yes. Well, let's take the film industry. Apparently Hollywood is going to have this year box office records. That's their predictions. Because probably there are more people with a little bit more time to watch films. But some of the analysts in the film area say that what's sure is that more films are watched during an economic crisis, but how? Are they going to be watched on mobile phones, telephones? Are they going to be watched on other devices?

So one theory certainly is that the rate of piracy will increase as a result of the economic crisis, and maybe people will have more resort to counterfeit products too during the economic crisis.

My own view is that the economic crisis is going to accelerate some of the developments that were already occurring. So it will accelerate the rise of China. I mean we are seeing that in terms of the international patent system. For example, patent applications, international patent applications, from the United States are down 14 per cent in the first six months of this year. From China they're up 20 per cent. So the crisis, I think, is going to have an accelerating effect.



MEDIA MONITORS

Same in the digital world. I think it'll have an accelerating effect on those industries or companies that are in crisis, that are suffering difficulties, are going to feel it more severely, more quickly, and the new business models I think will emerge a little bit more quickly.

FTAs, well it's a very interesting question because what we have is an increasingly complex international architecture. Of course, we have a multilateral system and then regional agreements and then FTAs.

And I think at the present time there are some 200 bilateral FTAs being negotiated around the world. And what is that going to - you know, what sort of confused spaghetti are we going to end up with at the end of that, in terms of architecture? And it's a very difficult question.

I would say that what we have to think about in the multilateral system, frankly, is why is this happening? And why it's happening is basically a loss of confidence in the multilateral system to provide solutions. The multilateral process is too slow, unfortunately, and there is a real risk involved in this.

Naturally, coming from where I am, I'm in favour of multilateral solutions. But it's difficult in the area of intellectual property, because intellectual property by definition is concerned with the very



MEDIA MONITORS

latest advances in technology and the creative expression, and the multilateral methodology is usually the lowest common denominator.

You find the lowest common denominator that everyone's comfortable with, and that's not necessarily the best way to make policy for state of the art developments. And that is, I think, one of our difficulties in policy making in the multilateral area. And for as long as we don't find solutions, people, countries, will have recourse to bilateral FTAs.

KEN RANDALL:

Francis, can I just take you back to the beginning of Tony's question, when so much of the world production of consumer goods is moved to China, can there be effective control of intellectual property rights of the type that he was describing, in theft, in effect, of ideas and products?

FRANCIS GURRY:

Well, the best way, I think, is for them to see an interest in doing it. And that we are seeing as they become a generator of, an originator of, products, rather than an outsourcer. And I think, you know, outsourcing is moving out of China elsewhere. Chinese are even starting to outsource. And then they acquire a reason to enforce intellectual property. That's the best evolution.

But in between time, of course, there is a period of time in which intellectual property owners may be suffering from lack of enforcement, lack of adequate enforcement. How do you deal with that?



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Well, it's usually dealt with - you can deal with it by an action before the World Trade Organization, which has been tried.

You can deal with it by bilateral negotiations and discussions, and even pressure, if that's possible in this context. It's very difficult. You know, I think that, frankly speaking, the international community has never really been very good at compliance. You know, if you look over the last 50 years, we've generated volumes and volumes of legislation and treaties, but compliance, whether it's human rights or intellectual property, we're not very good at.

KEN RANDALL:

Next question from Morris Riley.

QUESTION:

Do you think ISP providers will form part of the solution as sort of de facto collectors of royalties and copyrights? I mean, for example, in the pre-digital age, music, if you hear it through the speaker here we pay a fee to somebody, who then distributes it to the creators. It must be complex. But in the future, do you think public policy makers will see it tempting to make our ISP providers the collectors of revenue?

FRANCIS GURRY:

I hope so. I hope so because, you see, the approach that has been happening is to make them responsible. You know, you could also adopt the approach, as you suggest, of bringing them into the value chain so that they see their own reason to enforce intellectual property or to respect copyright.



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The ISPs, I think, are rather like the printers of the analogue world. The aggregators are the publishers, and the ISPs are the printers. And the printers had an interest in the value chain of production: the more books they - were printed, the more remuneration they had.

So bringing them in would, I think, break down this opposition that we tend to have at the moment between the content providers on the one hand, and the IT companies or the internet service providers on the other who say we don't want to hear about your problems, we're just running the - you know, the plumbing. So yes.

KEN RANDALL: Roger Houseman.

QUESTION: Dr Gurry, in respect to the speech you gave previously, you mentioned your budget. And I was wondering, if somehow by magic we could double your budget, what sort of effect would that have?

FRANCIS GURRY: Well, thank you, very interesting question. I wish you were a member state. Look, I think that what we could do is vastly improve global knowledge infrastructure, okay. That's the first thing.

And that, I think, would get a lot of buy-in from the developing countries. So we are overwhelmed with demand from developing countries, for example, to automate their offices and bring them into and give them access to databases.



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With the cooperation or with the generosity of the publishers - as a small example, generosity of the publishers, International Association of Scientific, Medical and Technical Publishers and the International Publishers Association, we have now given access to persons in least developed countries to a database of scientific periodicals and journals which if you took an annual subscription to would be US\$400,000.

And it's free of charge to LDCs, people in - researchers, universities and institutions in LDCs. And it's also \$1000 only for a subscription for persons in 58 developing countries that fit into the low income category of the World Bank.

And that's the sort of thing that I think we could do which would make a contribution to the reduction of the knowledge gap. I mean you look at the knowledge gap around the world, it's really quite extraordinary.

And let me give you one statistic, if I may. Seven corporations last year spent over \$7 billion in research and development, over \$7 billion in the generation of new knowledge. And that is more than 53 sub-Saharan African countries had available for all of their public needs: health, education, infrastructure, defence, police, the lot. It's more than their GDP.



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You know, so the differences are extraordinary, the knowledge gap in the world. And I think that through databases, internet access, we could make a difference by really moving into this. And at the same time, we could make a difference to the functionality of the system from the point of view of the developed countries.

We could vastly improve, you know, the functionality of the patent system, which needs to be improved because they're coping with overwhelming demand; some 3.5 million unprocessed patent applications around the world. So that is certainly two things that we could do.

And I think the third area of importance would be helping developing countries establish national innovation and intellectual property strategies. And the final area would be, you know, sensitising the public to some of these issues, the importance of intellectual property and property rights in the knowledge economy.

KEN RANDALL: Another question from Simon Gross.

QUESTION: We talked about responsabilising society. Let's talk about decarbonising society. You spoke at a conference last month about, and you put the point that the IP rights system can contribute to the take-up of renewable energies.



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And I think you're talking there about fast-tracking applications, things like that. The Australian Government's funding the Global Carbon Capture and Storage Institute which, as I understand it, their modus is more about public good, so the research would be available publicly. How do you see the trade-off between those two models in this global issue?

FRANCIS GURRY:

Well, I think that, as a general rule, we tend to regard the intellectual property system too much as a static instrument. You know, it hasn't changed much, frankly speaking, for the last hundred years. We fiddle around with the edges. And we should use it - we should regard it as a more dynamic tool.

So what could we do? In the example that you've given, I'll just throw out a suggestion - and it's not necessarily saying that this is anyone's policy. But what you could do is say, well we'll give you a patent for 25 years instead of 20, but you have to make it available for licensing, you know, you cannot have the exclusive exploitation of it.

So you encourage greater investment in the technologies, and at the same time you encourage the diffusion of the technologies. It's just an example that you could modulate the rights that we have in such a way as to achieve desirable policy ends.



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So you might say anything in the carbon sequestration facility - well, perhaps I should steer clear of that institution - but anything there that's publicly-funded research, we will take a patent out on, but it will be available for licensing by anyone, any comer, to encourage the take-up of the technology and its diffusion, but also get a revenue stream to invest in research for improving the technology.

I suppose the other thing to mention in this context of climate change is that transfer of technology is going to be a big issue coming up to the Copenhagen talks, as the developing countries are being asked to - I'm going to stop - move to carbon-free technologies. That's going to be costly. They don't necessarily have them, and they are going to be asking for those technologies to be transferred.

KEN RANDALL:

There's a question on your right, Dr Gurry.

QUESTION:

My name is Maryanne Diamond and I'm president of the World Blind Union, the international organisation representing the estimated 161 million people who are blind. In addition to that, there are many millions of people who have a print disability through a physical disability, learning disorder or whatever.

I know you're very aware of the access to information that we address at our international level, with only five per cent of printed material



accessible to us. The technologies, of course, are moving fast, as you identify, and there is technology for quick, speedy, not costly ways of transferring information into an accessible format.

We also have the United Nations Convention on the Rights of Persons with Disabilities, which more than 140 countries have signed, including Australia. I'm interested to know what you think may be the impact of this convention on what we call the famine to us as blind people of printed material, because under the convention, there is the right for people with disabilities to have equal access to information.

And I'm interested to know, you know, wearing your UN hat, what you think might be the impact, at the international and at the state level, of such a treaty in regard to copyright and access to information.

FRANCIS GURRY:

Thank you very much indeed, and thank you very much for raising that issue. I think the impact is going to be enormous. We've already felt it. It's on our agenda. And it's something that I'm personally very much committed to seeing gets a constructed and useful solution.

And, incidentally, the United States of America also signed the convention. And I think that is going to be very influential in our area, in the copyright area,



the fact that they signed the convention on disability. So, what's happening with us, two things.

One, at the behest of - originally, as you know, the World Blind Union proposed a draft treaty to create an international environment for exception and licensing schemes for access to published works on the part of the visually impaired and the print impaired.

And that draft treaty has now been tabled by Brazil, Paraguay and Ecuador, in our standing committee on copyright, and will be considered at the next meeting of the standing committee. And I think it's a very, very important issue which will be taken up now and considered in detail.

And there is another thing that's happening, and that is that we are facilitating - WIPO is facilitating, what we call a stakeholder's platform to look at ways of practically improving access to published works on the part of the visually impaired.

The stakeholder's platform is composed of, on the one hand, the publishers, the International Publishers Association; and, on the other hand, the World Blind Union and the DAISY Consortium, which works with new technologies of access. And they have a technology subgroup, and they have a trusted intermediary subgroup.



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Because the thing is this: that if you want to transfer, let's say a digital master file from London to Nairobi in order to create an accessible format, the digital master file is the same for the accessible format as it is for the ordinary format, so publishers want a trusted intermediary to guarantee that this is not going to be used for a parallel market. And we're coming to those solutions. And I think it will - I hope it will, have an impact on improving access.

KEN RANDALL:

Question straight ahead.

QUESTION:

Hi. My name is Jordan Brown. I'm an independent documentary filmmaker and I would like to ask you a question concerning Google Books. You mentioned it before. I would like to put this to you: what are your concerns with Google scanning books without the permission from the copyright holders, and building the largest digital repository of books that is private? And as this, as knowledge and culture is privatised in this way, what do you think the implications are on society?

FRANCIS GURRY:

Well, I personally think these should be public assets, or at least these assets should be subject to public rules of access. So if you don't make the asset public, I think you have to have public policy roles that are going to ensure that access can't be stopped and that access is available at affordable terms.



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So I'm very clear about what I think ought to be the case. But unless we can move as an international community, and indeed at the national level too, the situation is that we will see more and more privatisation of these public goods.

KEN RANDALL:

There's a question to your left.

QUESTION:

Yes, David Nelson from inovia. I'm just interested to know, I guess, 30-odd years into the life of the Patent Cooperation Treaty, whether you believe that it's lived up to the, I guess, aspirations or expectations of an international global patent; particularly when you put yourself in the shoes of an inventor wanting to take their invention to the world, whether it's truly accessible and cost-effective and all the other things that would really help proliferate innovation.

FRANCIS GURRY:

Thank you. Look, I think the Patent Cooperation Treaty is one of the rare examples of successful international cooperation. And it is successful because it doesn't threaten anyone. It leaves the existing national patent offices in place and casts a procedural network over them to make them interact and work efficiently. And I think it has worked well.

We are now, as I said, up to about 160,000 international patent applications a year. We have about 50 per cent of all the international patent applications - that's defining an international patent



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application as a patent application filed in more than one country - 50 per cent of them pass through the PCT. Our aim is to expand that market.

There are, nevertheless, certain defects in the system. Those defects, frankly speaking, are due to the behaviour of various actors in the system rather than the system itself. And so one of our tasks is to make those actors behave themselves. And since those actors are very powerful, that's very difficult.

KEN RANDALL:

Dr Francis Gurry, let me ask you your final question. Many of the things you've said today suggest that the specialised role of the WIPO is becoming less and less relevant to its function; you're doing a lot of things which aren't directly associated with your original purposes.

Can you see a situation where there'll be perhaps a merger between your organisation and the World Trade Organization, or other UN agencies, to cover this fact that many people have often described progress in international intellectual property matters as glacial, because you're all talking about technology moving at a pace like lightning?

FRANCIS GURRY:

That's a big challenge. You know, if we can't solve this - you know, if we can't solve the blockages that characterise the system, frankly, the system of improving the international architecture for legislative architecture, then our role in economic rule-making will suffer, naturally.



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And why did people take intellectual property to the World Trade Organization in the first place? And that one is going back to the late '80s and early '90s, late '80s. I think they did it for two reasons. The first was that their intellectual property was one of many issues, whereas the WIPO it's - we're a single-issue organisation.

And if you disagree at WIPO about intellectual property, you pack your bags and leave. If you disagree about intellectual property in the World Trade Organization, you might be able to trade it for bananas or something else that's on the menu for that day. And so that, I think, was one of the reasons.

And the other reason is that they have an enforcement mechanism. The integrated dispute resolution mechanism of the WTO provides an enforcement mechanism which we do not have, so we have to be very conscious of that. It means that, at the end of the day, we fall back to relying on consensus and cooperation in evolving the framework.

And that's our task, frankly, in the next couple of years. And if we can't do that, then we're in trouble in this area. Whether we'll be taken over, I don't know. You know, I don't think so. I think the more likely result is that we would have our role reduced in economic rule-making, and that, I think, would be a pity.



KEN RANDALL: Thank you very much.

[Applause]

KEN RANDALL: Dr Gurry, thank you very much. It's been a very informative hour. And we would like you, if you've got a really big one, to sign, there's a big pen in there which is very suitable for the task.

FRANCIS GURRY: Thank you very much.

KEN RANDALL: Good luck.

FRANCIS GURRY: Thank you very much. I thought this card here was National Bank of Australia.

[Laughter]

* * END * *

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ABs = Managers, administrators, professions. GBs = Grocery buyers.
